

PROFESSIONAL FEE AND EXPENSE GUIDELINES

The Honorable Robert D. Berger
United States Bankruptcy Court

I. Employment Application and Affidavit

A. Timing

1. Section 327 - requires court approval of professionals hired by debtor-in-possession or trustee.
2. Fees will not be approved unless employment has been approved. Nunc Pro Tunc orders will be allowed where equitable principles so require. Mere neglect by the professional does not constitute extraordinary circumstances. In re Land, 943 F.2d 1265, 1267-68 (10th Cir. 1991). In re Ibbetson, 100 B.R. 548 (D. Kan. 1989).

B. Effect of Approval of Employment

1. Notwithstanding approval of the application for employment, the Court may disallow compensation or expenses provided for under the terms and conditions of the employment application(s), if such terms and conditions prove to have been improvident in light of developments not anticipated at the time such application(s) was approved.

II. Fee and Expense Applications

All applications for fees and expenses shall contain the following information. These guidelines provide the minimum standard. The Court may require additional information in a particular application when the nature of the case and representations so warrant. Nothing contained herein shall limit the Court's power under Bankruptcy Code §§ 326-329 and Local Bankruptcy Rules.

1. The identity of the applicant and the party the applicant represents;
2. The date the bankruptcy petition was filed;
3. The date the applicant moved for employment;
4. The date of the order granting approval of employment;
5. A statement of whether it is an interim or final application (if interim, identify whether it is the first, second, etc., interim application);
6. A recapitulation of what payments have been made, the source of the payments, the date of the payments and what compensation and reimbursement amounts have been previously approved by the Court;
7. The fee amount and the expense amount requested under such application;
8. Specific information about the requested expense amount, including:
 - a. the date the expense was incurred;
 - b. the exact nature of the expense (i.e., the number of copies and cost per copy);
 - c. the purpose or need for the expense;
 - d. any profit margin, markup or overhead factor being realized on any item of expense;

9. Specific information about the requested fee amount, including:
 - a. The name(s) of the individual(s) who worked on the case, including their title or position and their hourly rate;
 - b. Individual and separate entries for each service performed, identifying:
 - i. who performed the work;
 - ii. the date the work was performed;
 - iii. a description of the work performed and an explanation of the specific nature of the activity, such as the issue, contested matter, or problem worked on, and where not self-evident, a statement of the purpose of such work;
 - iv. the identity of other parties involved in the work performed;
 - v. the amount of time expended in tenths (0.10) of hours; and
 - vi. the dollar value at the applicable billing rate;
10. Applications for expenses of Creditor Committee members and non-attorney professionals must include copies of all receipts for expenditures. Applications for expenses incurred by attorneys and their staff need not include copies of receipts.

III. Expenses

A. What Is Compensable

1. Extraordinary photocopying - actual, reasonable and necessary costs
2. Extraordinary postage expense - actual, reasonable and necessary costs
3. Long distance telephone calls
4. Fees charged by Bankruptcy Clerk's office for copies from the court file
5. Certified mail, if shown to be required by law
6. Out-of-town travel, including coach class airfare, tolls, parking, reasonable and necessary lodging and meals, nonlocal (more than 20 miles, one way, between office and destination) mileage at Internal Revenue Code rate
7. Express mail or delivery - actual, reasonable and necessary costs
8. Telefacsimile charges - actual, reasonable and necessary costs, outgoing faxes allowed only as to the cost of the long distance call, if any; incoming faxes allowed
9. Computerized legal research - actual and reasonable costs above monthly subscription fee
10. Messenger service - actual and reasonable costs

B. What Is Not Compensable

1. Ordinary photocopying - routine correspondence
2. Ordinary postage expense - routine correspondence
3. Telephone service
4. Word processing
5. Court fees
6. Office overhead, including, but not limited to: rent; utilities; clerical or secretarial wages, salary, benefits and overtime; local telephone charges
7. Local travel (20 miles or less, one way, between office and destination)

IV. Fees

A. Rate of Compensation for Professionals

1. Attorney's Fees

Subject to the Court's reserved power to limit fees under § 328 of the Bankruptcy Code, local area attorneys may be compensated at their usual and customary rate. Professionals employed in cases that are of national scope and present complex issues requiring the skill and experience of attorneys from other parts of the country may be allowed compensation at their usual and customary rates, again subject to the Court's discretion under § 328.

- a. In determining whether a requested fee is reasonable, the Court shall be guided by In re Permian Anchor Services, Inc., 649 F.2d 763, 768 (10th Cir. 1981), which adopted the lodestar analysis set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974), which looks to the following factors:

(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

- B. The Court shall make a separate determination of the necessity of the requested services, as defined in In re Lederman Enterprises, Inc., 997 F.2d 1321 (10th Cir. 1993), including whether the services benefitted the bankruptcy estate.

2. Paralegal Fees

The principles set out above for usual and customary rates for local and national attorneys shall apply to the rates of their respective paralegal employees. Time entries for a paralegal should not include secretarial or clerical tasks.

3. Other Professionals

Other professionals who ordinarily bill on an hourly basis may be allowed their usual and customary rate, subject to the Court's discretion. Flat fees for accountants, financial advisors, investment bankers, or consultants are disfavored and will not be approved unless approved upon prior application for cause shown.

B. Compensable components of Attorney's and Paralegal's Fees

1. Fee applications - reasonable time spent in preparation of fee application. In re Seneca Oil Co., 65 B.R. 902, 910 (Bankr. W.D. Okla. 1986).
2. Prepetition - only time spent in preparation for or contemplation of filing bankruptcy.
3. Personal services - services that benefit the bankruptcy estate are compensable.
4. Travel - nonlocal (as previously defined) travel compensated at counsel's usual and customary hourly rate. Travel must be apportioned among all the cases on which the attorney appears.

5. Interoffice conferences among attorneys are compensable subject to a showing that they are reasonable, necessary and not duplicative.

C. Components of Attorney's and Paralegal's Fees That Are Not Compensable

1. Clerical or secretarial work - filing, organization of files, mailing, copying.
2. Time spent "educating an untrained apprentice or familiarizing oneself with general Code provisions or basic law" is not compensable. Attorneys are required to have some minimal level of expertise. In re Seneca Oil, 65 B.R. 902, 912 (Bankr. W.D. Okla. 1986).