

JUDGE SOMERS
PROFESSIONAL FEE AND EXPENSE GUIDELINES
June 11, 2019

The following are guidelines only and do not amend or replace applicable sections of the Code, the bankruptcy rules, the local rules, and case law.

I. Employment of Debtor's Counsel

- A. Court approval under § 327 is not required for the retention of professionals by a debtor in a Chapter 7 or Chapter 13 case.
- B. Form 2030, Disclosure of Compensation of Attorney for Debtor, must be filed in all cases. This disclosure must be consistent with the terms of the retention agreement between debtor and counsel.
- C. The Court has not adopted a “no look” or standard fee for debtor's counsel in either Chapter 7 or Chapter 13 cases.

II. Employment of Professionals Retained by Trustee or Debtor in Possession

- A. Timing of Applications and Affidavit
 - 1. Section 327 requires Court approval of professionals hired by debtor-in-possession or trustee.
 - 2. Fees will not be approved for services during the case before the effective date of approval of employment. *Nunc pro tunc* approval of employment may be allowed only if extraordinary circumstances exist. Mere neglect by the professional does not constitute extraordinary circumstances.
- 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.

III. Fee and Expense Applications

A. Timing and Notice

1. Applications for monthly payment in Chapter 11 and 12 Cases are governed by LBR 2016.1. An order approving a motion for monthly payments must be entered before applications for monthly payments are approved. A motion for monthly payment should be separate from the motion for employment and shall be served on those persons identified in LBR 2016.1(c). Notice shall be in accord with Rule 2002. The Court reserves the right to conduct a hearing to determine the extent of the professional's need to be compensated monthly and to determine the terms of such payment, even if there is no objection.
2. Applications for interim compensation are governed by § 331. Notice shall be in accord with Rule 2002.
3. Applications for final compensation are governed by § 330. Notice shall be in accord with Rule 2002. Any order granting compensation on a monthly or interim application shall be deemed interim only and remains subject to review on the final application. Until a final fee application is approved, the Court may enhance or reduce fees and expenses previously approved and retains the power to order the disgorgement in appropriate circumstances.

B. Content of the Application

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 §§ 326-330 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 of the order granting approval of employment;
4. A statement of whether it is an interim or final application (if interim, identify whether it is the first, second, etc., interim application);

5. 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;
6. The fee amount and the expense amount requested under such application;
7. Specific information about the requested expense amount, including the date and exact nature of the expense (i.e., the number of copies and cost per copy);
8. 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: who performed the work; the date the work was performed; 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;
 - c. the identity of other parties involved in the work performed;
 - d. the amount of time expended in tenths (0.10) of hours; and
 - e. The dollar value at the applicable billing rate.
9. Applications for expenses of Creditors' 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.

IV. 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, if specifically billed by the carrier;
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;
7. Non-local (more than 20 miles, one way, between office and destination) mileage at Internal Revenue Code rate;
8. Express mail or delivery - actual, reasonable and necessary costs;
9. 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;
10. Computerized legal research - actual and reasonable costs above monthly subscription fee; and
11. Messenger service - actual and reasonable costs.

B. What Is Not Compensable

1. Telephone service;
2. Word processing;
3. Office overhead, including, but not limited to: rent; utilities; clerical or secretarial wages, salary, benefits and overtime; local telephone charges; and
4. Local travel (20 miles or less, one way, between office and destination).

V. Fees of Professionals

A. Standards for Attorney Compensation

1. Subject to the Court's reserved power to limit fees under § 328 of the Bankruptcy Code and subject to the requirement of § 330 that compensation be reasonable, 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 and § 330.

2. In determining whether a requested fee is reasonable, the Court shall be guided by 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:
 - a. the time and labor required;
 - b. the novelty and difficulty of the questions;
 - c. the skill requisite to perform the legal service properly;
 - d. the preclusion of other employment by the attorney due to acceptance of the case;
 - e. the customary fee;
 - f. whether the fee is fixed or contingent;
 - g. time limitations imposed by the client or the circumstances;
 - h. the amount involved and the results obtained;
 - i. the experience, reputation, and ability of the attorneys;
 - j. the "undesirability" of the case;
 - k. the nature and length of the professional relationship with the client; and
 - l. awards in similar cases.

B. Paralegal Compensation

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

C. Compensation of 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.

D. Compensable Components of Attorney's and Paralegal's Fees

1. Fee applications - reasonable time spent in preparation of fee application.
2. Prepetition - only time spent in preparation for or contemplation of filing bankruptcy.
3. Personal professional services - services that benefit the bankruptcy estate are compensable.
4. Travel - non-local (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.

E. 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.