UNITED STATES BANKRUPTCY ADMINISTRATOR
MIDDLE DISTRICT OF NORTH CAROLINA

JOHN PAUL H. COURNOYER – BANKRUPTCY ADMINISTRATOR
101 S. EDGEWORTH ST.
GREENSBORO, NC 27401
(336) 378-4170
WWW.NCMBA.USCOURTS.GOV

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To: Chapter 7 trustees, trustee's counsel, accountants, brokers, auctioneers, and other professionals employed in chapter 7 bankruptcy cases.

Re: Chapter 7 Fee Application Guidelines

These guidelines apply to fee applications in all chapter 7 cases, unless otherwise directed:

Timing of Fee Applications

Given the nature of chapter 7 work, most professional engagements warrant only a single fee application covering all services provided. Trustees should wait until case completion to seek their commissions under 11 U.S.C. § 326. The same rule generally applies where a trustee has employed his or her own law firm.[1] Similarly, auctioneers and brokers are typically paid from sale proceeds upon the completion of all services.

That said, interim fee applications for the same professional are sometimes permissible. For example, periodic applications would be appropriate for an accountant that prepares annual tax returns in connection with a multi-year case, or special counsel employed on an hourly basis to pursue lengthy litigation. In these circumstances, the first interim application is permitted after the creditor's meeting has been concluded and the case has been pending for at least 120 days. *See* 11 U.S.C. § 331. In such cases, professionals may file additional interim fee applications on a quarterly basis (or longer intervals).

Contents

All applications must include:

- A cover sheet and application, using the forms available on the BA's website by clicking here.
- Biographical information for everyone that provided professional or paraprofessional services under the application. It should include each person's name, position, education, experience (including bankruptcy-

[1] In the rare case where a trustee has sought and received approval to make interim distributions to creditors, the BA supports payment of accrued attorney's fees and expenses at that time, but not the payment of trustee's commission.

related experience), specializations or certifications, and customary billing rate (if applicable).

- A detailed description of services and expenses covered by the application. For engagements based upon hourly compensation, this requires itemized time entries that show the name, title, time expended, hourly rate, and description of each service provided, and an itemization for any expense reimbursements requested. For engagements based upon a commission, contingent fee, or similar structure, this requires a detailed summary of the services provided, the calculation of the requested compensation, and an itemization for any expense reimbursements requested.
- Copies of the employment application and the order approving employment.

Itemized Time Entry Guidelines

The detailed itemization of time entries must follow the following guidelines:

- Chronological order.
- Billing increments of one-tenth of an hour (0.1, 0.2, etc).
- No lumped or combination entries.
- Time entries must contain enough detail to evaluate whether the time expended was reasonable for the service provided.
- *Adversary Proceedings.* Time entries associated with an adversary proceeding should be separately billed as a sub-matter, or otherwise separated from time entries in the main case.
- *Intraoffice Conferences/Multi-Attorney Activities*. If multiple timekeepers seek compensation for joint activities, such as multiple attorneys appearing at the same hearing, the time entries should explain why the task required multiple people. If no explanation is provided, the BA will object to all but one timekeeper.
- *Half Rate for Travel.* Travel time may be billed at no more than half of the professional's allowed hourly rate.
- *Court Appearances.* Time entries for court appearances or creditor's meetings should be limited to the actual time spent in court or in the creditor's meeting. Any other matters related to the court appearance, such as conferences before or after the hearing, must be separately

billed.

- *Ministerial and Clerical Tasks Are Not Compensable.* Tasks like typing, transcription, opening the mail, copying, organizing files, and filing a document with the court through CM/ECF are non-compensable unless the description clearly justifies a need for these tasks to be performed by a professional or paraprofessional.

- *Efficient Staffing.* Fees may also be reduced for attorneys' failure to use paralegals to perform tasks that do not need to be performed by an attorney, inefficient use of associates, or for the failure to properly staff the engagement.

Hourly Rates

If a trustee employs his or her own law firm, the presumptively reasonable hourly rates are (i) $375 for lawyers with more than five years of experience, (ii) $300 for lawyers with less than five years of experience, and (iii) $150 for paralegals.

Other professionals' hourly rates must be reasonable as required by 11 U.S.C. §§ 330, 506(b) or 506(c), as applicable. Except for trustees' counsel, there are no set hourly rates. Customary factors will be considered in evaluating the hourly rates requested.

Itemized Expenses

The detailed itemization of expenses must follow these guidelines:

- Each expense must be set out in sufficient detail to demonstrate its benefit to the estate.

- General overhead expenses, including supplies, are not allowed. Examples of general overhead expenses include telephone charges and charges for legal research services such as Westlaw or Lexis.

- All expenses must be billed at cost (i.e., no added profit or other multiplier).

- *Copy Charges*. The nature of the copying, the number of copies, the charge per copy, and the total charge should be disclosed. Copy charges billed by an outside service should be accompanied by an invoice.

- *Mileage*. Any mileage reimbursement request should detail the date of the trip, the destination and purpose of the trip, the number of miles driven, the charge per mile, and the total charge.

- *Other Travel*. Where a trip requires expenses such as meals or lodging, the details of each expense (meals, lodging, transportation, etc.) should be clearly stated, along with the total cost. A single entry for the total expense of a trip is not adequate. The description should also explain why the trip was necessary.

Trustee vs. Attorney Time

When a trustee serves as his or her own counsel, they must carefully distinguish between time expended as trustee and time expended as counsel for the trustee. Trustees should not bill attorney time for performing duties that could be performed by a reasonably prudent businessperson. The distinction between attorney and trustee time is evaluated on a case-by-case basis consistent with applicable law. *See., e.g., In re J.W. Knapp Co.,* 930 F.2d 386, 388 (4th Cir. 1991) ("only when unique difficulties arise may compensation be provided for services which coincide or overlap with the trustee's duties, and only to the extent of matters requiring legal expertise"); *In re Lexington Hearth Lamp & Leisure, LLC*, 402 B.R. 135, 137 (Bankr. M.D.N.C. 2009).

Holdback and Other Special Provisions

The Court has discretion to implement a holdback and other special provisions under appropriate circumstances. Nothing in this guidance should be construed as precluding additional or modified requirements governing fee applications on a case-specific basis.

Service

Unless otherwise ordered, all fee applications shall be served on the BA, any trustee or examiner, debtor's counsel (or the debtor in a *pro se* case), any committee counsel, and any party that has requested service. The bankruptcy noticing center shall provide notice of the application to all parties in the official matrix.

John Paul H. Cournoyer
U.S. Bankruptcy Administrator
Middle District of North Carolina