

Filing a Fee Application: Step 2 for Getting Paid for Your Services to a Debtor-in-Possession or Trustee in Bankruptcy Court

(Or, now you can Show Me the Money!)



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Step 2: Filing the “fee app”

The ultimate exit strategy for turnaround professionals is getting paid for what you do for a bankruptcy estate. In a bankruptcy setting, simply sending a bill upon completion of your work will not get you paid. The Bankruptcy Code and the Federal Rules of Bankruptcy Procedure prescribe requirements and procedures that are conditions for compensating professionals. And that is because the bankruptcy court is duty bound to control the bankruptcy estate’s administrative expenses.

This is the second installment of a two-part paper on payment of professionals in bankruptcy cases. The first part, presented at the Turnaround Management Association’s Second Annual S.E. Regional Conference in 2007,¹ dealt with the first step for getting paid: obtaining court approval of the professional’s retention. This installment addresses the second step: filing a proper application for authorization by the bankruptcy court to get paid, called a “fee app” by those in the know.²

The statute to know inside out

Section 330 of the Bankruptcy Code³ is the roadmap for standards for awarding compensation and what should be addressed in a fee app. That section is reprinted in Appendix 1 to this paper.

Section 330 permits the bankruptcy court to award “*reasonable* compensation for *actual, necessary* services” rendered by the professional (or the professional’s paraprofessional) and reimbursement for “*actual, necessary* expenses.” 11 U.S.C. § 330(a)(1)(A),(B) (emphasis added). The award may be made only after notice and a hearing.⁴ 11 U.S.C. §330(a)(1). The bankruptcy court is permitted to award less than the amount requested. 11 U.S.C. § 330(a)(2).

The criteria a bankruptcy court considers when determining what is “reasonable” compensation are the nature, extent and value of the services rendered. 11 U.S.C. §330(a)(3). In reviewing those criteria, the bankruptcy court must consider “all relevant factors, including—

¹ The first part is titled *Obtaining Approval of Employment: Step 1 for Getting Paid for Your Services to a Debtor-in-Possession or Trustee in Bankruptcy Court (Or, how to avoid becoming a Turnaround Volunteer)* and is available from the author upon request.

² The author thanks Patrick Mosley, her law clerk, for assisting in the researching and drafting of this presentation.

³ The Bankruptcy Code is found at 11 U.S.C. section 101, et seq. All subsequent references to section numbers in this paper are to the Bankruptcy Code.

⁴ Some courts do not require an actual hearing; rather, the application may be considered on the papers after parties in interest have had a chance to object to the compensation sought in the application. This procedure is authorized by Section 102(1).

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. §330(a)(3)(A)-(F).

As if to emphasize again some of the factors above, section 330 also directs the bankruptcy court *not* to award compensation in certain circumstances. No compensation shall be allowed for unnecessary duplication of services, services that were not likely to benefit the estate or services that were not necessary to administration of the case. 11 U.S.C. §330(a)(4)(A).

Section 330 also requires that the fee application itself be prepared by someone of the “the level and skill reasonably required to prepare the application.” 11 U.S.C. §330(a)(6). This requirement is interpreted to mean that the task should be performed by a less experienced person at greater savings to the estate when a less experienced person can do the task competently. *In re Fibermark*, 349 B.R. 385, 410 (Bankr. D. Vt. 2006) (company that served as auditor and provided accounting and other services to Chapter 11 debtors failed to justify its use of senior-level professionals, with billing rates exceeding \$500, to prepare its fee applications, rather than senior associates with significantly lower billing rates, warranting disallowance of all compensation sought for fee application preparation).

Frequency

You may file a fee app upon conclusion of your work or for consideration coincident with the hearing on confirmation (court approval) of the reorganization or liquidation plan, whichever is earlier. However, Section 331 permits interim

applications every 120 days unless otherwise ordered by the bankruptcy court. In larger or more complex cases, the bankruptcy court may allow more frequent periodic payment subject to final review at the conclusion of the case. Be sure to check with the debtor's counsel if special procedures apply in your case.

Rules and guidelines

Rule 2016 governs the specific content of the fee app: The application must "set ... forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested." Fed.R.Bankr.P. 2016(a). This requirement means that mere narrative summaries of the services rendered are insufficient. See *In re Hillsborough Holdings Corp.*, 142 B.R. 1006, 1007 (Bankr. M.D. Fla. 1992) (absent detailed time records, it is impossible for the court to determine the reasonable compensation for the debtor's investment bankers and financial advisors in providing the services summarized in the application).

Local rules of bankruptcy courts may also provide additional procedural requirements, such as deadlines for filing the fee app. See, e.g., L.B.R. 2016-1, Bankr. M.D. Fla.

The United States Trustee has a set of extensive guidelines that attorneys for the United States Trustee must follow in reviewing fee apps for possible objections. These guidelines include specified content of the fee app, including details about the case status, a summary sheet, and billing by discrete project or category, which content is aimed at facilitating review of the award requested. See *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expense Filed Under 11 U.S.C. §330*, available on the United States Trustee's website⁵ and reprinted in Appendix 2. In addition, some regional United States Trustee offices prescribe additional, discretionary guidelines. Professionals are well advised to adhere to general United States Trustee guidelines as well as any regional United States Trustee requirements. Many times the sole opposition to a professional's fee app is the United States Trustee. If you can eliminate any possible opportunity for an objection by adhering to the United States Trustee guidelines, then why not do that?

Similarly, check to see whether your bankruptcy court has any administrative orders or whether the individual judge has any preferences that prescribe formatting or content of fee apps.

A professional who intends to submit a compliant fee application should, therefore, request the debtor's counsel to provide to him or her copies of any local rules, the United States Trustee guidelines, any regional United States Trustee supplemental, discretionary guidelines, and any bankruptcy court administrative order or individual judge guidelines that relate to fee apps.

⁵ http://www.usdoj.gov/ust/eo/rules_regulations/guidelines/docs/feeguide.htm

Avoid these pitfalls: When courts won't "show you the money"

Those professionals who follow the foregoing rules *should* have little problem in obtaining court-approved compensation for services rendered and costs incurred in working for a bankruptcy estate. However, sometimes even the most conscientious and well-intended professional may encounter delay in obtaining authorization for payment, or may experience a disallowance of payment for some or all of the services and expenses listed on the fee app if the professional does not avoid what are seen by the bankruptcy courts as common pitfalls.

Recall from the "Step 1" section of this two-part paper, *see n. 2 supra*, that the first step for getting paid is obtaining court approval *before* you begin your work for an estate. This requirement is imposed by Section 327. Those who fail to do so will not receive compensation. *See, e.g., Fibermark*, 349 B.R. at 394. Some bankruptcy courts may approve retention after-the-fact, but only if the applicant can show some kind of excusable neglect or other circumstances justifying such approval. *See, e.g., In re Fleming Companies, Inc.*, 305 B.R. 389 (Bankr. D. Del. 2004); *In re Twinton Properties Partnership*, 27 B.R. 817 (Bankr. M.D. Tenn. 1983).

Many other common causes for disallowance arise under the requirements of Section 330(a)(3) and (a)(4), described above.

For example, a very common cause of disallowance is the attendance at meetings, conferences, and hearings by multiple professionals. Sometimes these events look like veritable feeding troughs! Be sure that your attendance is *actually* and reasonably *necessary* under the circumstances, otherwise you risk having that time be charged off to your volunteering to be there. The risk to the estate of non-attendance versus the benefit of attendance should be assessed in determining whether to participate. *See Fibermark*, 349 B.R. at 396 (professionals required to demonstrate benefit provided to estate when three attended same conference).

Bankruptcy courts also deny compensation for "lumped" time, meaning many tasks lumped into one time increment, such as "9.0 hours for full day of uninterrupted activity on case, including numerous emails and phone conferences, internal conferences, and drafting papers." Disallowance of compensation is based on the bankruptcy court's inability to assess the reasonableness of fees charged for each individual task within the entry. *In re Poseidon Pools of America, Inc.*, 180 B.R. 718, 731 (Bankr. E.D. N.Y. 1995). If you must use one time entry to describe your day's activities, then capture the subset of time allotted to each task. Contrast these two examples:

1. Poor example: Attend to management tasks. 10.0

2. Correct example: Work on consultation tasks, 4.8 hours: Reviewed and revised application to employ our firm, drafted by debtor's counsel (1.2), conferred with debtor's counsel regarding necessity for hearing on same (.1), began preference analysis by reviewing all bank statements and identifying checks clearing with preference period and identifying related vendor statements (1.0), reviewed payment history per each vendor and calculated ordinary course (2.5).

Other pitfalls to avoid in preparing and filing fee applications are:

- When billing for a meeting, conference, or hearing at which having multiple professionals is justifiable, billing time increments different from other professionals will draw scrutiny. Indeed, different time increments raise a question "as to whether the compensation requested by *any* of the meeting participants is reasonable." *Fibermark*, 349 B.R. at 394 (emphasis in original).
- Legal work performed by a non-legal professional will not be compensated. *In re Bicoastal Corporation*, 122 B.R. 140 (Bankr. M.D. Fla. 1990) (accountant who spent time on researching legal claims denied compensation).
- Work that essentially duplicates another's function will not be compensated, so do not overstep your boundaries. See *In re ACT Manufacturing, Inc.*, 281 B.R. 468 (Bankr. D. Mass 2002) (financial consultants who were retained to handle day-to-day management matters were required to explain what functions they performed that the debtor's management could not and also explain potential duplication of efforts of debtor's counsel).
- Be aware of whether the bankruptcy court before which the matter is pending compensates for preparing a fee application, as some do not. Compare *In re Junco, Inc.*, 185 B.R. 215, 220 (Bankr. E.D. Va. 1995) (keeping track of time does not require skills of highly trained professional, and efforts to obtain payment for work performed is a cost of doing business) with *Matter of Braswell Motor Freight Lines, Inc.*, 630 F.2d 348 (5th Cir. 1980) (time spent preparing and presenting fee application is compensable because it would be unfair to deny compensation to comply with express requirements of the Bankruptcy Code).
- Be careful when to charge for a paraprofessional's time. Secretarial and ministerial duties are not compensable – they are overhead. As the court in *Fibermark* noted:

In the absence of an explanation of why a particular professional or paraprofessional's skills are necessary, the time they spend on administrative activities is not

compensable. Administrative activities include tasks such as mailing or delivering papers; photocopying; word processing, including but not limited to creating templates, adding pages to various stipulations, formatting, creating spreadsheets, scanning and saving files into the firm's computer system, creating and revising charts, inserting case numbers into orders and printing documents; organizing files; maintaining an internal calendar; checking for docket updates; updating a master service list; creating, organizing, updating and indexing binders; pulling precedent pleadings requested by an attorney; and making travel arrangements. Duties appropriate for office staff are considered part of a professional's overhead expenses and may not be billed to the estate.

Id. at 396-97 (internal citations omitted).

Conclusion

You have been retained properly because you know all about the first step for getting paid. You have done a wonderful job for the bankruptcy estate and have been the procuring cause of confirmation. The bankruptcy court wants to compensate you a reasonable amount for your fine work. Make it easy on the judge and yourself by carefully scrutinizing your fee application before it is filed and eliminating all potential causes for delay and disallowance – not to mention opposition by the United States Trustee.

APPENDIX 1

RELEVANT STATUTES AND RULE CONCERNING PAYMENT OF PROFESSIONALS

§ 327. Employment of professional persons

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

(f) The trustee may not employ a person that has served as an examiner in the case.

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.

Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

(b) If the court has authorized a trustee to serve as an attorney or accountant for the estate under section 327(d) of this title, the court may allow compensation for the trustee's services as such attorney or accountant only to the extent that the trustee performed services as attorney or accountant for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney or accountant for the estate.

(c) Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

§ 329. Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to--

(1) the estate, if the property transferred--

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

§ 330. Compensation of officers

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103--

- (A)** reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
- (B)** reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

- (A)** the time spent on such services;
- (B)** the rates charged for such services;
- (C)** whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D)** whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E)** with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F)** whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in **subparagraph (B)**, the court shall not allow compensation for--

- (i)** unnecessary duplication of services; or
- (ii)** services that were not--
 - (I)** reasonably likely to benefit the debtor's estate; or
 - (II)** necessary to the administration of the case.

(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the estate.

(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

(b)(1) There shall be paid from the filing fee in a case under chapter 7 of this title \$45 to the trustee serving in such case, after such trustee's services are rendered.

(2) The Judicial Conference of the United States--

(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and

(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title;

to pay \$15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such \$15 shall be paid in addition to the amount paid under paragraph (1).

(c) Unless the court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than \$5 per month from any distribution under the plan during the administration of the plan.

(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.

§ 331. Interim compensation

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

(a) Application for compensation or reimbursement

An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.

(b) Disclosure of compensation paid or promised to attorney for debtor

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has

shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

(c) Disclosure of compensation paid or promised to bankruptcy petition preparer

Every bankruptcy petition preparer for a debtor shall file a declaration under penalty of perjury and transmit the declaration to the United States trustee within 10 days after the date of the filing of the petition, or at another time as the court may direct, as required by § 110(h)(1). The declaration must disclose any fee, and the source of any fee, received from or on behalf of the debtor within 12 months of the filing of the case and all unpaid fees charged to the debtor. The declaration must describe the services performed and documents prepared or caused to be prepared by the bankruptcy petition preparer. A supplemental statement shall be filed within 10 days after any payment or agreement not previously disclosed.

NOTE: THESE GUIDELINES HAVE CHANGED. GO TO http://www.justice.gov/ust/eo/rules_regulations/guidelines/index.htm FOR THE UPDATED VERSION.

APPENDIX 2

UNITED STATES TRUSTEE GUIDELINES FOR PREPARING FEE APPLICATIONS

Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses filed under 11 U.S.C. § 330

(Reprinted at 28 C.F.R. Part 58, Appendix)

(a) General Information.

(1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. ("Code"), in accordance with procedural guidelines ("Guidelines") adopted by the Executive Office for United States Trustees ("Executive Office"). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) Contents of Applications for Compensation and Reimbursement of Expenses.

All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format.

(i) To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

Exhibit A – Project Categories

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

ASSET ANALYSIS AND RECOVERY: Identification and review of potential assets including causes of action and non-litigation recoveries.

ASSET DISPOSITION: Sales, leases (§ 365 matters), abandonment and related transaction work.

BUSINESS OPERATIONS: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

CASE ADMINISTRATION: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

CLAIMS ADMINISTRATION AND OBJECTIONS: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

EMPLOYEE BENEFITS/PENSIONS: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

FEE/EMPLOYMENT APPLICATIONS: Preparations of employment and fee applications for self or others; motions to establish interim procedures.

FEE/EMPLOYMENT OBJECTIONS: Review of and objections to the employment and fee applications of others.

FINANCING: Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

LITIGATION: There should be a separate category established for each matter (e.g., XYZ Litigation).

MEETINGS OF CREDITORS: Preparing for and attending the conference of creditors, the § 341(a) meeting and other creditors' committee meetings.

PLAN AND DISCLOSURE STATEMENT: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

RELIEF FROM STAY PROCEEDINGS: Matters relating to termination or continuation of automatic stay under § 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

ACCOUNTING/AUDITING: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

BUSINESS ANALYSIS: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

CORPORATE FINANCE: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

DATA ANALYSIS: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

LITIGATION CONSULTING: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

RECONSTRUCTION ACCOUNTING: Reconstructing books and records from past transactions and bringing accounting current.

TAX ISSUES: Analysis of tax issues and preparation of state and federal tax returns.

VALUATION: Appraise or review appraisals of assets.

[61 Fed. Reg. 24890 (May 17, 1996); 28 CFR Part 58, Appendix]