

NOTE: This material is dated and is provided as general guidance for best practices. Please check for any updated statutes, rules, or online procedures that might apply. See also, Local Rule 2016-1.

PRACTICE GUIDELINES MEMORANDUM

TO: Attorneys Practicing Before Me
and Other Interested Persons

FROM: C. Timothy Corcoran, III
United States Bankruptcy Judge

DATE: January 5, 1994 (Revised July 1, 1998)

RE: Guidelines for Compensation and Expense
Reimbursement of Professionals

The following is a guideline governing the most significant issues related to applications for compensation and expense reimbursement. The guideline covers the narrative portion of an application, time records, and expenses. It applies to all professionals (with the exception of applications of Chapter 7 and Chapter 13 trustees for trustee compensation), but it is not intended to cover every situation.

A.

Applications Generally

F.R.B.P. 2016 sets forth what must be in a fee application. In addition to ensuring that the requirements of that rule are met, the application must be sworn or made under penalty of perjury. The application contains the evidentiary facts upon which I rely, and those facts must be made of record in admissible form.

I have previously published my requirements concerning the form of a fee application in In re Braniff, Inc., 117 B.R. 702, 705-06 (Bankr. M.D. Fla. 1990). Counsel and interested persons should prepare their applications in the form described there. Nevertheless, I expect applications to deviate from that form when it is reasonable for such deviations to occur such as, for example, in a small case or when the amount of the compensation sought is small.

In addition, I have published my views on the subject of what services are to be performed by a Chapter 7 trustee and what services are compensable on application by a professional employed by a Chapter 7 trustee. In re Holub, 129 B.R. 293 (Bankr. M.D. Fla. 1991). These professionals should prepare their fee applications with those additional principles in mind.

B.

Organize the Application with
the Most Important Information First

Remember that the purpose of a fee application is to provide information that allows me to grant the application in the amounts requested and that permits parties in interest to determine if they wish to object. Put the key information up front where creditors and I can see it rather than bury it in the body of the application where we have to hunt for it.

First, tell us how much you are seeking in total on a hours, rate, and dollar basis, reflect retainers received, prior interim payments, or other credits, and show the net amount due assuming your application is granted. You can nicely summarize this information at the top of the application. See Billing Summary, paragraph 4 under C. The Narrative, below.

Second, in summary fashion, tell us what you did to earn the amounts requested. This is where you get to "toot your own horn." Tell us what benefits you achieved for the estate. Tell us how efficient you were. In a small case involving a small fee request, counsel might write:

On behalf of the trustee, I objected to the debtors' claim of personal property exemptions based upon values greater than scheduled and negotiated a buy back agreement resulting in the recovery of \$2,500. I also prosecuted a fraudulent conveyance adversary proceeding against the debtors' son as to a 1996 Ford Bronco given by the debtors to the son one month before the filing. I negotiated a compromise of this proceeding that brought an additional \$8,500 into the estate.

A summary such as this explains to me what you did and helps to justify the amounts requested. Only after you have provided this information first, should you set forth the other facts that are required.

In preparing the rest of the application, please follow the following general guidelines:

C.

The Narrative

1. Employment and Prior Compensation. The application should disclose the date of the order approving the applicant's employment and contain a clear statement itemizing the date of each prior request for compensation, the amount requested, the amount approved, and the amount paid.

2. Case Status. With respect to interim requests, the application should briefly explain the history and the present posture of the case.

In Chapter 11 cases, the information furnished should describe the general operations of the debtor; whether the business of the debtor, if any, is being operated at a profit or loss; the debtor's cash flow; whether a plan has been filed and, if not, what the prospects are for reorganization and when it is anticipated that a plan will be filed and a hearing set on the disclosure statement.

In Chapter 7 cases, the application should contain a report of the administration of the case including the disposition of property of the estate; what property remains to be disposed of; why the estate is not in a position to be closed; and whether it is feasible to pay an interim dividend to creditors.

In both Chapter 7 and Chapter 11 cases, the application should state the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration. On applications for interim fees, the applicant should be prepared to supplement the application at the hearing to inform the court of any changes in the current financial status of the debtor's estate since the filing of the application.

With respect to final requests, applications should meet the same criteria except, where a Chapter 7 trustee's final accounting is being heard at the same time, the financial information in the final accounting need not be repeated.

When more than one application is filed at the same time or noticed for the same hearing, they may, to the extent appropriate, incorporate by reference the narrative history furnished in a contemporaneous application.

Fee applications submitted by special counsel seeking compensation from a fund generated directly by their efforts, auctioneers, real estate brokers, or appraisers do not have to provide the case status information described here. Such applications need to include, however, a short narrative description of the work performed, the amount realized for the estate, the amount of compensation sought, and the manner in which the requested fee was computed.

3. Project billing. The narrative should categorize by subject matter and separately discuss each professional project or task. All work for which compensation is requested should be in a category. Miscellaneous items may be included in a category such as "Case Administration." The professional may use reasonable discretion in defining projects for this purpose, provided that the application provides meaningful guidance to the court as to the complexity and difficulty of the task, the professional's efficiency, and the results achieved. With respect to each project or task, the number of hours spent and the amount of compensation and expenses requested should be set forth at the conclusion of the discussion of that project or task.

4. Billing Summary. Hours, hourly rates, and total compensation requested in each application should be aggregated and itemized as to each professional and paraprofessional who provided compensable services. It is suggested that this information be prominently displayed early in the application in an appropriate manner, such as in a box. When project billing is involved, this information should be presented in the aggregate and also for each project.

5. Multiple Professionals. Where a case, or a project within a case, has involved the use of two professionals, or the use of a professional and a paraprofessional, the narrative should describe, generally, why such usage was necessary, and why more than one professional was involved with particular court hearings, depositions, meetings, etc. If the application does not justify the usage of multiple professionals for such matters, disallowance of all or a portion of the fee requested for such multiple time may result.

6. Paraprofessionals. Fees may be sought for paralegals, professional assistants, and law clerks only if identified as such and if the following requirements are met:

(a) The services for which compensation is sought would have had to be done by the professional if not done by the

paraprofessional, and would have been compensable under these guidelines.

(b) The person who performed the services is specially trained or is a law school student, and is not primarily a secretary or clerical worker; and

(c) The applications include a resume of the paraprofessional.

7. Preparation of the Application. Time spent in preparing a fee application is compensable, but the aggregate number of hours and amount requested for doing so must be disclosed (in addition to the professional's itemized time entries). If these charges exceed five percent of the fees requested, this fact and the applicable percentage must also be specifically disclosed and an explanation provided.

D.

Time Records

1. Time Records Required. All professionals, except auctioneers, real estate brokers, and appraisers, must keep accurate contemporaneous time records.

2. Increments. Professionals are required to keep time records in minimum increments no greater than six minutes. Professionals who utilize a minimum billing increment greater than .1 hour are subject to a substantial reduction of their requests.

3. Descriptions. At a minimum, the time entries should identify the person performing the services, the date performed, what was done, the subject involved. Mere notations of telephone calls, conferences, research, drafting, etc., without identifying the matter involved, may result in disallowance of the time covered by the entries.

4. Clumping. If a number of separate tasks are performed on a single day, the fee application should disclose the time spent for each such task (i.e., no "grouping" or "clumping").

5. Unit billing. There shall be no "unit billing" or minimum time entries. Only the actual amount of time spent in performing the service described shall be reported. "Phoney" or "padded" time entries are unacceptable and, if discovered, will result in a substantial penalty or sanction in the form of disallowance of all or a portion of the fees requested.

6. Conferences. Failure to justify apparently excessive time spent in conferences with other professionals or paraprofessionals in the same firm may result in disallowance of all fees related to such conferences.

7. Airplane Travel Time. Airplane travel time is not compensable, but work actually done during a flight is compensable.

8. Administrative Tasks. Time spent in addressing, stamping and stuffing envelopes, filing, photocopying, or "supervising" any of the foregoing is not compensable, whether performed by a professional, paraprofessional, or secretary.

E.

Expenses

1. Firm Practice. The court will consider the customary practice of the firm in charging or not charging non-bankruptcy/insolvency clients for particular expense items. Where any other clients, with the exception of pro bono clients, are not billed for a particular expense, the estate should not be billed. Where expenses are billed to all other clients, reimbursement should be sought at the least expensive rate the firm or professional charges to any client for comparable services or expenses. It is recognized that there will be differences in billing practices among professionals.

2. Actual Cost. "Actual cost" is defined as the amount paid to a third party provider of goods or services without enhancement for handling or other administrative charge.

3. Documentation. Documentation must be retained and made available upon request for all expenditures in excess of \$50.00. Where possible, receipts should be obtained for all expenditures.

a. Office Overhead. Office overhead is not reimbursable. Overhead is the ordinary operating costs of a firm, such as rent, heat, and the like, that cannot readily be attributed to a particular case. Overhead typically includes: secretarial time, secretarial overtime, word processing time, charges for after-hour and weekend air conditioning and other utilities, and the cost of meals or transportation provided to professionals and staff who work late or on weekends.

b. Word Processing. Usually not reimbursable. See paragraph 3(a) above.

- c. Computerized Research. Actual cost.
- d. Paraprofessional Services. These may be compensated as a paraprofessional under Section 330 but not charged or reimbursed as an expense.
- e. Photocopies (Internal). Charges must be disclosed on an aggregate and per page basis. If the per page cost exceeds 25 cents, the professional must demonstrate to the satisfaction of the court, with data, that the per page cost represents a good faith estimate of the actual cost of the copies, based upon the purchase or lease cost of the copy machine and supplies therefor, including the space occupied by the machine, but not including time spent in operating the machine.
- f. Photocopies (Outside). Actual cost.
- g. Postage. Actual cost.
- h. Overnight Delivery. Actual cost where shown to be necessary.
- i. Messenger Service. Actual cost where shown to be necessary. An in-house messenger service is reimbursable but the estate cannot be charged more than the cost of comparable services available outside the firm.
- j. Facsimile Transmission. Actual cost of telephone charges for transmissions are reimbursable. No other charges are reimbursable.
- k. Long Distance Telephone. Actual cost.
- l. Automotive Transportation. Travel of one hour or less round-trip is not reimbursable. Travel in excess of one hour round-trip is reimbursable in an amount not exceeding the amount recognized by the Internal Revenue Service, which is:

<u>Year</u>	<u>Mileage Rate</u>	<u>Citation</u>
1998	.325/mile	Rev. Proc. 97-58, 1997-52 I.R.B. 24
1997	.315/mile	Rev. Proc. 96-63, 1996-53 I.R.B. 46
1996	.31/mile	Rev. Proc. 95-54, 1995-1 I.R.B. 64

1995	.30/mile	Rev. Proc. 94-73, 1994-52 I.R.B. 23
1994	.29/mile	Rev. Proc. 93-51, 1993-42 I.R.B. 30
1993	.28/mile	Rev. Proc. 92-104, 1992-52 I.R.B. 24
1992	.28/mile	Rev. Proc. 91-67, 1991-52 I.R.B. 11

m. Parking. Actual cost.

n. Air Transportation. Air travel is expected to be at regular coach fare for all flights under two hours. For flights of two hours or more, business class or first class may be considered acceptable where written justification is submitted establishing a business basis for use of business class or first class seating and where the monetary difference between regular coach and such higher fare is reflected in the expense report. Where business class or first class travel is used and the applicant does not wish to submit justification therefor, the applicant may request reimbursement of an amount equal to regular coach fare for that particular flight.

o. Hotels. Due to the wide variation in hotel costs in various cities, it is not possible to establish a single guideline for this type of expense. All persons will be required to exercise discretion and prudence in connection with hotel expenditures.

p. Meals -- Travel. The cost of lunches while a party is away from the area, or in the area from another city, is not reimbursable. Reimbursement may be sought for the reasonable cost of breakfast and dinner while traveling.

q. Meals -- Working. Working meals at restaurants or private clubs are not reimbursable. Reimbursement may be sought for working meals only where food is catered to the professional's office in the course of a meeting with clients, such as a creditors committee, for the purpose of allowing the meeting to continue through a normal meal period.

r. Amenities. Charges for entertainment, alcoholic beverages, "mini-bars," newspapers, laundry and dry cleaning, shoe shines, etc., are not reimbursable.

s. Filing Fees. Actual cost.

- t. Court Reporter Fees. Actual cost.
- u. Witness Fees. Actual cost.
- v. Process Service. Actual cost.
- w. UCC Searches. Actual cost.