

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

**GUIDELINES FOR COMPENSATION
AND EXPENSE REIMBURSEMENT OF PROFESSIONALS AND TRUSTEES**

The following guidelines are promulgated pursuant to B.L.R. 9029-1 and govern the most significant issues related to applications for compensation and expense reimbursement. The guidelines cover the narrative portion of an application, time records and expenses. They apply in their entirety to professionals seeking compensation under 11 U.S.C. § 330 and, where indicated, to Chapter 7 and Chapter 11 trustees. The guidelines are not intended to cover every situation. The court is advised that compliance with these guidelines will satisfy the requirements of the United States Trustee.

I. Guidelines Applicable To Attorneys And Other Professionals

The Narrative

1. **Employment and Prior Compensation** – The application should disclose the date of the order approving 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 orally 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 account is being heard at the same time, the financial information in the final account need not be repeated.

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 comply with the above. For all other applications, when more than one application is noticed for the same hearing, they may, to the extent appropriate, incorporate by reference the narrative history furnished in a contemporaneous application.

3. **Project Billing** – In any application exceeding \$10,000, or when the professional's anticipated services for the case will exceed \$20,000, the narrative should categorize by subject matter and separately discuss each project or task. All work for which compensation is requested should be in a category.

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. The number of billing categories created should take account of the total amount of fees and expenses sought in the case. Thus, for example, an application totaling \$100,000 should generally be broken into more categories than an application totaling \$10,000, even if the nature of the work represented in the two applications is otherwise similar.

There is no minimum amount necessary to justify the creation of a new billing category. The maximum amount that should be included in a single category should generally be \$20,000. This cap may be exceeded where further breakdown is impractical (e.g., courtroom time in a long trial). Generally, each category should contain less than \$20,000. Miscellaneous items may be included in a category such as "case administration," but such a category should not generally represent more than 15% of the fee request.

Work in a main case should be broken into categories appropriate to the size, chapter, and complexity of the case, and the role of the professional. Generally, each adversary proceeding should be set forth in a separate category. Within each adversary proceeding, subcategories should be created for "pleadings," "discovery," "motions," and "trial." In complex adversary proceedings, additional categories may be appropriate.

With respect to each project or task, the number of hours spent, the results obtained, and the amount of compensation and expenses requested should be set forth at the conclusion of the discussion of that project or task. Please also note the requirement in Guideline 11 relating

to time records by project.

4. **Billing Summary** – Hours and total compensation requested in each application should be aggregated and itemized as to each professional and paraprofessional who provided compensable services.
5. **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 application includes a resume or summary of the paraprofessional's qualifications.
6. **Preparation of Application** – Reasonable fees for preparation of a fee application may be requested. Fees for preparation of a fee application *may not exceed five percent* of the total amount of fees and costs requested in the application. This five percent guideline is a ceiling rather than a floor; preparation expenses equaling *five percent* are not presumptively reasonable. The aggregate number of hours spent, the amount requested and the percentage of the total request which the amount represents must be disclosed. If the actual time spent will be reflected and charged in a future fee application, this fact should be stated but an estimate nevertheless provided.
7. **Client Review of Billing Statement** – A debtor in possession, trustee or official committee shall exercise reasonable business judgment in monitoring the fees and expenses of the estate's professionals. Billing statements should be sent to the employing entity (debtor in possession, trustee or official committee) on a monthly basis. A fee application shall be sent to the employing entity at least 20 days prior to the scheduled hearing date. The application shall be transmitted with a cover letter that contains the following statement: "The court's Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees provide that a debtor in possession, a trustee or an official committee must exercise reasonable business judgment in monitoring the fees and expenses of the estate's professionals. We invite you to discuss any objections, concerns or questions you may have with us. The Office of the United States Trustee will also accept your comments. The court will also consider timely filed objections by any party in interest at the time of the hearing."
8. **Certification** – Each application for compensation and expense reimbursement must contain a certification by the professional designated by the applicant with the responsibility in the particular case for compliance with these guidelines ("Certifying Professional") that: (a) the Certifying Professional has read the application; (b) to the best of the Certifying Professional's knowledge, information and belief, formed after reasonable inquiry, the compensation and

expense reimbursement sought is in conformity with these guidelines, except as specifically noted in the certification application; and ©) the compensation and expense reimbursement requested are billed at rates, in accordance with practices, no less favorable than those customarily employed by the applicant and generally accepted by the applicant's clients.

9. **Short Form Applications** – Where the professional is filing only a final request for compensation in a Chapter 7 case and the request, exclusive of costs, does not exceed \$15,000 for the case, the professional has the option of utilizing the approved Chapter 7 form application.

In a Chapter 13 case, where the professional has utilized and filed the *RIGHTS AND RESPONSIBILITIES OF CHAPTER 13 DEBTORS AND THEIR ATTORNEYS*, the professional has the option of utilizing the approved Chapter 13 form application when seeking compensation in excess of that approved at the time of confirmation.

Copies of the approved form applications are available in the Clerk's Office.

Time Records

10. **Time Records Required** – All professionals, except auctioneers, real estate brokers, appraisers and those employed on a contingency fee basis, must keep accurate contemporaneous time records. The Court may, however, specifically direct that time records be kept on a contingent fee matter.
11. **Time Records By Project** – In any application exceeding \$10,000, or where the professional's anticipated services for the case will exceed \$20,000, time records should be kept by categories as described in Paragraph 3 relating to Project Billing above. Time records should be sorted, assembled and attached to the application by category corresponding to the discussion in the narrative.
12. **Increments** – Professionals are required to keep time records in minimum increments no greater than 6 minutes. Professionals who utilize a minimum billing increment greater than .1 hour are subject to a substantial reduction of their requests.
13. **Descriptions** – At a minimum, the time entries should identify the person performing the services, the date performed, what was done and 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.
14. **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").
15. **Conferences** – Professionals should be prepared to explain time spent in conferences with other professionals or paraprofessionals in the same firm. Failure to justify this time may result in disallowance of all fees related to such conferences.

16. **Multiple Professionals** – Professionals should be prepared to explain the need for more than one professional or para-professional from the same firm at the same court hearing, deposition or meeting. Failure to justify this time may result in compensation for only the person with the lowest billing rate.
17. **Airplane Travel Time** – Airplane travel time is not compensable, but work actually done during a flight is compensable. If significant airplane travel time is expected in a case, specific guidelines should be obtained for that case.
18. **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.

Expenses

19. **Firm Practice** – All expenses for which reimbursement is sought must be of the kind, and at the least expensive rate, the applicant customarily charges nonbankruptcy/insolvency clients.
20. **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.
21. **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.
22. **Office Overhead** – Not reimbursable. Overhead includes: secretarial time, secretarial overtime, word processing time, charges for after-hour and weekend air conditioning and other utilities, and cost of meals or transportation provided to professionals and staff who work late or on weekends.
23. **Word Processing** – Not reimbursable.
24. **Computerized Research** – Actual cost.
25. **Paraprofessional Services** – May be compensated as a paraprofessional under § 330 but not charged or reimbursed as an expense.
26. **Professional Services** – A professional employed under § 327 may not employ, and charge as an expense, another professional (e.g., special litigation counsel employing an expert witness) unless the employment of the second professional is approved by the Court prior to the rendering of services.
27. **Photocopies (Internal)** – Charges must be disclosed on an aggregate and per page basis. If the per page cost *exceeds 20 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.

28. **Photocopies (Outside)** – Actual cost.
29. **Postage** – Actual cost.
30. **Overnight Delivery** – Actual cost where shown to be necessary.
31. **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.
32. **Facsimile Transmission** – Actual cost of telephone charges for outgoing transmissions are reimbursable. Transmissions received are reimbursable on a per page basis. If the per page cost exceeds .20¢, 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 facsimile machine and supplies therefor including the space occupied by the machine, but not including time spent in operating the machine.
33. **Long Distance Telephone** – Actual cost.
34. **Automotive Transportation** – Travel of one hour or less round-trip is not reimbursable. Travel expense for trips in excess of one hour round-trip is reimbursable in accordance with the amount allowed by the Internal Revenue Service. (IRC § 274(d) and the current applicable I.R.B. Announcement. At this date the amount is .31¢ per mile.) Travel by a professional, paraprofessional or other staff member between his or her residence and principal place of business is not reimbursable regardless of the day of the week or time of day.
35. **Parking** – Actual cost, provided that parking for professionals, paraprofessionals or other staff member at their principal place of business is not reimbursable regardless of the day of the week or time of day.
36. **Air Transportation** – Air travel is expected to be at regular coach fare for all flights.
37. **Hotels** – Due to 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.
38. **Meals-Travel** – The cost of lunches while a party is away from the Bay Area, or in the Bay Area from another city, is not reimbursable. Reimbursement may be sought for the reasonable cost of breakfast and dinner while traveling.
39. **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.

40. **Amenities** – Charges for entertainment, alcoholic beverages, newspapers, dry cleaning, shoe shines, etc. are not reimbursable.
41. **Filing Fees** – Actual cost.
42. **Court Reporter Fees** – Actual cost.
43. **Witness Fees** – Actual cost.
44. **Process Service** – Actual cost.
45. **UCC Searches** – Actual cost.

II. Guidelines Applicable To Trustees

Chapter 7 and Chapter 11 trustees must maintain contemporaneous time records in every case. Time records must be maintained by project categories. At a minimum, project categories should include: (1) Assets Recap (asset analysis and recovery/asset disposition); (2) Investigation of Financial Affairs of the Debtor; (3) Claims Administration and Objections; and (4) Fee Applications. Trustees may add additional categories at their discretion. Trustees are also subject to Guidelines 4, 5 (subject to § 326), 10, 12, 13 and 19 - 45 dealing with expenses.

In cases in which the trustee's compensation request is anticipated to be \$5,000 or less, the trustee may submit a brief narrative description of the services performed and a statement of the amount of time spent. In cases in which the final compensation exceeds \$5,000, or where an interim request is made and it is anticipated that the total compensation requested will exceed \$5,000, the trustee's application must include time records as well as a narrative description of the services performed and comply with the guidelines referenced above.

The guidelines regarding trustee time records shall apply only to cases filed on or after January 1, 1997.