

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

ADMINISTRATIVE ORDER	x
	x Superseding General
	x Orders M-104, M-151
	x M-291, M-389, M-446
RE: Amended Guidelines for Fees and Disbursements	x
for Professionals in Southern District of New York	x General Order M-447
Bankruptcy Cases	x

By resolution of the Board of Judges for the United States Bankruptcy Court for the Southern District of New York, it is resolved that in order to further provide professionals with clear and concise procedures for compensation and reimbursement of expenses and to combine into one order the requirements heretofore promulgated by this Court and the United States Trustee, applications for compensation and reimbursement of expenses filed in the Bankruptcy Court for the Southern District of New York shall conform substantially to the following.

A. 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 to facilitate a review 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 more than once every 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 a chapter 12 or 13 case, where the debtor's attorney is the applicant, whether the application complies with section 330(a)(4)(B); whether the application is in accordance with the 2016(b) statement that was filed at the beginning of the case; and whether approval of the application would have an effect on the debtor's plan.
 - (iv) 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.
 - (v) In every case, 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 Court has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases.
- (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.
- (vi) Time and service entries are to be reported in chronological order under the appropriate project category.
- (vii) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail, with each service showing a separate time entry and not combined or "lumped" together; however, tasks performed on a project which total a de minimis amount of time can be combined or lumped together if they do not exceed 0.5 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. Except to the extent that paragraph F, infra, is to the contrary, the following factors are relevant to a determination that an expense is proper:
- (i) Whether the expense is reasonable and economical.
 - (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, or the actual cost cannot easily be determined.
 - (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, administrative 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.

B. Certification

- (1) Each application for fees and disbursements must contain a certification by the professional designated by the applicant with the responsibility in the particular case for compliance with these Amended Guidelines (the “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 fees and disbursements sought fall within these Amended Guidelines, except as specifically noted in the certification and described in the fee application; (c) except to the extent that fees or disbursements are prohibited by these Amended Guidelines, the fees and disbursements sought are billed at rates and in accordance with practices customarily employed by the applicant and generally accepted by the applicant’s clients; and (d) in providing a reimbursable service, the applicant does not make a profit on the service, whether the service is performed by the applicant in-house or through a third party.
- (2) Each application for fees and disbursements must contain a certification by the Certifying Professional that the trustee, debtor, and, where applicable, the chair of each official committee, have been provided, not later than 21 days after the end of each month, with a statement of the fees and disbursements accrued during such month. The statement must contain a list of professionals and paraprofessionals providing services, their respective billing rates, the aggregate hours spent by each professional and paraprofessional, a general description of services rendered, a reasonably detailed breakdown of the disbursements incurred and an explanation of billing practices.
- (3) Each application for fees and disbursements must contain a certification by the Certifying Professional that the trustee and, in a chapter 11 case, the chair of each official committee and the debtor have all been provided with a copy of the relevant fee application at least 14 days before the date set by the court or any applicable rules for filing fee applications.

C. Confidentiality Requests

If an applicant believes that there is a need to omit any information or description of services as privileged or confidential, the applicant must first get the approval of the court; provided, however, that if such a request is granted, the court may require that any application also contain a set of unredacted time records for in camera inspection.

D. Fee Enhancement

- (1) Any request for an enhancement of fees over the fee which would be derived from the applicable hourly rates multiplied by the hours expended or from the court order authorizing retention must be specifically identified in the application, including the amount being requested, and the justification for the requested enhancement must be set forth in detail.

- (2) Any request for such an enhancement of fees must be set forth in the summary sheet required by these Amended Guidelines.

E. Voluntary Reduction of Fees or Disbursements

If an applicant is not requesting all of the fees or disbursements to which it might be entitled based on the applicable hourly rates multiplied by the hours expended or based on the court order authorizing retention, the voluntary reduction must be identified in the application, including the amount of the reduction taken. If the voluntary reduction pertains to services which that continue to appear in the detailed description of services rendered or to disbursements that continue to be listed, the entries for which no compensation or reimbursement is sought must be identified.

F. Provisions Regarding Disbursements

- (1) No Enhanced Charges for Disbursements. Except to the extent that disbursements are prohibited by these Amended Guidelines, the disbursements sought must be billed at rates, and in accordance with, practices customarily employed by the applicant and generally accepted by the applicant's clients.
- (2) Photocopies. Photocopies shall be reimbursable at the lesser of \$ 0.10 per page or cost.
- (3) Overtime Expense. No overtime expense for non-professional and paraprofessional staff shall be reimbursable unless fully explained and justified. Any such justification must indicate, at a minimum, that:
 - (i) Services after normal closing hours are absolutely necessary for the case; and
 - (ii) That charges are for overtime expenses paid. The reasonable expenses of a professional required to work on the case after 8:00 p.m. are reimbursable provided that, if the professional dines before 8:00 p.m., the expense is reimbursable only if the professional returns to the office to work for at least one and one half hours. In any event, the expense for an individual's meal may not exceed \$20.00.

G. Form of Order.

To ensure that the accuracy of the Public Record of Compensation Awarded to Trustees, Examiners, and Professionals is maintained pursuant to Federal Rule of Bankruptcy Procedure 2013, the form of order and schedules promulgated by the Board of Judges and found on the Court's website shall be used.

The foregoing Guidelines have been approved by the Board of Judges and shall be subject to annual review as to adjustments to disbursement/ reimbursement amounts set forth hereinabove in Provision F.

This order shall become effective on February 5, 2013, and apply to all fee applications filed on or after that date.

Dated: New York, New York
January 29, 2013

/s/ Cecelia G. Morris
Chief Bankruptcy Judge

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.