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TO: Counsel for Debtors, Creditors' Committees, and Trustees; Accountants; and Other Professionals Participating in Chapter 11 Cases

FROM: William P. Miller

SUBJECT: Amended Chapter 11 Fee Application Guidelines

EFFECTIVE DATE: February 19, 2020

These chapter 11 fee application guidelines apply to all fee applications filed in chapter 11 cases on or after February 19, 2020. Fee applications for attorney for debtor, attorney for the unsecured creditors' committee, trustee, examiner, attorney for trustee, attorney for examiner, accountant, financial advisor, and certain other professionals are subject to all provisions of these fee application guidelines unless otherwise ordered by the Court. In particular cases, the United States Bankruptcy Administrator for the Middle District of North Carolina (the "Bankruptcy Administrator") or the Court may request submission of the fee application in a different format or require additional information be included in the fee application.

I. General Procedures

In a chapter 11 case, attorney for debtor, attorney for the unsecured creditors' committee, trustee, examiner, attorney for trustee, attorney for examiner, accountant, financial advisor, as well as certain other professionals, may request an interim allowance of compensation on an initial and quarterly basis. The procedures to be followed are set forth below.

A. Initial Application.

Except in a case under subchapter V, an initial interim application for compensation shall not be filed before the later of the conclusion of the creditors meeting or within 120 days after the order for relief. The attorney for debtor, the attorney for the creditors' committee, and other professionals whose employment has been approved by the Court or who are otherwise seeking compensation from the bankruptcy estate may file an application for compensation for services rendered and for reimbursement of expenses through the date of the creditors' meeting or a later date. As discussed more fully below, an application must include a detailed itemization of services rendered, the dates the services were rendered, and the amount of time the services entailed. If debtor's attorney (or other professional) received a retainer from debtor at the time prior to the entry of the order for relief, a fee application must still be filed just as if no retainer had been received. The fee approved by the Court will then be drawn against the retainer; no fees will be paid from bankruptcy estate funds until the retainer has been depleted.

The initial fee application should include a request that the applicant be allowed to apply for and receive interim compensation on a quarterly basis for future services to be rendered to the estate at the rates as set by the Court. In *exceptional* circumstances and for cause shown, the applicant may request to receive compensation on a monthly basis. Such exceptional circumstances would be limited to large and complex cases, or those in which the applicants are small firms that could not economically survive such a drain on financial resources.

In a subchapter V case in which a plan is confirmed under § 1191(a)(1) and the subchapter V trustee’s services will terminate upon substantial consummation, the trustee’s initial fee application should not include a request that the applicant be allowed to apply for and receive interim compensation on a quarterly basis.

When a retainer is drawn down prior to the order for relief, there must be a full disclosure and documentation of the total amount of retainer paid and the time charged against the retainer. This disclosure and documentation of the time charged against the retainer is to be set forth in accordance with the usual itemizations that are required for fee applications filed during the case. The disclosure and documentation of the retainer and time charged against the retainer prior to the order for relief should be made as part of the Rule 2016(b) Disclosure of Compensation Statement and in the initial application for compensation. When the time charged against retainer prior to the order for relief is to be included in the applicant’s initial application for compensation, this time should be clearly labeled as “time charged against retainer prior to the order for relief.” The application must also state that the information on time charged prior to the order for relief was included in the Rule 2016(b) Disclosure of Compensation Statement.

The Court will set a hearing on the initial application for compensation and on the applicant’s request for permission to file future requests for interim compensation. The hearing will be set with at least 21-day notice to all creditors and other interested parties. After a hearing is held on a fee application, the applicant requesting the fee must prepare an appropriate order approving the fees and expenses, setting forth the hourly rates approved by the Court, and approving the arrangement for future interim compensation.

B. Interim Applications.

Following the initial application, interim fee applications may be filed on a quarterly basis and will be considered for approval in accordance with the following schedule:

For Calendar Quarter Ending:	<u>File With Court and Serve Bankruptcy Administrator on or Before:</u>
March 31	April 21
June 30	July 21
September 30	October 21
December 31	January 21

Failure to timely file the application will delay consideration of the fee request until the next quarter.

Typically, interim applications will be set on a tentative hearing basis, with 14-day notice to parties in interest to file an objection if desired. The Court will set a hearing if an objection to a quarterly fee application is filed or if the Court determines that it should be set for hearing. If the application is approved in whole or in part without a hearing, an approval memorandum will be mailed by the Clerk's Office to the applicant and to debtor upon approval of the application.

C. Service of Fee Applications.

Each fee application must be filed with the Court and served on the trustee, if any, and any party requesting service. Additionally, applicant must serve a copy of the fee application by electronic mail (service through CM/ECF is insufficient) to the staff attorneys for the Bankruptcy Administrator. The attorney for debtor is to serve a copy of each application on the attorney for the creditors' committee (if there is one). The attorney for the creditors' committee is to serve a copy of any application on the attorney for debtor and chairperson of the creditors' committee.

D. Hourly Rates of Compensation.

Fee applicants may submit fee applications based on reasonable hourly rates consistent with 11 U.S.C. §§ 330, 506(b) or 506(c), as applicable; there are no set hourly rates. The Court may consider at least the following criteria in determining the hourly rate to be awarded to each applicant: (i) the time expended; (ii) the nature and extent of the services rendered; (iii) the value of the services to the estate; and (iv) the cost of comparable services other than in a case under Title 11.

Each fee application must clearly set forth whether there has been a change in any hourly rates that are being requested, as compared to what the Court has allowed to the applicant in the most recent order awarding fees to the applicant (i.e., is the applicant requesting a higher rate in this fee application than the Court allowed in the last fee application in the case). See Summary of Services Rendered/Application for Compensation and Reimbursement of Expenses (copy of form attached).

E. Holdback Provisions.

The judge may decide to implement a holdback procedure in a particular case. Provided a case is moving at a satisfactory pace, usually no holdback procedure would be warranted. If a holdback procedure is implemented, the portion of fees that is held back would be available to be paid upon completion of the case and submission of a final fee application. There may be some instances in which a fee enhancement or bonus would be appropriate; however, this would occur only in the rare and exceptional case, inasmuch as the court will have already made a determination that the professionals are receiving reasonable hourly rates for their services.

F. Final Fee Applications.

Following plan confirmation, conversion, or as ordered by the Court, applicants should file a final fee application for all services rendered in the case and all expenses incurred. Applicants should include in the application for final compensation, and in the proposed order to be entered thereon, a provision for the applicant to submit "supplemental" fee applications for the period

subsequent to entry of the order allowing final compensation and until entry of the final decree closing the case.

Typically, if a case is converted to chapter 7, the Court will not set a hearing on a final fee application until the chapter 7 trustee has filed or is in the process of filing the final report.

G. Procedures for Filing “Supplemental” Final Fee Applications.

Any supplemental final fee applications should be filed and otherwise processed in accordance with the usual chapter 11 interim fee application practices.

II. Form/Content of Fee Applications.

Except as noted below, all fee applications must include the following:

1. Narrative Introduction;
2. Biographical Information;
3. Summary of Services Rendered during the previous quarter (see attached form);
4. Categorized Summary of Services Rendered during the previous quarter (see attached form);
5. Summary of Accumulated Services Rendered and Expenses Incurred (see attached form);
6. Estimate of Total Fees to be Incurred (see attached form);
7. Detailed itemization of services rendered, the date rendered, and the amount of time spent;
8. Detailed itemization of actual, necessary expenses;
9. Copies of the application for and order approving the employment of the professional. (initial and final applications only)

Detailed information on each of these requirements is set forth in the sections below and a checklist of required information for initial, interim, and final fee applications is attached.

With respect to subchapter V trustees only, fee applications must include:

1. Narrative introduction;
2. Biographical information;
3. Summary of Services, with hourly rate;
4. Itemization of Services rendered by Trustee;
5. Summary of fees and expenses previously received.

A. Narrative Introduction.

Fee applications should include a narrative introduction with the following information:

1. Identity of the applicant;
2. Date of order for relief;
3. Whether compensation is sought under a section other than 11 U.S.C. § 330;
4. Terms and conditions of employment, including any retention document, source of compensation, and budget and limitations on representation, if any;

5. Whether the client has reviewed and approved the application; and
6. Whether a voluntary reduction or enhancement in fees from the total is being sought.

Retention documentation must be filed with the initial fee application; however, retention documentation does not need to be filed with subsequent fee applications unless there is a change in the terms and conditions of employment, source of compensation, or budget and limitations on representation.

B. Biographical Information

Each fee application (initial, interim, and final) must include a brief biographical description of each of the individuals for whom compensation is sought, including paraprofessionals. However, if biographical information has been provided for an individual in a prior fee application filed by applicant in the case, that individual’s biographical information does not need to be included in future fee applications unless the individual’s information has changed. This biographical information is necessary to help evaluate the applicant and to aid in the determination of an appropriate rate of compensation. An application received without this information cannot be properly evaluated, which may delay the court’s consideration of the application for compensation. The biographical information should include at least the following:

1. Name of professional/paraprofessional;
2. Position in the firm/company;
3. Educational background;
4. Professional (or paraprofessional) background, including, at a minimum: (i) number of years of general experience, (ii) number of years of bankruptcy experience, (iii) specialization or certification, and (iv) percentage of practice/work devoted to bankruptcy; and
5. Usual billing rate.

C. Summary of Services Rendered.

A summary of services rendered for the previous quarter must be provided using the attached form. The summary of services rendered must include a statement that the fee application complies with the applicable chapter 11 fee application guidelines.

The summary of services rendered must contain a summary chart showing the name of each individual, their position in the firm (partner, associate, paralegal, etc.), the total hours billed by that individual, the individual’s hourly rate for services, and the extended amount billed by that individual. Time itemizations should be totaled by individual and should provide a “grand total” for the period for which compensation is sought. The following is an example Summary of Services Rendered:

Name	Position	Hours	Rate	Total
Susan Jones	Partner	12.0	130.	1,560.00
Susan Jones	Travel	2.5	65	162.50
Tom Smith	Associate	26.0	90.0	2,340.00
Anne Foster	Paralegal	11.0	50.0	550.00

Total		51.5		4,612.50
Total Expenses*				122.00
Total Fees and				4,734.50

* The expenses must also be itemized elsewhere in the application.

D. Categorized Summary of Services Rendered.

A categorized summary of all services rendered must be provided using the attached form. The categorized summary chart must show each category, the total hours billed in each category, the rate per hour in each category, and the extended amount. Time itemizations should be totaled by number of hours and the dollar amount. Categories may vary based on the circumstances of each particular case. Applicants may add categories as appropriate to each case, however, the following categories should be used, at a minimum:

1. Categories for Attorneys

- (i) General case administration;
- (ii) Employee benefits;
- (iii) Preparing for and defending relief from stay motions;
- (iv) Negotiation and drafting of plan and disclosure statement;
- (v) Executory contracts and lease issues;
- (vi) Claims administration and objections;
- (vii) Adversary proceedings (each AP should be a separate category);
- (viii) Fee applications;
- (ix) Post confirmation issues;
- (x) Intra-office conferences/multi-person activities;
- (xi) Travel; and
- (xii) Other.

2. Categories for Accountants/Financial Consultants

- (i) Accounting/SEC information- Activities related to maintaining books of account, preparation of financial statements and account analysis;
- (ii) Auditing;
- (iii) Business analysis- Preparation and review of company business plan, development and review of business strategies, preparation and review of cash flow forecasts and feasibility studies;
- (iv) Liquidation analysis;
- (v) Valuation- Appraisals of assets or review of appraisals;
- (vi) Conferring among other professionals;
- (vii) Reviewing the work of other professionals;
- (viii) Plan and disclosure statement- Formulation, presentation and confirmation;
- (ix) Tax issues;
- (x) Litigation consulting- Services related to bankruptcy matters such as insolvency, feasibility, avoidance actions, forensic accounting, etc.;
- (xi) Management of debtor;
- (xii) Fee application preparation;

- (xiii) Travel; and
- (xiv) Other.

Example Categorized Summary of Services Rendered:

Category	Hours	Rate	Total
Case Administration	8.5	165.00	1,402.50
	2.0	130.00	260.00
Employee Benefits	1.2	165.00	198.00
Relief from Stay Motions	2.3	130.00	299.00
Total	14.0		2,159.50

E. Summary of Accumulated Services Rendered and Expenses Incurred.

A summary of accumulated services rendered and expenses incurred from approval of employment through the prior calendar quarter must be included on the attached form.

F. Estimate of Total Fees To Be Incurred.

If an applicant will be filing more than a single fee application in any case, the fee application must include a projection, by category (see section II.D. above), of the amount of fees that they expect will be incurred in the case from beginning to end. This projection should be revised if the projection changes materially. The estimate should be provided on the attached form.

G. Detailed Itemization of Services Rendered.

Professionals must file *detailed* itemizations of services rendered and expenses incurred. Services rendered and expenses incurred will be the subject of substantial scrutiny by other parties in the case, as well as subject to independent review by the Court regardless of whether an objection is filed, to determine the reasonableness of the fees and expense reimbursement requested.

1. *Format of Detailed Itemization.* Detailed time entries should be grouped by category (see section II.D. above), with time entries appearing in chronological order within the category.
2. *Detail Required.* Fee applications must provide detailed descriptions of the services. Each discrete activity must be fully described, and the time expended on *each* activity must be disclosed. All time detail should be in hours and in decimal notation. Billing increments of one-tenth of an hour are required; quarter-hour increments are not acceptable. Apparent “minimum” billing times, such as .20 hours for a phone call or .30 hours for a letter (regardless of the length of the call or letter), are not acceptable and may result in a reduction in allowed hours.
3. *No Combination Entries.* Entries in applications must not be combined. The practice of “lumping” several different tasks together is unacceptable, as it makes it difficult to

separate compensable items from those that may be noncompensable. Fees may be reduced for entries that are lumped together. Accordingly, each discrete activity must be itemized and described in sufficient detail to allow a determination of whether the time spent on the activity was reasonable and necessary.

4. *Adversary Proceedings*. Each adversary proceeding should be separately designated such that the results obtained from each adversary proceeding can be evaluated in relation to the cost of the litigation.
5. *Intraoffice Conferences/Multi-Attorney Activities*. Each time entry for a multi-timekeeper activity must reflect the name of each of the other timekeepers in attendance and whether time has been billed by the timekeeper for his or her participation in the activity. If more than one person has billed for the activity, the need for billing by more than one timekeeper must be clearly explained. Absent such an explanation, multiple billing is unacceptable, and the time expended by one of the timekeepers may be disallowed. When the nature of the case involved is such that more than one professional will be needed to work on the matter, the need should also be described in the narrative body of the initial and final applications.
6. *Travel Time*. Travel time will be compensated at no more than one-half of the professional's allowed rate. Local (in county) travel is considered to be an overhead expense built into the professional's hourly rate and is not separately compensable. If the applicant contends that they were working while traveling, so that full compensation is appropriate, that contention must be clearly set out and explained.
7. *Court Time*. Court time should include only time *actually spent in court hearings* and should not include travel time to or from court or any time spent in any conferences held in conjunction with the court appearance. Court time also includes the creditors meeting held pursuant to 11 U.S.C. § 341.
8. *Ministerial and Clerical Tasks*. Ministerial and clerical tasks performed by a professional or a paraprofessional person are not compensable. Nonprofessional duties are considered to be overhead and assumed to be part of the professional's billing rate. Therefore, such tasks as typing, transcription, opening the mail, copying, organizing files, filing, filing a document with the court through CM/ECF and the like will be considered to be noncompensable unless the description clearly justifies a need for these tasks to be performed by a professional or paraprofessional. Fees may also be reduced for attorneys' failure to use paralegals to perform tasks that do not need to be performed by an attorney or for the failure to properly staff the engagement.

III. Detailed Itemization of Actual, Necessary Expenses.

Detailed expense information must be furnished in each fee application; it is important that each expense be set forth in detail and justified as to its benefit to the estate. General overhead expenses, including supplies, are not allowed. The application must contain a statement to the effect that the expenses are being billed *at cost* (that is, there is no added profit or other multiplier added to the applicant's cost). The expense items that appear in applications most frequently are discussed below.

1. *Telephone.* Under no circumstances are applicants permitted to “guesstimate” long distance or cellular phone charges and simply charge a flat fee for each call. The expenses requested must reflect the actual expenses incurred.
2. *Facsimile Charges.* Charges for faxes are limited to the actual cost of incoming and outgoing faxes. For outgoing faxes, expenses are limited to the cost of any long-distance telephone charges incurred. For incoming facsimiles, reimbursable expenses are limited to the actual cost of the faxes received, and the applicant must disclose the number of pages received, the charge per page, and the total charge for incoming faxes.
3. *Copy Charges.* The nature of the copying, the number of copies, the charge per copy, and the total charge should be disclosed. The description should also state whether the copying was produced “in house” or was done by an outside service.
4. *Mileage.* The date, the destination and purpose of each trip, the number of miles, the charge per mile, and the total charge should be stated.
5. *Other Travel.* Where a trip requires expenses such as meals or lodging, the details of each expense (meals, lodging, transportation, etc.) should be clearly stated, along with the total cost. A single entry for the total expense of a trip is not adequate. The description should also explain why the trip was necessary.
6. *Legal Research.* Charges for legal research (Westlaw, Lexis) and library charges are considered to be nonreimbursable overhead expenses.

CHECKLIST FOR FEE APPLICATIONS
(Not generally applicable to subchapter V trustees, see above)

Note that all sections should be formatted as separate exhibits to the Narrative/Pleading of the Application

Initial Application

- Narrative, pleading-type application
- Biographical Information
- Summary of Services Rendered, including attestation
- Categorized Summary of Services Rendered
- Estimate of Total Fees to be Incurred
- Application for and Order Approving Employment
- Detailed itemization of services and expenses

Interim Application

- Narrative, pleading-type application
- Biographical Information not included in a previous application
- Summary of Services Rendered, including attestation
- Categorized Summary of Services Rendered
- Summary of Accumulated Services Rendered
- Estimate of Total Fees to be Incurred (include a copy of each previously-filed estimate)
- Detailed itemization of services and expenses not included in a previous application

Final Application

- Narrative, pleading-type application
- Biographical information not included in a previous application
- Summary of Services Rendered, including attestation
- Categorized Summary of Services Rendered
- Summary of Accumulated Services Rendered
- Estimate of Total Fees to be Incurred (include a copy of each previously-filed estimate)
- Application for and Order Approving Employment
- Detailed itemization of services and expenses not included in a previous application

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor

Case No. _____

**SUMMARY OF SERVICES RENDERED/
APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES**

By: _____

During the period from____, 20__through____, 20____, the undersigned person/firm performed professional services for the above-named bankruptcy estate in the capacity of _____. Attached to the summary is a detailed itemization of time expended and expenses incurred in the performance of these professional services.

Name	Title	Hourly Rate	Total	Hourly Rate previously allowed by the Court
Total				
Expenses (as shown on attachment)				
Total Amount Requested				

I certify that the information contained in this application is true and accurate and that the application complies with the Court’s chapter 11 fee guidelines currently in effect.

This ____ day of _____, 20____.

(Attorney)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor

Case No. _____

CATEGORIZED SUMMARY OF SERVICES RENDERED

By: _____

During the period from _____, 20____ through _____, 20____, the undersigned person/firm performed professional services for the above-named bankruptcy estate in the capacity of _____.

The following summarizes by category the time expended by the applicant:

Category	Hours	Hourly Rate	Total
Total			

This ____ day of _____, 20 ____.

(Attorney)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor

Case No. _____

SUMMARY OF ACCUMULATED SERVICES RENDERED AND EXPENSES INCURRED

Applicant: _____

Total fees previously:

Requested: \$ _____

Court-approved: \$ _____

Paid to applicant: \$ _____

Total expenses previously:

Requested: \$ _____

Court-approved: \$ _____

Paid to applicant: \$ _____

Fees requested in this application: \$ _____

Expenses requested in this application: \$ _____

Balance in retainer: \$ _____

This form must be completed and attached to each and every application for compensation filed in bankruptcy cases pending in the Middle District of North Carolina regardless of the reason it is submitted and regardless of the chapter of the Bankruptcy Code under which debtor is proceeding.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor

Case No. _____

ESTIMATE OF TOTAL FEES TO BE INCURRED

By: _____

The undersigned person/firm estimates that the following reflects the fees, by category, which are expected to be incurred during the course of this chapter 11 case:

Category	Hours	Rate	Total
Case administration			
Employee benefits			
Relief from stay motions			
Plan and disclosure statement			
Executory contracts/lease issues			
Claims administration and objections			
Adversary proceedings			
Fee applications			
Post-confirmation issues			
Intra-office conferences/multi-person activities			
Travel			
Other			
Total			

This ____ day of _____, 20 ____.

(Attorney)

This form is to be completed by counsel for debtor, counsel for the unsecured creditors' committee, and all other professionals who will be filing more than one fee application, and the form must be filed with the initial fee application. (Accountants must revise the form to include the categories to be used by accountants.)