

**United States Bankruptcy Administrator  
Middle District of North Carolina  
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**TO:** Professionals Participating in Chapter 7 Cases (Chapter 7 Trustees, Attorneys for Trustees, Special Counsel, Accountants, Auctioneers, Appraisers, Real Estate Agents, 506(b)/(c) Applicants, Etc.)  
**FROM:** Michael D. West  
**SUBJECT:** Chapter 7 Fee Application Guidelines

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The court is implementing new Chapter 7 fee application guidelines, which will be effective for fee applications filed after June 1, 1998.

In a Chapter 7 case, the trustee, attorney for the trustee, special counsel, accountant, appraiser, auctioneer, real estate agent, as well as certain other professionals,<sup>1</sup> may request compensation from the bankruptcy estate for court-approved services performed for the benefit of the estate. The procedures to be followed are set forth below.

**I. Frequency of Filing Fee Applications**

Unless the court permits otherwise, fee applicants may apply to the court for compensation not more than once every 120 days after an order for relief has been entered in a case. With regard to the frequency of filing fee applications, however, it is not anticipated that Chapter 7 trustees would submit applications on an interim basis except under unusual circumstances.

**II. Approval of Employment**

The Chapter 7 trustee in a case may employ one or more attorneys, accountants, appraisers, auctioneers, real estate agents, or other professionals to assist the trustee in carrying out the trustee's duties. Court approval is required for the employment of these professionals and must be obtained before they begin performing services for the estate. Each application requesting approval of employment must contain an explanation of the compensation requested by the applicant, including the method of computation (such as an hourly rate, flat rate, or on a percentage commission).

**III. Provisions Applicable to Appraisers, Auctioneers, and Real Estate Agents**

Fee applications filed by appraisers, auctioneers, and real estate agents shall include a copy of the application for and order approving their employment and a detailed narrative description of the services provided to the estate (for example, what property was appraised, what property was sold, when the property was sold, the dollar amount of the proceeds that were received, itemized list of expenses, etc.), along with an explanation of the terms of the employment and the compensation arrangements previously approved by the court. Any additional information requested by the court or the U.S. Bankruptcy Administrator must also be provided in the application.

**IV. General Procedures Applicable to Attorneys and Accountants, Including Attorneys**

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<sup>1</sup> In general, an attorney representing a debtor may not receive post-petition compensation from the debtor's bankruptcy estate. See 11 U.S.C. § 327.

## **Representing Chapter 7 Trustees**

In general, unless the court permits otherwise, professionals whose employment has been approved by the court or who are otherwise seeking compensation from the bankruptcy estate may apply to the court for compensation for services rendered and for reimbursement of expenses not more than once every 120 days after an order for relief has been entered in a case. 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. The initial fee application should include a request that the applicant be allowed to apply for and receive interim compensation for future services to be rendered to the estate at the rates as set by the court.

The court will set a hearing on applications for compensation exceeding \$500.00, with at least twenty days' notice to 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.

Each applicant must file with each fee application:

1. A Summary of Services Rendered during the period of time covered by the application (copy of form attached);
2. A Categorized Summary of Services Rendered during the previous quarter (copy of form attached);
4. A Summary of Accumulated Services Rendered and Expenses Incurred (copy of form attached);
5. A copy of the order approving the employment of the professional and the application upon which the order was based;
6. Biographical information; and
7. A detailed itemization of the services rendered, the date rendered, and the amount of time spent.

### **A. Form/Content of Fee Applications**

#### **1. Checklist**

The following is a checklist/summary to aid applicants in organizing fee applications; the checklist shows each item that must be included with each fee application and in what order the information must appear:

✓	Page		Notes
<input type="checkbox"/>	1	Narrative, pleading-type application	
<input type="checkbox"/>	2	Summary of Services Rendered	Extra copy of this page to clerk's office
<input type="checkbox"/>		Attestation	Include at bottom of Summary of Services page
<input type="checkbox"/>	3	Categorized Summary of Services Rendered	
<input type="checkbox"/>	4	Summary of Accumulated Services Rendered	
<input type="checkbox"/>	5	Application for and Order Approving Employment	
<input type="checkbox"/>	6	Biographical information	
<input type="checkbox"/>	7+	Itemization of services and expenses	

#### **2. Biographical Information**

Each fee application must include a brief biographical description of each of the individuals for whom compensation is sought, including paraprofessionals. This information is necessary to help evaluate the applicants 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:

- a. Name
- b. Position in the firm
- c. Educational background
- d. Professional (or paraprofessional) background, including at least the following:
  - i. Number of years of general experience
  - ii. Number of years of bankruptcy experience
  - iii. Specialization or certification
  - iv. Percentage of practice devoted to bankruptcy
- e. Usual billing rate

### **3. Attestation**

The applicant submitting the application must include a statement to the effect that the application complies with the fee guidelines. This statement is to be included on the Summary of Services Rendered, as shown on the attached form.

### **4. Categorization of Activities is Required.**

Activities must be categorized for fee applications in which the fees requested exceed \$5,000.00. All supporting time details should be grouped by category, with time entries appearing in chronological order within the category.<sup>2</sup> Although the categories could vary based on the circumstances of each particular case, the following should be used, at a minimum:

#### ATTORNEYS

1. General case administration;
1. Legal research;
1. Preparing for and litigating relief from stay motions;
1. Fraudulent conveyance matters;
1. Preferences;
1. Claims administration and objections;
1. Adversary proceedings (separately designated);
1. Intra-office conferences/multi-person activities;
1. Travel;
1. Fee application preparation; and
1. Other.

#### ACCOUNTANTS/FINANCIAL CONSULTANTS

<sup>2</sup> In other words, if Tom Smith had two entries in the Travel category on 1/3/98 and 1/22/98 and Mary Jones had a Travel category entry on 1/13/98, Tom Smith's 1/3/98 entry would be followed by Mary Smith's 1/13/98 entry; Tom Smith's 1/22/98 travel time would be the final entry. Time should **not** be grouped first by individual and then by date within the category.

1. Accounting -- Activities related to maintaining books of account, preparation of financial statements and account analysis;
1. Auditing;
1. Valuation -- Appraisals of assets or review of appraisals;
1. Conferring among other professionals;
1. Reviewing the work of other professionals;
1. Tax issues;
- Tax return preparation;
1. Litigation consulting -- Services related to bankruptcy matters such as avoiding actions, forensic accounting, etc.;
1. Data entry;
1. Fee application preparation;
1. Travel; and
1. Other.

## 5. Time Entries

Professionals should be aware that they must file detailed fee applications, which will be the subject of substantial scrutiny by other parties in the case, as well as independent review by the court regardless of whether an objection is filed, to determine the reasonableness of the fees requested.

### a. Detailed Descriptions Required

Fee applications must provide detailed descriptions of the services provided; 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. Examples of unacceptable time notations are "55 minutes," "2 ½ hours" and "½ day." 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.

### b. Do Not Combine Entries.

Entries in applications must not be combined; the practice of "lumping" several different tasks together is unacceptable. Fees may be routinely 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.

## 6. Other Time Entry Information/Requirements

- a. 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.
- b. 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, 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.

- c. Travel Time -- Travel time will be compensated at no more than one-half of the professional's allowed rate. Local travel is usually considered to be an overhead expense built into the professional's hourly rate and is not separately compensable.
- d. 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 meeting of creditors held pursuant to Section 341.
- e. 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, opening the mail, copying, filing 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 will also be reduced for failure to use paraprofessionals to perform tasks that do not need to be performed by the professional.

**B. Hourly Rates of Compensation**

Fee applicants may submit fee applications based on reasonable hourly rates consistent with Section 330<sup>3</sup> of the Bankruptcy Code.<sup>4</sup> The court will consider at least the following criteria in determining the hourly rate to be awarded to each applicant:

- 1. The time expended;
- 2. The nature and extent of the services rendered;
- 3. The value of the services to the estate; and
- 4. The cost of comparable services other than in a case under Title 11.

**C. Two Summary Charts of Time and Expenses**

**1. By Individual**

Each fee application must contain a summary chart showing the name of the individual, his or her position in the firm (partner, associate, paralegal, etc.), the total hours billed by each person, the rate per hour, and the extended amount. Time itemizations should be totaled by individual and "grand total" for the period for which compensation is sought. This information should be in the form of a single-spaced chart, similar to the following:

Name	Position	Hours	Rate	<u>Total</u>
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<sup>3</sup> Or § 506(b) or § 506(c), as may be applicable.

<sup>4</sup> The existing interim/presumptive hourly rate schedule for attorneys representing trustees, however, shall remain in effect.

Susan Jones	Partner	12.0	130.00	1,560.00
Susan Jones-Travel	Partner	2.5	65.00	162.50
Tom Smith	Associate	26.0	90.00	2,340.00
Anne Foster	Paralegal	11.0	50.00	550.00
Total		51.5		4,612.50
Total Expenses *				122.00
Total Fees and Expenses				4,734.50

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

## 2. By Category

Where categorization is required, each fee application must also contain a summary chart showing 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. This information should be in the form of a single-spaced chart, similar to the following:

Category	Hours	Rate	Total
General case administration	8.5	145.00	1,232.50
	2.0	130.00	260.00
Legal research	1.2	130.00	156.00
Relief from stay motions	2.3	130.00	299.00
Fraudulent conveyance matters			
Preferences	3.5	145.00	507.50
Claims administration and objections	1.3	130.00	169.00
Intra-office conferences/multi-person activities	1.8	130.00	234.00
Travel	2.5	145.00	362.50
Fee application preparation	1.2	130.00	146.00
Other	3.0	82.50	247.50
	27.3		3,614.00

## D. Expenses

Detailed expenses 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. 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. 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.
3. 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.
4. 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.

**5. Accelerated Delivery Methods** The use of accelerated methods of delivery is often necessary and of benefit to the estate. Since such methods are considerably more expensive than regular mail, however, the application should indicate why such use was necessary and how it benefited the estate.

a. Messenger/Courier Service

Many applications include charges for time and mileage for hand-delivery of documents to the court, and to other parties. Unless the need for hand-delivery of the documents is clearly justified in the application, expenses or fees for hand-delivery of documents are not reimbursable.

b. Facsimile Charges

Charges for outgoing faxes are limited to the actual cost of any long distance telephone charges incurred. For incoming facsimiles, the number of pages, the charge per page, and the total charge must be disclosed.

**V. Chapter 7 Trustees**

Although a Chapter 7 trustee's compensation is usually a percentage commission and not based on the hours of service provided by the trustee, the trustee is required to perform his or her fiduciary duties in order to be entitled to a trustee's commission. Accordingly, the Chapter 7 trustee is required to account for and itemize the time spent performing trustee duties for each estate. Each application for compensation filed by a Chapter 7 trustee must include a detailed itemization of the services rendered, the date rendered, and the amount of time spent on each activity. Categorization is not required unless requested by the court or the U.S. Bankruptcy Administrator.

The duties of a Chapter 7 trustee are set forth in 11 U.S.C. § 704. Those duties that can be performed by a reasonably prudent business person should be performed by the trustee and not the attorney for the trustee. *In general*, the following types of activities do not usually require that they be performed by someone with a law degree:

1. Reviewing and studying the petition, statement of affairs and schedules, including exemptions and disclosure of compensation paid to debtor's counsel;
1. Attending and conducting Section 341 meeting of creditors
1. Meetings and discussion with auctioneer about the sale of assets;
1. Preparing notice of sale, attendance at sale, and preparing report of sale;
1. Reviewing accounts receivable to determine those that should be turned over to an attorney for collection, and writing initial demand letter.
1. Review of books and records to identify transaction made within one year or ninety days of the petition date;
1. Initial examination of the claims register;
1. Preparing interim and final reports;
1. Preparing reports of distribution;
1. Writing checks, making distribution, opening bank accounts, balancing bank accounts, depositing checks, transferring funds from one account to another;
1. Discussions with parties about the status of the case; and

1. Communications with unsecured creditors about filing proofs of claim and answering other inquiries from unsecured creditors.

Time spent by Chapter 7 trustees for performing the types of tasks set forth above should not be included in an application by the attorney for the trustee unless the applicant makes clear in the time entry in question that the services of an attorney were required to perform the task.

With regard to the frequency of filing fee applications, it is not anticipated that Chapter 7 trustees will submit applications on an interim basis except under unusual circumstances. Applications for reimbursement of funds advanced by a trustee for insurance, storage, rent, or other items of that nature, however, may be filed on an interim basis.

## **VI . Holdback Provisions**

It shall be up to the judge in each case to decide whether to implement some type of holdback procedure. 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 professional is receiving a reasonable hourly rate for the services

## **VII. Service of Fee Applications**

The original of each fee application must be filed with the court. An additional, extra copy of just the Summary of Services Rendered page must also be filed with the court. A copy of each application must also be served on the Bankruptcy Administrator at the same time that the original application is filed with the court. In no event should the original of any fee application be served on the Bankruptcy Administrator. Service to the Bankruptcy Administrator should be by mail or by delivery to the Bankruptcy Administrator's Office. (Any copied delivered to the Clerk's Office for routing to the Bankruptcy Administrator will be forwarded *only* if the copy is clearly marked, "BA's COPY.") Failure to serve a copy of a fee application upon the Bankruptcy Administrator will likely delay the court's consideration of the fee application.

## **VIII. Chapter 11 Costs of Administration in Cases Converted From Chapter 11 to Chapter 7**

In general, Chapter 11 costs of administration in a case that has been converted from Chapter 11 to Chapter 7 will be considered by the court at the end of the Chapter 7 case when it can be determined whether there will be funds available for Chapter 11 COA's.

## **IX. Submission of Computer Disks**

Professionals may be required to submit to the Bankruptcy Administrator their time entry information on floppy disks. In the event that the Bankruptcy Administrator determines that such computerized information would be useful in the review of very large fee applications, the Bankruptcy Administrator will notify the professionals early in the case and will discuss the compatibility of the applicant's computer billing system with the Bankruptcy Administrator's computer system.

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

In Re: \_\_\_\_\_ )  
 )  
 ) Case No. B-9\_\_\_\_-\_\_\_\_\_ C-7 \_\_\_\_  
 )  
 Debtor. \_\_\_\_\_ )  
 \_\_\_\_\_ )

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

By: \_\_\_\_\_

From \_\_\_\_\_, 199\_\_\_\_ through \_\_\_\_\_, 199\_\_\_\_, 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	Hours	Hourly Rate	Total
<b>Total</b>				
<b>Expenses</b> (as shown on attachment)				
<b>Total Amount Requested</b>				

I certify that the information contained in this application is true and accurate and that the application complies with the court's Chapter 7 fee guidelines currently in effect.

This the \_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_.

\_\_\_\_\_

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

In Re:

Debtor.

\_\_\_\_\_ )

)  
)  
)  
)  
)  
)  
)

Case No. B-9\_\_-\_\_\_\_\_ C-7 \_\_

**CATEGORIZED SUMMARY OF SERVICES RENDERED**

By: \_\_\_\_\_

From \_\_\_\_\_, 199\_\_ through \_\_\_\_\_, 199\_\_, 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	Rate	Total
<b>TOTAL</b>			

This the \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_

**SUMMARY OF ACCUMULATED SERVICES RENDERED AND EXPENSES INCURRED**

Applicant: \_\_\_\_\_  
Case Name: \_\_\_\_\_  
Case Number: \_\_\_\_\_

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 the applicant is proceeding.*