UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

M-104

----------x

ADMINISTRATIVE ORDER

Re: Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases

----------x

Pursuant to a resolution of the Board of Judges, all fee applications filed on or after July 1, 1991 will be reviewed in accordance with the annexed guidelines which have been approved by the Board of Judges, and which shall be subject to annual review as to adjustments to the expense reimbursement amounts for the following guideline items: D3 (photocopying), D5 (facsimile transmission), and D10 (overtime meals).

At: New York, New York
June 20, 1991

Hon. Burton R. Lifland
Chief Bankruptcy Judge

DOCKETED
JUN 24 1991
U.S. BANKRUPTCY COURT
SO. DIST. OF NEW YORK

Guidelines for Fees
and Disbursements for Professionals
in Southern District
of New York Bankruptcy Cases[1]

The following guidelines apply in all bankruptcy cases in the Southern District of New York. They delineate information that each interim and final application for professional fees and expenses must contain, and guidelines for reimbursement of disbursements. Those provisions preceded by an asterisk (*) are mandatory guidelines to which an applicant must certify the application adheres. No deviation from those guidelines marked with an asterisk is permissible, regardless of circumstances. Fee applications must comply with the remainder of these guidelines, provided that if the fee application departs therefrom (a) the certification shall specifically so state, and (b) the application must explain why the applicant believes departure from the guidelines is justified in the circumstances. The presumption is that the Court will follow the guidelines set forth herein. Any application departing from these guidelines shall include, in the paragraph proffering the justification for departing from the guidelines, the amount that the applicant would be entitled to receive under the guidelines.

A. Certification

[1] These guidelines shall apply to all professionals seeking compensation pursuant to 11 U.S.C. §§327,328,330 and 331, including investment bankers and real estate advisors, unless the Court, in the order of retention, provides otherwise.

[*]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 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 application complies with the mandatory guidelines set forth herein; (c) to the best of the Certifying Professional's knowledge, information and belief formed after reasonable inquiry, the fees and disbursements sought fall within these guidelines, except as specifically noted in the certification and described in the fee application; and (d) except to the extent that fees or disbursements are prohibited by these guidelines, the fees and disbursements sought are billed at rates and in accordance with practices customarily employed by the applicant and generally accepted by applicant's clients.

[*]2. Each application for fees and disbursements must contain a certification by either the Certifying Professional or by the trustee, the debtor, or the chair of each official committee represented by the applicant that the trustee, the debtor, or the chair of each official committee (as to each respective committee's professionals) has reviewed the fee application and has approved it. If the Certifying Professional is unable to certify that the trustee, debtor or committee chair, as the case may be, has approved the application, then the application must so state.

[*]3. Each application for fees and disbursements must contain

a certification by the Certifying Professional that the trustee, the chair of each official committee and the debtor have all been provided no later than 20 days after the end of each month with a statement of 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.

[*]4. Each application for fees and disbursements must contain a certification by the Certifying Professional that the trustee, the chair of each official committee and the debtor have all been provided with a copy of the relevant fee application at least 10 days before the date set by the Court or any applicable rules for filing fee applications.

[*]5. The Certifying Professional and, where applicable, the trustee, the debtor, or the chair of each official committee providing a certification should be present at the hearing unless previously excused by the Court.

B. Time Records Required to Support Fee Applications

[*]1. Each professional and paraprofessional must record time in increments of tenths of an hour, and must keep contemporaneous time records on a daily basis.

[*]2. Time records must set forth in reasonable detail an appropriate narrative description of the services rendered. Without limiting the foregoing, the description should include indications of the participants in, as well as the scope, identification and purpose of the activity that is reasonable in the circumstances, especially in relation to the hours sought to be charged to the estate for that particular activity[2].

[*]3. In recording time, each professional and paraprofessional may describe in one entry the nature of the services rendered during that day and the aggregate time expended for that day without delineating the actual time spent on each discrete activity, provided, however, that if the professional or paraprofessional expends more than 1 hour on a particular activity the time record for that day must include, internally in the description of services for that day, the amount of time spent on

---

[2] By way of illustration only, and not by way of limitation, the following descriptions are inadequate or imcomplete:

(i) J. SMITH - 1/10/91- legal research re fraudulent transfers - 10.0

(ii) J. SMITH - 1/11/91- lengthy telephone call with J. Doe re status - .7

(iii) J. SMITH - 1/12/91- drafting motion papers - 5.0

(iv) J. SMITH - 1/13/91- interoffice conferences w/ J. Doe and P. Jones re direction of of case - 2.0

(v) J. SMITH - 1/14/91- meeting with creditors - 8.0

(vi) J. SMITH - 1/14/91- document organization - 3.0

(vii) J. SMITH - 1/15/91- various correspondence - 1.0"

that activity. A hypothetical time record complying with this guideline is included in the margin.[3]

[*]4. To the extent a professional is engaged in rendering services in a discrete activity within the case (a) that can reasonably be expected to continue over a period of at least three months, and (b) that can reasonably be expected to constitute approximately 10-20% or more of the fees to be sought for an interim period, the professional shall establish a separate record entry for that matter, and record time therein separate from any other services in the case. Within that separate entry the professional shall comply with Section B(3), including the proviso thereof. Examples of such discrete services within a case where such separate recording may be appropriate, in a particular case, include: an extended program of Rule 2004 examinations; sale of a significant asset or subsidiary; a significant adversary proceeding or contested matter; negotiating a plan; drafting and commenting on plan documents (plan, disclosure statement, related corporate documents, etc.)...

Paraprofessionals working on such a discrete activity shall similarly account separately for their services and time.

5. The Court may direct, in the order scheduling the hearing on fees or otherwise, the fee applicant to make available to

---

[3] A complying time entry would be:

["Conf. W/X re 362 hearing; revising draft motion re ordinary course [1.1]; numerous TCs re adeq. protection; conf. call W/Y, Z re taxes [1.4]; review court filings ... Total Time 3.8"]

parties in interest, or to file with the Clerk of the Court, a copy of the contemporaneous time records required to be kept by Sections B(1)-(4). If the Court so directs, the Court shall provide that time record entries referring to or disclosing privileged material and confidential material may be excised from such records; provided, however, that if the excised material is sufficiently extensive to infringe upon the Court's ability to judge reasonableness of the services, the Court may request submission of in camera, unredacted time records.

C. Description of Services Rendered

1. Content of the Application. In addition to the description of services rendered to the trustee, the debtor or an official committee, as the case may be, each fee application must include:

[*](a) A statement at the outset thereof of

(i) the amount of fees and disbursements sought;

(ii) the time period covered by the application;

and (iii) unless the order authorizing retention dispenses with this subparagraph, the total professional hours expended, as well as the total paraprofessional hours expended.

[*](b) Unless the order authorizing retention upon application therefor dispenses with this paragraph, a schedule showing the name of each professional, with his or her position in the firm, the name of each paraprofessional who worked on the case during the fee period, the year that the professional was

licensed to practice, the hours worked by each professional and paraprofessional, and the hourly rate for each professional and paraprofessional. Any change in hourly rates or billing practices from those utilized in the prior application period must be noted on the schedule.

2. To the extent an applicant is required by Section B(4) hereof to maintain a separate time record, the fee application shall describe in reasonable detail the nature of that discrete activity as well as the results of the applicant's efforts. The description shall include an approximation of the percentage of the total fee requested in the application attributable to such activity.

[*]3. Any request for an enhancement of fees over the fee which would be consistent with Section A(1)(d) hereof or which would be derived solely from applicable hourly rates must be specifically identified in the application, and the justification for the requested enhancement must be set forth in detail.

D. Reimbursement for Expenses and Services

1. Certification

Each application requesting reimbursement for services and expenses must contain a certification by the Certifying Professional that:

[*]a. In providing a reimbursable service, the applicant does not make a profit on that service.

b. In charging for a particular service, the applicant does not include in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay.

[*]c. In seeking reimbursement for a service which the applicant justifiably purchased or contracted for from a third party (such as temporary paralegal or secretary services, or messenger service), the applicant requests reimbursement only for the amount billed to the applicant by the third-party vendor and paid by the applicant to such vendor.

2. <u>Presentation of Disbursements and Expenses in Fee Application.</u>

[*]a. In requesting reimbursement for expenses and services, applicants are specifically reminded of other certifications required by these guidelines, and in particular the certification under Section A(1)(c) hereof. Excessive charges shall not be reimbursed. To the extent that an applicant seeks reimbursement for expenses and services, the application shall categorize them (if applicable) in the following manner:

(i) Photocopying

a. Internal (see D(3))
b. External (see D(1)(c))

(ii) Telecommunications

a. Toll charges (see D(6))
b. Facsimile (see D(1)(c))

(iii) Courier and freight (see D(6))

(iv) Printing (see D(1)(a))

(v) Court reporter and transcripts

(vi) Messenger service (see D(1)(c))

(vii) Computerized research (see D(4))

(viii) Out of town travel expenses (see D(7))

a. Transportation
b. Lodging
c. Meals

(ix) Word Processing, Secretarial and other Staff Services (see D(1)(b) and D(11))

(x) Overtime expense (see D(9))

a. Non-professional
b. Professional

(xi) Local Meals (see D(10))

(xii) Local Transportation (see D(12))

Expenses and disbursements which do not fall within any of the foregoing categories and which exceed $500 in the aggregate should be listed separately and adequately described.

b. Support for each item for which reimbursement is sought must be kept. Such support shall be provided on request to the Court and the United States Trustee, and in appropriate circumstances to any party in interest provided that, where applicable, privilege or confidentiality can be preserved.

3. <u>Photocopying</u>.

Photocopying shall be reimbursable at the lesser of $.20 per page or cost.

4. Computerized research.

Computerized legal services such as Lexis and Westlaw are reimbursable to the extent of the invoiced cost from the vendor.

5. Facsimile transmission.

A charge for out-going facsimile transmission to long distance telephone numbers is reimbursable at the lower of (a) toll charges or (b) if such amount is not readily determinable, $1.25 per page for domestic and $2.50 per page for international transmissions. Charges for in-coming facsimiles are not reimbursable.

6. Postage, telephone, courier and freight.

The cost of postage, freight, overnight delivery, courier services, and telephone toll charges are reimbursable, if reasonably incurred. Thus, charges should be minimized whenever possible. For example, messengers and overnight mail should be used only when first-class mail is impracticable. Delivery of papers to professionals at their homes or similar locales by radio car or taxi is not reimbursable. Charges for local telephone exchange service are not reimbursable.

7. Travel charges.

First class air fare, luxury accommodations and deluxe meals are not reimbursable, nor are personal, incidental charges such as telephone and laundry unless necessary as a result of an unforeseen extended stay. Mileage charges for out-of-town travel

with one's own car are reimbursable at the lesser of the amount charged clients in the non-bankruptcy context or the amount allowed by the Internal Revenue Service for per mile deductions.

[*]8. Proofreading.

Charges for proofreading for typographical or similar errors are not reimbursable whether the services are performed by a paralegal, secretary or temporary staff.

9. Overtime expense.

Overtime for non-professional and paraprofessional staff is not reimbursable unless justified under the first paragraph of these guidelines. Any such justification must indicate, at a minimum, that (i) services after normal closing hours are absolutely necessary for the case, and (ii) the 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 1 1/2 hours. In any event, the expense for an individual's meal may not exceed $20.00.

10. Daytime meals.

Daytime meals are not reimbursable unless the individual is participating, during the meal, in a necessary meeting respecting the case.

11. Word processing, secretarial and other staff services

Daytime, ordinary business hour charges for secretarial, library, word processing and other staff services (exclusive of

paraprofessional services) are not reimbursable unless such charges are not included in the firm's overhead for the purpose of setting billing rates, in which case the application shall so state. Special office charges, such as the temporary employment of additional staff: a) necessitated by the case and b) not incurred in replacement of permanent staff or to shift otherwise non-reimbursable charges, will be reimbursed if reasonable and justified in each instance.

12. Local transportation.

Local taxi and limousine charges should be minimized and justified. Because of the proximity of mass transit to the court, mass transit should be used whenever practicable.