

Guidelines for Compensation and Expense Reimbursement of Professionals

United States Bankruptcy Court
for the Western District of North Carolina

Introduction

Congress has established the **standard** for professional compensation to be: "reasonable compensation for actual, necessary services" and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Congress has also established relevant factors for the courts to use in determining the amount of reasonable compensation in § 330(a)(3) as follows:

- (A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--
- (A) the time spent on such services;
 - (B) the rates charged for such services;
 - (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
 - (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
 - (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

The purpose of these Guidelines is to assist parties in providing information necessary for the Court to make the determination of reasonable compensation as outlined by Congress. These Guidelines are **NOT** requirements for the Court or parties. Following these Guidelines should reduce, if not eliminate, objections as to the form or format of the application. The Guidelines are also intended to assist parties in addressing their respective burdens of proof with respect to an application for compensation.

Narrative

A narrative explanation of the status of the case and the professional's contribution to the estate is useful to the Court. The degree of detail included in the narrative is in the discretion of the applicant as a proponent/advocate of the application. "Boilerplate" narratives are of no use to the Court. However, the use of a "boilerplate" curriculum vitae is permitted.

The narrative portion of the application provides an opportunity for the applicant to persuade the Court that the compensation requested is reasonable. The applicant should describe and highlight particular problems that were present and what was done to resolve those problems. The benefits to the estate of the services rendered should be reported in detail. Any extraordinary problems or benefits should be described in the narrative. Describe the anticipated development and progression of any litigation. For example, has all of the work to date been in preparation of lawsuits, but none has been filed? Has a substantial amount of time been spent in settlement negotiations and what were the results of the negotiations? Any time entries discounted or "written-down" should be specifically identified. For interim applications it is especially helpful to provide a case history, projected future activity, and a statement of the actions necessary to conclude the case.

Billing Summary

Summary of time and expenses applied for in this and prior applications.

Rates

This part of the application should show the hourly rates charged by each professional and include the background and experience of the professional. Unless the applicant specifically states otherwise, the rate shown is the actual rate charged the client and was the rate in effect at the time the service was rendered.

Time Increments

The applicant should use discretion in determining the increment. Generally, a "safe harbor" for the applicant is to charge an increment no greater than that generally accepted in the market (currently .1 hour). The applicant should be prepared to demonstrate that any greater increment does not operate to inflate the time billed.

Time Entries

Generally, time entries should be sufficiently descriptive to enable the Court and third parties to determine the nature and extent of the service rendered. At a minimum, the time entry should describe who provided the service, when the service was provided,

where (if travel is involved), and what service was provided. To the extent the applicant believes that detailed descriptions will violate the attorney-client privilege or other applicable privilege, the applicant must assert the privilege specifically. Even where a privilege is asserted, the time entry should reflect the general topic area as specifically as possible without violating the privilege.

Even when tasks are performed on the same day or time block, separate tasks should be set forth in separate time entries. When different tasks are included in the same time entry, the Court cannot make a proper determination under 11 U.S.C. §330. Any significant amount of time spent on adversary proceedings should be set out separately from the base application. The applicant should segregate time entries in adversary proceeding litigation such that the Court can evaluate the results obtained and benefit to the estate of the services as related to the costs incurred. Time entries which are not adequately descriptive or are "lumped" are subject to disallowance.

Conferences and Multiple Professionals

All conferences should identify the purpose, all attendees, and the nature of the matters discussed or accomplished. Because of the opportunity for "double-teaming," explanations should be given whenever more than one professional attends a conference, hearing or meeting.

Office Tasks

"Secretarial" tasks performed by professionals should be demonstrated to be both necessary and expeditious.

Travel Time

Time entries billed for non-working travel time and for work done during travel time should be identified separately. Compensation for travel time alone (where no other work was accomplished for the client), should be highlighted and explained. Travel time should not be billed when substantive work was simultaneously performed and billed. Travel time should be categorized with the category best reflecting the purpose of the travel.

Request for Compensation Other than Time Billed x Hourly Rate

The Court is not adverse to considering methods of compensation other than time billed times hourly rate charged. Any requests for compensation other than hourly rate times hours billed must be set forth clearly and conspicuously so the Court can determine the basis for the compensation request and the reasonableness thereof.

Burdens of Proof and Objections

The burden of persuasion is on the movant. The burden of going forward with the evidence begins with the movant, shifts to the objector, then back to the movant who must, in the final analysis, show the reasonableness of the compensation. Objections should be factual and should demonstrate specific objectionable time.

Project Categories

The Court may require categorization of time entries in certain cases, and where required, will do so by order. The Court encourages the use and designation of the following categories even in the absence of an order. When used, these categories should be imbedded as codes into each time entry, such that the Court can use the codes to sort and review the time entries in an automated fashion. An applicant may substitute the number of the category instead of the full title of the category. Where project categories are used and the application's time entries are submitted on computer diskette, the Court will expedite the review of the fee application.

1. **Asset Transactions:** Identification and review of potential assets including causes of actions, sales, leases and abandonment.
2. **Case Administration and Business Operations:** Issues related to the debtor-in-possession business and activities related to case administration including schedules, financial reports, creditor contacts, § 341 meetings and employee relations.
3. **Fee Proceedings:** Preparation of fee applications and review and objections to fee applications.
4. **Financing and Relief from Stay Proceedings:** Matters pertaining to debtor-in-possession financing and relief from stay motions.
5. **Litigation:** Matters pertaining to litigation.
6. **Plan and Disclosure:** Matters pertaining to the formulation, presentation, confirmation, compliance and closing of a plan.
7. **Claims Administration:** Analysis, bar date motions, objection and allowance of claims.
8. **Other:** The application should include an explanation of the specific type of project or category for time entries included under this category.

EXPENSES

The general practice is to find as reasonable and necessary those expenses and expense billing practices that are accepted in the relevant market. Expense items should be set out separately and should reflect the actual cost. Even when using the actual cost, certain items must be justified as necessary, such as overnight delivery, messenger service and meals. Any conventions used, i.e. per page charge for copying, should be identified and explained. Certain "safe harbors" for expense conventions are listed below.

Copies

In-house copies billed at \$.25 or less are presumed reasonable. For copies prepared by a copying service, the actual billed amount should be listed.

Air Travel

The actual cost of the ticket at coach fare.

Auto Travel

The mileage rate set by the Internal Revenue Service at the time of the travel is presumed reasonable.