U. S. Department of Justice

United States Trustee
Southern District of California

GUIDELINES FOR FULFILLING THE REQUIREMENTS OF THE UNITED STATES TRUSTEE

880 Front Street, Suite 3230
San Diego, CA 92101
(619) 557-5013
https://www.justice.gov/ust-regions-r15/region-15-general-information-0

GUIDELINE NO. 1

SERVICE OF DOCUMENTS ON THE OFFICE OF THE UNITED STATES TRUSTEE

A. SERVICE OF DOCUMENTS

1. Cases Under Chapter 7, 11, and 12: In accordance with Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P.") 9034, 5005, 2002, the United States Trustee requests copies of all notices and documents filed in cases under chapters 7, 11, and 12 of the Bankruptcy Code be served upon the Office of the United States Trustee located at 880 Front Street, Suite 3230, San Diego, CA 92101.

Exceptions: DO NOT SERVE THE FOLLOWING DOCUMENTS ON THE OFFICE THE UNITED STATES TRUSTEE:

- Proof of Claim;
- Petitions and accompanying materials which are included in the initial filing with the Bankruptcy Court;
- Chapter 7 Relief from Stay papers;
- Chapter 7 Avoidance of Lien papers; and
- Reaffirmation/Redemption papers.

2. Adversary Proceedings: Only the following documents need to be served on the United States Trustee upon commencement of an adversary proceeding:

   - Initial Complaint (and any amendments); and
   - Answer (or other responsive pleadings).

   a. NOTE: The United States Trustee should not be named as a party defendant in Motions for Relief from Stay or Adversary Proceedings, unless the United States Trustee is an actual party.

   b. NOTE: Do not serve discovery or discovery requests on the Office of the United States Trustee, unless the United States Trustee is a named party.

3. Special Notice for Chapter 12 Cases: In cases under Chapter 12, all documents served upon the United States Trustee must also be served upon the Chapter 12 Trustee appointed in the case. For information regarding service on the Chapter 12 Trustee, please contact the Office of the United States Trustee.

B. MANNER OF SERVICE

1. For cases and proceedings pending in the Southern District of California, all documents which are required to be served upon the United States Trustee should be served at the following address:

   Office of the United States Trustee
   880 Front Street, Suite 3230
   San Diego CA 92101

2. The United States Trustee does not accept service by facsimile or email unless prior arrangement has been made with the attorney assigned to the case.

GUIDELINE NO. 2

MATTERS REQUIRING A STATEMENT OF POSITION FROM THE OFFICE OF THE UNITED STATES TRUSTEE

A Movant or Applicant ("Movant") must obtain a Statement of Position of the United States Trustee ("Statement of Position") in accordance with Local Bankruptcy Rules ("LBR") 9034-1 with respect to:

A. Motions for Extension of Time for Filing Schedules of Assets and Liabilities and Statements of Financial Affairs required by Fed.R.Bankr.P. 1007 and LBR 1007-3.

B. Application to employ attorneys or other professionals including, but not limited to, accountants, appraiser, auctioneers, agents and brokers pursuant to 11 U.S.C. §327 or §1103 and as required by LBR 2014 and 6005; and

C. Applications for Entry of Final Decree in a chapter 11 case pursuant to Fed.R.Bankr.P. 3022.

To obtain a Statement of Position, the Movant must serve the motion or application, supporting declarations attaching any other supporting documents, the proposed order, and the proof of service (referred to as "the motion papers") at ustp.region15sop@usdoj.gov

The United States Trustee's office will only accept service at

ustp.region15sop@usdoj.gov

for requests for Statement of Position in connection with the three (3) matters set forth in LBR 9034-1(a). Please do not mail a hard copy of your motion papers concurrently with your email request. The Movant's email to the United States Trustee's office must clearly set forth a return email or mailing address.

Time periods for filing a Statement of Position are set out in LBR 9034-1(d) and (e). If the United States Trustee objects to the motion papers, the United States Trustee will file a Statement of Position with the Court and serve the Movant at the email or mailing address provided. If the United States Trustee does not object to the motion papers, the United States Trustee will either file a Statement of Position with no service on the Movant or will allow the time to respond to expire.

If the United States Trustee requests a hearing in the Statement of Position, the Movant must schedule a hearing with proper notice on the United States Trustee and other parties in interest.

For additional information regarding the processing of Statements of Position consult the Local Bankruptcy Rules for the Southern District of California.

GUIDELINE NO. 3

APPLICATIONS TO EMPLOY PROFESSIONALS

The Bankruptcy Court must approve the employment of any attorney, accountant, appraiser, auctioneer, agent or other professional retained pursuant to 11 U.S.C. §§ 327, 1103, and 1114 of the Bankruptcy Code. See also Fed.R.Bankr.P. 2014(a) and LBR 2014-1.

A. APPLICATIONS TO EMPLOY PROFESSIONALS

A request to employ a professional must include the following information:

1. The name and occupation of the person or firm to be employed.

2. Facts demonstrating the necessity for the employment and the specific services to be rendered.

3. The terms and condition of employment. Include the dates and amounts of all payments to applicant related to the case, the source of such payments, the current hourly rate(s) for the professionals and para-professionals expected to render services, and the charges that may be considered in an application for compensation and reimbursement of expenses. If applicable, any application to employ professionals must include a copy of the Fed.R.Bankr.P. 2016(b) disclosure statement. Attach any employment agreement including a retainer agreement, guarantee, or security agreement to the application. A contract for employment must not contain an arbitration provision or other provisions inconsistent with employment as a bankruptcy professional.

4. The reason for the selection of the particular professional to be employed. (Attach a statement of the past experience of the professional).

5. An authorized person's signature such as the debtor-in-possession, the chapter 11 trustee, or an officer, general partner, or other principal of the debtor-in-possession. (The Application should not be signed by the professional seeking employment.)

6. A declaration under penalty of perjury setting forth, to the best of the professional's knowledge, all of the professional's connections. Include connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee and any person employed by the Office of the United States Trustee. State whether the professional holds any adverse interest to the estate of the debtor. The declaration must contain facts, not merely legal conclusions.

7. A proposed Order which states that no compensation will be paid by the debtor-in-possession or any other person or entity for services rendered to the estate, or by the chapter 11 trustee, except upon application and bankruptcy court approval.

B. RETROACTIVE EMPLOYMENT OF A PROFESSIONAL

If an application to employ a professional by the debtor-in-possession or chapter 11 trustee is made more than thirty (30) days after the date of the commencement of the post-petition services by that professional, an explanation of the delay in the form of an affidavit must accompany the Application. Any application seeking an Order of retroactive effect more than 30 days after the commencement of services must be noticed to all creditors and state the amount of fees and expenses which have accrued during the period between the date of the commencement of post-petition services and the date the Application was submitted.

For applications that seek retroactive (nunc pro tunc) approval, professionals are referred to In Re Atkins, 60 F.3d 970 (9th Cir. 1995); In re THC Financial Corp., 837 F.2d 389 (9th Cir. 1988); In re Crook, 79 B.R. 821 (9th Cir. BAP 1986); and In re Mahoney, Trocki & Associates, 54 B.R. 823 (Bankr. S.D. Cal. 1985).

C. MULTIPLE REPRESENTATION

If more than one attorney is being retained to represent the debtor-in-possession, the chapter 11 trustee, or the Unsecured Creditors' Committee, facts must be stated in the Application as to the need for multiple counsel, the services to be performed by each, and an affirmative statement in each application that there will be no duplication of services.

D. POST-PETITION RETAINERS

No retainer shall be paid to counsel post-petition in the absence of a Bankruptcy Court Order authorizing payment.

E. SUBSTITUTION OF PROFESSIONAL

When the debtor-in-possession or trustee has been authorized to employ a professional person, any successor professional must also obtain court authorization for such employment. LBR 2014-1(a). If there is a substitution of counsel, a substitution of attorney form is also required.

GUIDELINE NO. 4

COMPENSATION AND REIMBURSEMENT OF PROFESSIONALS

No professional person may be paid without bankruptcy court approval unless otherwise permitted by the Bankruptcy Code. An application for allowance of compensation and expenses for professional persons should conform with Fed.R.Bankr.P. 2016, LBR 2016 and the following substantive requirements:

A. FEE AND EXPENSE GUIDELINES

Consult and apply

Appendix A – Guidelines for Reviewing and Applications for Compensation filed under 11 U.S.C. §330 in (1) larger chapter 11 cases by those seeking compensation who are not attorneys, (2) all chapter 11 cases below the larger case threshold, and (3) cases under other chapters of the Bankruptcy Code[1]

and

Appendix B – Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. §330 for Attorneys in Larger Chapter 11 Cases[2]

adopted by the Executive Office for the United States Trustee pursuant to 28 U.S.C. §586(a)(3)(A). Information concerning these guidelines is set forth on the United States Department of Justice website at www.justice.gov/ust/eo/rules_regulations/guidelines/index.htm.

B. APPLICABILITY OF PROJECT BILLING: Project billing, referred to in the Guidelines for Reviewing Applications for Compensation Filed under 11 U.S.C. §330, shall not apply to any applicant whose total aggregate compensation request in a case is anticipated to be less than $7,500, unless the Office of the United States Trustee or the Court deem otherwise. This amount excludes expense reimbursements.

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[1] In 1996, in accordance with 28 U.S.C. §586, the United States Trustee Program ("USTP") promulgated Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. §330 ("1996 guidelines"). 28 C.F.R. Part 58, Appendix A. The USTP is revising the 1996 guidelines in phases. The new Appendix B Guidelines, which are effective for cases filed on or after November 1, 2013, apply only to attorney compensation in larger chapter 11 cases. Until the USTP adopts other superseding guidelines, the 1996 guidelines will continue in effect for the review of applications filed under section 330 in (1) larger chapter 11 cases by those seeking compensation who are not attorneys, (2) all chapter 11 cases below the larger case threshold, and (3) cases under other chapters of the Bankruptcy Code.

[2] Larger Chapter 11 Cases are cases with $50 million or more in assets and $50 million or more in liabilities, aggregated for jointly administered cases. Single asset real estate cases, as defined in 11 U.S.C. 101 (51B), filed under chapter 11 are excluded.

C. OBJECTION CEILING FOR IN-HOUSE EXPENSES: The objection ceiling for in-house expenses that are routinely incurred are as follows:

1. Photocopy charges in excess of actual cost, or 20 cents per page, whichever is less, without a showing of good cause; and

2. Facsimile charges in excess of actual cost, or $1.00 per page for outgoing transmissions and 20 cents per page for incoming transmissions, whichever is less, without a showing of good cause.

D. APPLICATIONS FOR FINAL ALLOWANCE: A final application shall be filed by each professional at the conclusion of the case. The application shall seek approval of all prior payments of compensation and reimbursement of expenses, including the application of any pre-petition retainer, and shall state the total amounts sought to be finally approved for payment.

GUIDELINE NO. 5

DISCLOSURE STATEMENTS

Disclosure statements are required to contain "adequate information" in accordance with 11 U.S.C. §1125. The following is a check list of items that should generally appear in disclosure statements. The list is neither exclusive nor exhaustive and, depending upon the size and nature of the debtor and the plan of reorganization ("plan") itself, the requirements for items to be included in a disclosure statement may vary considerably from case to case.[3]

A. PURPOSE OF THE DISCLOSURE STATEMENT: The disclosure statement should indicate that its purpose is to provide adequate information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records. The purpose is to enable a hypothetical reasonable investor typical of the holders of claims (creditors) or interests (shareholders) in the case to make an informed judgment concerning the plan. [See 11 U.S.C. §1125(a)(1)].

B. VOTE REQUIRED FOR APPROVAL: The disclosure statement should indicate which classes of creditors are impaired and entitled to vote. The disclosure statement shall set forth the vote required for approval of the plan. The disclosure statement shall also indicate that the creditors or interest holders can either vote for or against the plan. The disclosure statement should also explain that a class of creditors has accepted the plan if voting creditors holding at least two-thirds in amount and more than one-half in number of the allowed claims voting, have voted for the plan. [See 11 U.S.C. §1126(c)].

C. DESCRIPTION OF THE PLAN: The disclosure statement shall provide a description of the major provisions of the plan, including an estimate date by which creditors can expect to begin to receive payments, an expected percentage return on their claims, and a summary of the treatment of various classes under the plan. The effective date of the plan should be provided as well as any bar date that has been set. Generally, the description does not have to be detailed and may merely refer to the specific provisions of the plan which contains such detailed information. Further, the summary should contain a description of each class of creditor and the approximate dollar amount of the claims in each class.

D. MEANS OF EFFECTUATING THE PLAN: The disclosure statement shall indicate how the debtor intends to accomplish the goals of the plan, i.e., whether by an infusion of cash by an investor, sale of real or personal property, continued business operation, issuance of stock or otherwise. If an investor is to provide funds, the identity of the investor and financial information regarding the investor's ability to provide such funds should be included.

[3] See In re Metrocraft Publishing Service, Inc., 39 B.R. 567 (Bankr. N.D. Ga. 1984).

E. CASH REQUIREMENTS: The disclosure statement shall indicate the amount of cash to be paid upon confirmation of the plan to satisfy administrative claims and any other claims. The source of such cash shall also be identified. If the debtor expects a cash infusion from an outside source or from principals which is to be repaid in the future, then the identity of the source as well as the repayment terms should be disclosed. Similarly, the effect of such repayment (i.e., principal and interest payments) should be reflected in the debtor's financial projections.

F. ADMINISTRATIVE EXPENSES: The disclosure statement shall identify whether any administrative expenses which must be paid, the identity of the administrative claimants and the source of the funds from which payments are to be made. The disclosure statement should also set forth that these expenses will be paid at the time of confirmation or on the effective date of the plan, unless the holder of such claim has agreed to a different treatment, the identity of the party and the alternative treatment shall be disclosed. [See 11 U.S.C. §1129(a)(9)(A)].

G. LEGAL PROCEEDINGS: The disclosure statement shall briefly describe all material legal proceedings to which the debtor is a party, proceedings which the debtor contemplates instituting, and legal proceedings which are known to be threatened against the debtor. The information shall include the name of the proceeding, the court in which the litigation is pending, the present status, the relief sought, the debtor's prognosis for the outcome, the estimated litigation costs, and the effect, if any, on the plan.

H. DESCRIPTION OF THE DEBTOR: The disclosure statement should describe the debtor and the debtor's business and should address any factors that may be unusual or peculiar to the business, such as seasonal cycles and unique product lines.

I. REASONS FOR FINANCIAL DIFFICULTIES AND CORRECTIONS OF THOSE FACTORS: The disclosure statement should contain a brief narrative description of the reasons for the debtor's financial difficulties (which precipitated the filing of the debtor's case) and the steps taken to alleviate the situation since the inception of the case.

J. ASSETS AND VALUATION: The disclosure statement shall provide a review of the debtor's scheduled assets and scheduled values, an estimate of the current value of the debtor's assets and the basis for such estimate (e.g. cost or appraisals), and an explanation of any deviation of current asset values from the scheduled values. The disclosure statement shall also contain a current profit and loss statement and a balance sheet. A statement shall be made as to whether these documents have been audited, the date of the audit and the identity of the auditor.

K. LIABILITIES: The disclosure statement shall provide a review of the scheduled claims, their amounts and an estimate of the current amounts of all of the debtor's liabilities, including a summary of the proofs of claims filed in the case. The

disclosure statement should indicate whether any claims are disputed and what action will be taken to resolve the dispute, including any estimated expenses to be incurred relative to such action.

L. HISTORICAL AND CURRENT FINANCIAL INFORMATION: The disclosure statement shall include historical and current financial data. It shall include a profit and loss statement, a cash flow statement, and a balance sheet. This information provides creditors with the some perspective on the debtor's past and current financial situation as well as the debtor's financial prospects under the plan of reorganization. A pro forma balance sheet as of the date of the plan is projected to be confirmed, indicating the financial condition of the reorganized debtor, should be included. In order to allow a full analysis, profit and loss statements must be provided on both a cash and accrual basis.

M. LIQUIDATION ANALYSIS: Creditors are entitled to receive as much under a chapter 11 plan of reorganization as they would under a chapter 7 liquidation. Consequently, the disclosure statement should clearly indicate the difference between the treatment proposed in the plan and that which creditors would receive under a chapter 7 liquidation. Such a comparison might indicate the percentage return to creditors under each alternative and must disclose any assumptions regarding liquidation values, administrative costs, etc. [See 11 U.S.C. §1129(a)(7)(A)(ii)]. It is insufficient to merely indicate that the plan will provide a better return than liquidation without information to support that conclusion. A simple tabular presentation setting forth estimated administrative expenses, priority expenses, secured and unsecured claims, together with the debtor's estimated asset values (including sources of such values) is appropriate. The liquidation analysis should also provide a present value calculation of the payments to creditors under the proposed plan versus liquidation. Where the debtor is a partnership, the disclosure statement should also describe the rights of a chapter 7 trustee under 11 U.S.C. §723, including an estimate of any recovery and relevant financial information about the general partners.

N. FINANCIAL PROJECTIONS: Projections are critical to a creditor's ability to assess the viability of the plan, especially where the plan calls for deferred payments to creditors or is based upon future earnings. The disclosure statement should include projections as far into the future as is practicable, including assumptions used by the debtor in formulating the projections, such as expected sales levels, gross and net profit levels, and inventory acquisition. The bases for the projections must be disclosed, and such projections must be realistically founded. At a minimum, the period covered by the projections should be commensurate with the period of payment deferral under the plan. Use of spreadsheets is encouraged. Financial projections must be provided on both cash and accrual basis.

O. MARKETING EFFORTS: The disclosure statement should indicate what efforts the debtor has made since the bankruptcy filing to market its properties for sale. Such a description should include the identity of the listing agent, the listing price, any offers

received or anticipated, pending litigation which might affect the sale of the property, the equity in the property (including the source of the valuation), and any alternatives for marketing the property in the future.

P. POST-PETITION EVENTS: The disclosure statement shall indicate whether any major events have occurred post-petition which might affect the case. Such events may include the appointment of a creditors' committee, a trustee, an examiner, or may involve post-petition financing or asset sales which could have potentially significant consequences on the ability of the debtor to meet the plan requirements.

Q. MANAGEMENT COMPENSATION: The disclosure statement shall disclose the identities and qualifications of management personnel, and set forth the respective compensation to be paid. The disclosure statement should identify if any of the management personnel are insiders as defined by 11 U.S.C. §101(31). The disclosure statement should also include the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as director, officer or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan. [See 11 U.S.C. §1119(a)(5)].

R. INSIDER AND AFFILIATE CLAIMS: The disclosure statement shall disclose the claims asserted by insiders as defined by 11 U.S.C. §101(31). This disclosure statement shall indicate the identity of the claimant, the affiliation of the insider with the debtor, the circumstances giving rise to the claim, the amount of the claim, and the amount the insider is asserting as a creditor. In addition, the disclosure statement shall indicate whether any or all of these claims have been subordinated and, if so, the basis for the subordination.

S. STOCK ISSUED FOR DEBT: If the debtor plans to issue stock for all or part of its debt, the disclosure statement shall indicate if the debtor asserts that such stock is exempt from securities laws under 11 U.S.C. §1145. The disclosure statement should also describe the nature of the stock or securities including information such as voting rights, interest rate, accumulation of dividends, liquidation preference, potential markets and market values after confirmation, the existence of other classes of stock, registration rights and any limitation on transferability. The debtor should state whether the stock is registered under Section 5 of the Securities Act of 1933 or, if not, what exemption from registration is claimed and the basis for such a claim. Further, if the exemption of 11 U.S.C. §1145 is relied upon, the disclosure statement should indicate this fact will be fully disclosed on any issued securities.

T. UNITED STATES TRUSTEE'S CHAPTER 11 QUARTERLY FEES: The disclosure statement should indicate that any unpaid quarterly fee balances, including assessed interest, will be brought current prior to or on the effective date of the plan. Section 1129(a)(12) provides that a plan may not be confirmed unless all fees payable by the debtor under 28 U.S.C. §1930 have been paid or the plan provides for the payment of all such fees on the effective date of the plan. Additionally, the disclosure statement and plan of reorganization should provide for the payment of quarterly fees

until the case is closed by the court, converted to another chapter or dismissed by the court. To monitor compliance with the plan of reorganization, the plan of reorganization should provide that quarterly post-confirmation reports will be filed with the United States Bankruptcy Court and served upon the United States Trustee's Office.

U. ABSOLUTE PRIORITY RULE: 11 U.S.C. §1129(b) provides that if an impaired class has not accepted the plan, the court may not confirm the plan unless it does not discriminate unfairly, and is fair and equitable, with respect to each impaired class of claims or interests. The disclosure statement should set forth whether the plan meets this standard with respect to every impaired class, and specifically indicate whether any holder of any claim or interest that is junior to the claims of an impaired class will receive or retain any property under the plan on account of such junior claim or interest. The absolute priority rule and its impact should be clearly explained.

V. NEW VALUE CONTRIBUTION: If the debtor proposes to allow contributing shareholders to retain an interest in the debtor ahead of more senior claimants, the disclosure statement should specifically set forth this treatment and the new investment, or value, to be contributed by the shareholders. The disclosure statement should indicate the reasons that such treatment does not violate the absolute priority rule set forth in 11 U.S.C. §1129(b).

W. TAX ANALYSIS: The disclosure statement should describe the plan's tax impact upon the debtor and the debtor's equity interest holders and creditors.

X. RISKS TO CREDITORS UNDER THE PLAN: The disclosure statement should describe any risks that might impede the debtor's ability to perform under the plan or that would otherwise cause the debtor to fail to meet the plan's requirements.

Y. "SMALL BUSINESS" ELECTION: The Bankruptcy Reform Act of 1994 provides that a business which falls within the parameters of 11 U.S.C. §101(51C) may elect to be considered a "small business" and follow a "fast track" chapter 11 bankruptcy process set forth in 11 U.S.C. §1121(e). This election allows the court to "conditionally approve" a disclosure statement, subject to final approval after notice and a hearing. It also allows the plan proponent to hold a combined hearing on approval of the disclosure statement and confirmation of the plan. [See 11 U.S.C. §1125(f)]. A debtor electing this treatment should describe, in its disclosure statement, the factors qualifying the debtor for small business election and the special procedures applicable to qualified debtors who make such an election. The disclosure statement should specifically set forth that it is conditionally approved and final approval is to occur at the combined hearing on the disclosure statement and plan confirmation.

Z. DEFAULT PROVISIONS: The disclosure statement should set forth the events which will constitute a default under the terms of the plan.

GUIDELINE NO. 6

CHAPTER 11 QUARTERLY FEES

Information regarding Chapter 11 Quarterly Fees is located at
https://www.justice.gov/ust/chapter-11-quarterly-fees

GUIDELINE NO. 7

BANKRUPTCY PETITION PREPARERS

11 U.S.C. §110 of the Bankruptcy Code provides civil penalties for persons, other than an attorney or a supervised employee of an attorney, who negligently or fraudulently prepare bankruptcy petitions or any other documents for filing by a debtor in connection with a bankruptcy case. These civil penalties include, where appropriate, the disgorgement of fees, monetary fines and the imposition of an injunction from participation in activities constituting the unauthorized practice of law.

All petition preparers shall comply with the requirements of 11 U.S.C. §110. Failure to comply with §110 may result in the filing of a civil enforcement action by the United States Trustee. The preparer may also be subjected to criminal prosecution under 18 U.S.C. §154. Individuals who are aware of improper petition preparer activity are urged to report the same to the Office of the United Sates Trustee.