

## **Fastrack to Payday: Practice Pointers for Chapter 13 Attorney Fee Applications in the Western District of Washington**

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**Introductory Notes & Disclaimer:** This brief guide is intended to help chapter 13 practitioners get paid and ease this Bankruptcy Court's burden in reviewing chapter 13 attorney fee applications. It is an outline to maximize efficiency and utility for practitioners, and basic legal standards are not provided. This guide is purely practical and does not address all chapter 13 attorney fee application issues. My recommendations are from practical observation and are guided by caselaw. My opinions in this piece do not reflect the Bankruptcy Court's opinion on these issues, and this guide should not be cited as authority.

**Local Authority:** Local chapter 13 attorney fee application practices are governed by [Local Rules W.D. Wash. Bankr. 2016-1\(a\), \(e\), and \(f\)](#). These three rules specifically describe the requirements for chapter 13 fee applications. A practitioner who reads these rules before submitting her fee application will be off to a good start.

**Notice:** Under Fed. R. Bankr. P. 2002(a)(6), 21 days' notice is required if the application is over \$1,000. And, [Local Rule W.D. Wash. Bankr. 9013-1\(d\)\(2\)\(F\)](#) mandates 21 days' notice under its catchall provision.

**Service:** Per [Local Rules W.D. Wash. Bankr. 2016-1\(e\)\(3\)](#), applications must be served on the debtor and the Chapter 13 Trustee, and a notice of hearing on an application must be served on the debtor, the Chapter 13 Trustee, all creditors holding allowed claims, and all parties requesting notice under Fed. R. Bankr. P. 2002(i).

### **Formatting:**

- All applications for compensation shall conform to [Local Bankruptcy Form 13-9](#).
- A proposed order approving the application shall be attached to the application as a separate document and the order shall conform to [Local Bankruptcy Form 13-10](#).
- If compensation is requested as part of a motion that seeks other relief, an application and proposed order that conform to [Local Bankruptcy Forms 13-9 and 13-10](#), respectively, shall be attached to the motion.

### **Required Disclosure:**

- Attorneys representing debtors in chapter 13 cases shall provide debtors with a copy of [Local Bankruptcy Form 13-5](#) entitled "Rights and Responsibilities of Chapter 13 Debtors and Their Attorney" ("Rights and Responsibilities Disclosure").
- The Rights and Responsibilities Disclosure shall be signed by each debtor, certifying receipt, and by the debtor's attorney.
- Failure to provide a copy of the Rights & Responsibilities Disclosure may result in denial or disgorgement of attorney fees.

### **The Amount of Compensation:**

- [General Order No. 2019-1](#): \$4,000 “no-look” fee is effective for cases filed after January 31, 2019.
  - W.D. of Washington Bankruptcy Court Judges require ch. 13 attorneys to only seek approval for the amount *above* the no-look fee. For example, if an attorney first applies for compensation of \$5,500 after the Court approved her \$4,000 no-look fee in the confirmation order, only \$1,500 needs to be requested in the application and the proposed order.
  - The attorney applicant must still provide all billing narratives from the chapter 13’s commencement to show the no-look fee was actually earned. [Local Rules W.D. Wash. Bankr. 2016-1\(e\)\(3\)](#) (“Attorneys . . . requesting compensation above the presumptive fee shall . . . file an itemized time record for *all services provided* for representation . . .” (emphasis added)).
  - If the fee application is not your first application, your submitted billing records need only be from the date of the last fee award.
- The compensation application’s text should clearly state the total compensation amount sought for the total number of hours billed. In the billing narrative, clearly identify any no-charge, write-off, or discount entries.

### **Billing Narratives and Time Entries:**

- A professional requesting compensation must exercise “reasonable billing judgment” in incurring its fees. *Leichty v. United States Trustee (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004) (quoting *Roberts, Sheritan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re MEDNET, MPC Corp.)*, 251 B.R. 103, 108 (9th Cir. BAP 2000)). Given this maxim, use your best professional judgment when deciding to bill time expended on any task for a client.
- Each entry must identify the person that billed the entry, e.g., Atticus Dettrefré bills for “preparing the chapter 13 plan; formulating non-standard provisions.” In doing so, Atticus uses a key to save space and identify himself by his initials and puts “AD” in the entry identifying that he billed for that entry.
- Billing rates must be reasonable for the type of work performed. See, e.g., *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).
- Consider your audience by submitting billing narratives in a format that you would want to read. In other words, make it easy for the reviewing court to grant your fee application.
  - Note, judges and law clerks often review many fee applications per day. A billing narrative that is in smaller than 11 or 12 font with maximum margins and far too many entries for one page is painful to read. Nobody wants to use a magnifying glass to read your one-page billing narrative that fits the entire billing history on one sheet. It is okay if the billing narrative has multiple pages so long as it uses a reasonable font style, size, and, always, conforms with applicable authority.
  - Attorneys can further help the reviewing reader by breaking down pre-confirmation billing entries and post-confirmation billing entries. This can be accomplished with a simple notation or heading dividing the billing narrative into two sections.

- Nothing precludes a preconfirmation interim fee application, but it is not common practice in this district. A bankruptcy judge may be more likely to require the attorney applicant to appear at a hearing to justify the pre-confirmation application.
- Clerical time is not compensable. If clerical time is included in the fee application, the amount billed must be zero dollars or “no charge.” See *In re CF & I Fabricators of Utah, Inc.*, 131 B.R. 474, 494 (Bankr. D. Utah 1991) (discussing different non-compensable clerical activities):

If the service performed by a paraprofessional consists of typing, data entry, checking court dockets or court dates, manually assembling, collating, marking, processing, photocopying, or mailing documents, the task is clerical in nature and not compensable. Such tasks are traditionally charged to overhead and included in the professional's hourly rate. If no singular education or experience is required, if the service requires extensive supervision by the professional, or if there is no discretion involved, the service is not specifically compensable.

Note that paralegal and legal assistant time may be compensable for reasonable rates and time for non-clerical tasks.

- Avoid block billing, and itemize the time expended on specific tasks. See *In re Burns*, 503 B.R. 666, 677–78 (Bankr. S.D. Miss. 2013).
- Attorney travel time may be compensable. Caselaw on travel time compensability is inconclusive, see, e.g., *In re Thomas*, 2009 WL 7751299, at \*9 (9th Cir. BAP July 6, 2009), and there is no local rule governing the topic.
  - From reviewing dockets in this district, each bankruptcy judge has an individual approach to travel time compensability, but most judges in this district appear to allow billing for half-time.
  - For example, a local chapter 13 practitioner, J. Remy Bentham, bills at \$350 per hour for one hour spent travelling from Seattle to Tacoma to attend a 341 meeting and she only charges her client \$175. His entry for that time might state “03/15/2021 – JRB – \$350/hour – Service Rendered: Travel from SEA to TAC re: 341 Meeting at half rate (1hr); attend 341 mtg (0.3hr); debrief 341 mtg w/ clt (0.2hr) – Time: 1 hr. – Amount Billed: \$350.00.” Now, some basic math (get your abacus!) shows the entry represents  $(\$175 \text{ or } \$350/2) + \$105 + \$70 = \$350$ .
- For additional guidance, refer to the [U.S. Trustee Program's fee application guidelines](#). See generally *Guidelines for Reviewing Applications for Compensation*, 28 C.F.R. Pt. 58, App. A (1996).

**Concluding Notes:** When in doubt, read the local bankruptcy rules in detail for guidance and then call Chambers if you have procedural questions.