

Table of Contents

- Introduction 1
 - A. Purpose of this Guide..... 1
 - B. Overview of the Chapters 2
 - C. Who Should Prepare Employment Fee Applications? 4
- Chapter 1: Are You a Professional?5
 - A. Statutory Professionals 5
 - B. Other Individuals and Groups Generally Treated as Professionals by Bankruptcy Courts 7
 - C. Are Officers and Employees of the Debtor Considered Professionals? 8
 - D. When Should a Professional Begin Work? 8
- Chapter 2: Written Fee, Engagement or Retainer Agreements 11
 - A. Requirement of Written Agreement 11
 - B. Identification of a Party Employing the Professional 11
 - C. Defining the Client’s Responsibilities 13
 - D. Defining the Professional’s Responsibilities 14
 - E. Identifying Conflicts 14
 - F. Termination Provisions 15

Chapter 3 Procedures for Applying for Bankruptcy Court Approval of Employment.....	19
A. Introduction: When to File Your Employment Application	19
B. Procedures for Applying to Be Employed	20
C. Employment under 11 U.S.C. §§ 327 and 1103..	20
1. Who Prepares the Employment Application?	21
2. Employment Applications	21
3. Rule 2014 Professional Affidavit	21
D. Hiring Turnaround Professionals	23
 Chapter 4: What Does It Mean to Be “Disinterested” and Not Hold or Represent an Adverse Interest under 11 U.S.C. § 327?.....	 27
A. What Is a Disinterested Person?.....	27
1. 11 U.S.C. § 327.....	27
2. 11 U.S.C. § 101(14): Definition of Disinterested Person	28
B. Issues Beyond the Statute	30
1. Actual or Potential Conflicts.....	30
2. Pre-petition Representation of the Debtor...	30
3. Imputation of “Lack of Disinterestedness” or Representation of Adverse Interests	31
C. 11 U.S.C. § 328: Approval of Billing Methods.....	31
D. Disclosure of Relationships	32
1. Rule 2014.....	32
2. What to Review	32

Chapter 5: Billing under the Lodestar Standard	35
A. Introduction	35
B. U.S.Trustee Guidelines on Timekeeping.....	36
C. Staffing Issues	37
 Chapter 6: Non-Lodestar Fee Structures and Provisions.....	 39
A. Approval of Fee Structures under 11 U.S.C. § 328	 39
B. Types of Fee Structures.....	41
1. Contingent Fees	41
2. Flat-Rate Fees	42
3. Success Fees.....	42
4. “Lodestar” Fees.....	43
C. Indemnification Provisions	44
 Chapter 7: Monthly Fee Application Process	 45
A. Overview of Monthly Fee Procedures	45
B. Seeking to Be Paid on a Monthly Basis	46
C. How Monthly Fee/Billings Are Structured	46
D. Objections to and Disgorgement of Monthly Fees	 47
E. Holdbacks of Monthly Fees.....	48
 Chapter 8: “Ordinary Course” Professionals	 49
A. What Are “Ordinary Course” Professionals?	49

B.	How “Ordinary Course” Professionals Are Retained	50
Chapter 9: Itemization of Costs and Expenses.....		53
A.	History of Reimbursement of Expenses Guidelines	53
B.	U.S.Trustee Guidelines on Expenses	53
C.	Factors for Allowing Expense Reimbursement ..	54
Chapter 10: Interim and Final Fee Applications		59
A.	Procedure for Interim Fee Application: 11 U.S.C. § 331	59
B.	Timing of Interim Applications	59
C.	Interrelationship of Formal Interim Applications with Monthly Fee Process	60
D.	Formal Interim Applications.....	60
1.	Overview of Applications	60
2.	Orders Awarding Interim Fees	61
E.	Procedure for Final Fee Applications.....	62
1.	Form of the Final Application.....	62
2.	Scope of the Final Application	63
3.	Interrelationship of Final Fee Application with Prior Interim and/or Monthly Fee Applications	63
4.	Order Awarding Final Fee.....	64

Chapter 11: Fee Enhancements.....65

A. Contractual Enhancements.....65

B. Noncontractual Enhancements.....66

Chapter 12: Conclusion.....69

Appendix A: List of Forms.....71

Appendix B: Electronic Resources161

**Appendix C: Rules, Statutes, U.S. Trustee Guidelines
and Other Materials163**