

LOCAL BANKRUPTCY RULE 2016-2

COMPENSATION AND TRUSTEE REIMBURSEMENT
PROCEDURES IN CHAPTER 7 ASSET CASES

(a) APPLICABILITY

Except as provided herein, this Rule applies in all chapter 7 asset cases in all divisions of the court and supersedes any previous general order. Nothing in this Rule shall preclude the trustee from seeking court approval to disburse estate funds by way of a noticed motion filed and served pursuant to Local Bankruptcy Rule 9013-1.

(b) AUTHORIZATION TO USE ESTATE FUNDS UP TO \$750 TO PAY CERTAIN EXPENSES

During the course of a case, a trustee may disburse up to \$750 from estate funds to pay the following actual and necessary expenses of the estate without further authority from the court (the “Authorized Allocation”):

- (1) Actual cost of noticing, postage, copying
- (2) Costs to advertise sale
- (3) Computer charges
- (4) Long distance telephone
- (5) Postage
- (6) Moving or storage of estate assets
- (7) Teletransmission
- (8) Travel charges for trustee (includes lodging, meals, mileage and parking)
- (9) Bank charges for research or copies
- (10) Court reporting fees
- (11) Delivery of documents
- (12) Expedited mail
- (13) Filing and process serving
- (14) Notary fees
- (15) Recording fees
- (16) Deposition/transcript fees

- (17) Witness fees
- (18) Locate and move assets
- (19) Prepare litigation support documents
- (20) Insurance
- (21) Locksmith
- (22) Rent
- (23) Security services
- (24) Utilities
- (25) Taxes payable pursuant to 11 U.S.C. § 503(b)(1)(B), but not preconversion taxes

(c) BOND PREMIUMS

In addition to payments that may be made from the Authorized Allocation (up to \$750), the trustee may pay bond premiums required by 11 U.S.C. § 322(a) in the ordinary course of the trustee's administration of an estate.

(d) EXPENSES FOR THE PREPARATION OF TAX RETURNS

The trustee may apply by a single application to employ and to pay a tax preparer a flat fee (not to exceed \$750 unless the court orders otherwise) for preparation of tax returns for the estate. If the court grants such application, the trustee may pay the flat fee so ordered without further application or order. This amount shall be in addition to payments that may be made from the Authorized Allocation (up to \$750).

(e) EMERGENCY EXPENSES

The trustee may exceed the Authorized Allocation to pay emergency expenses, without prior court approval, to protect assets of the estate that might otherwise be lost or destroyed. Emergency expenses are limited to:

- (1) Charges for storage of the debtor's records to prevent the destruction of those records and related necessary cartage costs
- (2) Insurance premiums to prevent liability to the estate
- (3) Locksmith charges to secure the debtor's real property or business
- (4) Security services to safeguard the debtor's real or personal property

If the trustee disburses more than the Authorized Allocation (up to \$750) to pay emergency expenses and other expenses for which the Authorized Allocation may be used, the trustee must file and serve a cash disbursement motion, as described in paragraph (g) below, within 5 court days after such expenses are paid.

(f) **PROCEDURES FOR EMPLOYMENT OF PARAPROFESSIONALS AND PAYMENT OF THEIR FEES AND EXPENSES**

A trustee must obtain court approval to employ and to pay a paraprofessional. The term “paraprofessional” includes all persons or entities other than “professionals” who perform services at the trustee’s request and who will seek payment for services and expenses directly from the bankruptcy estate including, without limitation, an agent, a field representative, an adjuster and a tax preparer.

(1) Employment. A trustee may seek court approval to employ a paraprofessional by filing an employment application using Local Bankruptcy Rules Form F 2016-2.1. The court’s approval of the employment of any paraprofessional is not a judicial determination as to whether services of the paraprofessional constitute “trustee services.” A nonexclusive list of services that the court deems “trustee services” that are included in the statutory limitation on a trustee’s compensation pursuant to 11 U.S.C. § 326(a) includes:

- (A) Review schedules
- (B) Acceptance and qualification as a trustee
- (C) Routine investigation regarding location and status of assets
- (D) Initial contact with lessors, secured creditors, ABC, etc., if same can be accomplished from office
- (E) Turnover or inspection of documents, such as bank documents
- (F) UCC search review
- (G) Recruiting and contracting with appraisers, brokers, professionals
- (H) Mail forwarding notices
- (I) Routine collection of accounts receivable
- (J) Letters regarding compliance with Local Bankruptcy Rule 2015-1
- (K) Conduct 11 U.S.C. § 341(a) examination
- (L) Routine objection to exemption
- (M) Routine motions to dismiss
- (N) 11 U.S.C. § 707(b) referral to United States trustee
- (O) Routine documentation of notice of sale, abandonment, compromise, etc.
- (P) Appear at hearings of routine motions
- (Q) Review and execute certificate of sale, deed, or other transfer documents
- (R) Preparation and filing of notification of asset case
- (S) Prepare and file cash disbursement motions and necessary attachments
- (T) Prepare exhibits to operating reports
- (U) Prepare quarterly bond reports
- (V) Prepare 180-day status reports
- (W) Routine claims review and objection
- (X) Prepare and file final report and account and related orders

- (Y) Prepare motion to abandon or destroy books and records
- (Z) Prepare and file F.R.B.P. 3011 report
- (AA) Prepare and file notice and motion to abandon assets and related orders
- (BB) Attend sales
- (CC) Monitor litigation
- (DD) Answer routine creditor correspondence and phone calls
- (EE) Prepare and file application to employ ~~professionals~~ and paraprofessionals
- (FF) Review and comment on professional fee applications
- (GG) Participate in audits
- (HH) Answer United States trustee questions
- (II) Close and open bank accounts
- (JJ) Verify proposed disbursements
- (KK) Post receipts and disbursements
- (LL) Prepare detail and calculation for payment of dividend
- (MM) Prepare dividend checks
- (NN) Organize and research bills
- (OO) Prepare and sign checks for the trustee's signature
- (PP) Prepare internal cash summary sheets
- (QQ) Reconcile bank accounts
- (RR) Prepare and make deposits
- (SS) Additional routine work necessary for administration of the estate

- (2) Reimbursement of Fees and Expenses. A trustee may pay a paraprofessional only upon specific order of the court. If the paraprofessional or trustee contends that the paraprofessional's services are not "trustee services," the trustee or the paraprofessional must present evidence to support that contention. Absent adequate proof, the court may find that the services of the paraprofessional are "trustee services" subject to the limitation on compensation under 11 U.S.C. § 326(a). If a trustee refuses or neglects to file a fee application for the paraprofessional, the paraprofessional may file a separate fee application pursuant to 11 U.S.C. § 330. In addition to fulfilling the requirements of 11 U.S.C. § 330, F.R.B.P. 2014, and the Local Bankruptcy Rules, the paraprofessional's fee application must include: (i) a declaration explaining why a separate fee application is necessary; and (ii) evidence establishing which services are "trustee services" and which are not. The paraprofessional must serve any separate fee application by first class mail on the trustee, debtor, debtor's counsel, if any, the United States trustee, and all professionals and other paraprofessionals employed in the case and must give notice of the application to all creditors.

(g) CASH DISBURSEMENT MOTION

- (1) Filing and Service. If the trustee wishes to pay expenses not authorized by this Rule from estate funds, the trustee must file a cash disbursement motion pursuant to Local Bankruptcy Rule 9013-1(g) to obtain court approval of payments for emergency expenses and all other expenses he or she deems necessary for effective administration of the case. The cash disbursement motion must be in substantially the same form as Local Bankruptcy Rules Form F 2016-2.2. The trustee must serve the cash disbursement motion by first class mail on the debtor, debtor's counsel, if any, the United States trustee, holders of the 20 largest unsecured claims, and all those who have served the trustee with requests for special notice. Any objections to the cash disbursement motion must be filed and served on the trustee and trustee's counsel, if any, within 10 days from the date the cash disbursement motion is served. The trustee must file the cash disbursement motion with the court within 15 days after service of the motion. If the trustee receives no opposition, he or she must include a declaration to that effect. If the trustee receives opposition, he or she must set the matter for hearing and give written notice of the date, time and place of the hearing by first class mail to the objecting party, debtor, debtor's counsel, if any, and the United States trustee. The trustee may seek an expedited hearing pursuant to Local Bankruptcy Rule 9075-1.
- (2) Hearing. The court may set a hearing on a cash disbursement motion regardless of whether an objection is made. However, if the court does not advise the trustee of a hearing on the motion within 7 court days after the motion is filed, the trustee may disburse funds from the estate to pay the expenses referred to in the motion to the extent he or she deems it necessary, pending an order of the court. If, thereafter, the trustee receives notice that the court has issued an order in which the cash disbursement motion has been disapproved in whole or in part, or that the court has set a hearing, the trustee must stop paying the expenses dealt with in the motion or otherwise comply with the provisions of the order. The trustee may file a motion for reconsideration pursuant to Local Bankruptcy Rule 9013-1(d).
- (3) Personal Liability and Disclosure. Except as provided in this Rule, a trustee who makes a disbursement without prior court approval may be personally liable to the estate for the amount of the disbursement. All disbursements made by the trustee pursuant to this Rule must be disclosed in the trustee's final report and in all applications for fees/costs by the trustee and by paraprofessionals employed in the case by the trustee.

(h) **CHAPTER 7 OPERATING CASES**

A trustee may operate the business of a chapter 7 debtor and pay any actual and necessary expenses from the Authorized Allocation (up to \$750) without a court order for the first 30 days from the date of the trustee's appointment. If a trustee wishes to continue operating the debtor's business beyond the 30 days, he or she must file and serve a motion under 11 U.S.C. § 721 before the 30-day period expires. In addition to the requirements of 11 U.S.C. § 721, the trustee's motion must include evidence justifying operation of the business and state the approximate length of time the trustee intends to operate the business. The trustee may seek approval to operate the business for no more than 1 year at a time. The court may hold a hearing on the trustee's motion after the expiration of the 30-day period, but the trustee may not disburse estate funds other than the Authorized Allocation (up to \$750) after the 30-day period except upon specific order of the court. The issuance of an operating order does not relieve the trustee of the need to obtain a cash disbursement order(s) unless, and to the extent that the operating order expressly approves specific expenditures from the estate.

Court's Comment

2003 Revision

Paragraph f(1)(EE) - *professionals and deleted.*

2000 Revision

New Rule incorporating General Order 00-01, Compensation and Trustee Reimbursement Proceedings in Chapter 7 Asset Cases.