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6
7 UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON
8

9 In re:)	Case No. 04-08822 PCW11
)	Chapter 11
10 THE CATHOLIC BISHOP OF)	
SPOKANE a/k/a THE CATHOLIC)	
11 DIOCESE OF SPOKANE)	UNITED STATES TRUSTEE'S
)	OBJECTION TO FEES OF
12)	PAINE HAMBLIN ET. AL.
Debtor.)	[DOCKET NO. 422]

13
14 The United States Trustee, by and through her attorney, Gary W. Dyer, objects a
15 portion of the fees requested by the counsel for the debtor, Paine Hamblen. The United
16 States Trustee does so for the following reasons:

17 SUMMARY

18 The United States Trustee objects to the amount of fees for meetings and work of
19 multiple attorneys which do not appear justified, for having multiple attorneys at court
20 hearings, for work which appears to be duplicative of others' work, and for entries of
21 time which are not shown to be beneficial to this estate."

22 The United States Trustee also notes that the firm did not include the pre-petition
23 time incurred "in contemplation of" or " in connection with" this case, despite the
24 express language in 11 U.S.C. §§ 329, Rule 2016 and the local forms. The United States
25 Trustee cannot evaluate the post-petition work without the pre-petition time records,
26 particularly in light of the retainers received and applied for the pre-petition fees of this
27
28

1 firm."

2 The first portion of the objection identifies the entries and areas of concern. The
3 second part provides the citations of authority for the court to sustain the objection. The
4 failure to provide the minimum information and follow the express requirements of the
5 local forms in the first fee application stymies the review of the fees.
6

7 8 9 1. TIME ENTRIES AND AREAS OF OBJECTIONS

10 A. DUAL BILLING FOR MEETINGS

11 The firm bills for all the participants in the numerous meetings held by counsel,
12 and often the purpose of the meeting is not stated. The interim monthly submissions
13 state that the team meetings are billed at half the \$200 hourly rate.
14

15 See the entries as follows:

16 1. Business Operations

17 A. Dual billing for meetings, press conferences, etc:

18	12/6	press conference	SMC 3, GJA 2.5
19	2/1	SMC, MJP call with Mr. Frazier re cash management and committee	SMC 1, GJA 1, MJP 2.5
20	2/1	SMC, MJP office conference re cash management	SMC .4, MJP .4
21	2/2	SMC,GJA,MJP conference with client re cash management and committee	GJA 3, MJP 3, SMC 3
22	2/4	SMC,GJA,MJP conference with client	SMC 3, GJA 3, MJP 3
	2/7	SMC, MJP conference re cash management	SMC .3, MJP .3

23 2. Case Administration

24 A. Dual billing for meetings, etc.

25	12/7	6 lawyers meeting	6 x 1.5 hours
26	12/10	dual meeting on status conference order	MJP 1, SMC 1;
27		Second meeting: GJA .4, SMC .4	
28	12/13	Team meeting of 7 lawyers and 1 paralegal	7x 2.3 hours,
		Paralegal at 2.3 hours	
	12/16	Team meetings of 6 lawyers	5 x 2.2 x\$200; 1 x \$140

12/16 Conferences re committee issues GK 1.3, MJP 1.3

12/17 3 lawyers and one paralegal in conferences with insurance lawyers,
followed by a conference of four lawyers about the conference with
the insurance lawyers 3 x 1.5 hours at \$200; Paralegal at 1.0 hours

12/17 4 lawyers conference about the bar date MJP 1.0 hours

12/20 2 lawyers in conference with client about case management GJA 1

12/22 4 lawyers attend court hearing --status conference, followed by 2
lawyer conference about the status conference
Hearing: SMC 1.5, GJA 1.5, MJP 1.5, DWS 1.5, Paralegal 1.5
Conference: SMC .8, DWS 1, MJP .5

1/4 4 attorneys in conference about case management, 341, removal
DGX 3, SMC 3, DWS 3, GJA 3, Paralegal 3 (n/c)

1/10 2 attorneys meeting about case management
SMC .5, GJA .5, MJP .5

1/11 5 attorneys meet about case management
DGS 1.7, SMC 2.4, DWS 2.4, GJA 2.4, MJP 2.4

1/13 2 attorneys meet about case management SMC 2, GJA 2

1/14 4 attorneys meet about case management
DGS 1, SMC 1, DWS 3.2 (lumped), GJA 1

1/18 5 attorneys meet about Dillon Jackson's pleadings
DGS 1, SMC 1, DWS 1.3, GJA 1, MJP 1

1/31 4 attorneys hold conference about the case
DGS 1.5, DWS 1.5, GJA 1.5, MJP 1.5

2/1 3 attorneys at team meeting GJA 1, DWS 1, DGS 1
2 attorneys meet with client GJA 2, SMC 2

2/14 5 attorneys and one paralegal meet re review assignments
First: MJP 1, GJA 1, SMC 1
Second: MJP 2, DGS 1.5, SMC 1.3, DWS 2, MJP 2, P/L 2
Third: Hearing: GJA 1.5, SMC 1.5, P/L 1.5

2/25 3 attorneys at case management hearing, and meeting after the
hearing Hearing: SMC 3, MJP 4.5, GJA 3 (n/c)
Conference: SMC 1.5, GJA 1.5, MJP 1.5
Meet with CTC: MJP 2, SMC 2

3/1 8 attorneys and two paralegals at meeting
DGS 1.7, DWS 1.7, SMC 1.7, GJA 1.7, DJG 1.7, MJP 1.7,
GK 1.7, and SRH 1.7; Paralegals: JG 1.7, BB 1.7

3/3 SMC, MJP meeting SMC .6, MJP .6

3/14 6 attorneys at team meeting
DGS 2, SMC 1.5, DWS 2, GJA 2, DJG 1.8, MJP 2, GK 2,
Paralegal JG 1.5

3/16 2 attorneys at team meeting; paralegals team meeting
SMC .5, MJP .5, GJA (in Asset Analysis) 2

3/18 team meeting SMC 1, DWS .5 or .6, MJP 1, GJA .5

1	3/21	team meeting	SMC1, DWS .6, DJG .7, MJP 1, GK 1, SRH 1
2			Paralegal JG 1
3	3/22	meeting with parish counsel	SMC 1.5, MJP 1.5, 2, GJA 2
4		Meeting with bishop and staff	SMC 2, GJA 1.5, MJP 2
5	3/28	team meeting	DGS 1.7, SMC 1, DWS 1.5, DJG 1.5, MJP 1,
6			GK 1.5, SRH 1.5, Paralegal JG 1

3. Meetings of Creditors

7	A. Dual billing for meetings		
8	1/4	MJP, GJA prepare client for 341	MJP 2, GJA 3, SMC 2
9	1/5	SMC, MJP, GJA attend 341 meeting	3 x 5 hours
10		Post 341 meeting:	SMC 1, MJP .5
11	1/12	SMC, MJP meeting with Claimant's Committee lawyers	
12			2.5 hours x 2
13	2/2	SMC, MJP, GJA meeting with UST; conference re meeting	
14			SMC 3, MJP 1.4, GJA 2.5
15	3/28	DJG, SMC, JG for court hearing	
16			1.5 hours x 3

4. Pacific Insurance Adversary Proceeding

17	A. Dual Meetings or billings		
18	3/9	SMC, DWS conference re strategy	SMC .6, DWS .6
19		Telephone call with carriers re Rule 26	SMC .5, DWS .5, GJA .6
20	3/10	SMC, DWS re: declaratory relief and ins. issues	
21			MSC .5, DWS .4
22	3/14	5 attorneys review the withdrawal of reference	
23			DGS .2, SMC .5, DWS .4, GJA .5, DJG .3, MJP .7
24		On 3/15, SMC reviews it again for 1 hour	
25	3/16	SMC, DWS, review intervention by Claimant's Committee	
26			SMC .5, DWS .4, .3, and .5
27	3/18	MJP reviews the intervention	MJP 1
28	3/18	SMC, GJA meeting	SMC .5, GJA .5
29	3/21	Court hearing:	SMC 1, DWS 1, GJA 1, Paralegal JG 1
30	3/21	SMC, GJA, DWS telephone call with carriers	
31			SMC .5, GJA .3 + .2, DWS 1.7 (lumped)

5. FEE & EMPLOYMENT APPLICATION

32	A. Dual attendance at hearing:		
33	12/23	Employment hearings	SMC 2.5, DWS 3.3 (n/c) MJP 1
34		Prep for hearing	MJP 5; GJA 2

1 6. 541 ADVERSARY PROCEEDING

2 A. Dual billing of meetings and reviews of pleadings

3 2/4 SMC, MJP, review the complaint SMC .5, MJP .6

4 2/7 KAT review complaint .7

5 SMC reviews complaint again 1

6 2/9 DWS review the complaint 1

7 3/1 GK, DGS review Portland complaint DGS .7, GK 1.5

8 SRH, GK office conference on 541 issues SRH 1.4, GK 1

9 3/7 DGS, MJP, GK review answers and defenses

10 DGS .7 +.8+1.7, MJP .3, GK .5 + 3.6 conference

11 3/15 SMC,GJA, MJP, BB Rule 26 confirm with the plaintiffs

12 2.5 x 3 hours; Paralegal BB .9

13 3/22 GK, GJA Telephone call with Nussbaum re 1st Amendment, case
14 planning GK .7, GJA .5

15 3/23 GK, GJA Rule 26 report GK 1.4, GJA .5

16 3/25 SMC, MJP Confer re 1st Amendment and other issues

17 SMC .7, MJP 1, GJA (no time)

18 3/25 GK, SRH confer re state law and trust research

19 GK 2, SRH 1.6

20 7. ASSET ANALYSIS

21 A. Dual meetings billed

22 Dual meetings on 3/14 for status and planning, strategy

23 DWS 1, MJP 1, GK 1

24 8. JURISDICTIONAL ISSUES ON SEX ABUSE TRIALS

25 A Dual billing for meetings and hearings

26 2/10 remand hearing DGS .3, GJA .5

27 9. CLAIMS ADMINISTRATION AND OBJECTIONS

28 A. Dual billing for meetings, court hearings

3/21 GJA, MJP dual at court hearing GJA 1, MJP 1

3/31 SMC, MJP meeting re Future Claims rep SMC 1, MJP .2

B. DUAL BILLING FOR MULTIPLE REVIEW OF PLEADINGS

1. CASE ADMINISTRATION

12/9 reviews of PC W's status conference order

1		DWS .6, SMC .6, DGS .5	
2	12/28, 12/30	MJP review of Tucson 341 transcript	1.5 + .8
3	1/11	DGS review Portland transcript	1
4	1/18-1/20	4 attorneys review the D. Jackson pleadings	
5		SMC .3, DWS .4, MJP .8 +1, DGS 1.3	
6	2/10-11	3 attorneys review drafts of case management pleadings and responses	
7	2/10	DWS .4 + .6 +.9 + .3, GJA 2.5, MJP .2+.2, DJG .2 +.3 +1.3 +1 +.7 +.4+ .6 +.4	
8	2/11	DGA .3 +.2, GJA 3, DJG .2	

2. FEE & EMPLOYMENT APPLICATIONS and OBJECTIONS

a. Objection from Stang's group

9	12/10	DWS review objection from Stang's group	.8 +.2
10	12/17	DWS (same)	.7 +1.5
11		GJA (same)	.5
12		MJP (same)	.3
13	12/21	SMC (same)	.4
14		GJA (same)	1.5

Duplicative work on the response:

15	12/18	GJA 1	
16	12/20	GJA 2	
17	12/21	SMC .8 +1.3, DWS 2.6 + 4.7 + 2.1, MJP 4,	
18	12/22	GJA 2, MJP 4.2	

At the hearing on 12/23:
SMC 4, DWS 3.3, MJP 6

3. MEETING OF CREDITORS section:

a. Composition of Creditors issues

21	1/20	SMC,DWS,GJA review motion re: composition of committee	
22		SMC 1.5, DWS 1.8, GJA 1.3	
23	1/21	GJA (same)	6.5
24	1/24	DWS (same)	1.2
25	1/25	DWS (same)	.8
26		GJA	6
27		MJP	1.7
28	1/26	DWS	1.7
		GJA (same)	6
	1/27	review declaration in response	
		SMC .7, GJA 5, MJP 3.5, DWS .5, Paralegal BB 2.4	

1/31 3 lawyers in office conference with UST
SMC 2.5, GJA 2.5, MJP 2.2

3. MEETINGS OF CREDITOR

12/20 MJP review Tucson's 341 transcript .9
12/28 SMC (same) .2
1/3 GJA (same) 2.5
1/4 GJA (same) 3.5

4. MOTION TO DISBAND (DRAFTED BY THE DEBTOR)

Why was the motion reviewed by three senior attorneys?
(SMC, GJA, MJP)

5. JURISDICTIONAL ISSUES ON SEX ABUSE TRIALS

a. Review the motions to remand

1/19 MJP 1.4
2/2-3, 2/17 DWS, DGS review motions for remand
2/23, 2/25, 2/26 DSH legal research duplicative if compare with GJA on
2/26 and 2/28

b. Court hearing

3/3 DGS 1.2, SMC 1.5
3/4 DGS .4, SMC .7, DJG .4, JG .5

c. Review the Seattle Archdiocese pleadings

3/16 DGS .7 + .8, SMC .8, GJA .4

d. Status Conference with court on abuse adversaries:

3/21 SMC 1.5, JG 1 (corresponds to the Pacific Insurance date)

6. CLAIMS ADMINISTRATION AND OBJECTIONS

1/17 MJP review Portland's re: bar date 3
GJA 3.5
1/18 GJA review Portland's re: bar date 3

C. BENEFIT TO THIS ESTATE UNCLEAR AND NOT DESCRIBED

Certain entries do not properly or completely describe why they benefit this
estate, or should be allowed.

1 1. BUSINESS OPERATIONS

2 a. Communications Issues

3
4 2/8 GJA work on communications issues with attorney Stone;
telephone call with Fr. Dublinski re communications issues
5 GJA 1
DGA 2 + 1 + .7 + 1.3

6
7 2/9 DGS office conference with GJA re: communications
DGA .3 + .3, GJA 2.5

8
9 2/9 GJA work on communications issues (meet with SMC?)
GJA 2.5, SMC .7

10
11 2/9 BB assist GJA & Stone with communications issues
BB 1

12
13
14 b. Coordination efforts and agreements with Portland & Tucson– see
15 below in Case Administration.

16
17 c. Reference to St. George

18 3/11, 3/24 Why is this billable to this estate?

19 2. CASE ADMINISTRATION

20 a. Tucson/Portland time

21 12/10 MJP calls to Tucson counsel and review of Fleming decision
MJP .5 (SNAP), and .2

22 12/16 SMC calls to Tucson & Portland lawyers (1.5); conference
with MJP (.5)

23 12/16 MJP calls to Tucson & Portland lawyers (1.5)

24 2/18 GJA memo re coordination with Portland and Tucson
attorneys (.2)

25 12/27 MJP email an update to Tucson lawyer (.2)

26 1/4 DGS review of Orange County settlement information and
alternative ADR (1.2)

27 1/7 MJP emails to Tucson & Portland re case management (.3)

28 1/10 DGS review the Portland ADR process (1)

1/11 DGS telephone call to Tucson diocese (.5)
DGS review the Portland transcript (1)
2/8 DJG review Tucson pleadings and adversary proceeding;
memos (.5)
2/9 SMC review Tucson pleadings (.5)
2/9 DJG review Portland pleadings and adversary proceeding;
memo (7.7, .5)
2/11 DJG review Portland pleadings (3.5, 6.7)
2/12 SMC, MJP meeting with Diocesan Chapter 11 counsel (6.5 x
2) plus brief GJA on 2/14 (1)
2/13 DJG review Portland pleadings (1.7)
2/21 DJG finish Portland pleadings review (2.2)
3/3 MJP telephone call to Portland counsel (.8)

b. Coordination with Portland and Tucson

2/15 GJA litigants Sharing Agreement with Portland, Tucson &
Parishes (3)
2/17 GJA further work on matters with Portland, Tucson &
Parishes (1.5)
2/18 GJA further work on matters with Portland & Tucson (2.5,
.5)
2/22 GJA further coordination matters (2)
2/23 GJA further coordination matters (1)
2/24 GJA further coordination matters (1)
2/28 GJA further coordination with Portland & Tucson (.9)

3. CLAIMS ADMINISTRATION AND OBJECTIONS

a. Review of Portland and Tucson

12/20 GJA review Portland's documents (2)
MJP review Tucson's documents (.8)
12/21 GJA review Portland's documents (.7)
12/22 GJA review Portland's documents (2)
1/14 GJA review Portland's documents (2)
1/17 GJA review Portland's documents (3.5)

b. Relevance/necessity of the entry is unclear

1/3 GK "Analysis of federal and state cases re: abuse claims"
(4.5)
1.4 GK (same) (3.3)

D. THE TIME SPENT IN THE CASH MANAGEMENT ORDER IS EXCESSIVE.

The committees and the debtor spent an excessive amount of time in the cash management order's creation and negotiations. The debtor's counsel captures its time in Case Administration in the first month, then in Business Operations in the second month. The Tort Litigant's counsel spent \$5,840 on the matter, and their local counsel's time records are indecipherable in their organizational structure. The Claimants' Committee counsel spent \$27,531 related to Financing aspects of the case.

The time by the Paine Hamblen firm is as follows:

1/19	MJP	draft notice of hearing on cash management	.2
1/24	MJP	receive memo from Mr. Frazier re cash mgmt	.2
		Confer with SMC re case and cash mgmt	.5
		Confer with G. Frazier + JShickish re cash mgmt	2.8
		Confer with Jmunding re cash mgmt	.3
		Review Portland & Tucson re: cash mgmt	.5
		Confer with M.Miller re cash mgmt	.5
		Review diocesan policy and email G.Frazier	.5
1/26	MJP	confer with G.Frazier re cash mgmt	.7
		Review email from G.Frazier re cash mgmt	.5
1/27	MJP	email to Elsaesser re cash mgmt	.1
		Review email from G.Frazier re cash mgmt	.8
1/28	MJP	confer with Elsaesser re cash mgmt	.4
		Confer with G.Frazier re cash mgmt	.3
		Confer with SMC re cash mgmt	.2
1/31	MJP	review latest proposal re cash mgmt	.5
		Confer with G.Frazier re cash mgmt	.2
		Work on cash mgmt order	1
2/1	SMC	review draft of cash mgmt order	1.5
		T/c with M.Miller re cash mgmt	.4
		T/c with G.Frazier re cash mgmt and committee	1
		O/c with GJA re cash mgmt	.5
		Confer with MJP re cash mgmt	.4
	GJA	confer with SMC, MJP + G.Frazier re cash mgmt	1
	MJP	review committees cash mgmt proposal	.4
		Confer with SMC re the proposal	.4
		Review emails from J.Stang re cash mgmt	.2

1		Confer with Elsaesser re cash mgmt	.2
2		Email to J.Stang re cash mgmt	.1
3		Email from M.Miller re Fr. Steiner's comments re: Cash mgmt	.2
4		Email from J.Munding re cash mgmt	.2
5		Email from M.Miller re cash mgmt	.1
6	2/2	SMC Confer with G.Frazier re cash mgmt	2.5
7		various emails from G.Frazier & J.Stang	1
8		Confer with bishop & staff re cash mgmt	3
9		MJP confer with UST re cash mgmt	.2
10		Email to UST re cash mgmt	.2
11		Confer with Elsaesser re cash mmgt	.3
12		Confer with clerk re hearing date	.2
13		Emails to J.Stang & G.Frazier re cash mgmt	.3
14		Work on counter proposal re cash mgmt	1
15		Email exchange with UST re cash mgmt	.2
16		Email to M.Miller re cash mgmt	.2
17	2/3	SMC O/c with MJP re cash mgmt hearing today	.6
18		MJP confer with G.Frazier & J.SChickish re cash mgmt	1
19		Confer with Dee Schindlinger	.2
20		Confer with J.Campbell re cash mgmt	.6
21		Status conference hearing with the court	1
22		Confer with SMC re cash mgmt	.6
23		Confer with M.Miller re cash mgmt	1.5
24	2/4	MJP confer with Elsaesser re cash mgmt	.2
25	2/7	SMC review various drafts of cash mgmt order from Elsaesser and J.Schickish and related emails;	1
26		Confer with MJP regarding the same	.3
27		MJP review latest draft of cash mgmt order which incorporates the changes from committees	.5
28		Confer with SMC re cash mgmt order	.3
		Email to M.Miller the cash mgmt order	.1
		Review Elsaesser's comments re cash mgmt	.5
		Email to M.Miller the Elsaesser comments	.1
		Conference with M.Miller re cash mgmt order	.5
		Revise cash mgmt order	1.5
		Review email from Elsaesser with additional comments Re cash mgmt order	.3
	2/8	MJP review J.Stang's comments on Ford's draft of Cash mgmt order	.3
		Conference with M.Miller re order	.3
		Review email from Elsaesser re Stang's comments	.3
		Confer with Elsaesser re cash mgmt	.5

1			Work on cash mgmt order	.8
2	2/9	SMC	confer with MJP re cash mgmt and latest version	.4
3			Review latest draft of cash mgmt	.8
4			Confer with MJP re the same	.1
5		MJP	review email from Elsaesser re cash mgmt issues	.4
6			Conference with J.Stang re cash mgmt order	1
7			Revise cash mgmt and email to counsel	.8
8			Conference with SMC re cash mgmt order	.4
9			Review cash mgmt order	.5
10			Conference with SMC re cash mgmt	.1
11			Review Ford's latest comments on cash mgmt order	.3
12	2/10	MJP	review latest version of cash mgmt order and confer	.7
13			With M.Miller re same.	
14			T/c with Stang, Shickish, Frazier & Dyer re cash mgmt	3
15			Review email from J.Schickish and latest draft of	1
16			Proposed cash mgmt order	
17			Status conference with Judge Williams re cash mgmt	.5
18	2/14	MJP	email latest draft of cash mgmt to M.Miller	.2
19			Conference with M.Miller re proposed cash mgmt	1.5
20	2/15	MJP	confer with Elsaesser re cash mgmt order	.5
21			Review email from Elsaesser re same	.2
22			Conference with Shickish, Stang & McHugh re same	1
23			Conference with SMC re cash mgmt	.2
24			Conference with M.Miller re cash mgmt	.3
25			Conference with J.Stang re cash mgmt	.5
26	2/16	MJP	review drafts and comments on cash mgmt order from	1.5
27			Stang, Elsaesser and Schickish	
28			Conference with M.Miller re cash mgmt order	.5
29			Review latest draft of cash mgmt order circulated by	1
30			Schickish and confer with M.Miller re same	
31	2/17	MJP	conference with M.Miller re cash mgmt order	.5
32			Review email from J.Schickish re cash mgmt	.2
33			Email to J.Schickish re order on cash mgmt	.1
34	2/18	MJP	work on cash mgmt order	1.5
35	2/22	MJP	review email from J.Schickish re proposed cash mgmt	
36			order	.3
37			Conference with M.Miller re cash mgmt order	.4
38			Conference with J.Schickish re cash mgmt and a	
39			committee issue	.5
40			Conference with Schickish, Stang et all re cash mgmt	1
41	2/23	MJP	conference with M.Miller re cash mgmt order	.8
42			Conference with Dee Sindlinger re cash mgmt hearing	.1
43			Email to Dee Sindlinger re cash mgmt and hearing	.1

1		Review email from J.Schickish re cash mgmt and	
2		copy of proposed order	.4
3		Conference with Gary Dyer re cash mgmt order	.2
4		Conference with Stang, Schickish et al re cash mgmt	1
5	2/24	MJP review email from Dee Sindlinger re cash mgmt	.1
6	3/2	DJG review cash mgmt order and draft argument re lack of	4.3
7		consent/stipulation by debtor to allow committees	
8		to assume avoidance powers (in Asset Analysis section)	

7 The debtor's firm spent 62 hours related to this cash management order. At \$200
8 an hours, the fees are \$12,400.

9 The cash management process should have taken much shorter time and cost, and
10 no more than \$10,000 among all the parties. The stated purpose of the order was to keep
11 the status quo in place and reserve the rights regarding the property of the estate issues.

12 The court is requested to allow only \$10,000 in total as a reasonable fee for this
13 task and order, and to allocate that fee among the applicants.

16 E. THE FEE APPLICATION IS INCOMPLETE

17 The fee application does not include the pre-petition time for the firm. The fee
18 application form of this district requires, in the first fee application, the pre-petition time
19 in contemplation of the petition being filed or in connection with the petition pursuant to
20 section 329 of Title 11. Local Rule 2016-1 requires (prescribes) the use of the local
21 forms. The local form in Paragraph III expressly requires the pre-petition time to be
22 included in the first fee application.

23 The firm received a large retainer just before filing, and we are advised a portion
24 was applied to the outstanding debt, thus the firm would not be a creditor on the date of

1 petition. How that money was used, and for what application, is part and parcel of the
2 first fee application, which is missing.

3
4 The review of the pre-petition time and compensation permits the court and the
5 parties to review and compare, in part, the appropriateness of the time spent before the
6 petition was filed and the time after the petition was filed. We are presently obstructed
7 from that review, particularly in the areas of the theory of the property of the estate, the
8 search for the claimants and the underlying investigation of the claimants—alive or dead,
9 and the preparations for this case.

10
11 The applicant is required to provide the court with a sufficiently detailed
12 application. In re Nucorp Energy Inc., 764 F.2d 655, 658 (9th Cir. 1985).

13
14 The court should deny the complete fee application until it is amended to comply
15 with our local rules and the actual form submitted by the applicant.

16 17 18 ARGUMENT

19 20 1. THE LAW RELATED TO FEE APPLICATIONS.

21 The burden of proof for each entry of a fee application is on the applicant. In re
22 Manoa Fin. Co., 853 F.2d 687, 691 (9th Cir. 1988); In re Recycling Industries, Inc., 243
23 B.R. 396 (Bankr. D. Colo. 2000). This burden is not to be taken lightly, especially given
24 the fact that every dollar expended on fees results in a dollar less for distribution to
25 creditors of the estate. In re Yankton College, 101 B.R. 151, 158 (Bankr.S.D.1989); In re
26 Pettibone Corp., 74 B.R. 293, 305 (Bankr.N.D.Ill.1987).

1 The applicant is required to provide the court with a sufficiently detailed
2 application. In re Nucorp Energy Inc., 764 F.2d 655, 658 (9th Cir. 1985).

3
4 Professionals have an obligation to exercise billing judgment. Unsecured
5 Creditors' Committee v. Puget Sound Plywood, Inc., 924 F.2d 955, 959 (9th Cir.1991);
6 In re Auto Parts Club, Inc. 211 B.R. 29, 33 -34 (9th Cir.BAP (Cal.),1997).

7 Section 330(a) of the Bankruptcy Code authorizes the court, after notice and a
8 hearing, to award to a trustee, an examiner, or other professional person employed under
9 11 U.S.C. § 327 or 1103 --

11
12 (A) reasonable compensation for actual, necessary services rendered by the
13 trustee, examiner, professional person, or attorney and by any paraprofessional
14 person employed by any such person; and

15 (B) reimbursement for actual, necessary expenses.

16 The court is also authorized to award less than the amount of compensation requested.

17 11 U.S.C. § 330(a)(2).

18 11 U.S.C. § 330(a)(3) provides:

19 In determining the amount of reasonable compensation to be awarded, the court
20 shall consider the nature, the extent, and the value of such services, taking into
21 account all relevant factors, including -

22 (A) the time spent on such services;

23 (B) the rates charged for such services;

24 (C) whether the services were necessary to the administration of, or
25 beneficial at the time at which the service was rendered toward the
26 completion of, a case under this title;

27 (D) whether the services were performed within a reasonable amount of
28 time commensurate with the complexity, importance, and nature of the
29 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

1 than cases under this title.

2 Section 330(a)(4)(A) of the Bankruptcy Code establishes limitations on the award of
3 compensation:
4

5 Except as provided in subparagraph (B), the court shall not allow compensation
6 for -

7 (i) unnecessary duplication of services; or

8 (ii) services that were not—

 (I) reasonably likely to benefit the debtor's estate; or

 (II) necessary to the administration of the case.

9 These guidelines grew out of court decisions beginning with Johnson v. Georgia
10 Highway Exp., Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). The Johnson factors assist in
11 determining the initial "reasonable" hourly rate, as well as the final adjustments to the
12 lodestar. See, In re Manoa Fin. Co., 853 F.2d 687, 691 (9th Cir. 1988). Generally, so
13 long as the rates being charged are the applicant's normal rates charged in bankruptcy or
14 non-bankruptcy matters alike, they will be afforded a presumption of reasonableness." In
15 re Jefsaba, Inc., 172 B.R. 787, 798 (Bankr. E.D. Pa. 1994) (citations omitted). As the rate
16 must be reasonable "so must the time spent by the professionals on the various tasks to
17 be performed." Id. Indeed,

18 We review fee applications paying particular attention to the level of professional
19 . . . billing time viz-a-viz the complexity of the task being performed. The nature,
20 extent and complexity of the task . . . determines the level of professional . . . who
21 should perform the task, and, consequently, the reasonableness of the fees
22 charged . . . It is unreasonable for a senior attorney to perform routine tasks such
23 as preparing a debtor's schedules Consequently, fees charged at a senior
24 attorney's hourly rate for such services are unreasonable. Id. at 796-97 (citation
25 omitted).

26
27 2. DUAL BILLING FOR MEETINGS AND REVIEW OF PLEADINGS
28 MUST BE JUSTIFIED OR OTHERWISE BE DENIED.

1 Where multiple attorneys attend a hearing or conference, the applicant needs to
2 show a contribution to the hearings or conference to allow compensation. Microwave
3 Products of America, Inc. 102 B.R. 661 (Bankry., W.D.Tn. 1989); Wabash Valley
4 Power Association, Inc., 69 B.R. 471, 16 CBC2d (Bankry. S.D. Ind. 1987). Only one
5 attorney may charge for a conference where no adequate explanation is given. In re
6 Adventist Living Centers, Inc. 137 B.R. 692 (Bankr. N.D. Ill. 1991). Attorneys should
7 work independently without the incessant conferencing. In re Pettibone Corp., 74 B.R.
8 293 (Bankr. N.D. Ill 1987).

11 The multiple meetings and conferences do not describe their necessity. The
12 narrative for the fee application does not describe their necessity nor their effectiveness.

15 3. INCOMPLETE TIME RECORDS MERIT A DENIAL OF FEES.

16 Where time entries lack the subject matter or substance of the event, the fees may
17 be denied. Wabash Valley Power Association, Inc., 69 B.R. 471, 16 CBC2d (Bankry.
18 S.D. Ind. 1987). In re Pettibone Corp., 74 B.R. 293 (Bankr. N.D. Ill 1987).

20 The time records for many entries are incomplete where they fail to provide a
21 subject mater or substance of the entry.

22 The time records that fail to show the relevance, leaving the reviewer to guess, are
23 insufficient in their description. The time entries for the review of the Portland and
24 Tucson cases are not shown to be beneficial or relevant to this case. The debtor is not
25 using the same theories or approach as those other dioceses.

1 4. COURT MAY REDUCE FEES FOR DUPLICATION OF
2 SERVICES IN THE CASE BY OTHER COUNSEL

3 The court may reduce the fees of counsel for time that is duplicative of services
4 performed by other counsel in the case. See, Matter of First Colonial Corp. of America,
5 544 F.2d 1291 (5th Cir. 1977); In re Casey, 173 B.R. 893 (Bankr. E.D. Tx. 1994); In re
6 Liberal Market, 24 B.R. 653 (Bankr. S.D. Ohio 1982).
7

8
9 5. THE FAILURE TO FOLLOW THE LOCAL RULES AND FORMS
10 MERITS DENIAL OF THE FEES OR A DENIAL UNTIL THE ADDITIONAL
11 INFORMATION IS PROVIDED.

12 The local rules mandate the use of the local forms. The local form expressly
13 requires the applicant to provide the pre-petition time in the fee application. This
14 reflects the requirement under 11 U.S.C. § 329 that all time in connection with or in
15 contemplation of a bankruptcy case is to be reviewed by the court, and either approved
16 or disapproved.
17

18 The applicant is required to provide the court with a sufficiently detailed
19 application. In re Nucorp Energy Inc., 764 F.2d 655, 658 (9th Cir. 1985).
20

21 In this case, the pre-petition time is not included in this fee application, and is
22 very significant to the review of the appropriateness of the fees in the areas of the
23 theories of the case reflected in the schedules, the committee issues, and the post-petition
24 research on the 541 adversary proceeding. No one can properly evaluate the post-
25 petition services without reviewing the pre-petition preparation for the case.
26
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28

1 CONCLUSION

2 The court is respectfully requested to find that the fee application is incomplete
3 thus preventing a proper review in its condition, that the fees requested by counsel in this
4 case are not shown to be actual, necessary or reasonable because the fee application is
5 not complete and cannot be adequately evaluated without the pre-petition entries, and in
6 the event that the court proceeds to allow any fees, to reduce the fee by \$150,000.
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9

10 Dated this 3rd day of October 2005.

11 Respectfully submitted,

12 ILENE J. LASHINSKY
13 United States Trustee

14 /s/ Gary W. Dyer
15 GARY W. DYER
16 Attorney for the United States Trustee
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