

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

EXHIBIT A—PROJECT CATEGORIES

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Sales, leases (§365 matters), abandonment and related transaction work.

Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

Case Administration: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

Employee Benefits/Pensions: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

Fee/Employment Applicants: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

Fee/Employment Objections: Review of and objections to the employment and fee applications of others.

Financing: Matters under §§361, 363 and 364 including cash collateral and secured claims; loan document analysis.

Litigation: There should be a separate category established for each matter (e.g., XYZ Litigation).

Meetings of Creditors: Preparing for and attending the conference of creditors, the §341(a) meeting and other creditors' committee meetings.

Plan and Disclosure Statement: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

Relief From Stay Proceedings: Matters relating to termination or continuation of automatic stay under §362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

Accounting/Auditing: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

Business Analysis: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

Corporate Finance: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

Data Analysis: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

Litigation Consulting: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

Reconstruction Accounting: Reconstructing books and records from past transactions and bringing accounting current.

Tax Issues: Analysis of tax issues and preparation of state and federal tax returns.

Valuation: Appraise or review appraisals of assets.

[61 FR 24890, May 17, 1996]

PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

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59.2 Definitions.

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AUTHORITY: Sec. 201, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-11).

SOURCE: Order No. 942-81, 46 FR 22364, Apr. 17, 1981, unless otherwise noted.

§ 59.1 Introduction.

(a) A search for documentary materials necessarily involves intrusions into personal privacy. First, the privacy of a person's home or office may be breached. Second, the execution of such a search may require examination of private papers within the scope of the search warrant, but not themselves subject to seizure. In addition, where such a search involves intrusions into professional, confidential relationships, the privacy interests of other persons are also implicated.

(b) It is the responsibility of federal officers and employees to recognize the importance of these personal privacy interests, and to protect against unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive. The purpose of the guidelines set forth in this part is to assure that federal officers and employees do not use search and seizure to obtain documentary materials in the possession of disinterested third parties unless reliance on alternative means would substantially jeopardize their availability (*e.g.*, by creating a risk of destruction, etc.) or usefulness (*e.g.*, by detrimentally delaying the investigation, destroying a chain of custody, etc.). Therefore, the guidelines in this part establish certain criteria and procedural requirements which must be met before a search warrant may be used to obtain documentary materials held by disinterested third parties. The guidelines in this part are not intended to inhibit the use of less intrusive means of obtaining documentary materials such as the use of a subpoena, summons, or formal or informal request.

§ 59.2 Definitions.

As used in this part—

(a) The term *attorney for the government* shall have the same meaning as is

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given that term in Rule 54(c) of the Federal Rules of Criminal Procedure;

(b) The term *disinterested third party* means a person or organization not reasonably believed to be—

(1) A suspect in the criminal offense to which the materials sought under these guidelines relate; or

(2) Related by blood or marriage to such a suspect;

(c) The term *documentary materials* means any materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, films or negatives, audio or video tapes, or materials upon which information is electronically or magnetically recorded, *but does not include* materials which constitute contraband, the fruits or instrumentalities of a crime, or things otherwise criminally possessed;

(d) The term *law enforcement officer* shall have the same meaning as the term "federal law enforcement officer" as defined in Rule 41(h) of the Federal Rules of Criminal Procedure; and

(e) The term *supervisory official of the Department of Justice* means the supervising attorney for the section, office, or branch within the Department of Justice which is responsible for the investigation or prosecution of the offense at issue, or any of his superiors.

§ 59.3 Applicability.

(a) The guidelines set forth in this part apply, pursuant to section 201 of the Privacy Protection Act of 1980 (Sec. 201, Pub. L. 96-440, 94 Stat. 1879, (42 U.S.C. 2000aa-11)), to the procedures used by any federal officer or employee, in connection with the investigation or prosecution of a criminal offense, to obtain documentary materials in the private possession of a disinterested third party.

(b) The guidelines set forth in this part do not apply to:

(1) Audits, examinations, or regulatory, compliance, or administrative inspections or searches pursuant to federal statute or the terms of a federal contract;

(2) The conduct of foreign intelligence or counterintelligence activities by a government authority pursuant to otherwise applicable law;