

Rule 2.20

**ATTORNEYS' FEES AND  
RELATED NON-TAXABLE EXPENSES**

(a) **Scope.** This Rule applies to claims for attorneys' fees and related non-taxable expenses made in cases assigned to the Standard Track or Complex Track of the local rule governing Differentiated Case Management. If a final judgment, including a judgment made under Rule 54(b), Federal Rules of Civil Procedure, does not determine the propriety and the amount of attorneys' fees authorized by statute or by contract, or if the court does not establish other procedures for determining such fees, the procedures set forth in this Rule shall apply. This Rule does not apply to claims for attorneys' fees and related non-taxable expenses which may be recoverable as an element of damages or to claims for attorneys' fees and related expenses for violations of the Federal Rules of Civil Procedure or under 28 U.S.C. § 1927. The provisions of this Rule also do not apply to any motion which may be filed after the entry of a default judgment or by court-appointed counsel in a habeas corpus matter.<sup>1</sup>

(b) **Time for Filing.** Where recovery of attorneys' fees and related non-taxable expenses are sought against the United States, the motion and supporting memorandum of points and authorities must be filed in accordance with the time limits set forth in Rule 54(d)(2)(B), Federal Rules of Civil Procedure and 28 U.S.C. § 2412(d)(1)(B). In all other cases, this paragraph (b) shall apply.

(1) **Motion.** Unless otherwise provided by statute or court order entered in an individual case, the party seeking an award of attorneys' fees and related non-taxable expenses shall file and serve a motion for award of attorneys' fees and related non-taxable expenses within fourteen (14) days of the entry of judgment in the action with respect to which the services were rendered. At a minimum, the motion shall specify:

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<sup>1</sup> Although civil in nature, writs of habeas corpus are generally applicable to prior criminal proceedings.

(A) The applicable judgment and the statutory or contractual authority entitling the party to the award; and

(B) The amount of attorneys' fees and related non-taxable expenses sought or a fair estimate of such amount.

At the time of filing the motion, counsel need not file a memorandum of points and authorities, as required by Local Rule 1.10(b), or the supporting documentation, as required by paragraph (d) of this Rule.

(2) Memorandum in Support. Unless otherwise ordered by the Court, the memorandum of points and authorities in support of a motion for award of attorneys' fees, and all supporting documentation as required by paragraph (d) of this Rule, shall be filed and served within sixty (60) days of the entry of judgment in the action with respect to which the services were rendered.

(3) Responsive and Reply Memoranda. Unless otherwise ordered by the court, the opposing party may file and serve a responsive memorandum to the motion for award of attorneys' fees and related non-taxable expenses, or any portion thereof, within fifteen (15) days after service of the memorandum in support. Thereafter, the moving party, unless otherwise ordered by the court, shall have ten (10) days after service of the responsive memorandum to file a reply memorandum if that party so desires.

(4) Computation of Time. The time periods prescribed in this Rule are to be computed in accordance with Rule 6, Federal Rules of Civil Procedure.

(c) **Content of Memorandum in Support of Motion for Award of Attorneys' Fees and Related Non-Taxable Expenses.** The memorandum of points and authorities in support of a motion for award of attorneys' fees and related non-taxable expenses shall include a discussion of the following matters with appropriate headings and in the order listed below:

(1) Eligibility. This section must specify the judgment and cite the applicable statutory or contractual authority upon which the movant seeks an award of attorneys' fees and related non-taxable expenses. This section also must set forth a description of the nature of the case and must identify the claims or defenses

as to which the party prevailed and the claims or defenses as to which the party did not prevail. Counsel should cite the relevant legal authority governing the standard by which the court should determine eligibility.

(2) Entitlement. This section must discuss the applicable factors deemed relevant in determining whether attorneys' fees and related non-taxable expenses should be allowed, with citation(s) to the relevant legal authority. If the moving party claims entitlement to fees for preparing the motion and memorandum for award of attorneys' fees and related non-taxable expenses, such party also must cite the applicable legal authority supporting such specific request.

(3) Reasonableness of Requested Award. This section should discuss, as appropriate, the various factors bearing on the reasonableness of the requested attorneys' fee award, including, but not limited to, the following:

- (A) The time and labor required of counsel;
- (B) The novelty and difficulty of the questions presented;
- (C) The skill requisite to perform the legal service properly;
- (D) The preclusion of other employment by counsel because of the acceptance of the action;
- (E) The customary fee charged in matters of the type involved;
- (F) Whether the fee contracted between the attorney and the client is fixed or contingent;
- (G) Any time limitations imposed by the client or the circumstances;
- (H) The amount of money, or the value of the rights, involved, and the results obtained;
- (I) The experience, reputation and ability of counsel;
- (J) The "undesirability" of the case;
- (K) The nature and length of the professional relationship between the attorney and the client;

(L) Awards in similar actions; and

(M) Any other matters deemed appropriate under the circumstances.

(d) **Supporting Documentation.** Unless otherwise ordered, the following documentation shall be attached to each memorandum of points and authorities filed in support of a motion for award of attorneys' fees and related non-taxable expenses:

(1) A Statement of Consultation. No motion for award of attorneys' fees will be considered unless a separate statement of the moving counsel is attached to the supporting memorandum certifying that, after personal consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolve all disputed issues relating to attorneys' fees or that the moving counsel has made a good faith effort, but has been unable, to arrange such conference. The statement of consultation shall set forth the date of the consultation, the names of the participating attorneys and the specific results or shall describe the efforts made to arrange such conference and explain the reasons why such conference did not occur.

(2) Fee Agreement. A complete copy of any written fee agreement, or a full recitation of any oral fee agreement, must be attached to the supporting memorandum. If no fee agreement exists, then counsel must attach a statement to that effect.

(3) Task-Based Itemized Statement of Fees and Expenses. A task-based itemized statement of time expended and expenses incurred shall be prepared in accordance with paragraph (e) of this Rule and shall be attached to the supporting memorandum. Counsel may seek leave of court to file such statement under seal if deemed necessary to prevent the disclosure of information protected by the attorney-client privilege and attorney work-product doctrine.

(4) Affidavit. The supporting memorandum must be accompanied by an affidavit of moving counsel which, at a minimum, sets forth the following:

(A) Background. A brief description of the relevant qualifications, experience and case-related contributions of each attorney for whom fees are claimed.

(B) Reasonableness of Rate. A brief discussion of the terms of the written or oral fee agreement, if any. This section shall include a statement as to whether the client has paid any fees or expenses pursuant to any such fee agreement and, if so, a statement of the amount paid and a description of the nature of the services for which payment was made, the time involved in such services and the identity of the person performing such services. As appropriate, this section also should discuss the method by which the customary charges were established, the comparable prevailing community rate or other indicia of value of the services rendered for each attorney for whom fees are claimed.

(C) Reasonableness of Time Spent and Expenses Incurred. In this section the affiant must state that the affiant has reviewed and has approved the time and charges set forth in the task-based itemized statement and that the time spent and expenses incurred were reasonable and necessary under the circumstances. This section also must demonstrate that the affiant exercised "billing judgment." The affiant should identify all adjustments, if any, which may have been made, and specifically, should state whether the affiant has eliminated unnecessary, duplicative and excessive time, deleted certain categories of time or expense entries and/or reduced the amount charged for a particular type of expense such as facsimile or photocopy charges.

(5) Any other affidavits or evidentiary matter deemed appropriate under the circumstances or required by law.

(e) **Task-Based Itemized Statement of Attorneys' Fees and Related Non-Taxable Expenses.** Unless otherwise ordered, the itemized account of the time expended and expenses incurred shall be in the format described in this Rule.

(1) Format. The itemized statement for legal services rendered shall reflect, in chronological order, the following information:

- (A) The date on which the service was performed;
- (B) The time devoted to each individual unrelated task performed on such day;
- (C) A description of the service provided; and

(D) The identity of the attorney, paralegal or other person performing such service.

(2) Description of Services Rendered. The party seeking an award of fees must adequately describe the services rendered so that the reasonableness of the charge can be evaluated. In describing such services, however, counsel should be sensitive to matters giving rise to issues associated with the attorney-client privilege and attorney work-product doctrine, but must nevertheless furnish an adequate nonprivileged description of the services in question. If the time descriptions are incomplete, or if such descriptions fail to adequately describe the service rendered, the court may reduce the award accordingly. Explanatory examples are set forth below.

(A) Telephone Conferences. This time entry must identify all participants and the reason for the telephone call.

Ex.: Telephone conference with J. Doe (attorney for Defendant Baker) re response to settlement proposal and further negotiations.

(B) Legal Research. This time entry must identify the specific legal issue researched and, if appropriate, should identify the pleading or document the preparation of which occasioned the conduct of the research. Time entries simply stating "research" or "legal research" are inadequate and the court may reduce the award accordingly.

Ex.: Work on motion for summary judgment including (1) legal research re statute of limitations applicable to Title VII cases and (2) factual investigation pertaining to claimed discrimination.

(C) Preparation of Pleadings and Other Papers. This time entry must identify the pleading, paper or other document prepared and the activities associated with its preparation.

Ex.: Prepare first amended complaint including factual investigation underlying newly asserted Lanham Act claim and legal

research related to elements of such claim.

(D) **Travel Time.** Ordinarily air travel time should not be charged. If services were performed during such time, then describe such services rather than charging for the travel time.

(3) **Description of Expenses Incurred.** In a separate portion of the itemized statement, identify each related non-taxable expense with particularity. Counsel should attach copies of applicable invoices, receipts and/or disbursement instruments. Failure to itemize and verify costs may result in their disallowance by the court.

(f) **Responsive Memorandum.** The responsive memorandum of points and authorities in opposition to a motion for award of attorneys' fees and related non-taxable expenses shall identify with specificity all disputed issues of material fact and shall separately identify each and every disputed time entry or expense item. The respondent may attach controverting affidavits.

(g) **Discovery.** Discovery shall not be conducted in connection with a motion for award of attorneys' fees and related non-taxable expenses, unless ordered by the court upon motion and good cause shown.

(h) **Evidentiary Hearing.** The court in its discretion or upon motion may set an evidentiary hearing on a motion for award of attorneys' fees and related non-taxable expenses to resolve serious disputes involving material issues of fact that compromise the award. In all other cases, the court will determine the appropriate award, if any, of attorneys' fees and related non-taxable expenses without an evidentiary hearing.

(i) **Class Action Settlements.** Notice of the amount of any attorneys' fees and related non-taxable costs, or fair estimate thereof, to be sought in connection with any action certified as a class action pursuant to Rule 23, Federal Rules of Civil Procedure shall be given to all class members at the time, and in accordance with, the notice provided to the class members given pursuant to Rule 23(e), Federal Rules of Civil Procedure.

(j) **Establishment of Fee Committee, Appointment of Special**

**Master - Class Actions.** This section addresses attorneys' fees to be awarded under the equitable or common fund doctrine, and in any action certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

(1) In such cases, the court may appoint a Fee Committee, with such powers as the Court prescribes, to make recommendations on fees and expenses for all attorneys submitting an application for attorneys' fees. Members of the Fee Committee shall be paid for their services and expenses incurred out of the fund from which the attorneys' fees are to be paid, on such basis as may be ordered by the court.

(2) Alternatively, the court may, in its discretion, appoint a special master for this purpose, under and pursuant to the provisions of Rule 53 of the Federal Rules of Civil Procedure.

(3) The Fee Committee or Master may be appointed following:

(A) The court's preliminary approval of a proposed class settlement in accordance with Rule 23(e) of the Federal Rules of Civil Procedure; or

(B) The entry of a final judgment, or a judgment made final by Rule 54(b) of the Federal Rules of Civil Procedure; or

(C) The entry of an appealable order which gives rise to an entitlement to attorneys' fees.

(4) The membership of a Fee Committee appointed by the court shall consist of three persons, at least two of whom shall be attorneys. All attorneys appointed as members of a Fee Committee shall be members of the bar of this court. A committee member may not have either an interest in the outcome of the proceeding or have represented any party in the litigation.

(5) The Fee Committee or Master shall have authority to contact any attorney whose fee application is under consideration and may conduct hearings as the Fee Committee or Master may deem necessary.

(6) Every application for attorneys' fees in cases governed by this paragraph (j) shall include, at a minimum, the

information required by paragraphs (c), (d) and (e) of this Rule and, in addition thereto, shall include the following:

(A) A narrative statement of the general contributions made by the applicant's firm to the prosecution of the litigation;

(B) An identification of any committees, task forces or other organizational groups formed in connection with the litigation upon which the applicant served, and a description of the role played by the applicant in the work of that committee or group; and

(C) Such supplemental information or data as shall be required by any Fee Committee or Master appointed by the court to review such application.

(7) At the conclusion of its work, the Fee Committee or Master shall submit a written report and recommendation to the court, setting forth, *inter alia*, the following:

(A) A description of the procedures employed by the Fee Committee or Master;

(B) A description of the standards adopted for reviewing applications for attorneys' fees, and for calculating recommended awards;

(C) A description of the pertinent factors involved in the litigation which were considered by the Fee Committee or Master in reviewing applications and arriving at recommendations to the court; and

(D) Specific recommendations as to the amount of fees to be awarded to each application.

(8) Unless otherwise ordered by the court, the recommendations of the Fee Committee or Master shall be recited in the notice provided to the class members advising of the court's preliminary approval of any proposed settlement, the date scheduled for any hearing on the award of attorneys' fees, costs and expenses, and the right of the class membership to participate in any such hearing.

(9) Following the hearing, the court shall enter its order adopting, modifying or rejecting, in whole or in part, the recommendation of the Fee Committee or the Master.