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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 05-40773-B-7
10 APPLGATE DRAYAGE CO.,)
11 Debtor.) Docket Control No. JPG-6
12) Date: September 12, 2006
Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued
14 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
17 "Act"), a copy of the ruling is hereby posted on the court's
Internet site, www.caeb.uscourts.gov, in a text-searchable
18 format, as required by the Act. However, this posting does not
constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 This motion has been filed pursuant to LBR 9014-1(f)(1). The
21 failure of the debtor, the trustee, and all other parties in interest
22 to file timely written opposition as required by this local rule may
23 be considered consent to the granting of the motion. See Ghazali v.
24 Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). In this
25 instance, the court issues a tentative ruling.

26 The motion is granted to the extent set forth herein.

27 Applicant includes a request that the employment order entered
28 December 14, 2005 be amended to include an effective date of November

1 15, 2005, the petition date. Counsel misstates this department's
2 policy. This department does not require employment applications be
3 filed with the petition. This department follows In re Shirley, 134
4 B.R. 940 (9th Cir. BAP 1992), which sets forth the rule that
5 professionals are not entitled to compensation from the estate for
6 work done prior to the authorization of their employment. Orders are
7 effective on the date they are entered on the docket by the clerk,
8 unless the court orders a different effective date. Sewell v. MGF
9 Funding, Inc. (In re Sewell), 345 B.R. 174, 180 (9th Cir. BAP 2006).
10 Thus, in the absence of an earlier effective date in the order,
11 employment is authorized when the clerk enters the order authorizing
12 employment on the docket. Furthermore, this department is bound by
13 the Ninth Circuit's decision In re THC Financial Corp, 837 F.2d 389
14 (9th Cir. 1988). That decision requires a showing of extraordinary
15 circumstances to justify retroactive employment. This department
16 generally permits effective dates up to thirty (30) days before filing
17 (not service) of an application for employment. The administrative
18 requirements associated with obtaining approval of employment justify
19 retroactive approvals of up to that duration without any additional
20 showing of extraordinary circumstances.

21 Applicant filed her application for employment on November 22,
22 2005; seven days after the bankruptcy case was filed. The request to
23 modify the employment order (Dkt. No. 23) is granted and the December
24 14, 2005 order is amended pursuant to Fed. R. Bankr. P. 9024
25 incorporating Fed. R. Civ. P. 60(b)(1) [excusable neglect] to include
26 an effective date of November 15, 2005.

27 In light of the above amendment, the application is approved for
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1 a total of \$37,585.77 in fees and costs. On November 15, 2005, the
2 then debtor-in-possession filed a chapter 11 petition. This court
3 authorized the employment of counsel for the debtor-in-possession on
4 December 14, 2005. As modified by this ruling, applicant's employment
5 is effective as of the petition date of November 15, 2005. The
6 applicant now seeks compensation for the period of November 15, 2005
7 to May 2, 2006, equaling \$37,410.00 as fees, and \$175.77 as costs. As
8 set forth in the attorney's application, these fees and costs are
9 reasonable compensation for actual, necessary and beneficial services.

10 Applicant is further authorized to apply the \$20,961.00 currently
11 held in her trust account to the fee award. Because this case has
12 converted to one under chapter 7 and because chapter 11 administrative
13 expenses receive a lower priority than chapter 7 administrative
14 expenses, see 11 U.S.C. § 726(b), nothing herein prevents the chapter
15 7 trustee from seeking disgorgement should the chapter 7 estate prove
16 administratively insolvent. Similarly, the court will authorize
17 payment of the balance owing, \$16,624.77, as a chapter 11
18 administrative expense pro rata with other expenses of like priority.

19 Applicant shall submit two orders to the court: (1) an amended
20 order approving employment including an effective date of November 15,
21 2005 and (2) an order approving the fee application that conforms to
22 the court's ruling.