

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

Honorable Fredrick E. Clement  
Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**

**DATE: DECEMBER 6, 2017**

**CALENDAR: 11:00 A.M. CHAPTERS 11 AND 9 CASES**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-12389](#)-A-11      **IN RE: DON ROSE OIL CO., INC.**  
[BBR-3](#)

MOTION FOR AN ORDER APPROVING BID AND SALE PROCEDUES AND/OR  
MOTION FOR AN ORDER APPPROVING EXPENSE REIMBURSEMENT  
11-15-2017    [[565](#)]

HOWARD EHRENBERG/MV  
RILEY WALTER  
T. BELDEN/ATTY. FOR MV.

**No Ruling**

2. [17-12389](#)-A-11      **IN RE: DON ROSE OIL CO., INC.**  
[BBR-4](#)

MOTION FOR ORDER LIMITING SERVICE OF CERTAIN MOTIONS  
11-15-2017    [[573](#)]

HOWARD EHRENBERG/MV  
RILEY WALTER  
T. BELDEN/ATTY. FOR MV.

**No Ruling**

3. [17-12389](#)-A-11      **IN RE: DON ROSE OIL CO., INC.**  
[RBS-1](#)

MOTION BY RANDYE B. SOREF TO WITHDRAW AS ATTORNEY  
11-9-2017    [[554](#)]

RILEY WALTER

**Final Ruling**

**Motion:** Attorney's Withdrawal from Representation of a Client

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by movant pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

An attorney's withdrawal from representing a client is governed by LBR 2017-1(e) and the Rules of Professional Conduct of the State Bar of California. LBR 2017-1(e) provides that "an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared." This local rule also mandates that the attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw.

California Rule of Professional Conduct 3-700(C)(5) provides for permissive withdrawal if "[t]he client knowingly and freely assents to termination of the employment." Cal. R. Prof'l Conduct 3-700(C)(5). This provision has been satisfied.

The court finds that the attorney's withdrawal from the representation is proper. In the order's recitals, the order shall state the client's last known address and, if known, the client's phone number. The order's substantive provisions shall include a provision requiring the attorney to comply with California Rule of Professional Conduct 3-700(D) after the withdrawal.

4. [17-12389](#)-A-11     **IN RE: DON ROSE OIL CO., INC.**  
[RBS-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF POLSINELLI LLP  
FOR RANDYE B. SOREF, CREDITOR COMM. ATY(S)  
11-15-2017    [\[558\]](#)

RILEY WALTER

## **Final Ruling**

**Motion:** First and Final Application for Compensation (Polsinelli LLP)

**Notice:** LBR 9014-1(f)(1),(f)(2)

**Disposition:** Continued to January 23, 2018, at 1:30 p.m. in Fresno, applicant to augment the record and give notice of the continuance

**Order:** Civil minute order

Committee Counsel Polsinelli LLP seeks first and final compensation and expenses in the amount of \$88,426.00 and \$971.97, respectively. The application will be denied without prejudice.

## **DISCUSSION**

### Parties Entitled to Notice

"Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, **all creditors** and indenture trustees at least 21 days' notice by mail of . . . (6) a hearing on any entity's request for

compensation or reimbursement of expenses if the request exceeds \$1,000. . .  
." Fed. R. Bankr. P. 2002(a)(6).

The Bankruptcy Court for the Eastern District of California has implemented Rule 2002 by requiring the moving party, rather than the clerk, to serve notice of the motion. LBR 9014-1(e).

Here, there has been insufficient service. The application was filed on 27 persons and entities. Proof of Service, November 15, 2017, ECF # 564. The creditors matrix created by the Clerk of the court shows 288 creditors and related parties. As a consequence, service of the application was insufficient.

No order limiting service has been entered. Such a motion has been noticed for hearing on the same date as this motion. Motion for Order Limiting Service, November 15, 2017, ECF # 573. As proposed the motion would limit service to the following persons: (1) debtor and its counsel of record; (2) United States Trustee; (3) all secured creditors; (4) Official Committee of Unsecured Creditors; (5) parties affected by the particular motion; and (6) all parties who request special notice. Even if that motion is granted, service would be deficient for two reasons. First, the sufficiency of service is judged by the date service is effected, and not the date of the hearing on the motion. Second, the applicant has not served those parties entitled to notice under the terms of motion to limit service. Missing is service on nine secured creditors: Kings Cash Group; Allied Affiliated Funding, LP; Axis Capital; Capcall LLC; Lee Financial; Mack Financial; Small Business Administration; Stan Boyett & Son, Inc.; and Wells Fargo Equipment Finance. Compare Schedule D, July 6, 2017, ECF # 55, with Proof of Service, November 15, 2017, ECF # 564. As measured by either standard service is insufficient.

#### Notice of Hearing

Motions must be noticed for hearing. LBR 9014-1(d)(1). **The notice must specify whether and when written opposition must be filed.** LBR 9014-1(d)(3)(B). That notice must be served on all parties entitled to notice of the hearing. LBR 9014-1(e).

Except as otherwise provided by the Federal Rules of Bankruptcy Procedure, in the Eastern District of California Bankruptcy Court most motions must be served 28 days prior to the hearing or 14 days prior to the hearing. LBR 9014-1(f)(1),(2). If a motion is noticed for hearing at least 28 days prior to the hearing, opposition must be made in writing, if at all, and must be filed and served at least 14 days prior to the hearing. LBR 9014-1(f)(1)(B). If the motion is heard on less than 28 days notice, written opposition need not be filed and parties may be heard in opposition orally at the hearing. LBR 9014-1(f)(2)(C).

Consistent with Fed. R. Bankr. P. 2002(a), this application was filed and served 21 days prior to the hearing. But the notice incorrectly notes that opposition must be served in writing 14 days prior to the hearing. Notice p. 2, lines 20-22, November 15, 2017, ECF # 563. Consistent with LBR 9014-1(d)(3)(B)(ii), the notice warns respondent that the failure to file written opposition may result in the motion being granted without hearing. This

notice misleads respondents into believing that the failure to file written opposition on or before November 22, 2017, only a week after the application was filed and served.

Polsinelli LLP attempted (unsuccessfully) to address this defect by filing an Amended Notice, November 27, 2017, ECF # 585. But the notice was only served on the members of the Official Committee of Unsecured Creditors. *Id.* It was not served on all other creditors and other interested parties, who might wish to be heard in opposition to the motion.

#### Project Billing Format

United States Trustee's Guidelines require that professionals seeking compensation to sort its invoice into project billing format. "The USTP has established 'project categories' for fee applications. All time and service entries should be arranged by project categories. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation. [USTP Appendix A Fee Guidelines, Guideline 3(b)(4)(i)]." March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Compensation Procedure, Employment and Compensation Procedure of Professionals § 4: 1357 (Rutter Group 2017). Those categories are: Asset analysis and recovery; Asset disposition; Business operations; Case administration; Claims administration and objections; Employee benefits/pensions; Fee/employment applications; Fee/employment objections; Financing; Litigation; Meetings of creditors; Plan and disclosure statement; Relief from stay proceedings; Accounting/auditing; Business analysis; Corporate finance; Data analysis; Litigation consulting; Reconstruction accounting; Tax issues; and Valuation. *Id.* at § 4:1358. Inclusion of that information in the summary sheet is not sufficient. See Rutter Group at § 4:1355.

Here, the application does contain a "Project Fee Summary." Application p. 3, November 15, 2017, ECF # 558. But the invoice offered in support of the application does not the order invoice by project category, instead submitting a 39 page chronological invoice. This prevents effective review by the trustee, creditors and the court. Fee applications must be accompanied by both a chronological invoice and an invoice sorted by project billing category.

#### Narrative Summary

The United States Trustee guidelines require narrative summary for each project category. "Narrative summary to accompany each project category: Each project category should contain a narrative summary of the following information: [1] a description of the project, its necessity and benefit to the estate, and the status of the project, including all pending litigation for which compensation and reimbursement are requested; [2] identification of each person providing services on the project; and [3] a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project. [USTP Appendix A Fee Guidelines, Guideline 3(b)(4)(iii)]." March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Compensation Procedure, Employment and Compensation Procedure of Professionals § 4: 1357 (Rutter Group 2017).

Here, no such narrative has been offered in support of the application. The declaration of Randy B. Soref was filed in support of the application. Soref decl., November 15, 2017, ECF # 559. But it falls short of the specificity required by the United States Trustee's guidelines and of the detail necessary for meaningful review of the application by the trustee, creditors and this court.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Pollinselli LLP's first and final application for compensation and reimbursement for expenses has been presented to the court. Having considered the application and ancillary documents,

IT IS FURTHER ORDERED that not later than December 20, 2017, the applicant shall serve notice of the continued hearing to all persons and parties entitled to notice under Fed. R. Bankr. P. 2002(a)(6) or, if applicable, any order limiting service and shall file a certificate of service so indicating. That notice shall (1) state with particularity the relief sought, i.e. the amount of compensation sought and the costs to be reimbursed, and (2) inform parties in interest that opposition must be made in writing and filed, as well as served, not later than January 9, 2018.

IT IS FURTHER ORDERED that not later than December 20, 2017, the applicant shall augment the record in support of the motion by filing (1) a narrative statement, (2) an invoice for the period of time for which fees and/or costs are sought that is sorted by billing project category, and (3) such additional evidence, if any, that the applicant wishes to be considered in ruling on the motion. Not later than December 20, 2017 and without regard to whether the court grants the trustee's motion to limit service, the applicant shall serve all those parties and persons identified in the trustee's motion to limit service, BBR-4, with the documents described in this paragraph.

IT IS FURTHER ORDERED that the United States trustee, the Chapter 11 trustee or any party in interest wishing to be heard in opposition shall file and serve written opposition not later than January 9, 2018.

IT IS ORDERED that application is continued to January 23, 2018, at 1:30 p.m. in Fresno.

5. [17-12389](#)-A-11     **IN RE: DON ROSE OIL CO., INC.**  
[RWR-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-12-2017    [[471](#)]

NATIONS FUND I, LLC/MV  
RILEY WALTER  
RUSSELL REYNOLDS/ATTY. FOR MV.

**No Ruling**