Survey of Bankruptcy Attorneys Regarding Applications for Administrative Expenses

Final Report

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This report contains tables of the results of the *Survey of Bankruptcy Attorneys Regarding Applications for Administrative Expenses.* Respondents include attorneys who belong to listservs hosted by the Business Bankruptcy Section of the ABA and the American Bankruptcy Institute; the survey link was published to each of the listservs along with an invitation to participate. The analysis includes answers from 94 respondents who took the survey between Friday, January 21, 2011 and Monday, March 7, 2011. The tables consist of statistical summaries of responses to objective questions, as well as open-ended comments.

Collectively, the listservs have memberships of more than 1,500 attorneys, and although it is likely that the membership of the two listservs overlap, only a small proportion of attorneys to whom the link was made available responded to the survey. Thus, the results of this survey are not necessarily representative of all bankruptcy attorneys, and may in fact disproportionately reflect the views of attorneys who have encountered problems with requests for payment of administrative expenses.

Results indicate:

- Almost two-thirds of the responding attorneys (63%) reported that they practice in more than one bankruptcy district.

- Most responding attorneys (60%) said that none of the bankruptcy districts in which they practice has formal or informal procedures for requesting payment of administrative expenses (Table 1). (Tables 2, 3, and 4 provide more information from those attorneys who reported practicing in districts that had formal or informal procedures.)

- When asked to what extent they encountered difficulties in their practice due to how requests for administrative expense are handled, respondents most frequently (39%) indicated that they experienced "slight" difficulties because of this. Just under 30 percent said they encountered no difficulties, while 20% said they encounter moderate difficulties, and 4% said they encounter great difficulties. (Table 5). A higher percentage of attorneys who practice in multiple districts reported experiencing difficulties, with about 30% (16 respondents) saying they experienced "moderate" or "great" difficulties, compared to about 12% (3 respondents) of attorneys who reported practicing in only one district.

- Almost two-thirds of responding attorneys (64%) said that their practice would benefit from more standardization of the *procedures* governing requests for payment of administrative expenses. More than one-third (34%) said their practice would benefit from more standardization of the *forms* used to apply for payment of administrative expenses; 20% said their practice would benefit from no change to current procedures and forms (Table 6 and Table 7, which contains explanations of their responses). Attorneys who practice in multiple districts appeared to be slightly more supportive of standardization of both procedures and forms than were attorneys who practice in a single district (68% of attorneys who practice in multiple districts said their practice would benefit from more

standardization of procedures, compared to 57% of attorneys who practice in single districts; similarly, 37% of attorneys who practice in multiple districts said their practice would benefit from more standardization of the forms, compared to 29% of attorneys in single districts).

- When asked to rate the extent to which national changes are necessary, responding attorneys were most supportive of changes to the national rules governing how applications for administrative expenses are handled and nationally-available procedural forms that attorneys and districts could adapt; roughly 60% rated such changes a "4" or "5" on a 5-point scale where "1" represented "not at all necessary" and "5" represented "very necessary." There was slightly less support among respondents for nationally-mandated Official Forms for payment of administrative expenses, for which 44% gave a "4" or "5" (Table 8).

- Responding attorneys indicated that the most important procedural aspects to cover in a national rule would be the *manner of filing* (e.g., motion, application; selected by 84% of respondents); *noticing requirements* (selected by 79% of respondents); and *hearing opportunities* (e.g., negative notice; selected by 71% of respondents. (Table 9 and Table 10, which contains additional suggestions and explanation).

- The types of expenses that attorneys considered most important to address were *administrative expenses in Chapter 11 cases* (selected by 89% of attorneys); *payment to suppliers that delivered goods to the debtor within 20 days before the petition* (selected by 73% of respondents); and *payment for goods and services furnished in the ordinary course of business in a Chapter 11 case prior to conversion to Chapter 7* (selected by 70% of attorneys). More than half of the respondents also thought national rules or forms should address *administrative expenses in Chapter 7 cases* (66%) and *expenses incurred by a creditor for the benefit of the estate* (61%). (Table 11 and Table 12, which contains additional suggestions and explanation).

- Table 13 provides miscellaneous additional comments the attorneys provided.

Tables of Responses

Table 1

In the bankruptcy district(s) in which you practice, are there formal or informal procedures or forms for requesting payment of administrative expenses? (Please check one)

Response	Count	Percent
Yes, in at least one district there are procedures or forms for requesting payment of administrative expenses.	23	24.7%
No.	56	60.20%
I can't say.	14	15.10%

Table 2

Please specify the types of administrative expenses covered by the procedure(s) or form(s), including the chapter(s) to which such procedures or forms apply. If there is more than one district with procedures or forms for making these requests, or if the judges within any district follow different procedures, please list and describe each one separately:
Local Rule 3003-1 deals with a 90 day deadline after the meeting of creditors to file a 503(b)(9)claim for goods received by the debtor for goods sold to the debtor in the ordinary course of such debtor's business.
Allowance of administrative expenses under 503, including 503(b)(9) must be sought by motion. There is a local rule that requires this. Nevertheless, Court's often will enter procedures orders early in the case modifying this practice.
Filing a motion is the accepted method of requesting administrative expense.
Not limited as to type or chapter
On 12/1/10, Oregon adopted a local rule and optional form, similar to Official Form 10, for filing nonprofessional administrative expense claims. The rule is LBR 2016-1(a)(1). The entire set of the Oregon rules is at http://www.orb.uscourts.gov/Rules_Form/file_attachment/200201011110140431.pdf The form is LBF #B10A, and it is at http://www.orb.uscourts.gov/Rules_Form/file_attachment/200207011110153400.pdf
Procedural Orders entered usually in Chapter 11 cases providing upon notice of ten days to pay 80% of fees and 100% of expenses on a monthly basis to professionals.
any request for administrative expenses.
practice customs

503 administrative expenses are done by motion in most of the districts I practice in.
E.D. Ky requires an application for allowance of admin claims across all chapters, except as may be modified in Ch. 11 plans. Not as familiar with W.D. Ky, but believe it also requires an application for payment. No forms or local rules apply.
Any non-fee item that arose postpetition.
503 b 9, attorneys fees for Chapter 11
ND Ind: application for allowance and payment of administrative expense, notice to creditors, prepared Order. 503(b)(9) claims are in the process of consideration as both a proof of claim and an application for allowance, etc.
We only practice in Ch 11. Beyond the local rules, each judge has general procedures some of which may provide alternatives such as the ability to use negative notice.
all admin expense subject approval by application
Regular motion rules
In New Jersey, New York and Del. there are forms that conform to local practice for applications by counsel for payment of admin expenses where professionals have had prior appointment approve. No specific form where request is "for benefit to the estate>"
depends on chapter
SC Local Rule for hiring professionals in Chap 11. Local Operating Orde for Atty fees in chap 13.
My knowledge is limited to Chapter 11 admin expenses. File an application for payment of admin expense.
DNJ - general form for request for payment of administrative expenses, processed as a proof of claim.

Table 3

Do the procedures or forms for requesting administrative expenses vary among the districts or judges before whom you practice? (Please check all that apply).

Response	Count	Percent
Yes, the procedures or forms vary among the districts in which I practice.	6	6.4%
Yes, the procedures or forms vary among judges within a district in which I practice.	4	4.3%
No.	11	11.7%
I can't say.	3	3.2%

Table 4

Please briefly explain how the procedures for requesting administrative expenses differ among the districts or judges before whom you practice. It is not necessary to repeat the descriptions you provided in the earlier comment section here. We are interested in what specifically differs between the procedures and how those differences affect your practice:
Some request that they be filed by motion, others by proof of claim, others have no procedure in place and determine the procedure on a case by case basis.
Western Washington does not have a rule and form similar to Oregon's described above. I recently represented an Oregon client with an administrative-expense claim in a chapter 11 case in the Eastern District of New York. With advice of local counsel, the client abandoned pursuit of the claim because the client would have been required to file a motion requesting payment with a supporting affidavit, and it would have had to have local counsel attend a hearing, even in the absence of any objection to the claim. The cost of doing those filings and having local counsel attend a hearing made pursuit of the claim noneconomical. If the court had permitted the client simply to file a proof of claim form, as Oregon now does, the client would have done that, and it likely would have been paid.
The format can be different but the substance is the same.
ND Ind: court determines reasonableness of professional fees by hearing evidence as to what comparable services are worth (are paid) in the private sector; if a fee application sufficiently itemizes the nature of services performed, the hours expended, and the hourly rate, the burden of proof shifts to the objector to show that the work performed was unnecessary or the time expended

was unreasonable (or the hourly rate too high). SD Ind: it's whatever the judge feels is right.
All require a certification with respect to whether or not objections have been made by a date certain

Table 5

Which of the following statements best describes how much difficulty, if any, you experience in your bankruptcy practice due to how requests for payment of administrative expenses are handled in bankruptcy courts? (Please check one).

Response	Count	Percent
I encounter no difficulties in my practice due to how requests for payment of administrative expenses are handled in bankruptcy courts.	28	29.8%
I encounter slight difficulties in my practice due to how requests for payment of administrative expenses are handled in bankruptcy courts.	37	39.4%
I encounter moderate difficulties in my practice due to how requests for payment of administrative expenses are handled in bankruptcy courts.	19	20.2%
I encounter great difficulties in my practice due to how requests for payment of administrative expenses are handled in bankruptcy courts.	4	4.3%
I can't say.	6	6.4%

Table 6

Which of the following statements best reflects how standardization of the procedures and forms governing requests for payment of administrative expenses would affect your bankruptcy practice? (Please check all that apply)

Response	Count	Percent
My bankruptcy practice would benefit from more standardization of the procedures governing requests for payment of administrative expenses.	60	63.8%
My bankruptcy practice would benefit from less standardization of the procedures governing requests for payment of administrative expenses.	1	1.1%
My bankruptcy practice would benefit from more standardization of the forms used to apply for payment of administrative expenses.	32	34.0%
My bankruptcy practice would benefit from less standardization of the forms used to apply for payment of administrative expenses.	2	2.1%
My bankruptcy practice would benefit from no change to current practices with respect to procedures and forms used to apply for payment of administrative expenses.	19	20.2%
I can't say.	11	11.7%

Table 7

For this table, we aggregated comments according to which answer respondent selected for the question displayed in Table 6. Because that question permitted attorneys to select all responses that applied, some comments appear in multiple categories below.

Please explain your answer:

For attorneys who said their bankruptcy practice would benefit from more standardization of procedures:
It would be nice to have rules and forms that were consistent for all judges in all districts.
Currently, it is not clear whether claimants have to file proofs of claims for administrative expenses or motions to allow payment of administrative claims. There should be standardized procedures and forms for submitting requests for

payment of administrative expenses through a proof of claim type practice, rather than motion practice. This would be cheaper and more efficient for both claimants and debtors, who will not have to respond to motions on an individual basis. In cases that I have been involved in, we sometimes ask the court to implement procedures to deal with 503(b)(9) claims or other administrative claims to prevent claimants from filing motions to allow administrative claims. Standardized procedures would alleviate the need to each time ask the court for these types of procedures.
Uniform procedures make everything easier.
It is unclear from court to court what procedure needs to be filed, especially since most courts do not specify a procedure in the rules. In most courts, the filing of an administrative proof of claim is sufficient, but is that really a request for payment of an administrative expense? And, if you file a motion for payment of an administrative expense the matter is treated as if you are looking for payment now, with deadlines set for responses and subsequent hearings. For those creditors who simply want to record their administrative claim, this procedure becomes too expensive.
See above.
less work to evaluate the claims if there was strict requirement for deadline to file and evidence that must be attached in order for claim to be allowed
It would help if there were forms, like proofs of claim forms, for filing for allowance of administrative claims, rather than requiring parties to file formal motions for allowance and to compel payment.
It is wasteful to require filing of a motion for payment of administrative expenses in most cases. There should be an approved form for filing, and a procedure akin to filing a proof of claim. These motions typically must come on for hearing, which is typically a waste of time at the time they first come up.
While the current procedures are sufficient if the procedures were standardized then the costs to the client and for processing would be reduced.
It would help to have standardized forms and procedures so there would be no doubt about how to perfect the admin claim,
Helpful if forms clearly identified that expense is post-petition, and that there is a timeline for submission of such expenses
Right now I just use the forms I've developed over the years, but recently ran into problems with a lawyer from another district who was terribly offended by my standard language.
Not all Judges have the same standards or requirements
If claim filing deadlines and other procedures were in place, cases would likely move more quickly, and in Ch. 11 cases, administrative insolvency would be apparent earlier.

Some consistency in the process would be of assistance although the process might simply be a timeline for establishing applications and a general format
As debtor's counsel, it is always easier to know what admins are out there rather than having to scour through claims. As an admin claimant's counsel, it always requires some digging to find out how to file (or refile) an admin claim.
Currently, there is no standard process for filing administrative expense claims, and it is difficult to determine how to proceed in a particular case. In some cases, an administrative bar date is set (sometime sooner, sometimes later). In some, the plan has provisions for filing administrative claims. In some, there is no provision.
The handling of administrative claims needs to be formalized and standardized - current practice, even within the same district, is a mess currently.
In larger chapter 11 cases, standardization of procedures and forms could be of some benefit. Take, for example, section 503(b)(9) administrative claims. Debtors often file motions asking courts to establish procedures to deal with these claims when they anticipate a large number of such claims may be filed. I also believe that adopting a process similar to the proof of claim process used for other types of claims would be helpful to address administrative expense requests when the claimant is not seeking payment outside of a confirmed plan of reorganization. Some more standardization of procedures and forms could be helpful in these contexts. Any procedures or forms that are created probably should be in the nature of "default" procedures/forms that practitioners can assume would be successful. They should not be held out as the exclusive acceptable means of dealing with administrative expense claims.
Standard procedures and forms would make it more predictable and easier to draft, and also easier to review those that I receive due to more uniformity.
The notice and opportunity for hearing procedure is not necessary for many administrative claims, including Sec. 503(b)(9) claims
There is variation about the timing of administrative expenses - some creditors should not have to risk being subject to administrative insolvency because the debtors with permission of the court chose not to pay certain admin claims when due
A standardization process would provide guidelines on what might be paid, and the type of proof required, reducing uncertainty on these issues
Standard admin claims should be handled just like POC's i.e. filed claims. There should be no requirement to use motion practice unless other relief is sought such as early payment (good luck on that!)
Some courts (not Wisconsin) don't set bar dates
It is too expensive to file a motion for most administrative claims. Thus a form such as a proof of claim would be very helpful. This is particularly so now

regarding 503(b)(9) claims.
It would be very useful to definitively and clearly separate the pre-petition proof of claim process and forms from the post-petition unpaid administrative expense process.
Standard procedures would provide more predictability when dealing with non-attorney professionals. Standard forms for non-attorney professionals would save significant time and money for the estates.
You have to ask the judge's clerk on how best to do in each case.
Both procedure and form vary from district to district, which causes added cost to the client each time an administrative expense is pursued in the various different courts.
Representatives of the estate should be able to request the clerk to set an administrative bar date without a motion, in the same manner as filing of an asset notice in a chapter 7 case. There should be a clearly delineated claims register for administrative claims.
For attorneys who said their bankruptcy practice would benefit from less standardization of procedures:
I'm primarily on the debtor side and have no interest in encouraging administrative expense claims. Outside bankruptcy, the cost of litigation provides a substantial disincentive for creditors to sue at the drop of a hat. Much of that disincentive already disappears in bankruptcy because the debtor is already the subject of a judicial proceeding wherein it is easier to tee up a request for payment of an administrative claim than it would be to bring suit in non-bankruptcy court. Standardized forms and procedures would further distort the incentives. And note that while it is already easier/cheaper for a creditor to assert an administrative claim than to sue in non-bankruptcy court, from the estate's perspective responding can be more expensive because in bankruptcy it's not just a two-party dispute; committee professionals review the pleadings and must be kept informed at estate expense, the U.S. Trustee may well have concerns which debtor professionals must take time to address, etc.
For attorneys who said their bankruptcy practice would benefit from more standardization of forms:
It would be nice to have rules and forms that were consistent for all judges in all districts.
Currently, it is not clear whether claimants have to file proofs of claims for administrative expenses or motions to allow payment of administrative claims. There should be standardized procedures and forms for submitting requests for payment of administrative expenses through a proof of claim type practice, rather than motion practice. This would be cheaper and more efficient for both claimants and debtors, who will not have to respond to motions on an individual

basis. In cases that I have been involved in, we sometimes ask the court to implement procedures to deal with 503(b)(9) claims or other administrative claims to prevent claimants from filing motions to allow administrative claims.
Standardized procedures would alleviate the need to each time ask the court for these types of procedures.
It is unclear from court to court what procedure needs to be filed, especially since most courts do not specify a procedure in the rules. In most courts, the filing of an administrative proof of claim is sufficient, but is that really a request for payment of an administrative expense? And, if you file a motion for payment of an administrative expense the matter is treated as if you are looking for payment now, with deadlines set for responses and subsequent hearings. For those creditors who simply want to record their administrative claim, this procedure becomes too expensive.
It is wasteful to require filing of a motion for payment of administrative expenses in most cases. There should be an approved form for filing, and a procedure akin to filing a proof of claim. These motions typically must come on for hearing, which is typically a waste of time at the time they first come up.
It would help to have standardized forms and procedures so there would be no doubt about how to perfect the admin claim,
Helpful if forms clearly identified that expense is post-petition, and that there is a timeline for submission of such expenses
If claim filing deadlines and other procedures were in place, cases would likely move more quickly, and in Ch. 11 cases, administrative insolvency would be apparent earlier.
As debtor's counsel, it is always easier to know what admins are out there rather than having to scour through claims. As an admin claimant's counsel, it always requires some digging to find out how to file (or refile) an admin claim.
Currently, there is no standard process for filing administrative expense claims, and it is difficult to determine how to proceed in a particular case. In some cases, an administrative bar date is set (sometime sooner, sometimes later). In some, the plan has provisions for filing administrative claims. In some, there is no provision.
The handling of administrative claims needs to be formalized and standardized - current practice, even within the same district, is a mess currently.

In larger chapter 11 cases, standardization of procedures and forms could be of some benefit. Take, for example, section 503(b)(9) administrative claims. Debtors often file motions asking courts to establish procedures to deal with these claims when they anticipate a large number of such claims may be filed. I also believe that adopting a process similar to the proof of claim process used for other types of claims would be helpful to address administrative expense requests when the claimant is not seeking payment outside of a confirmed plan of reorganization. Some more standardization of procedures and forms could be helpful in these contexts. Any procedures or forms that are created probably should be in the nature of "default" procedures/forms that practitioners can assume would be successful. They should not be held out as the exclusive acceptable means of dealing with administrative expense claims.
Standard procedures and forms would make it more predictable and easier to draft, and also easier to review those that I receive due to more uniformity.
The notice and opportunity for hearing procedure is not necessary for many administrative claims, including Sec. 503(b)(9) claims
We now have claims, motions for allowance, and requests for payment. Nothing standard and response range from objections, response, or disregard. Very confusing.
Standard admin claims should be handled just like POC's i.e. filed claims. There should be no requirement to use motion practice unless other relief is sought such as early payment (good luck on that!)
Uniform practice is easier
It is too expensive to file a motion for most administrative claims. Thus a form such as a proof of claim would be very helpful. This is particularly so now regarding 503(b)(9) claims.
It would be very useful to definitively and clearly separate the pre-petition proof of claim process and forms from the post-petition unpaid administrative expense process.
Different forms and styles for professional compensation approval are difficult to review and evaluate.
Standard procedures would provide more predictability when dealing with non-attorney professionals. Standard forms for non-attorney professionals would save significant time and money for the estates.
You have to ask the judge's clerk on how best to do in each case.
Both procedure and form vary from district to district, which causes added cost to the client each time an administrative expense is pursued in the various different courts.
Representatives of the estate should be able to request the clerk to set an administrative bar date without a motion, in the same manner as filing of an

asset notice in a chapter 7 case. There should be a clearly delineated claims register for administrative claims.
For attorneys who said their bankruptcy practice would benefit from less standardization of forms:
I'm primarily on the debtor side and have no interest in encouraging administrative expense claims. Outside bankruptcy, the cost of litigation provides a substantial disincentive for creditors to sue at the drop of a hat. Much of that disincentive already disappears in bankruptcy because the debtor is already the subject of a judicial proceeding wherein it is easier to tee up a request for payment of an administrative claim than it would be to bring suit in non-bankruptcy court. Standardized forms and procedures would further distort the incentives. And note that while it is already easier/cheaper for a creditor to assert an administrative claim than to sue in non-bankruptcy court, from the estate's perspective responding can be more expensive because in bankruptcy it's not just a two-party dispute; committee professionals review the pleadings and must be kept informed at estate expense, the U.S. Trustee may well have concerns which debtor professionals must take time to address, etc.
For attorneys who said their practice would benefit from no change to current practices with respect to procedures and forms:
It (application for administrative expense) just doesn't come up that often, particularly as to small amounts. Following conversion, when large amounts are at issue, a standard application for payment motion is filed and heard as other motions. On confirmation, generally it is handled informally by the chapter 11 debtor or at the plan confirmation hearing.
Courts in which I practice are flexible on these issues.
I think that allowing the filing of motions for admin expense claims, without more, allows sufficient flexibility for addressing these claims.
the system is not broken
In my experience, courts have substantial discretion to determine how to handle payments for admin expenses. This allows the court to consider the facts specific to the case, which I think if fine. Practice regarding admin claims bar dates might be helpful, although in my experience that also is handled reasonably well on an ad hoc basis.
Admin expenses come in so many varieties and appear throughout the case at so many different points that standard procedures could possibly impose more burdens than just issuing and complying with tailor made orders. HOWEVER, if the standards procedures and forms were tailored to different types of expenses and left blank spaces for the TIME PERIOD in which the admin expense request has to be made and when the claim has to paid, that may assist. For example, a claim for admin rents may have a different type of form and attachments than one for utility service, or taxes, or trade vendors or defaults in cash collateral or

DIP loans.
The existing rules are sufficient.
These are answers for ND Ind. For SD Ind we could really use standardization. For all503(b)(9) claims we need national standards as to how to ask for payment, etc.
The standard practice in the Chicago bankruptcy court is to file a motion for the allowance and payment of an administrative expense. The Chicago judges will normally only allow (or disallow in whole or in part)the claim for an administrative expense. The judges do not, as a rule, direct the debtor in possession or trustee to actually pay the allowed amount. The current practice seems to work well; "if it ain't broke, don't fix it" is a good rule to follow. Creating an official form may wind up creating unintended consequences and new grounds to deny a legitimate administrative expense.
Flexibility and knowledge of each case's circumstance and situation generally enables non professional administrative claims to be addressed in a more holistic fashion. Some administrative claims, nonetheless address pre-petition activity and some are for current goods sold post petition. Knowing that difference and acting upon it seems to preclude too much formalization.
You get used to the practice
Most of our cases are Ch 7 or Ch 13. We have a few Ch.lls. The fees are fixed in routine 7s and 13s. You can request more in any of these if not routine. you will of course have to file a fee app, just like in Ch. 11.
Invariably creating “procedures” creates hard fast boundaries from which any variation brings the wrath of clerks and judges that isn't found when there are no such procedures or bankruptcy rules.
For attorneys who selected the response “I can't say”:
Any change should have no affect on my practice because claimants will still need me. Changes to streamline the procedure would help claimants and the courts, however. Many cases see the judges approve procedures permitting an "administrative proof of claim" for 503(b)(9) claims, for example, and that is much more efficient and less burdensome on both the claimant and the court.
As I have not run into any problems to date regarding wither the procedures or forms for requests for payment of administrative expenses, I am unable to say why standardization would be a benefit or not. The problems I see are more related to when an administrative expense will be paid, i.e. when resolved, upon confirmation, at some other time. The rulings are inconsistent and, to me, make no sense.
Generally an appropriate motion is filed and it is dealt with by the court like any other motion.

I can readily prepare and file a motion or application for allowance and payment of administrative expenses, so the form is not that much of an issue. Nor is the procedure. A standardized form, if carefully constructed, might facilitate this task. It might also ease the burdens on the courts. While I might welcome more standardization in procedures, so it is not a case-by-case guessing game, the real problem for my clients is that the courts in which I have experience do not necessarily require that administrative claims be paid in the ordinary course of business, or in any reasonable time frame, especially as to section 503(b)(9) claims. In my view, those ought to be paid according to ordinary trade terms, or as soon as allowed. Instead, as to payment, they are invariably deferred until confirmation. This rewards debtors for ordering goods that they know they do not intend to pay for, for a long, long time. It results in an unfair transfer of working capital from the struggling suppliers--not to the debtors, but to the secured lenders--and should not be countenanced. Why should the lenders be permitted to have the inventory enhance their borrowing base, and not have any obligation to fund payment for the underlying cost of the raw material inventory? Moreover, the Debtor sells the goods, keeps the proceeds, and does not pay for the raw materials that it (usually) knowingly purchased with the intention of not paying. At least as to the 20-day deliveries, this should not be permitted to occur.
I'm generally in favor of standardization; however, if that means adding another level of procedures to be complied with, similar to the UST guidelines. No thanks. At least in Arizona Ch 11 practice the system isn't broken.
In my court I believe it is easy to obtain approval of administrative fees. I cannot speak for the lawyers but I think they would agree.
The method for payment of such expenses has not been a problem
The greatest difficulty I have with applications for approval and payment of admin expenses in the district with which I am most familiar is the unpredictability of the debtor's compliance in those cases where such a motion is granted; I suspect that creating standard forms or procedures will address that difficulty. In those districts where I have less experience and familiarity, the difficulty is that I am unfamiliar with the judges and their particular preferences and proclivities in relation to such motions. In that respect, standard procedure may be of some benefit, but perhaps not significant benefit.

Table 8

For each item listed below, please indicate on a 5-point scale the extent to which you believe it is necessary.

	1 Not at all necessary	2	3	4	5 Very necessary	I can't say
National rules to govern how applications for administrative expenses are handled.	23.7% (22)	8.6% (8)	6.5% (6)	32.3% (30)	28.0% (26)	1.1% (1)
Nationally-mandated Official Form(s) for applications for payment of administrative expenses.	29.7% (27)	12.1% (11)	13.2% (12)	19.8% (18)	24.2% (22)	1.1% (1)
Nationally-available Procedural Form(s) for applications for payment of administrative expenses, which districts and attorneys might adapt and use.	14.0% (13)	9.7% (9)	17.2% (16)	29.0% (27)	28.0% (26)	1.2% (2)

If the Bankruptcy Rules Committee were to determine that national rules or forms are necessary for handling payment of administrative expenses, which procedural aspects and which types of expenses would be most important to cover? (See Bankruptcy Code sections 503, 348, and Bankruptcy Rule 1019(6)). (Please check all that apply and provide any additional explanation that might help the Committee in its work.)

Table 9

Procedural Aspects

Response	Count	Percent
Time frame for filing	52	55.3%
Manner of filing (e.g., motion, application)	79	84.0%
Form of filing	62	66.0%
Place of filing (e.g., claims register, docket)	54	57.4%
Noticing requirements	74	78.7%
Hearing opportunities (e.g., negative notice)	67	71.3%
Other (please specify)	7	7.4%

Table 10

Additional Suggestions and Explanation on Procedural Aspects:
Uniformity in all bankruptcy courts would be a benefit to all involved.
I'm partial to the Oregon rule and form described above.
Many cases see the judges approve procedures permitting an "administrative proof of claim" for 503(b)(9) claims, for example, and that is much more efficient and less burdensome on both the claimant and the court.
Standardization in practice with respect to administrative claims would prove extremely helpful not only to courts, but to creditors. There is such diverse procedures across the courts that parties, and judges, are often confused as to what should be done, and when.
no need
Please don't make the deadline for submission of an application or form too early. Clients have trouble gathering and supplying the needed data. Additionally,

parties in interest wishing to file responses or objections should be required to file them in a reasonable time from, perhaps thirty days, stating the basis for objection with particularity, or have the application be granted if no party files a substantive objection.
But 503(b)(9) claims need further guidance: proof of claim form? application with notice to creditors? Both?
I think the time for filing is the most critical issue. Whether it is a motion, or a proof of admin claim form on negative notice, is secondary, but should be clear and consistent.
I have always wondered why there has been an absence of details and real justification for benefit to the estate in successful Chapter 11's particularly pre-paks and particularly for prefiling work.
OK as is.
Suggest a proof of claim type form without a hearing. If payment is requested now, a motion would have to be filed.

Table 11

Types of Expenses (Please check all that apply and provide any additional explanation below)

Response	Count	Percent
Administrative expenses in Chapter 7 cases	62	66.0%
Administrative expenses in Chapter 11 cases	84	89.4%
Administrative expenses in Chapter 12 cases	35	37.2%
Administrative expenses in Chapter 13 cases	37	39.4%
Claims of Chapter 7 trustees when a case is converted from a Chapter 7 to a Chapter 11, 12, or 13	39	41.5%
Taxes incurred in the administration of the estate	45	47.9%
Payment to suppliers that delivered goods to the debtor within 20 days before the petition	69	73.4%
Payments for goods and services furnished in the ordinary course of business in a Chapter 11 case prior to conversion to Chapter 7	66	70.2%
Expenses incurred by a creditor for the benefit of the estate	57	60.6%
Other (please specify)	6	6.4%

Table 12

Additional Suggestions and Explanation on Types of Expenses:
For goods and services provided in ordinary creditors, creditors should not be required to file a claim just to get their invoices paid in ordinary course. But if they do choose to file a claim because payment was not timely made, then there should be standardized procedures for doing so.
no need
It would seem that most varieties would lend themselves to some form of standardization. An exception might be the expenses incurred by a creditor for the benefit of the estate, as that category would seem to require more proof. What would be unfortunate would be to turn this process into one where all the debtor or trustee must do is lodge a non-substantive, unspecific objection, and thereby delay resolution for an extensive period of time without any substantive basis. That, at least, is a creditors' perspective. I suppose from the debtors/trustees' standpoint, they need time to determine whether a claim with limited documentary support or proof is valid before being forced to object or pay it. But on balance, I would rather have current practice continue than see the

administration of administrative claims delayed in resolution and payment 18 months (or more) awaiting the conclusion of a case.
The types of expenses I checked have this in common: they are expenses that the estate representative might not be aware of (or aware that they are being asserted as administrative expenses).
The procedure should apply when the debtor fails to pay the post petition claim in the ordinary course
There is a complete lack of disclosure of what went on prefiling with respect to negotiations for filing a Chapter 11 with Pre-paks, stalking horses,363 sales that were organized pre-filing
You have all of these same issues with professional fees.

Table 13

Please use this space to provide any other comments you may have about procedures or forms governing the payment of administrative expenses.
I am not sure this is much of a problem. However, it is always nice to have a form available in the event of need.
Please obtain input from a variety of parties and practitioners. I would want multiple opinions and points of view other than my own to be considered. Thank you for your work on this project.
Beware of a one-size-fits-all solution. 11 USC 503(b)(9) proves that there are and will be no simple solutions.
If a procedure is to be adopted, it is very important not to require a one-size-fits-all process following the filing of a claim. For example, a landlord who isn't being paid postpetition rent needs to be dealt with quicker than 20-days-before-bankruptcy claims. So it would be a great mistake to have the filing of a claim automatically trigger a response deadline and/or hearing. In my experience, judges are very sophisticated about distinguishing between administrative expense claims that need near-term attention and those that can wait. Let's not tie their hands, or even back them into a position where they have to countermand a "default option" in order to properly prioritize their time (and estate professionals' efforts).
I think the critical issue is how non-ordinary course administrative expenses are treated. These are often contentious claims that debtors are not willing to concede. Having a clear and consistent way to assert such claims in a timely manner would be highly beneficial.

I do not believe handling of administrative fees is a problem but it could well be in other districts.
It would save time and expense for the claimants and the Court if administrative claims were simply filed on a proof of claim type form and the Trustee or Debtor in Possession would have an opportunity to object to payment.
The only procedural issue that I have run into regarding admin expenses has to do with the allowance of Section 503(b)(9) claims. More clarity might be helpful there, but the local case law, particularly in E.D. Va, has set out the rules of the road sufficiently. The more significant issue regarding admins that I encounter from time to time is substantive. Specifically, how to compute entitlement to payment of administrative expenses among post-petition creditors where the Chapter 11 estate is administratively insolvent.
routine, liquidated administrative expenses such as post-petition rent should be handled like a proof of claim- simple filing, no noticing, minimal service, no requirement that one be a member of the bar or have local counsel.
Need uniformity as to method of assertion, time to assert, form of response, and method of resolution. Aside from that, no problem.
I am amazed by the number of cases where the schedules have been delayed and not filed until the last minute in prepaks and 363 sales while the case rockets to a conclusion. Opacity trumps transparency
Should also consider whether makes sense to include treatment of cure costs in connection with assumed executory contracts, particularly where assumed by a plan.
It really is an area that is district and judge dependent. Some standardization or guidance would be helpful.
Substantial contribution claims should be asserted via motion to put the burden of going forward on the creditor. Obligations that have been judicially ordered but are unpaid should be able to proceed by the filing of a claim form.