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Chapter 15 of the U.S. Bankruptcy Code: A Hands-on Guide to the New World Order of Ancillary and Cross-border Cases

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# Who is Your Client? Ethical Considerations Potential Counsel Must Consider

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## I. Introduction

Compared to other courts, counsel representing clients in bankruptcy court face heightened scrutiny prior to approval of their retention. In fact, outside of bankruptcy court, a party's choice of counsel is rarely subject

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to such judicial oversight. In addition, active bankruptcy counsel can sometimes find it difficult to determine and rule out conflicts due to past representation by counsel and his or her law firm of diverse groups of clients, both in and out of the bankruptcy court. These materials explore some of the obvious (and not so obvious) issues relating to who is the client and where an attorney's loyalties lie. To explore these issues, the following hypothetical examples will be helpful:

**HYPOTHETICAL:** XYZ, Inc., is a national manufacturing corporation incorporated and principally based in Massachusetts. The two principals of the corporation are Jim Bacon, Sr. (hereinafter "Senior"), and Jim Bacon, Jr. (hereinafter "Junior"). Senior is the equity owner of XYZ, Inc., however he has almost no involvement with the corporation whatsoever. On the other hand, Junior is the CEO and President, and makes almost all managerial decisions regarding the operation of the corporation. You are an attorney in Big Law Firm, P.C., (hereinafter "Big Firm"), which is a 100 lawyer firm based in Massachusetts that has an extensive and active bankruptcy practice.

## II. Qualification under § 327:

11 USCA § 327 dictates the conditions and qualifications of the employment of professional persons. Specifically, § 327 reads as follows:

- (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title (emphasis added).
- (b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.
- (c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

- (d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.
- (e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.
- (f) The trustee may not employ a person that has served as an examiner in the case.

“Disinterested person” is defined in § 101(14) as follows:

- (A) is not a creditor, an equity security holder, or an insider;
- (B) is not and was not an investment banker for any outstanding security of the debtor;
- (C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such as investment banker in connection with the offer, sale, or issuance of a security of the debtor;
- (D) is not and was not, within two (2) years before the date of the filing of the petition a director, officer or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and
- (E) does not have an interest materially adverse to the interest of the estate or of any class or creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason.

Please also note that pursuant to the recently enacted Bankruptcy Abuse Prevention and Consumer Protection Act of 2005<sup>1</sup>, the definition of “disinterested person” has been simplified, and will now be defined as a person that –

- (A) is not a creditor, an equity security holder, or an insider;
- (B) is not and was not within two (2) years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor.

In addition, Bankruptcy Rule 2014(a), states that the application for employment must also disclose “all of the person’s connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.”

The Bankruptcy Rules require that an applicant file a verified statement disclosing the person’s connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee or any person employed in the office of the United States trustee. “The purpose of the disclosure requirements is to provide the court with information necessary to determine whether the professional’s employment meets the broad test of being in the best interests of the estate.”<sup>2</sup>

Failure of a professional employed in a bankruptcy proceeding to be forthcoming with disclosure provides the bankruptcy court with an independent ground for disqualification.

In addition, many courts by local rule have supplemented the disclosure requirements in Bankruptcy Rule 2014 by further defining the terms used in said rule, and by adding a requirement of updating and supplementing the initial disclosures. For example, Rule 2014-1 of Local Bankruptcy Rules of Massachusetts requires counsel to signify that, “I shall amend this statement immediately upon my learning that (A) any of the within representations are incorrect, or (B) there is any change of circumstances relating thereto.” In *In Filene’s Basement*,<sup>3</sup> Judge Hillman further explained the requirement of Rule 2014 as follows:

It has been held that the requirements of the rule transcend those of § 327 (a), as they mandate disclosure of all connections with the named parties, rather than being limited to those which deal with disinterestedness.” *In re Leslie Fay Cos.*, 175 B.R. 525, 536 (Bankr.S.D. N.Y. 1994). “It is counsel’s obligation to come forward with the information concerning his interests.” *In re Guard Force Management, Inc.*, 185 B.R. 656, 661 (Bankr.D.Mass. 1995), quoting *In re Flying E Ranch Co.*, 81 B.R. 633 (Bankr.D.Colo. 1986). Failure to be forthcoming with disclosure provides the bankruptcy court with an independent ground for disqualification. *Miller v.*

United States Trustee (In re Independent Engineering Co.), 232 B.R. 529, 532 (1st Cir. BAP 1999); Leslie Fay Cos. at 533; In re EWC, Inc., 138 B.R. 276, 281-82 (Bankr.W.D.Okla. 1992). See also Smith v. Marshall (In re Hot Tin Roof, Inc.) 205 B.R. 1000, 1003 (1st Cir. B.A.P. 1997) (stating professionals “cannot pick and choose which connections are irrelevant...”).<sup>4</sup>

In In re Filene’s Basement, Inc., Judge Hillman went on to hold that the proposed counsel had failed to disclose its prior representation of debtor prepetition, and thus disqualification of firm was justified on the basis of this nondisclosure in the Rule 2014 statement alone, without reaching the issue of firm’s disinterestedness.

Judge Hillman went on to state “the purpose of the disinterestedness requirement is to ‘prevent even the appearance of a conflict...which might be reflected in [the attorney’s] decision[s] concerning estate matters.’”<sup>5</sup> The Martin<sup>6</sup> case draws a distinction between actual conflict, potential conflict and appearance of conflict, and states that mere appearance of a conflict by itself is not grounds for disqualification. However, In re LKM Industries, Inc.,<sup>7</sup> held that a professional who is a creditor of the debtor by virtue of some prepetition service unrelated to the chapter 11 proceeding is per se disqualified, and that the court has no discretion to allow the debtor to employ such a professional. Mere prepetition employment of the professional is not in itself disqualifying, but prepetition services which have resulted in an existing debt would be disqualifying.<sup>8</sup> The real turning point of the Filene’s Basement case seems to be failure to disclose. If full disclosure had been made, would the facts have warranted disqualification?

In addition, it is crucial that the application to employ disclose the existence of any such relationships with past principals so the court can examine the same. For purposes of the bankruptcy rule governing employment of professional persons, it is counsel’s obligation to come forward with the information concerning his or her interests.<sup>9</sup>

#### **IV. Consequence for failure to disclose or incomplete disclosure**

Professional persons may be denied all compensation for services and reimbursement of expenses if, at any time during that person’s employment, the person held “an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.”<sup>10</sup> Although not all connections are necessarily disqualifying, failure to disclose a real connection before employment is authorized

can in itself justify a discretionary denial of fees under §328(c).<sup>11</sup> In *Rome*, the Court of Appeals held that “[counsel’s] failure to make a full and spontaneous disclosure...provided sufficient ground for the discretionary denial of compensation under section 328(c).”<sup>12</sup> The Court of Appeals explained as follows:

Absent the spontaneous, timely and complete disclosure required by section 327(a) and Bankruptcy Rule 2014(a), the court appointed counsel proceed at their own risk. See, e.g. . *Matter of Roger J. Au & Son, Inc.*, 71 B.R. 238, 242, 15 Bankr. Ct. Dec. (CRR) 995 (Bankr. N.D. Ohio 1986) (failure to disclose facts material to potential conflict may provide totally independent ground for denial of fees, quite apart from the actual representation of compelling interests).<sup>13</sup>

For this reason, good practice would include filing of an updated 2014 Affidavit if reasons surface during counsel’s representation that are new or were unknown at the time of the original application. Failure to disclose potential conflicts can again result in disgorgement. For example, special litigation counsel in *In re Molten Metal Technology, Inc.*,<sup>14</sup> were ordered to disgorge all fees and expenses due to counsel’s failure to disclose a joint defense agreement between the debtor, debtor’s officers and counsel, that the court deemed highly relevant to the bankruptcy proceedings. As such, and for failure to disclose its relationship with the respective parties, special counsel was denied its fees.

However, it is important to keep in mind that if employment of a professional person is in ordinary course of business, the trustee does not need court approval pursuant to 11 USCA §327. Despite this fact, and in an abundance of caution, it is recommended that all professional persons be approved prior to the commencement of work in order to avoid potential disgorgement.

## V. State law

Finally, it is important to remember that state law is the foundation of any analysis of rules governing attorney conduct. Although not the focus of this article, it is important to recognize that all attorneys are obviously also required to follow the ethical rules of the jurisdiction in which they practice.<sup>15</sup> In addition, the basic concepts of loyalty, independent judgment and who is considered a client are drawn from state law.<sup>16</sup> For example, in Massachusetts, the Massachusetts Rules of Professional Conduct, Rule 1.7 states as follows:

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
  - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
  - (2) each client consents after consultation.
- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
  - (1) the lawyer reasonably believes the representation will not be adversely affected; and
  - (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The interplay between state ethical provisions and federal law can sometimes be complicated; however the state and federal requirements pertaining to conflicts are usually complimentary and can be read consistently.

## VI. Types of clients

An examination of conflicts has different implications based on the type of client from whom you are seeking retention. The following is an examination of different issues facing different client types.

### a. Debtor in possession

**HYPOTHETICAL:** Following numerous defective product judgments, you have been contacted by Junior to discuss bankruptcy options for XYZ. An internal conflicts check reveals that another attorney in your Chicago office represents Senior relative to numerous non-XYZ matters, including his personal real estate purchases, his estate plan and his divorce. According to the firm records, Senior remains an active client. In addition, your firm also assisted XYZ with a corporate merger 12 years ago. Can you represent XYZ?

Counsel must obtain court approval pursuant to 11 USCA §327 prior to representation, and in turn section 327(c) requires that no actual conflict of interest exists. As the United States Court of Appeals for the First Circuit has observed, the thrust of 11 USCA §327 is to “ensur[e]

that all professionals appointed pursuant to §327(a) tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities.”<sup>17</sup> Representation of a corporation imposes additional challenges, especially where the firm has done prior work for the principals. Although your daily interface is often with the corporation’s principal, it is often hard for that principal to understand that your loyalty lies with the corporate client, and not the principals. Unfortunately, it is often the case that decisions made for the benefit of the corporation may be to the financial detriment of the principals.

Regardless of your relationship with the principal, it is important to remember that all actions must be for the benefit of the estate. As a result, counsel to the corporate debtor should advise that the principals also retain their own counsel if it appears an interest may be adverse, as generally, counsel cannot represent both debtors in possession and principals of the business due to these issues of loyalty. An example of the of dual representation (i.e., representing both the corporate debtor and principals) can be found in *In re R & R Associates of Hampton*,<sup>18</sup> which the First Circuit found that where counsel to a debtor partnership had also acted as counsel to the individual partners in the past (and failed to disclose the same to the court), the firm was not only required to disgorge its fees, but could also be held liable for damages to the debtor partnership based on a breach of fiduciary duty.

Courts have held that a debtor’s fiduciary duties to creditors arise upon a corporation’s insolvency, and not merely upon the institution of formal bankruptcy proceedings.<sup>19</sup> This principal alone may put the debtor corporation in direct conflict with the principals, as now the debtor must also act after taking into account creditors, as opposed to mere profitability.

#### **b. Creditors’ committee**

**HYPOTHETICAL:** Due to your firm’s large commercial real estate and corporation departments, attorneys in your firm have represented and continue to represent numerous large secured creditors of XYZ, several of which have contacted you relative to XYZ’s recent chapter 11 filing. In addition, the largest unsecured creditor has contacted you and would like you to become counsel to the unsecured creditors’ committee that is being formed later this week. Can you serve?

Section 1103(a) of the Bankruptcy Code authorizes a committee appointed pursuant to Section 1102 to employ its own professional as follows:

At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

Attorneys employed by a committee "may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case."<sup>20</sup> However, "[r]epresentation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest."<sup>21</sup>

In addition, counsel to the creditors' committee must demonstrate that the labor performed is for the benefit of the estate. This becomes increasingly complicated when the committee attempts to hire two attorneys from different firms to act as co-counsel, as was the case in *In re Bible Speaks*.<sup>22</sup> In *Bible Speaks*, the unsecured creditors' committee attempted to hire two competent co-counsel from two different firms due to a committee disagreement over which firm should be employed. In denying said application, Judge Queenan held that the unsecured creditor's committee failed to establish cause for dual employment because both counsel were equally qualified to handle the representation independently, and the risk of duplicative work was high.

Although counsel must be disinterested, representing the committee and individual creditor or creditors is not per se conflict.

### c. Secured creditor

**HYPOTHETICAL:** You have been contacted by a secured creditor with respect to representing them relative to the XYZ bankruptcy. Do you need court approval?

Counsel to a secured creditor does not need court approval to represent creditor, however, counsel may be required to file a fee application pursuant to §503 if the creditor is seeking attorney's fees as part of the secured debt. Counsel must file an affidavit if representing more than one creditor pursuant to Bankruptcy Rule 2019.

### d. Unsecured creditor

**HYPOTHETICAL:** You have been contacted by two independent unsecured creditors, each of which has requested you represent them

relative to the XYZ bankruptcy. There has already been an unsecured creditor's committee formed, and counsel appointed to that committee. Is there a conflict, and do you need court approval?

Although an unsecured creditor is a party in interest for the most part, standing alone it does not have the same clout as the creditors' committee. In addition, counsel fees will not be paid out of the bankruptcy estate unless it can be demonstrated that efforts of counsel provided a benefit to the estate over and above that of the creditors' committee.<sup>23</sup>

Accordingly an unsecured creditor is typically better off relying on the creditors' committee to represent its interest unless there are some special circumstances arising. These circumstances could include the following issues:

1. Leasing issues: If the creditor is a lessor to the debtor, it will likely need its own counsel to represent it on assumption/rejection, assignment and other issues, including whether or not the lease was terminated prepetition.
2. Reclamation, preference and fraudulent conveyance issue: There are issues that are in direct conflict with other unsecured creditors. Thus, the committee would not be helpful and independent counsel is required.
3. Post-filing issues. Credit issue; Ordinary complex plan issues; Guarantees of principals on non-debtor affiliates.

**e. Trustee/examiner**

**HYPOTHETICAL:** Attorney Connor Deville has been appointed to serve as chapter 11 trustee at XYZ. Can he bill for both his services as trustee and counsel to the trustee?

Pursuant to 11 USCA § 327, the trustee "may employ one or more attorneys... to represent or assist the trustee in carrying out the trustee's duties..." Of course, the appointment of counsel must be approved and is subject to court purview like all other professionals. The trustee can request to employ itself to act as its counsel pursuant to 11 USCA § 327(d) which states "[t]he court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate." It is important to keep in mind, that the trustee and the counsel to the trustee must keep careful, meticulous records itemizing the task codes each have performed, especially if they are one and the same. Duties of

trustee counsel are not the same as duties of trustee. Counsel should not be compensated at legal rates for work required or typically performed by the trustee at presumably lower rates. The trustee's compensation is limited to a percentage pursuant to 11 USCA §328, whereas the legal fees associated with the estate are subjected to the broader "reasonable compensation for actual, necessary services rendered" standard set forth in 11 USCA §330. Thus, where the trustee also serves as his own counsel, he must submit two separate applications.

In addition to the conflict requirements set forth in 11 USCA §322, a person acting previously as an examiner to the debtor is prohibited from then later acting as trustee under 11 USCA §321(b).

#### **f. Employment of other professional persons**

**HYPOTHETICAL:** XYZ, Inc., was involved a prepetition contract dispute with a local trucking company. The debtor has referred this matter to the litigation firm that has handled all of their litigation matters over the past 10 years and requested they commence litigation immediately. What issues arise regarding the appointment of special counsel?

"Professional persons" can include accountants, appraisers, auctioneers, realtors and special purpose counsel, such as patent and litigation attorneys. Employment as a professional person for a specified special purpose is done pursuant to 11 USCA §327(e). While this subsection does not require that the person be entirely disinterested (unlike the requirements of persons employed under 11 USCA §327(a)), it does require that such counsel "not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." In order to subject potentially adverse interests to review before employment is approved, Bankruptcy Rule 2014(a) requires that the application to be employed be accompanied by a verified statement of the person to be employed that discloses the connections between that person and the universe of parties in interest in the case.

#### **g. Debtor not in possession**

**HYPOTHETICAL:** Debtor's bankruptcy encounters continued financial difficulties post-filing. On motion of the creditors' committee, the court appoints a chapter 11 trustee. What is debtor's counsel's role thereafter?

Upon the appointment of the chapter 11 trustee, counsel to the debtor's role is generally minimized as the trustee generally will now monitor and oversee the debtor's operations. Accordingly, the court will more carefully scrutinize any work done by debtor's counsel to ensure it meets the "reasonable compensation for actual, necessary service rendered" test set forth in 11 USCA §330, counsel must be very careful to ensure that its work is not duplicative with that of the trustee.

In addition, if the debtor in a chapter 11 subsequently has their case converted to a chapter 7, it has now been clarified that the counsel to the debtor is not entitled to continued payment for services rendered despite their chapter 11 approval pursuant to 11 USCA §327, absent engagement by the trustee and court approval in the chapter 7 case.<sup>24</sup> However, recently in *In re CK Liquidation Corp.*,<sup>25</sup> a Massachusetts bankruptcy court held that when a chapter 11 proceeding is converted to a chapter 7, unless the attorney has been reemployed by the chapter 7 trustee, the attorney may, in certain circumstances, draw on the security retainer which he received prepetition for work associated with the transition from chapter 11 to chapter 7.<sup>26</sup>

## VII. Reasons for denial of retention

### a. Disinterested person standard

Pursuant to 11 USCA §327, a person must not hold or represent an interest adverse to the estate; and must ii) be "disinterested" to qualify for employment as a professional person. In *In re Marvel Entertainment Group, Inc.*,<sup>27</sup> the Court of Appeals for the Third Circuit articulated the general principals of qualification as such:

Section 327(a), as well as section 327(c), imposes a per se disqualification as trustee's counsel of any attorney who has any actual conflict of interest; 2.) the district court may, within its discretion, pursuant to section 327(c) and consistent with section 327(c), disqualify an attorney who has a potential conflict of interest and; 3.) the district court may not disqualify an attorney on the appearance of a conflict alone.

As Judge Rosenthal held in the *In re Woodworkers Warehouse, Inc.*<sup>28</sup> decision, "[i]n most instances, potential conflict should be the basis for disqualification; only if every competent professional in a particular field is already employed by a creditor or a party in interest or if the possibility that the potential conflict will become actual is remote should a court per-

mit retention.”<sup>29</sup> The boundary between an “actual” and “potential” conflict is often unclear, whether a conflict is “actual” or “potential,” however, falls within the sound discretion of the court.<sup>30</sup>

In *In re Big Mac Marine, Inc.*,<sup>31</sup> the court held that an attorney’s representation of the debtor’s principals in their individual bankruptcy proceeding disqualified the attorney from representing the debtor, where the principals maintained that they were the debtor’s largest creditors. The court held that this situation constituted an actual conflict of interest, which was not removed when the principals withdraw their claims as creditors.<sup>32</sup> As such, even after the principals were no longer considered creditors, the debtors still could not retain the attorney, and the attorney was not entitled to attorney’s fees for the work he had done prior to his disqualification.<sup>33</sup>

#### **b. Interim fee applications**

**HYPOTHETICAL:** Counsel to XYZ had its first and second fee applications approved. Following the filing of its third application, a potential conflict has come to light that existed at the outset of retention. Are counsel’s prior fee awards in jeopardy?

Section 328(c) states that “[e]xcept as provided in section 327(c), 327(e) or 1107(b) of this title; the court may deny allowance of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person’s employment under section 327 or 1103 of this title, such professional person is not a disinterested person or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.” In addition, the courts have held that all fees are reviewable, even if previously allowed.<sup>34</sup>

### **VIII. Conclusion**

Counsel involved in bankruptcy representation must carefully navigate the sometimes difficult waters of the Bankruptcy Code. In order to comply with the letter and spirit of the Code, it is often best to err on the side of caution, and fully submit all connections and conflicts to the court’s purview, or risk disgorgement. Although the Code does not provide all of the answers, the practitioner’s common sense and general understanding of bankruptcy law will act as a compass to help complete the journey safely.

**NOTES**

1. P.L. 109-8, § 256, 119 Stat. 23.
2. *In re Lincoln North Associates, Ltd. Partnership*, 155 B.R. 804, 807-08 (Bankr. D. Mass. 1993).
3. *In re Filene's Basement, Inc.*, 239 B.R. 850, 35 Bankr. Ct. Dec. (CRR) 75, 36 Bankr. Ct. Dec. (CRR) 16 (Bankr. D. Mass. 1999).
4. *In re Filene's Basement, Inc.*, 239 B.R. 850, 856, 35 Bankr. Ct. Dec. (CRR) 75, 36 Bankr. Ct. Dec. (CRR) 16 (Bankr. D. Mass. 1999).
5. *In re Filene's Basement, Inc.*, 239 B.R. 850, 858, 35 Bankr. Ct. Dec. (CRR) 75, 36 Bankr. Ct. Dec. (CRR) 16 (Bankr. D. Mass. 1999); citing *In re Martin*, 817 F.2d 175, 180, 16 Bankr. Ct. Dec. (CRR) 112, 16 Collier Bankr. Cas. 2d (MB) 672, Bankr. L. Rep. (CCH) P 71759 (1st Cir. 1987).
6. *In re Martin*, 817 F.2d 175, 180, 16 Bankr. Ct. Dec. (CRR) 112, 16 Collier Bankr. Cas. 2d (MB) 672, Bankr. L. Rep. (CCH) P 71759 (1st Cir. 1987).
7. *In re LKM Industries, Inc.*, 252 B.R. 589, 591-92, Bankr. L. Rep. (CCH) P 78272 (Bankr. D. Mass. 2000).
8. *In re LKM Industries, Inc.*, 252 B.R. 589, 591-92, Bankr. L. Rep. (CCH) P 78272 (Bankr. D. Mass. 2000).
9. Bankruptcy Rule 2014(c).
10. See 11 USCA § 328(c)(2).
11. See *Rome v. Braunstein*, 19 F.3d 54, 59, 25 Bankr. Ct. Dec. (CRR) 695, 30 Collier Bankr. Cas. 2d (MB) 1346, Bankr. L. Rep. (CCH) P 75773 (1st Cir. 1994).
12. *Rome v. Braunstein*, 19 F.3d 54, 60, 25 Bankr. Ct. Dec. (CRR) 695, 30 Collier Bankr. Cas. 2d (MB) 1346, Bankr. L. Rep. (CCH) P 75773 (1st Cir. 1994); *In re Water's Edge Ltd. Partnership*, 251 B.R. 1, 6, 36 Bankr. Ct. Dec. (CRR) 117, 44 Collier Bankr. Cas. 2d (MB) 1039 (Bankr. D. Mass. 2000) (denying creditor's motion to disqualify law firm from acting as counsel where law firm previously represented a party in interest, partially because law firm adequately disclosed prior representation in its application for employment as debtor's counsel).
13. See *Rome v. Braunstein*, 19 F.3d 54, 59-60, 25 Bankr. Ct. Dec. (CRR) 695, 30 Collier Bankr. Cas. 2d (MB) 1346, Bankr. L. Rep. (CCH) P 75773 (1st Cir. 1994).
14. *In re Molten Metal Technology, Inc.*, 289 B.R. 505, 40 Bankr. Ct. Dec. (CRR) 250 (Bankr. D. Mass. 2003).
15. *In re Sheridan*, 215 B.R. 144 (Bankr. N.D. Ill. 1996); see also *In re Freedom Solar Center, Inc.*, 776 F.2d 14, 13 Bankr. Ct. Dec. (CRR) 1009, 13 Collier Bankr. Cas. 2d (MB) 915, Bankr. L. Rep. (CCH) P 70847 (1st Cir. 1985) (the First Circuit disqualified bankruptcy counsel who represented debtor, debtor's shareholder and new corporation organized by debtor based on Maine's rules of professional conduct which require disqualification if it is demonstrated that an attorney is representing multiple clients with differing interests, absent full disclosure and consent.)
16. Collier on Bankruptcy, P 8.03[2]
17. See *Rome v. Braunstein*, 19 F.3d 54, 58, 25 Bankr. Ct. Dec. (CRR) 695, 30 Collier Bankr. Cas. 2d (MB) 1346, Bankr. L. Rep. (CCH) P 75773 (1st Cir. 1994).
18. *In re R & R Associates of Hampton*, 402 F.3d 257, 44 Bankr. Ct. Dec. (CRR) 145 (1st Cir. 2005).
19. See *Geyer v. Ingersoll Publications Co.*, 621 A.2d 784 787 (Del. Ch. 1992).
20. 11 USCA § 1103(b).
21. 11 USCA § 1103(b).
22. *In re Bible Speaks*, 67 B.R. 426 (Bankr. D. Mass. 1986).
23. See 11 USCA § 503(b)(3).

24. See *Lamie v. U.S. Trustee*, 540 U.S. 526, 124 S. Ct. 1023, 157 L. Ed. 2d 1024, 42 Bankr. Ct. Dec. (CRR) 122, 50 Collier Bankr. Cas. 2d (MB) 1299, Bankr. L. Rep. (CCH) P 80038 (2004).
25. *In re CK Liquidation Corp.*, 321 B.R. 10, 19-20, 44 Bankr. Ct. Dec. (CRR) 103 (Bankr. D. Mass. 2005).
26. *In re CK Liquidation Corp.*, 321 B.R. 10, 19-20, 44 Bankr. Ct. Dec. (CRR) 103 (Bankr. D. Mass. 2005).
27. *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 32 Bankr. Ct. Dec. (CRR) 479, 39 Collier Bankr. Cas. 2d (MB) 1315, Bankr. L. Rep. (CCH) P 77670 (3d Cir. 1998).
28. *In re Woodworkers Warehouse, Inc.*, 303 B.R. 740, 42 Bankr. Ct. Dec. (CRR) 107 (Bankr. D. Del. 2004).
29. *In re Woodworkers Warehouse, Inc.*, 303 B.R. 740, 742, 42 Bankr. Ct. Dec. (CRR) 107 (Bankr. D. Del. 2004), citing *In re BH & P, Inc.*, 949 F.2d 1300, 1316, 22 Bankr. Ct. Dec. (CRR) 541, 26 Collier Bankr. Cas. 2d (MB) 37, Bankr. L. Rep. (CCH) P 74356 (3d Cir. 1991).
30. *In re Woodworkers Warehouse, Inc.*, 303 B.R. 740, 742, 42 Bankr. Ct. Dec. (CRR) 107 (Bankr. D. Del. 2004), citing *In re BH & P, Inc.*, 949 F.2d 1300, 1317, 22 Bankr. Ct. Dec. (CRR) 541, 26 Collier Bankr. Cas. 2d (MB) 37, Bankr. L. Rep. (CCH) P 74356 (3d Cir. 1991). See also *In re Union Financial Services Group, Inc.*, 303 B.R. 390 (Bankr. E.D. Mo. 2003) (court denied counsel's employment as co-counsel to the unsecured creditor's committee because counsel continued to represent debtor's secured creditors in other chapter 11 cases in matters that are similar to the issues that arise in this case.)
31. *In re Big Mac Marine, Inc.*, 326 B.R. 150, 44 Bankr. Ct. Dec. (CRR) 246 (B.A.P. 8th Cir. 2005).
32. *In re Big Mac Marine, Inc.*, 326 B.R. 150, 156, 44 Bankr. Ct. Dec. (CRR) 246 (B.A.P. 8th Cir. 2005).
33. *In re Big Mac Marine, Inc.*, 326 B.R. 150, 155-156, 44 Bankr. Ct. Dec. (CRR) 246 (B.A.P. 8th Cir. 2005).
34. See *Matter of Taxman Clothing Co.*, 49 F.3d 310, 311, 26 Bankr. Ct. Dec. (CRR) 1034, 32 Collier Bankr. Cas. 2d (MB) 1642, Bankr. L. Rep. (CCH) P 76391 (7th Cir. 1995) ("all interim awards of attorney's fees in bankruptcy cases are tentative"); *Matter of Evangeline Refining Co.*, 890 F.2d 1312, 1321, 20 Bankr. Ct. Dec. (CRR) 99, 21 Collier Bankr. Cas. 2d (MB) 1491 (5th Cir. 1989) (interim fee awards are subject to final adjustments and, as such, are fully reviewable); *In re Stable Mews Associates*, 778 F.2d 121, 123 n.3, 13 Bankr. Ct. Dec. (CRR) 1251, Bankr. L. Rep. (CCH) P 70871 (2d Cir. 1985) ("Interim awards are by definition, not final.")