

B-2014-1

Employment of Professionals by Debtor-in-Possession

(a)(1) Except when employed for a special purpose under 11 U.S.C. § 327(e), to be eligible to be employed as counsel for the debtor-in-possession, an attorney must be a registered ECF user and shall make all filings in the case, including the application to employ, electronically.

(a)(2) All applications for employment of professionals by a debtor-in-possession, together with the accompanying affidavits and disclosures, including the disclosure of compensation required by Fed. R. Bankr. P. 2016, shall be served upon the United States trustee, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d), and all secured creditors.

(b) In addition to the other disclosures and affidavits required by the Bankruptcy Code and applicable Federal Rules of Bankruptcy Procedure, where the debtor-in-possession is not a natural person, the affidavit of the proposed professional shall specifically state:

(1) whether or not the debtor has any affiliates, as defined by 11 U.S.C. § 101(2), and, if so, (a) whether the professional or a member of the professional's firm or business represented or was employed by any such affiliate during the twelve months prior to the petition, and (b) any position, other than legal counsel, the professional or a member of the professional's firm or business holds or held in any such affiliate during the two years prior to the petition;

(2) if the professional or a member of the professional's firm or business has represented or been employed by any affiliate of the debtor during the twelve months prior to the petition, the circumstances of such representation or employment, all payments received on account of such representation or employment during the twelve months prior to the petition, and any amount owed on account of such representation or employment on the date of the petition;

(3) whether or not the professional or a member of the professional's firm or business represented or was employed by the debtor during the twelve months prior to the petition and, if so, the circumstances of such representation or employment, all payments received on account of such representation or employment during the twelve months prior to the petition, and any amount owed on account of such representation or employment on the date of the petition;

(4) any position, other than legal counsel, the professional or a member of the professional's firm or business holds or held in the debtor during the two years prior to the petition;

(5) whether or not the professional or a member of the professional's firm or business represented or was employed by an officer, director, shareholder, partner or limited partner of the debtor, or any entity that has guaranteed an obligation of the

debtor or is liable on any obligation of the debtor or pledged property to secure an obligation of the debtor and, if so, the circumstances of such representation or employment; and

(6) whether or not the professional or a member of the professional's firm or business has represented any scheduled creditor within the year prior to the date of the petition and, if so, the circumstances of such representation or employment.

(c) Unless objections to the application are filed seven (7) days prior to the date first set for the § 341 meeting or within twenty-one (21) days following service of the application, whichever is later, the court may approve the application without further notice or hearing. Unless the court orders otherwise for good cause shown, the failure to file an objection to the application within the time required will be deemed a waiver of any objection to the professional's employment by the debtor-in-possession and to the allowance or payment of fees on account of such employment based upon the disclosures made pursuant to paragraph (b).

(d) In the event the court approves the application, unless otherwise requested following notice to all creditors, the approval will relate back to the date the application was filed.

Commentary (1994)

This rule is designed to avoid after the fact realization that counsel for a debtor-in-possession may have a conflict of interest which would preclude it from representing a debtor-in-possession, by requiring counsel to pause and consider the unique potential for conflicts that the representation of a corporate debtor-in-possession may present. These disclosures will help to bring any such potential conflicts out into the open at the beginning of the case, when counsel first seeks authorization of its employment, rather than months or years later in the context of an objection to fees or a motion to disgorge fees previously paid.

Although some might find the proposed disclosures more burdensome than the standard "affidavit of disinterestedness" now used, their benefit comes from paragraph (c) providing for the waiver of any objection to the representation or payment of fees based upon the disclosures made in the affidavit.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated August 3, 2011, this rule was amended effective immediately, to add a requirement that counsel for the debtor-in-possession be a registered ECF user and make all filings electronically.