Bankruptcy Institute (1991)

Bankruptcy Institute
1991

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Selected Bankruptcy Ethical Issues: A Problem Approach

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1. HYPOTHETICAL

YOU REPRESENT TWIN-BILL BASEBALL CAPS, INC., WHOSE SOLE SHAREHOLDER IS KIRBY P. KIRBY HAS ASKED YOU TO HANDLE A CHAPTER 11 PROCEEDING FOR HIM INDIVIDUALLY AND FOR TWIN-BILL.

KIRBY HAS PERSONALLY GUARANTEED A LARGE LOAN TO TWIN-BILL, GIVING THE LENDER A MORTGAGE ON HIS HOME TO SECURE HIS GUARANTEE.

SHOULD YOU TAKE BOTH CASES?

In re Huddleston, 120 B.R. 399 (Bkrtcy. E.D. Tex. 1990)

On May 15, 1990, David S. Huddleston, the sole shareholder of Scott Huddleston Company, filed for chapter 11 protection; the company filed a chapter 11 petition the same day. On June 20, both entities filed an application to employ the same counsel. The U.S. Trustee objected.

The Trustee was concerned that dual representation of the corporate debtor-in-possession and its sole shareholder created a conflict of interest. The Trustee also objected to the counsel's failure to disclose this relationship in the affidavit of disinterestedness.

The court employed strong language in chastising counsel for failing to disclose the relationship between the debtors-in-possession. Noting that some case law supported disqualification as the penalty for non-disclosure, the court did "not impose such a draconian measure" but warned that it would if the issue surfaced in the future.

After a review of case law, the court concluded that no per se rule of prohibition existed barring representation by the same attorney of a corporate debtor-in-possession and its sole shareholder, also in bankruptcy. Rather, the nature of the dual representation should be reviewed on a case-by-case basis.

Here, due to the "mom and pop" nature of the business, the court found that forcing the employment of individual counsel would work an economic hardship on those involved. Second, despite the fact that the debtors-in-possession were mutually obligated on several debts, the court determined there was no actual conflict of interest. Third, the court noted counsel's acknowledgment of 11 U.S.C. § 328(c) and his willingness to disgorge fees if the court later found that an actual conflict of interest existed.
In re W.F. Development Corp., 905 F.2d 883 (5th Cir. 1990)

In 1987 bankruptcy proceedings, Westover Valley, Ltd., Lackland Court Apartments, Ltd., and Golf Gills Apartments, Ltd. (all limited partnerships) filed applications seeking to employ St. Clair Newbern, III, as attorney. The court approved Newbern's retention.

Later the same year, W.F. Development, general partner of the limited partnerships, sought approval of Newbern as its counsel when it filed for bankruptcy. The U.S. Trustee objected and refused to approve Newbern's application to represent the general partner in its bankruptcy and reversed its prior approval of his retention in the limited partners' bankruptcy cases.

On appeal, the district court ruled that "limited and general partners do hold materially adverse positions" in bankruptcy actions because the general partner's assets are often tapped to cover deficiencies in the limited partner's estate. The court of appeals upheld the district court's decision to disqualify Newbern from representing both the limited partnerships and the general partnership because of the clear potential for conflicts of interest.

ABA MODEL RULES OF PROFESSIONAL CONDUCT
Rule 1.6
Rule 1.7(b)
Rule 1.7(a)

MINNESOTA RULES OF PROFESSIONAL CONDUCT
Rule 1.6
Rule 1.7(b)
Rule 1.7(a)

ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY
EC 5-18

BANKRUPTCY CODE AND RULES
11 U.S.C. §327
11 U.S.C. §101(14)
Rules 2014; 2016; 2017
2. HYPOTHETICAL

YOU REPRESENT YOUR CHILDHOOD FRIEND, PAUL S. BUNYAN, IN A SLIP-AND-FALL SUIT WHICH HAPPENED AT HIS BLUE OX DRIVE-INN. HE STILL OWES YOU $7,000, BUT YOU AREN'T WORRIED BECAUSE YOU ARE JOINT OWNER WITH HIM IN A FISHING LAKE THE TWO OF YOU PURCHASED WHEN YOU WERE IN COLLEGE.

ONE YEAR LATER, AFTER PECOS BILL'S LONGHORN BURGER BARN IS ESTABLISHED ACROSS THE LAKE FROM THE BLUE OX, PAUL COMES TO YOU FOR ASSISTANCE IN FILING CHAPTER 11. YOU AGREE BUT WHEN YOU FILE YOUR AFFIDAVIT AND WHEN PAUL FILES HIS APPLICATION, NEITHER OF YOU MENTIONS THESE RELATIONSHIPS.

WILL YOU BE DISQUALIFIED? ARE YOU LIKELY TO RECOVER YOUR FEES?

In re Pierce, 809 F.2d 1356 (8th Cir. 1987)

Attorney McEwen had represented Pierce in a state court crop insurance action on a contingency basis. A judgment for Pierce was followed by an appeal substantially completed before Jan. 6, 1984.

On Jan. 6, McEwen filed a petition for reorganization on behalf of Pierce. Oral argument on the state court appeal was heard April 11, and the appellate court increased Pierce's recovery.

McEwen began work on the chapter 11 petition in late 1983 and obtained a mortgage on property owned by Pierce to secure payment for the bankruptcy work. McEwen filed the mortgage Jan. 6, just prior to filing the petition for reorganization. However, he failed to disclose this mortgage to the bankruptcy court.

In May, 1985, Pierce converted his case to chapter 7. In June McEwen applied to the bankruptcy court to recover his fees for the bankruptcy work and for the insurance case.

The bankruptcy court ruled that McEwen was entitled only to administrative expenses incurred by his pre-petition work. It disallowed the fees from the state court litigation because it was not an administrative expense of the estate and because he had failed to perfect his attorney's lien. His post-petition fees were disallowed due to lack of disinterestedness. McEwen appealed.

The appeals court affirmed the bankruptcy court decision principally relying on McEwen's status as a creditor and accompanying loss of status as a disinterested person. In addition, his fees were properly denied on several other bases:

B) McEwen's failure to disclose attorney's creditor status in the application for employment. 11 U.S.C. §328(a), Bankruptcy Rule 2014(a).

In re Matter of Patterson, 53 B.R. 366 (Bkrtcy. 1985)

Patterson filed for reorganization February 9, 1984. At that time, the debtor owed $8,000 for previous litigation to the same firm that was handling the bankruptcy.

The debtor's attorney's statement stated that no one in the firm held interests adverse to the estate or had any connection to the debtor. However, in addition to the previous debt for fees, one member of the firm, Gleason, held an undivided one-half interest in an 80 acre tract, co-owned with the debtor.

The bankruptcy court approved the appointment, and the firm represented the debtor until January 25, 1985, when it was allowed to withdraw. In February, the firm filed a proof of claim for the pre-petition fees, and in March filed for services rendered regarding the bankruptcy.

The debtor objected on several grounds, among them: (1) Gleason's co-ownership constituted an adverse interest; and (2) the firm's status as pre-petition creditor destroyed its "disinterested" status.

The court first determined that the firm was not "disinterested," citing §101(14) which states that one who is a creditor is not disinterested. This pre-petition creditor status disqualified the firm. Second, §101(14) excludes "insiders" from the status of disinterested persons. As defined in §101(31)(A)(iii) a general partner of a debtor is also an insider. Thus, Gleason's partnership was also cause for disqualification. Additionally, the court believed disqualification was appropriate because of the firm's nondisclosure of the potential conflict of interest in either the debtor's application and the firm's affidavit.

In re Burnside Steel Foundary Co., 90 B.R. 942 (Bkrtcy. N.D. Ill. 1988)

A law firm, NM&S, received a $35,000 retainer from the debtor company prior to filing chapter 11 for the company. The firm filed a statement of fees disclosing the pre-petition retainer.

The chapter 11 was later converted to chapter 7, and NM&S (now merged into W & S) continued to represent Burnside until the Court
ordered the case closed. W & S failed to file a fee application prior to the case’s close, and the court reopened the case, ordering W & S to show cause why the retainer should not be returned.

The court held that since the retainer paid in Chapter 11 is to secure future fees awarded by the court, until such court action, the retainer is a part of the estate. The attorney, therefore, becomes a secured creditor, and the retainer is subject to the court’s power.

In determining the retainer’s purpose, the court considered two possibilities; a retainer could be meant as full payment for all services in the action, or it could be partial security for future services. The court then considered that a Chapter 11 case such as originally envisioned by NM & S probably would have generated fees between $50,000 and $100,000.

The court believed that even though the firm failed to make a timely fee application, it had acted in good faith. The firm had sought total compensation of $35,382.68; the court allowed the firm to apply the retainer to these fees and expenses but allowed no reimbursement over $35,000 because of the failure to file prior to the case’s close.

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**BANKRUPTCY CODE AND RULES**

11 U.S.C. §327(a)
11 U.S.C. §101(14)
11 U.S.C. §101(31)
11 U.S.C. §328
11 U.S.C. §1107(b)
Rule 2014
3. HYPOTHETICAL

YOU REPRESENT VIKING, INC., A DISTRIBUTOR OF RESTAURANT SUPPLIES. VIKING IS ONE OF THE MAJOR CREDITORS SELECTED TO THE UNSECURED CREDITOR'S COMMITTEE SEEKING TO RECOVER FORM GOPHER HOLE, INC., A LOCAL RESTAURANT CHAIN IN CHAPTER 11.

AFTER THE INITIAL COMMITTEE MEETING, VIKING ASKS IF YOU WOULD BE THE OFFICIAL COUNSEL FOR THE COMMITTEE.

LATER, YOU DISCOVER THAT GOPHER HOLE’S ACCOUNTANT HAD MISREPRESENTED THE CHAIN’S FINANCES, WHICH RESULTED IN VIKING AND TWO OTHER CREDITORS EXTENDING CREDIT WHICH THEY WOULD NOT HAVE EXTENDED HAD GOPHER HOLE’S FINANCES BEEN PROPERLY PRESENTED. THESE THREE ENTITIES ASK YOU TO PURSUE AN ACTION AGAINST THE ACCOUNTING FIRM ON THEIR BEHALF.


Debtor sought to remove counsel for a special interest creditors’ committee due to conflict of interest under 1103(b), claiming counsel’s prior and continued representation of individual creditors who were constituents of the special committee precluded representation of the committee.

Court found that while such representation may have precluded committee representation prior to 1984 amendments, it now was cause for dismissal only where individual creditors represented and the committee have actual or serious potential adverse interests.

The debtor argued that representation of the individual creditors in connection with their claims against the estate created a potential conflict with the committee since the debtor could file counterclaims against individual creditors. The court held that as long as the individual creditors were part of the same sub-group of creditors represented by the committee, no actual or potential conflict existed.

The debtor also argued that counsel for the committee was obliged not to act in a manner adverse to the debtor. The court ruled that counsel’s fiduciary duty rested in allegiance to the committee, not the debtor.
In the Matter of Oliver's Stores, Inc., 79 B.R. 588  
(Bkrtcy. Ct. D. N.J. 1987)

Attorney and accounting firm representing official unsecured creditors' committee sought court's permission to represent individual creditors in an action against Chapter 11 debtor's former accountant, whose faulty audit had misled creditors. The court denied permission.

Although the court recognized the attorney and accounting firm intended no favorable treatment of an individual creditor, the potential for conflict was too great. Particularly, the court noted the possibility that the former accountant could, in the case of a third party complaint, sue the debtor; this could create adverse interests between the individual creditors and the unsecured creditors as a group by increasing the number of creditors with claims against a limited asset pool.

ABA MODEL RULES OF PROFESSIONAL CONDUCT

Rule 1.6

Rule 1.7(b)

ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY

Canon 9

BANKRUPTCY CODE AND RULES

11 U.S.C. §327 (c)

11 U.S.C. §1103(b)

Rule 2014

MINNESOTA RULES OF PROFESSIONAL CONDUCT

Rule 1.6

Rule 1.7(b)
4. HYPOTHETICAL

YOU HAVE RECENTLY BECOME A PARTNER AT RICHARDS AND GRANT AFTER LEAVING BAXTER AND KNIGHT. IN YOUR FIRST CASE AT YOUR NEW FIRM, YOU HAVE BEEN ASKED TO REPRESENT THE UNSECURED CREDITORS' COMMITTEE IN A CHAPTER 11 PROCEEDING FILED BY THE MORGENSTERN CORPORATION.

TWO YEARS AGO, WHILE AT BAXTER AND KNIGHT, YOU SPENT TWO DAYS DOING PRELIMINARY WORK FOR A POSSIBLE CHAPTER 7 FILING FOR MORGENSTERN WHICH WAS NEVER FILED.

SHOULD YOU TAKE THE CASE?

In re Blinder, Robinson & Company, Inc.,
123 B.R. 900 (Bkrtcy. D. Colo. 1991)

On August 1, 1990, a court-appointed trustee terminated all employees of the debtor, Blinder, Robinson, including the in-house attorneys. That day, the attorneys were hired as in-house counsel for Intercontinental Enterprises, Inc. (IEI), which was both the parent company of the debtor and a creditor of the debtor.

In late September, the trustee demanded that the IEI attorneys halt representation of any parties adverse to Blinder, Robinson. The attorneys continued representing IEI. The trustee then filed a motion to disqualify the attorneys.

Although disqualification is a drastic measure, it is mandated by Canon 4 of the Colorado Code of Professional Responsibility (concerning the preservation of client confidences and secrets) when there is a substantial relationship between the representation of a former client and the current representation of the new client. The court found that a factual nexus between the two representations existed because the attorneys had played an active role in advising the debtor about the bankruptcy proceeding. Even though much, perhaps all, of the information gathered by the attorneys from the debtor might have been available through other sources, disqualification is also mandated by Canon 9 enjoining attorneys to avoid the appearance of impropriety.

In the Matter of Davenport Communication Limited Partnership,
109 B.R. 362 (Bkrtcy. S.D. Iowa 1990)

A limited partnership, formerly represented by "the Davis Firm", filed for chapter 11 in June of 1990, and in October the Unsecured Creditors' Committee applied for approval to retain "the Davis Firm" as counsel. In support of its application the Committee argued that it required counsel with not only bankruptcy expertise but also securities, corporate and tax law expertise.
The Davis Firm prepared the debtor's limited partnership agreement, organized the general partner of the limited partnership, and acted as the debtor's general counsel until 1987.

The court disqualified the Davis Firm from representing the Committee on the grounds that a substantial relationship between prior and current representations existed and on the ground that representation of the Committee created the appearance of impropriety. Although the attorneys assigned to the Committee had been hired after Davis' representation of the debtor had ceased, the court found it impossible for the firm to handle the case without the interaction of attorneys who had been employed during the time in question. Since an "effective Chinese Wall" could not be erected, the Committee's application was denied.

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**BANKRUPTCY CODE AND RULES**

11 U.S.C. §327

11 U.S.C. §1103(b)

Rule 2014
REPRESENTATION OF THE DEBTOR

Status Requirements

**DISINTERESTED PERSON**


Status of disinterested person lost if one is a creditor, equity security holder, insider, investment banker, or attorney for an investment banker or officer, employee, or director of the debtor or investment banker of the debtor. 11 U.S.C. 101(14).

**NO ADVERSE INTEREST**


To hold an interest adverse to the estate means to act as agent or attorney for any entity possessing or asserting any economic interest that would tend to lessen the value of the estate or that would create an actual or potential dispute in which the estate is a rival claimant; or to hold a predisposition of bias against the estate. *In re Lee*, 94 Bankr. 172 (Bankr. C.D. Calif. 1988).

One is not disqualified solely due to prior representation of the debtor. 11 U.S.C. 1107(b).

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DISCLOSURE REQUIREMENTS

Any connections with the debtor, creditors, the U.S. Trustee, or any other party in interest, their attorneys and accountants must be revealed in the application and a verified statement of the attorney seeking employment. Rule 2014.

Statement of compensation paid or agreed to be paid must be filed within 15 days of entry of the order for relief regardless of whether fees or reimbursement are sought. 11 U.S.C. 329. Fee sharing must be disclosed along with the source of any compensation paid or to be paid. Sharing fees with anyone other than a member or associate of the attorney's firm is prohibited. 11 U.S.C. 329; 504. Rule 2016.

CONSEQUENCES OF DISCLOSURE AND FAILURE TO DISCLOSE

Lack (or loss of) status as disinterested person or as holding no adverse interest may result in denial of compensation or reimbursement for expenses. 11 U.S.C. 328(c).

Court may determine that fees paid or agreed to be paid are excessive and order return of fees or cancellation of fee agreement. 11 U.S.C. 329(b). Rule 2017.

Full or partial denial of compensation for services or reimbursement for expenses can result from failure to fully disclose relationships with the debtor, creditors, and all parties in interest. In re Pierce, 53 Bankr. 825 (Bankr. D. Minn. 1985) (aff'd, 809 F.2d 1356 (1987). 11 U.S.C. 328(c).

Representation of one or more creditors of same class as represented by the committee does not per se constitute representation of an adverse interest. 11 U.S.C. § 1103(b).

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### Status Requirements

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<th>NO ADVERSE INTEREST</th>
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Trustee may act as own attorney if in best interests of estate. 11 U.S.C. § 327(a).

To hold an interest adverse to the estate means to act as agent or attorney for any entity possessing or asserting any economic interest that would tend to lessen the value of the estate or that would create an actual or potential dispute in which the state is a rival claimant; or to hold a predisposition of bias against the estate. In re Lee, 94 Bankr. 172 (Bankr. C.D. Calif. 1988).

Status of disinterested person lost if one is a creditor, equity security holder, insider, investment banker, or attorney for an investment banker or officer, employee, or director of the debtor or investment banker of the debtor. 11 U.S.C. 101(14).

One is not disqualified solely due to employment by or representation of a creditor in Chapters 7, 11 or 12; upon objection court will disapprove employment if an actual conflict of interest exists. 11 U.S.C. § 327(c).

Trustee may not employ a former examiner in the case. 11 U.S.C. § 327(f).

Trustee may employ debtor's previous attorneys only for specific purposes and not to represent trustee in conducting the case if attorney holds no adverse interest. 11 U.S.C. § 327(e).

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APPLICATION FOR AND ORDER OF EMPLOYMENT. Bankruptcy Rule 2014.

APPLICATION FOR AND ORDER FOR COMPENSATION OR REIMBURSEMENT 11 U.S.C. 328(c); Bankruptcy Rule 2016.

DISCLOSURE REQUIREMENTS

Any connections with the debtor, creditors, the U.S. Trustee (and employees), or any other party in interest, their attorneys and accountants must be revealed in the application and a verified statement of the attorney seeking employment. Rule 2014.

Court may determine that fees paid or agreed to be paid are excessive and order return of fees or cancellation of fee agreement, 11 U.S.C. 328(c).

CONSEQUENCES OF DISCLOSURE AND FAILURE TO DISCLOSE

Lack (or loss of) status as disinterested person or as holding no adverse interest may result in denial of compensation or reimbursement for expenses. 11 U.S.C. 328(c).

Full or partial denial of compensation for services or reimbursement for expenses can result from failure to fully disclose relationships with the debtor, creditors, and all parties in interest. In re Pierce, 53 Bankr. 825 (Bankr. D. Minn. 1985) aff'd, 809 F.2d 1355 (1987). 11 U.S.C. 328(c).

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§ 101 (14) "disinterested person" means person that—

(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 an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

(D) is not and was not, within two 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 of 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;

§ 101 (31) "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor;
§ 327. Employment of professional persons

(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.

(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, 11 or 12 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.

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

(b) If the court has authorized a trustee to serve as an attorney or accountant for the estate under section 327(d) of this title, the court may allow compensation for the trustee's services as such attorney or accountant only to the extent that the trustee performed services as attorney or accountant for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney or accountant for the estate.

(c) Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses 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.
§ 1103. Powers and duties of committees

(a) 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.

(b) An attorney or accountant employed to represent a committee appointed under section 1102 of this title may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case. Representation 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.

(c) A committee appointed under section 1102 of this title may—

(1) consult with the trustee or debtor in possession concerning the administration of the case;

(2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;

(4) request the appointment of a trustee or examiner under section 1104 of this title; and

(5) perform such other services as are in the interest of those represented.

(d) As soon as practicable after the appointment of a committee under section 1102 of this title, the trustee shall meet with such committee to transact such business as may be necessary and proper.

§ 1107. Rights, powers, and duties of debtor in possession

(b) Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case.
Rule 2014. Employment of Professional Persons

(a) APPLICATION FOR AN ORDER OF EMPLOYMENT. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, 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 application shall be accompanied by a verified statement of the person to be employed setting forth 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.
(b) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF
FIRM OF ATTORNEYS OR ACCOUNTANTS. If, under the
Code and this rule, a law partnership or
corporation is employed as an attorney, or an
accounting partnership or corporation is employed
as an accountant, or if a named attorney or
accountant is employed, any partner, member, or
regular associate of the partnership, corporation
or individual may act as attorney or accountant so
employed, without further order of the court.

Rule 2016. Compensation for Services
Rendered and Reimbursement of Expenses

(a) APPLICATION FOR COMPENSATION OR
REIMBURSEMENT. An entity seeking interim or final
compensation for services, or reimbursement of
necessary expenses, from the estate shall file an
application setting forth a detailed statement of
(1) the services rendered, time expended and
expenses incurred, and (2) the amounts requested.
An application for compensation shall include a
statement as to what payments have theretofore been
made or promised to the applicant for services
rendered or to be rendered in any capacity
whatsoever in connection with the case, the source
of the compensation so paid or promised, whether
any compensation previously received has been
shared and whether an agreement or understanding
exists between the applicant and any other entity
for the sharing of compensation received or to be
received for services rendered in or in connection
with the case, and the particulars of any sharing
of compensation or agreement or understanding
therefor, except that details of any agreement by
the applicant for the sharing of compensation as a
member or regular associate of a firm of lawyers or
accountants shall not be required. The
requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.

(b) DISCLOSURE OF COMPENSATION PAID OR PROMISED TO ATTORNEY FOR DEBTOR. Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

Rule 2017. Examination of Debtor’s Transactions with Debtor’s Attorney

(a) PAYMENT OR TRANSFER TO ATTORNEY BEFORE ORDER FOR RELIEF. On motion by any party in interest or on the court’s own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.
(b) PAYMENT OR TRANSFER TO ATTORNEY AFTER ORDER FOR RELIEF. On motion by the debtor, the United States trustee, or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.
Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.6. Confidentiality of Information

(a) Except when permitted under paragraph (b), a lawyer shall not knowingly:
   (1) reveal a confidence or secret of a client;
   (2) use a confidence or secret of a client to the disadvantage of the client;
   (3) use a confidence or secret of a client for the advantage of the lawyer or a third person, unless the client consents after consultation.
(b) A lawyer may reveal:
   (1) confidences or secrets with the consent of the client or clients affected, but only after consultation with them;
   (2) confidences or secrets when permitted under the Rules of Professional Conduct or required by law or court order;
   (3) the intention of a client to commit a crime and the information necessary to prevent a crime;
   (4) confidences and secrets necessary to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services were used;
   (5) confidences or secrets necessary to establish or collect a fee or to defend the lawyer or employees or associates against an accusation of wrongful conduct.
(c) A lawyer shall exercise reasonable care to prevent employees, associates and others whose services the lawyer utilizes from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by paragraph (b) through an employee.
(d) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.


Rule 1.7. Conflict of Interest: General Rule

(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.
Rule 1.8. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

Rule 1.9. Conflict of Interest: Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

Rule 1.10. Imputed Disqualification: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests were materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.
RULE 1.1 Competence
A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.6 Confidentiality of Information *
(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client.

RULE 1.7 Conflict of Interest: General Rule
(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.
RULE 1.8  Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.
(i) A lawyer related to another lawyer as parent, child, sibling or
spouse shall not represent a client in a representation directly adverse
to a person who the lawyer knows is represented by the other lawyer
except upon consent by the client after consultation regarding the
relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of
action or subject matter of litigation the lawyer is conducting for a
client, except that the lawyer may:

1. acquire a lien granted by law to secure the lawyer's fee or
   expenses; and

2. contract with a client for a reasonable contingent fee in a
civil case.

RULE 1.9 Conflict of Interest: Former Client

(a) A lawyer who has formerly represented a client in a matter
shall not thereafter represent another person in the same or a sub-
stantially related matter in which that person's interests are materially
adverse to the interests of the former client unless the former client
consents after consultation.

(b) A lawyer shall not knowingly represent a person in the same or
a substantially related matter in which a firm with which the iawyer
formerly was associated had previously represented a client

1. whose interests are materially adverse to that person; and

2. about whom the lawyer had acquired information protected
by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client consents after consultation.

(c) A lawyer who has formerly represented a client in a matter or
whose present or former firm has formerly represented a client in a
matter shall not thereaften

1. use information relating to the representation to the disad-
vantage of the former client except as Rule 1.6 or Rule 3.3 would
permit or require with respect to a client, or when the information
has become generally known; or

2. reveal information relating to the representation except as
Rule 1.6 or Rule 3.3 would permit or require with respect to a
client.

RULE 1.10 Imputed Disqualification: General Rule

(a) While lawyers are associated in a firm, none of them shall
knowingly represent a client when any one of them practicing alone
would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

(b) When a lawyer has terminated an association with a firm, the
firm is not prohibited from thereafter representing a person with
interests materially adverse to those of a client represented by the
formerly associated lawyer and not currently represented by the firm,
unless:

1. the matter is the same or substantially related to that in
which the formerly associated lawyer represented the client; and

2. any lawyer remaining in the firm has information protected
by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the
affected client under the conditions stated in Rule 1.7.
EC 5-18 A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

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A Lawyer Should Avoid Even the Appearance of Professional Impropriety