

**RETENTION OF SPECIAL COUNSEL AND MOTIONS TO APPROVE
SETTLEMENTS OR COMPROMISES IN CHAPTER 7 & 13 CASES**

Who May File Applications for Retention of Special Counsel and Motions to Approve Settlements. All applications to retain special counsel in Chapter 13 cases assigned to Judge Humphrey must be filed by the Chapter 13 Trustee, or the debtor. See 11 U.S.C. § 327(e), Bankruptcy Rule 2014(a) and Local Bankruptcy Rule 2014-1(a). Also, all applications or motions to retain special counsel in Chapter 7 cases assigned to Judge Humphrey must be filed by the Chapter 7 Trustee or counsel to the Chapter 7 Trustee. See 11 U.S.C. § 327(e) and Bankruptcy Rule 2014(a). Sample forms for the retention of special counsel, including a form application for retention and a form affidavit of proposed special counsel are contained in the Local Bankruptcy Rule forms, as LBR Forms 2014-1(g) - 1 and 2014-1(g) - 2. Any application or motion to retain special counsel filed by special counsel will be denied without prejudice. Similarly, any such motion filed by another counsel retained by special counsel will be denied without prejudice.

In addition, all applications or motions to approve settlements or compromises pursuant to Bankruptcy Rule 9019 in Chapter 13 cases assigned to Judge Humphrey must be filed by the Chapter 13 Trustee, or the debtor. See Bankruptcy Rule 9019. All applications or motions to approve settlements in Chapter 7 cases assigned to Judge Humphrey must be filed by the Chapter 7 Trustee or counsel to the Chapter 7 Trustee. Any application or motion to approve a settlement or compromise filed directly by special counsel will be denied without prejudice. See Bankruptcy Rule 9019.

When to File Applications to Retain Special Counsel and Motions to Approve Settlements. Applications to retain special counsel must be filed timely. If the debtor is represented by an attorney relating to a personal injury, workers compensation, social security, or other claim at the time the debtor's bankruptcy case is filed and the debtor or trustee desires to continue that representation, the application to retain that attorney as special counsel should be filed with the bankruptcy petition. If the representation by special counsel is to commence following the filing of the bankruptcy case, then the application to retain counsel should be filed at the time that special counsel is hired by the debtor or trustee. The court generally does not have legal authority to approve the retention of legal counsel on a post facto, retroactive, or *nunc pro tunc* basis. See *In re Jarvis*, 53 F.3d 416 (1st Cir. 1995); *In re Carter*, 533 B.R. 632 (Bankr. S.D. Ohio 2015). Again, in general, special counsel may not be compensated for the time period during the bankruptcy which preceded the court's approval of the retention of the attorney.

Applications seeking approval of a compromise or settlement, including the distribution of the proceeds from any such settlement, need to be filed as promptly as possible following the entering into any such settlement. See Bankruptcy Rule 9019. Any distribution of funds from such a settlement without the prior approval of the bankruptcy court may be set aside or avoided by the bankruptcy court and returned to the bankruptcy

estate. See 11 U.S.C. § 549. Accordingly, it is imperative that the distribution of any proceeds of a settlement be approved by the court prior to the making of the distributions.

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