

SO ORDERED.

SIGNED this 16th day of November, 2021.



Dale L. Somers

Dale L. Somers
United States Chief Bankruptcy Judge

Designated for online publication only
**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**Pinnacle Regional Hospital, Inc.,
et al.,**

Debtors.

**Case No. 20-20219
Chapter 7
Jointly administered**

**Order on First Application of Daniel E. Stuart, Special Counsel,
for Interim Allowance of Compensation
and Reimbursement of Expenses**

Upon application of James A. Overcash ("Overcash"), Chapter 7 Trustee of these jointly administered cases ("Trustee"), the Law Office of Daniel E. Stuart, P.A. ("Stuart") was appointed special counsel. Stuart has filed an application for interim allowance of fees and reimbursement for expenses

(“Fee Application”).¹ Stuart has also entered an appearance on behalf of defendants in two adversary proceedings (the “Adversary Proceedings”) brought by the Trustee.² The United States Trustee (“UST”) has filed a comment on the Fee Application, arguing that Stuart has a conflict of interest such that the Court is empowered to disallow some or all of the requested compensation.

The Court agrees that Stuart has a conflict of interest. Nevertheless, allowance of the fees and expenses is not denied or reduced on that basis because Stuart’s conflict of interest was not manifested until after completion of the services covered by the Fee Application when Stuart first filed pleadings in the Adversary Proceedings. However, the Court directs that a revised fee application be filed before ruling on allowance of fees and expenses. The Court also directs Stuart to withdraw from representation of the defendants in the Adversary Proceedings.

¹ [Doc. 621](#).

² *James A. Overcash, as Chapter 7 Trustee of Joy’s Majestic Paradise, Inc. v. Rojana Enterprises, Inc.*, Adv. No. 21-06019; and *James A. Overcash, as Chapter 7 Trustee of Rojana Realty Investments, Inc. v. Rojana Enterprises, Inc.*, Adv. No. 21-06021.

I. Background Facts

On February 12, 2020, six related entities filed voluntary Chapter 11 petitions. The six cases are: Pinnacle Regional Hospital, Inc.; Pinnacle Regional Hospital, LLC; Blue Valley Healthcare System, Inc.; Pinnacle Healthcare System, Inc.; Rojana Realty Investments, Inc.; and Joy's Majestic Paradise, Inc. (collectively "Debtors"). The cases have since been converted to Chapter 7, the cases are being jointly administered, and Overcash was appointed Chapter 7 Trustee.³

On November 25, 2020, Overcash, as Chapter 7 Trustee for all six estates, filed an application to employ Stuart as special counsel under §§ 327(e) and 328(a).⁴ There was no opposition, and the application was granted. The application for appointment states that Stuart was retained by the Debtors more than twelve years previously to provide various legal services, including collection of debts for medical services. Stuart's declaration in support of the Fee Application states he and his firm are disinterested

³ On December 8, 2020, after a contested Chapter 7 trustee election and after Overcash filed his application to appoint Stuart as special counsel, Larry Pittman was appointed Chapter 7 trustee in place of Overcash in the Pinnacle Regional Hospital, LLC case. For purposes of the present dispute, the Court will overlook this fact. Neither Overcash nor Pittman have appeared in the contested matter currently before the Court and none of the parties have noted the appointment of Pittman.

⁴ [11 U.S.C. §§ 327\(e\)](#) and [328\(a\)](#). All references to Title 11 in the text shall be to the section number only.

persons, that he holds no interest adverse to the Debtors' estates, but that "to the extent he has continued to collect debt owed to the debtors, Stuart is a creditor of the Debtors."⁵ In his declaration, he further states, "Stuart will not represent any creditor in these chapter 7 cases and will not represent the Trustee or any creditor in the event that a dispute arises between the parties . . . , Stuart will file appropriate supplemental disclosures with the Court."⁶ He also stated, "I understand the continuing duty to disclose any adverse interest and change in status as a 'disinterested' person."⁷

About six months after he was employed, on June 11, 2021, Stuart filed his Fee Application.⁸ Stuart seeks compensation for services for the period of February 1, 2020 (i.e., starting about two weeks prepetition) through June 8, 2021 in the amount of \$23,049.74, which include \$22,083.08 for legal services and \$966.66 for necessary out-of-pocket expenses.

After the filing of the Fee Application, Stuart then filed motions to dismiss the Adversary Proceedings, filed by the Trustee in May 2021 to avoid allegedly fraudulent transfers made to defendant Rojana Enterprises, Inc, a

⁵ [Doc. 532-1, p. 3.](#)

⁶ *Id.* p. 4.

⁷ *Id.*

⁸ [Doc. 621.](#)

non-debtor. The first is brought on behalf of the Joy's Majestic Paradise, Inc. estate and the second is brought as Trustee of the Rojana Realty Investments, Inc. estate. As counsel for Rojana Enterprises, Inc., on June 21, 2021, Stuart filed a motion to dismiss the first complaint⁹ and on July 23, 2021, Stuart filed a motion to dismiss the second, similar complaint.¹⁰

A hearing on Stuart's Fee Application was held on September 9, 2021. The Court requested the UST review the Fee Application for possible existence of a conflict of interest. The UST filed a comment,¹¹ arguing the Court has the authority to reduce or deny Stuart's request for fees and expense because his representation of Rojana Enterprises, Inc. in the Adversary Proceedings is a conflict of interest and Stuart breached his duty to update his disclosures. In response, Stuart submits there is no conflict because he was retained by the Trustee to collect patient debts owed to Debtors Pinnacle Regional Hospital, Inc., Pinnacle Regional Hospital, LLC, and Blue Valley Surgical Associates, LLC, but not Joy's Majestic Paradise, Inc. or Rojana Realty Investments, Inc., the two bankruptcy estates at issue

⁹ Adv. no. 21-06019, [Doc. 5](#).

¹⁰ Adv. no. 21-06021, [Doc. 5](#).

¹¹ [Doc. 666](#).

in the Adversary Proceedings¹² Stuart also filed an “updated declaration” stating he has been retained to represent Rojana Enterprises, Inc. in the Adversary Proceedings.¹³

II. Analysis

A. Appointment of special counsel under §§ 327(a) and (e)

Section 327 states the prerequisites to employment of professionals, including attorneys, by the Trustee. Subsection (a) requires court approval and that the attorney “not hold or represent an interest adverse to the estate” and be a disinterested person. Disinterested is defined by § 101. It includes the requirement in subsection (A) that the attorney not be a creditor and in subsection (E) that the professional “does not have an interest materially adverse to the interest of th estate . . . by reason of any direct or indirect relationship to, connection with, or interest in the debtor, or for any other reason.”

Subsection 327(e), addressing the appointment of special counsel to a trustee, makes an exception to the dual requirements of disinterestedness and absence of a conflict of interest. Section 327(e) provides:

¹² [Doc. 669](#).

¹³ [Doc. 667](#).

The trustee, with the court’s approval, may employ, for a specific special purpose, . . . an attorney that has represented the debtor, if in the best interests 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 for which such attorney is to be employed.

There is no requirement in § 327(e) that the attorney be disinterested;¹⁴ the attorney may be a creditor of the estate for services previously provided.

Prohibited conflicts are limited to representing or holding “any interest adverse to the debtor or to the estate with respect to the matter for which such attorney is to be employed.”

An “adverse interest” is not defined by the Code. One case defines it as “the possession or assertion of an interest that lessens the value of, creates a dispute with, or engenders bias against the estate.”¹⁵ Another defines it as “(1) to possess or assert any economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a

¹⁴ 3 *Collier on Bankruptcy* ¶327.04[9] (Richard Levin & Henry J. Sommer eds.-in-chief, 16th ed. 2021).

¹⁵ *In re Grant*, [507 B.R. 306, 310](#) (Bankr. E.D. Cal. 2014).

predisposition under circumstances that render such a bias against the estate.”¹⁶

Under Rule 2014,¹⁷ a trustee’s application for appointment of special counsel must include, among other things, the facts showing the necessity for the employment, the name of the professional, the services to be rendered, and the terms of compensation. The Rule requires the application to be accompanied by “a verified statement by the person to be employed setting forth the person’s connection with the debtor, creditors, or any other party in interest, their respective attorneys and accountants.” A leading commentator describes the obligation to disclose conflicts in verified statement as follows:

In 1987, Rule 2014(a) was amended to require the proposed professional to disclose possible conflicts. The amendment requires a verified statement by the person to be employed setting forth the connections that person has with parties in interest and attorneys and accountants in the case. The disclosure requirements of Rule 2014(a) are broader than the rules governing disqualification, and an applicant must disclose all connections regardless of whether they are sufficient to rise to the level of a disqualifying interest under section 327(a). The disclosure requirements of Rule 2014 are strictly applied and impose an independent duty upon the professional applicant; thus, failure to comply with

¹⁶ *In re Wolfson*, 586 B.R. 790, 793 (Bankr. D. Co. 2018) (quoting *In re Roberts*, 46 B.R. 815, 826-27 (Bankr. D. Utah 1985)).

¹⁷ Fed. Rule Bankr. P. 2014. All references to the Bankruptcy Rules in the text shall be to the Rule number only.

the disclosure rules is a sanctionable violation, even if proper disclosure would have shown that the professional had not actually violated any Bankruptcy Code provision or any Bankruptcy Rule.¹⁸¹⁸

The Rule does not expressly require ongoing disclosure, but case law has uniformly held that under the Rule full disclosure is a continuing responsibility and an attorney is under a duty to promptly notify the court if any potential for conflict arises.¹⁹ Local Rule 2014.1²⁰ expressly imposes a duty to update disclosures. It states, “Promptly after learning of any additional material information relating to such employment (such as potential or actual conflicts of interest), the professional employed or to be employed shall file and serve a supplemental affidavit setting forth the additional information.”²¹

¹⁸ 9 *Collier on Bankruptcy* ¶ 2014.05.

¹⁹ *Id.*; see *In re Young*, No. 11-12554-j7, [2012 WL 6091102](#), at *5 n.5 (Bankr. D.N.M. Dec. 7, 2012) (citing *In re W. Delta Oil Co., Inc.*, [432 F.3d 347, 355](#) (5th Cir. 2005) and *In re Keller Fin. Services of Fla., Inc.*, [248 B.R. 859, 898](#) (Bankr. M.D. Fla. 2000)).

²⁰ [D. Kan. LBR 2014.1](#). References in the text to these rules shall be to Local Rule number only.

²¹ *Id.*

B. Stuart had no disqualifying conflict when he was appointed, but a conflict arose when Stuart was retained to represent Rojana Enterprises, Inc. in adversary proceedings pending in this Court and filed motions to dismiss in the Adversary Proceedings.

Subsection 327(e) allows appointment of special counsel to the trustee when: (1) the proposed counsel has represented the debtor previously; (2) the proposed counsel is hired for only a limited special purpose; (3) the proposed representation is in the best interest of the estate; and (4) the proposed counsel has no conflict of interest with the debtor or the estate relating to the proposed representation.²²

With respect to Stuart's appointment, these conditions were satisfied. Overcash, as Trustee of the six Debtors whose cases are being jointly administered, filed the application for appointment of special counsel. The application states that Stuart previously provided debt collection services to the Debtors, that he is to be retained for the limited purpose of debt collection, the terms of compensation, and that, although Stuart was not disinterested, he held no interest adverse to the Debtor's estate other than seeking payment for services previously performed. The application was accompanied by Stuart's verified declaration, which stated he had no conflict of interest. There

²² *In re Potter*, No. 7-05-14071, [2009 WL 2922850](#), at *1 (Bankr. D.N.M. June 12, 2009).

was no objection to the appointment, and an order for appointment was entered.

C. A conflict of interest became manifest when Stuart filed motions to dismiss in the Adversary Proceedings.

As stated above, on June 21, 2021, Stuart as counsel for Rojana Enterprises, Inc. (a non-debtor) filed a motion to dismiss the first complaint filed against Rojana Enterprises, Inc. by Overcash, as Chapter 7 Trustee of Joy's Majestic Paradise, Inc.²³ On July 23, 2021, Stuart as counsel for the same defendant, Rojana Enterprises, Inc., filed a motion to dismiss the second complaint filed against it by Overcash, as Chapter 7 Trustee of Rojana Realty Investments, Inc.²⁴

Stuart's representation of the defendants in the Adversary Proceedings is a conflict of interest. Those two Adversary Proceedings were brought by Overcash to recover assets on behalf of two of the jointly administered estates, Joy's Majestic Paradise, Inc. and Rojana Realty Investments, Inc. Stuart was appointed special counsel to the Chapter 7 Trustee of the six jointly administered cases. Thus, Stuart was simultaneously representing the Trustee as special counsel to recover assets for the Debtors and opposing the

²³ Adv. No. 21-06019, [Doc. 5](#).

²⁴ Adv. No. 21-06021, [Doc. 5](#).

Trustee's recovery of assets for benefit of two of those Debtors. Stuart was employed to collect assets of the jointly administered estates; in the Adversary Proceedings he is opposing the Trustee's efforts to maximize the estates of two of those estates.

Stuart argues that he has no conflict because as special counsel he was collecting patient bills for the benefit of only three of the six Debtors, Pinnacle Regional Hospital, Inc., Pinnacle Regional Hospital, LLC, and Blue Valley Surgical Associates, LLC, and the Adversary Proceedings were brought by the Trustee only on behalf of the estates of Joy's Majestic Paradise, Inc. and Rojana Realty Investments, Inc. Although this may be factually correct, for two reasons the Court rejects it as a basis to find the absence of a conflict of interest for purposes of the Fee Application.

First, this technical argument of limited representation was not revealed in the application for appointment, Stuart's declaration attached to the application for appointment, or the order of appointment of special counsel. Rather, those pleadings show that Stuart was appointed by the Trustee to represent all six Debtors. Stuart's declaration was filed with the caption of Pinnacle Regional Hospital, Inc , et al. and enumerated each of the six Debtors and their respective case numbers in a footnote. The declaration states it is submitted "in connection with the Trustee's application . . . to

employ the Law Office of Daniel A. Stuart, P.A. as Special Counsel in the above captioned cases.”²⁵

Second, conflicts of interest go to the very integrity of a bankruptcy case.²⁶ The Tenth Circuit holds “bankruptcy trustee and the professionals they employ to a high standard where conflicts of interest are concerned.”²⁷

Under the circumstances of this case, application of a high standard requires giving the fact of joint administration of the estates more weight than Stuart’s technical argument. To condone Stuart’s conflict would be improperly adopting a low standard.

D. The Court declines to reduce the fees requested by Stuart because of his conflict of interest, but requests that Stuart withdraw as counsel for Rojana Enterprises, Inc. in the Adversary Proceedings.

The United States Trustee argues that under § 328(c) Stuart’s conflict of interest empowers the Court to deny some or all compensation. Section 328(c) allows such denial “if at any time during such professional person’s employment under section 327 . . . such person . . . represents or holds an interest adverse to the interest of the estate with respect to the matter on

²⁵ [Doc. 532-1, p. 2.](#)

²⁶ *In re Paige*, [685 F.3d 1160, 1180](#) (10th Cir. 2012) (quoting *Winship v. Cook (In re Cook)*, [223 B.R. 782, 789](#) (10th Cir. BAP 1998)).

²⁷ *Id.*

which such professional person is employed.” Stuart’s conflict was not manifest until June 21, 2021, when he filed a motion to dismiss the Trustee’s complaint for benefit of the estate of Joy’s Majestic Paradise, Inc. Stuart’s Fee Application had been filed ten days previously, on June 11, 2021. Assuming that Stuart was retained as counsel for Rojana Enterprises, Inc. shortly before he filed the first motion to dismiss,²⁸ Stuart’s conflict of interest did not exist during the period covered by the Fee Application, which requests compensation for services from February 1, 2020 through June 8, 2021. The Court therefore declines to disallow or reduce compensation under § 327(c).

The UST also submits that the Court is empowered to penalize Stuart for failing to timely supplement the disclosures in his employment declaration. Rule 2014(a) requires full disclosure of all connections with the debtor, creditors, and any other party in interest. Case law uniformly interprets Rule 2014(a) to require continuing disclosures and Local Rule 2014.1 expressly imposes this duty. Stuart recognized his duty when in his Declaration he stated, “Stuart will not represent any creditor in these chapter 7 cases and will not represent the Trustee or any creditor in the event that a dispute arises between the parties. . . . Stuart will file appropriate supplemental

²⁸ The record does not include that date when Stuart was retained as counsel for Rojana Enterprises, Inc. for the purpose of defending the Adversary Proceedings.

disclosures with the Court.”²⁹ But Stuart did not file a supplemental declaration disclosing his representation in the adversary proceedings until October 14, 2021, after the Court questioned whether Stuart had a conflict of interest and the UST filed a comment about the Fee Application.³⁰

Stuart failed to fulfill his obligation to timely disclose his potential conflict subsequent to his employment. Nevertheless, the Court finds this failure insufficient to support reduction of allowance of fees and reimbursement of expenses. The facts do not reveal any basis to conclude that the duty of supplemental disclosure existed before June 8, 2021, the closing date of the Fee Application.

However, Stuart may not continue to represent the Trustee as special counsel and also represent the Rojana Enterprises, Inc. in the Adversary Proceedings brought by the Trustee. Stuart has stated his preference that he continue as special counsel.³¹ The Court therefore directs Stuart to withdraw

²⁹ [Doc. 532, p. 5.](#)

³⁰ Based upon Stuart’s statements and demeanor before the Court and his arguments in his brief responding to the UST’s comment on the Fee Application, it is very clear that Stuart sincerely fails to perceive the presence of a conflict. But his belief that there is not a conflict is not a defense to his rule violation. Local Rule 2014.1 expressly requires disclosure of additional material information relating to the employment including not only actual conflicts, but also potential conflicts.

³¹ [Doc. 669, p. 4.](#)

as counsel for the defendants in the two Adversary Proceedings because of the conflict.

E. The Court declines to approve the Fee Application for reasons other than conflict of interest.

The Fee Application cannot be approved as submitted. The Court, despite its years of experience in reviewing billing statement for the purpose of determining if the compensation requested is within standards of the Code, cannot decipher the statements attached to the Fee Application, which include multiple billing statements, expense ledgers, and a single trust account statement. A revised fee application should be filed detailing the attorneys' fees and expenses incurred together with any payments applied. The revised statement should cover only the fees and expenses incurred after February 12, 2020, the petition date. Compensation for services preformed and expenses incurred prepetition should be sought through the claims process, not an application for compensation as special counsel.

III. Conclusion

Although the Court finds that Stuart has a conflict of interest and did not timely report the changed circumstances as required by the Rule 20014(a) and Local Rule 2014.1, fees are not disallowed for this reasons because the conflict became manifest after the Fee Application was filed.

Nevertheless, the Court does not approve the Fee Application as filed and directs that a revised fee application be filed. In addition, the Court directs that Stuart resolve the current conflict of interest by withdrawing as counsel for Rojana Enterprises, Inc. in the Adversary Proceedings.

It is so ordered.

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