



**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA**

801 N. Florida Ave., Suite 954  
Tampa, Florida 33602

FROM: Chambers of the Honorable Roberta A. Colton  
TO: Chapter 7 Trustees and Attorneys Representing Chapter 7 Trustees in  
Consumer Protection Cases.  
RE: New Procedure for Retention of Special Counsel, Effective Date: APRIL 15, 2019.  
DATE: March 22, 2019

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**PROCEDURES FOR RETENTION OF SPECIAL COUNSEL  
IN CONSUMER PROTECTION CASES<sup>1</sup> — EFFECTIVE APRIL 15, 2019**

To better administer the large number of Consumer Protection Cases filed with the court, Judge Colton has determined that additional due diligence at the front end of a case will be required for approval of a retention application. *See generally In re Gonzalez*, Case No. 8:12-bk-19213-RCT (Doc. 359). These new procedures become effective April 15, 2019.

An attorney seeking to be retained to represent a Chapter 7 Trustee for a Consumer Protection Case will be required to declare that he or she has listened to the debtor's recorded 341 meeting<sup>2</sup> and has performed some additional investigation before seeking to be retained. This additional investigation may be but is not limited to: (i) an interview with the debtor(s); (ii) a letter to the creditor from the Chapter 7 Trustee seeking call logs or other records that has gone unanswered for 14 days; (iii) a review of the debtor's telephone records; or (iv) some other form of due diligence. If time does not permit additional diligence, for example due to the impending expiration of the statute of limitations, the attorney may so indicate. If the nature of the additional diligence is protected by work product privilege, special counsel also may so indicate and not disclose the nature of the diligence.

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<sup>1</sup> “Consumer Protection Cases” are those cases filed under the following (and similar) federal and state statutes:

- Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*
- Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*
- Florida Consumer Collection Practices Act (“FCCPA”), Fla. Stat. § 559.55 *et seq.*
- Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. §§ 501.201–501.213.

<sup>2</sup> Alternatively, the attorney may review a written transcript.

This declaration may be included in the affidavit of disinterestedness required under Fed. R. Bankr. P. 2014(a) or it may be in a separate document. The failure to include this declaration will result in denial of the application to employ special counsel, without prejudice.

Because this additional investigation necessarily will be done before the application for employment is filed, Judge Colton will entertain *nunc pro tunc* applications that reflect when the attorneys' work began; provided, the application references this retention procedure.

Provided the purpose of retention includes the pursuit of consumer protection claims, this procedure will apply, even if other causes of actions are also to be pursued. However, the additional disclosure requirements will not apply to the non-consumer protection claims.

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