

[Proposed New]
Rule 2014-1

EMPLOYMENT OF SPECIAL COUNSEL IN CONSUMER PROTECTION CASES

(a) ***Declaration.*** An attorney seeking to be retained to represent a Chapter 7 trustee for a Consumer Protection Case must declare that he or she has listened to the debtor's recorded § 341 meeting of creditors and has performed some additional investigation before seeking to be retained. The declaration may be included in the affidavit of disinterestedness required under Fed. R. Bankr. P. 2014(a) or in a separate document. The failure to include this declaration will result in disapproval of the application to employ special counsel, without prejudice. For purposes of this rule, a Consumer Protection Case includes claims filed under the following (and similar) federal and state statutes:

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

(b) ***Additional Investigation.*** For purposes of the above declaration, additional investigation may be but is not limited to: (1) an interview with the debtor(s); (2) a letter to the creditor from the Chapter 7 trustee seeking call logs or other records that has gone unanswered for 14 days; (3) a review of the debtor's telephone records; or (4) some other form of due diligence.

(c) ***Limited Exceptions.*** If time does not permit additional diligence, for example due to the impending expiration of the statute of limitations, the attorney may so indicate in the declaration. 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.

(d) ***Retroactive Appointment.*** Because the required additional investigation necessarily will be done before the application for employment is filed, the Court will entertain a retroactive application that reflects when the attorney's work began; provided, the application references this rule and is otherwise filed within a reasonable amount of time after work has begun.

(e) ***Multipurpose Appointments.*** If the purpose of retaining special counsel includes the pursuit of consumer protection claims, this rule will apply, even if other causes of actions are also to be pursued. However, the additional disclosure requirements do not apply to the non-consumer protection claims.