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(B) the sufficiency of the surety on such bond.

(c) A trustee is not liable personally or on such trustee's bond in favor of the United States for any penalty or forfeiture incurred by the debtor.

(d) A proceeding on a trustee's bond may not be commenced after two years after the date on which such trustee was discharged.

RULE REFERENCE: 2008, 2010, 7017

§ 323. Role and capacity of trustee

(a) The trustee in a case under this title is the representative of the estate.

(b) The trustee in a case under this title has capacity to sue and be sued.

First Circuit Annotations

Liston v. Gottsegen (In re Mi-Lor Corp.), 348 F.3d 294 (1st Cir. 2003)(DIP may commence action without court approval, including one against its principals for self-dealing; chapter 11 plan creditors' trust had standing, through its trustees, to continue such an adversary proceeding).

LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.), 196 F.3d 1 (1st Cir. 1999)(prior approval by the bankruptcy court is not a prerequisite for filing a creditor action against the trustee in that court).

Second Circuit Annotations

Rooney v. Thorson (In re Dawnwood Properties/78), 209 F.3d 114 (2d Cir. 2000)(only chapter 11 trustee had standing to bring contract and malpractice lawsuit on behalf of debtor against architectural firm).

Olick v. Parker & Parsley Petroleum Co., 145 F.2d 513 (2d Cir. 1998)(unlike chapter 7, a chapter 13 debtor has standing to litigate causes of action that are not part of the title 11 case without joinder of the trustee).

Third Circuit Annotations

Official Comm. Of Unsecured Creditors v. R.F. Lafferty & Co., 267 F.3d 340 (3d Cir. 2001)(the committee, standing in the shoes of the debtor, was not allowed to pursue PA cause of action based on "deepening insolvency" due to the defense of in pari delicto, which would have precluded the debtor from bringing the action).

Fourth Circuit Annotations

Detrick v. Panalpina, Inc., 108 F.3d 529 (4th Cir. 1997)(chapter 7 trustee alone has standing to raise issues before the bankruptcy court and to prosecute appeals; trustee was allowed to be substituted in appeal despite not having been substituted at trial level).

Richman v. First Woman's Bank (In re Richman), 104 F.3d 654 (4th Cir. 1997)("party in interest," as that term is used in 1109(b), must still formally intervene to participate in an adversary proceeding).

RULE REFERENCE: 6009

§ 324. Removal of trustee or examiner

(a) The court, after notice and a hearing, may remove a trustee, other than the United States trustee, or an examiner, for cause.

(b) Whenever the court removes a trustee or examiner under subsection (a) in a case under this title, such trustee or examiner shall thereby be removed in all other cases under this title in which such trustee or examiner is then serving unless the court orders otherwise.

RULE REFERENCE: 2012

§ **325. Effect of vacancy**

A vacancy in the office of trustee during a case does not abate any pending action or proceeding, and the successor trustee shall be substituted as a party in such action or proceeding.
 RULE REFERENCE: 2012

§ **326. Limitation on compensation of trustee**

(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

(b) In a case under chapter 12 or 13 of this title, the court may not allow compensation for services or reimbursement of expenses of the United States trustee or of a standing trustee appointed under section 586(b) of title 28, but may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1202(a) or 1302(a) of this title for the trustee's services, payable after the trustee renders such services, not to exceed five percent upon all payments under the plan.

(c) If more than one person serves as trustee in the case, the aggregate compensation of such persons for such service may not exceed the maximum compensation prescribed for a single trustee by subsection (a) or (b) of this section, as the case may be.

(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under 328(c) of this title or, with knowledge of such facts, employed a professional person under section 327 of this title.

Third Circuit Annotations

Staiano v. Cain (In re Lan Assocs. XI, L.P.), 192 F.3d 109 (3d Cir. 1999)(value of credit bid cannot be included in trustee's compensation; trustee eligible for fees under § 330).

§ **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, 12 or 11 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,

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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.

RULE REFERENCE: 2014, 5002, 6005

Supreme Court Annotations

Lamie v. U.S. Trustee, 124 S.Ct. 1023 (2004)(330(a)(1), as amended in 1994, does not authorize compensation to debtor's attorneys from estate unless they are employed in a chapter 7 by a trustee under 327 with court approval).

First Circuit Annotations

Miller v. United States Trustee (In re Indep. Eng'g Co.), 197 F.3d 13 (1st Cir. 1999)(professionals employed in bankruptcy cases are subject to particularly rigorous conflict-of-interest restraints, whereby they must not evidence even an appearance of impropriety).

In re Jarvis, 53 F.3d 416 (1st Cir. 1995)(court may grant late application to employ realtor, but only if it the employment satisfies the statutory requirements and the delay resulted from extraordinary circumstances; tardiness due to mere oversight is inadequate).

Rome v. Braunstein, 19 F.3d 54 (1st Cir. 1994)(court's affirmative duty regarding professional's conflicts contemplates an objective screening for even the appearance of impropriety, here representing insider and asset purchaser; sanctions include disqualification, denial of fees and/or disgorgement).

Casco N. Bank v. DN Assocs. (In re DN Assocs.), 3 F.3d 512 (1st Cir. 1993)(debtor's counsel was not acting adversely to the estate by presenting competing, albeit losing, plans in chapter 11, since plan included payment of 100% to unsecureds and provided beneficial competition).

Second Circuit Annotations

Vouzianas v. Ready & Pontisakos (In re Vouzianas), 259 F.3d 103 (2d Cir. 2001)(under section 327(a) a court may deny a trustee's designation of special counsel to pursue a personal injury claim in favor of lawyer who had worked on case prior to the bankruptcy).

Kittay v. Kornstein, 230 F.3d 531 (2d Cir. 2000)(NY bankruptcy court applies NY state professional responsibility rules on conflicts when appointing special counsel for debtor; each case must turn on its own circumstances).

Cushman & Wakefield of Conn., Inc. v. Keren Ltd. Partnership (In re Keren L.P.), 189 F.3d 86 (2d Cir. 1999)(nunc pro tunc approval of professional employment application requires approval had application been timely and delay resulted from extraordinary circumstances; professionals employed without court approval are not otherwise entitled to an administrative expense claim).

Bank Brussels Lambert v. Coan (In re Arochem Corp.), 176 F.3d 610 (2d Cir. 1999)(special counsel's retention under §327(e) requires that attorney hold no adverse interest relating to the services which are to be performed).

United States Trustee v. Bloom (In re Palm Coast, Matanza Shores L.P.), 101 F.3d 253 (2d Cir. 1996)(chapter 11 trustee could not hire his own real estate firm as consultant).

Third Circuit Annotations

Wasserman v. Bressman (In re Bressman), 327 F.3d 229 (3d Cir. 2003)(firms representing chapter 7 debtor in SEC or criminal proceedings were not subject to bankruptcy employment provisions when not benefitting nor charging the estate).

In re Pillowtex, Inc., 304 F.3d 246 (3d Cir. 2002)(abuse of discretion to approve debtor's counsel who has received potentially preferential transfer, despite promise to return money if determined to have received a preference and waive resulting claim).

United States Trustee v. First Jersey Securities (In re First Jersey Securities), 180 F.3d 504 (3d Cir.