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## THE IMPORTANCE OF DISINTERESTEDNESS: IDENTIFYING AND ADDRESSING CONFLICTS OF INTERESTS IN COMMERCIAL BANKRUPTCY CASES

*This article offers a summary of the conflict of interest and disclosure requirements for estate professionals under the Bankruptcy Code with a focus on commercial cases, provides an overview of recent court actions analyzed under Section 327 of the Bankruptcy Code, and offers guidance on best practices to identify and address conflicts of interest in your next commercial bankruptcy estate representation.*

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Bankruptcy attorneys are subject to numerous ethical rules related to retention, disclosures, and conflicts of interest along with specific retention requirements and limitations under the Bankruptcy Code. Upon securing a new potential engagement, firms and attorneys should be proactive in dealing with any retention issues in order to avoid costly sanctions, reputational damage, and potential fee disgorgement. The first section of this article summarizes applicable statutes and the Federal Rules of Bankruptcy Procedure — highlighting disclosure requirements for any estate professional. The second section provides a sampling of recent case law regarding conflicts of interest in commercial bankruptcy cases. The third section recommends the best practices for identifying potential conflicts of interest and ultimately addressing any such conflicts of interest as they arise.

### CONFLICTS OF INTEREST AND DISCLOSURE REQUIREMENTS

Section 327(a) of the Bankruptcy Code, among others, governs the retention of estate professionals, including legal counsel, investment bankers, and most financial consultants. The disclosure requirements of section 327(a) are continuous and courts have emphasized the importance of thorough, accurate, and ongoing disclosure of conflicts.<sup>1</sup> Under section 327(a), an estate may retain and compensate an attorney, accountant, or other professional so long as such professional does “not hold or represent an interest

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<sup>1</sup> *In re Biddle*, 2012 WL 6093926, at \*3-5 (Bankr. D. S.C. Dec. 6, 2012); *KLG Gates LLP v. Brown*, 506 B.R. 177, 192 (E.D.N.Y. 2014).

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