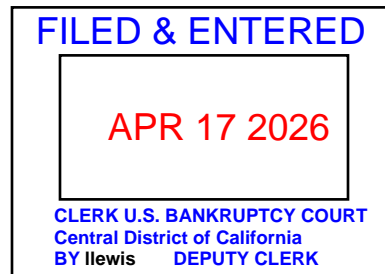


1 Byron Z. Moldo (CA SBN 109652)
bmoldo@ecjlaw.com
2 Shantal Malmed (CA SBN 351496)
smalmed@ecjlaw.com
3 **ERVIN COHEN & JESSUP LLP**
9401 Wilshire Boulevard, Twelfth Floor
4 Beverly Hills, California 90212-2974
Telephone: (310) 273-6333
5 Facsimile: (310) 859-2325



6 Proposed Special Litigation Counsel for Debtor
and Debtor-in-Possession Georgia K. Bode

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

ERVIN COHEN & JESSUP^{LLP}

11 In re

12 Georgia K. Bode,

13 Debtor and Debtor-in-
14 Possession.

Case No. 2:24-bk-19904-NB

The Hon. Neil W. Bason

Chapter 11

ORDER APPROVING SETTING
APPLICATION OF DEBTOR AND
DEBTOR-IN-POSSESSION FOR
AUTHORITY TO EMPLOY ERVIN
COHEN & JESSUP LLP AS SPECIAL
LITIGATION COUNSEL [Dkt. No. 171]
FOR HEARING

[Application filed pursuant to Local
Bankruptcy Rule 9013-1(o)]

Hearing:

Date: April 21, 2026

Time: 2:00 p.m.

Place: Courtroom 1545

255 E. Temple Street

Los Angeles, CA 90012

(or via Zoomgov per posted procedures)

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1 It is hereby ~~ORDERED~~ that The Court has reviewed the Application of Debtor and Debtor-
2 in-Possession for Authority to Employ Ervin Cohen & Jessup LLP As Special Litigation Counsel
3 (Dkt. No. 171) (the “Application”) is approved. The Application seeks to employ Ervin Cohen &
4 Jessup LLP (“Proposed Special Counsel”) as special litigation counsel to advise and assist Debtor
5 with all legal proceedings relating to her exempt property (a) pursuant to 11 U.S.C. § 327 and
6 (b) with compensation solely out of property of the estate under 11 U.S.C. §§ 330-31. See App. at
7 8:22-9:4 and 10:8-10.

8 **(a) Whether there is a case or controversy before this Court, and related issues**
9 Debtor has stated, and this Court’s review of the docket confirms, that the period of time
10 for any objections to employment has expired without any objection. See Decl. (dkt. 198). So
11 arguably there is no controversy for this Court to address.

12 Nevertheless, this Court has an independent duty to consider whether it has jurisdiction
13 and authority. In this context, that includes whether this Court has the power to authorize
14 employment under § 327 and to review compensation under §§ 330-31, or if instead some other
15 provisions of the Bankruptcy Code and Rules govern. See generally, e.g., In re AWTR Liquidation
16 Inc., 547 B.R. 831, 833 (Bankr. C.D. Cal. 2016) (duty to examine jurisdiction and authority).

17 This Court notes that these issues have arisen previously in this case, although this Court
18 has not yet had to decide them. Specifically, in connection with the employment of prior special
19 counsel on exemption issues, the question was raised about whether employment or compensation
20 were subject to 11 U.S.C. § 327-330 or instead § 329, and associated Rules. See OKeefe &
21 Assocs. Empl. App. (dkt. 75, the “OKeefe Empl. App.”) nn. 1-3 (at pp. 2-3) & p. 8:1-28.

22 This Court did not need to, and did not, decide the issues at that time because (i) the
23 OKeefe firm agreed that it would only be compensated out of exempt assets, (ii) it agreed that this
24 Court would review its fees, (iii) it represented that it was being employed solely on the exemption
25 issues, and was disinterested in any other respects, and (iv) the issues had not been fully briefed.
26 See OKeefe Empl. App. (dkt. 75) pp. 2:5-6, pp. 2:19-3:3, and p. 8:25-27 (“the Firm ... will not be
27 paid from the property of the bankruptcy estate”; fees subject to review; etc.); and see Order
28 Authorizing Empl. (dkt. 83, the “OKeefe Empl. Order”) (taking no position on whether

1 application was granted under § 327 or § 329 etc.).

2 But these issues have now come to a head in connection with the OKeefe firm’s
3 application for compensation. There is a pending objection to payment of its fees out of any assets
4 of the bankruptcy estate, which is scheduled to be heard at the same date and time as set forth
5 above in the caption. See Obj. (dkt. 193).

6 In addition, unlike the OKeefe firm’s application which stated that it “will not be paid from
7 the property of the bankruptcy estate” (dkt. 75, p. 2:6), the Application to employ new Proposed
8 Special Counsel does seek payment out of assets of the estate. Therefore, this Court is setting this
9 matter for a preliminary hearing as set forth in the caption to address the issues described below.
10 No briefing is either invited or permitted prior to the hearing, and all rights are reserved to request
11 at the hearing that this Court set a briefing schedule or any other procedures if appropriate.

12 **(b) Employment by the estate, or by Debtor**

13 The tentative ruling is (i) that employment by the bankruptcy estate under § 327 is limited
14 to professionals who do not represent interests “adverse to the estate” with respect to the matter on
15 which the attorney is to be employed, and (ii) that, at least in the circumstances of this case, the
16 role of Proposed Special Counsel of advocating for exempting very substantial amounts of
17 property from the estate is “adverse to the estate,” even on the limited matter on which counsel is
18 proposed to be engaged. See 11 U.S.C. § 327; OKeefe Empl. App. (dkt. 75) p. 2 n. 1 (citing
19 authorities for proposition that retention of counsel defending exemptions must be reviewed under
20 § 329 not § 327). Cf. In re Fondiller, 15 B.R. 890, 892 (9th Cir. BAP 1981) (for any proposed
21 special counsel – even those not eligible for employment under § 327(e) – “disinterestedness”
22 means attorney must not represent adverse interest “relating to the services which are to be
23 performed by that attorney”).

24 The tentative ruling is that, as has been suggested previously by the OKeefe firm, any
25 proposed employment must be by Debtor in her individual capacity, rather than by the bankruptcy
26 estate, and any employment must be reviewed under § 329 and associated Rules rather than
27 authorized under § 327. See OKeefe & Assocs. Empl. App. (dkt. 75) nn. 1-3 (at pp. 2-3) & p. 8:1-
28 28. Cf. Order Authorizing Empl. (dkt. 83) (approving employment but taking no position whether

1 § 327 or § 329 governed employment). See also Rules 2016, 2017 (Fed. R. Bankr. P.).

2 That said – even if employment is not under § 327 or any of the other statutory provisions
3 referenced in Rule 2014 (Fed. R. Bankr. P.) – the tentative ruling is that this Court still has
4 discretion to require the disclosure of all “connections” required by Rule 2014, in furtherance of
5 this Court’s scrutiny of Debtor’s retention and payment of any proposed special counsel under
6 § 329 and Rules 2016 and 2017. Accordingly, the tentative ruling is to require Proposed Special
7 Counsel to file Local Form F 2014-1.

8 **(c) Compensation by the estate, or by Debtor**

9 Alternatively, even if employment were to be authorized under § 327, the allowance of
10 estate professional fees would be subject to the requirements of 11 U.S.C. § 330(a), and the
11 tentative ruling is that Proposed Special Counsel could not be compensated if § 330(a) were to
12 apply. This Court “shall not” allow compensation for services that were not reasonably likely to
13 “benefit” the “estate” or else necessary to administration of estate. 11 U.S.C. § 330(a)(4)(A)(ii).

14 Courts have held that services rendered in defending exemptions do not benefit the estate.
15 See *In re Hanson*, 172 B.R. 67, 70-73 (9th Cir. BAP 1994) (chapter 7 debtor’s attorney could not
16 be compensated out of estate funds for defending exemptions because “in order to be compensable
17 from estate funds, services rendered by the debtor's attorney must benefit the estate”) (citations
18 omitted); *In re De La Rosa*, 91 B.R. 920, 922 (Bankr. S.D. Cal. 1988) (same); *In re Rhoten*, 44
19 B.R. 741, 743 (Bankr. M.D. Tenn. 1984) (same); *In re Howerton*, 23 B.R. 58, 59 (Bankr. N.D.
20 Tex. 1982) (same).

21 Although less frequently argued, courts have also rejected the assertion that litigating the
22 defense of exemptions is “necessary” to the administration of the estate. See, e.g., *Hanson*, 172
23 B.R. 67, 73.

24 The foregoing decisions arose outside of chapter 11, but the tentative ruling is that the
25 same principles apply to chapter 11 cases. “[I]n an individual Chapter 11 case, the attorney
26 retained as counsel for the debtor is not entitled to be compensated by the estate for time spent
27 dealing with exempt property, as such services would not provide benefit to the estate.” See *In re*
28 *Paterno*, 2014 WL 4929106, at *2 (Bankr. M.D.N.C. Sept. 30, 2014).

1 Therefore, the tentative ruling is that any compensation for defending Debtor’s claimed
2 exemptions would have to come out of property that is not property of the estate, such as property
3 that is determined to be exempt. See Hanson, 172 B.R. 67, 73 (Bankruptcy Code “sets aside
4 resources that a debtor may devote to his or her defense [of claimed exemptions], including
5 exempt assets ...”) (citation and internal quotation marks omitted). See also Okeefe & Assocs.
6 Empl. App. (dkt. 75) nn. 1-3 (at pp. 2-3) & p. 8:1-28 (review of compensation under § 329(b) and
7 Rule 2016(b)(2)). Cf. Order Authorizing Empl. (dkt. 83) (approving employment but taking no
8 position whether § 330-31 or § 329 and Rule 2016 governed review of fees). See also Rule 2017
9 (Fed. R. Bankr. P.).

10 **(d) Limitations on this Court’s tentative rulings**

11 This Court is not suggesting that in a run-of-the-mill case under chapter 11 or 13 a debtor’s
12 attorney would be unable to receive reasonable compensation out of the bankruptcy estate (i) for
13 preparing Bankruptcy Schedule C (exemptions), which presumably is a necessary part of
14 administering the bankruptcy estate, and probably (ii) for some other types of services associated
15 with exemptions. But at least in a case such as this one, in which the exemption disputes involve
16 hundreds of thousands if not millions of dollars, and in which the property claimed as exempt
17 comprises a very substantial part of all of the assets of the estate, the tentative ruling is that (i) it is
18 the debtor, not the estate, who must employ counsel to litigate the exemption issues; (ii) such
19 counsel must not be the same as general bankruptcy counsel; (iii) compensation must be out of
20 property that is not property of the estate; and (iv) the employment and payment of special counsel
21 are reviewable under § 329 and Rules 2016 and 2017, not § 327-331.

22 It bears repeating that these are only tentative rulings. The point is only to assist all parties
23 in interest to focus on the issues of concern to this Court, and to apprise this Court of any issues or
24 authorities that this Court might have overlooked. All rights are reserved.

25 **(e) Recognition of the conditions stated by Proposed Special Counsel and Debtor**

26 This Court recognizes that, as would be expected, the Application states that Proposed
27 Special Counsel will not be obligated to provide its services if its employment is not approved on
28 the terms requested. See App. (dkt. 171) p. 10:6-7. But this Court also recognizes that the

1 proposed high hourly rates of Proposed Special Counsel might offset any anticipated delays or
2 perceived risks.

3 This Court also recognizes that Debtor might be limited in her willingness or ability to pay
4 any proposed special counsel, either currently or in future, out of assets that she claims as exempt.
5 But Debtor will have to decide soon whether to proceed within whatever limits this Court is
6 persuaded it must apply. This case has already taken a substantial amount of time and expenditure
7 of legal fees, and this Court does not have unlimited willingness to defer the exemption litigation.

8 **(f) Conclusion**

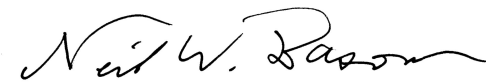
9 Based on the foregoing and good cause appearing, it is hereby ORDERED as follows:

10 1. A hearing on the Application will take place at the time and place set forth in the
11 caption above to address the matters set forth herein and whether or not to approve the Application
12 under § 330, § 329, or otherwise. No briefing is invited or permitted prior to that hearing, but all
13 rights are reserved to request that this Court set a briefing schedule or to request any other
14 procedures.

15 2. If Proposed Special Counsel wishes to continue to pursue employment, it is
16 directed at an appropriate time (i.e., either before the hearing or else after the hearing but before
17 lodging any proposed order regarding its employment) to file Local Form F.
18 2014.1.STMT.DISINTEREST.PROF, which is required by the “Procedures of Judge Bason”
19 (available at <https://www.cacb.uscourts.gov>).

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23 Date: April 17, 2026



Neil W. Bason
United States Bankruptcy Judge