

attorneys that "do not hold or represent an interest adverse to the estate and that are disinterested persons." Although framed conjunctively, the conditions are applied disjunctively; failure to meet either will result in disqualification. See In re Leisure Dynamics, Inc., 32 B.R. 753, 754 (Bankr. D. Minn. 1983). Section 101(13)(A) and (E) defines a "disinterested person" as a person that is not a creditor and that does not have an interest materially adverse to the interest of the estate. The Eighth Circuit Court of Appeals has held that an attorney that holds a mortgage on the debtor's real property to secure payment of prepetition and postpetition services is not disinterested because the attorney is a creditor and holds an interest adverse to the estate. In re Pierce, 809 F.2d 1356, 1362-63 (8th Cir. 1987); see also In re Martin, 59 B.R. 140, 143 (Bankr. D. Maine 1986). Accordingly, the attorney was subject to disqualification under section 327(a) and the court denied compensation for services under section 328(c). In re Pierce, 809 F.2d at 1362-63.

The affidavit of attorney Wynia as well as the debtor's schedules reveal that Mr. Wynia is a prepetition creditor of the debtor. Therefore, Mr. Wynia is disqualified from representation of the debtor in this case. The affidavit of attorney Mallaney, however, does not indicate the existence of such conflict. Accordingly, the debtor's application to employ attorneys will be granted in part and denied in part.

THEREFORE, based on the foregoing analysis, the application to appoint Thomas C. Wynia to represent the debtor is hereby denied. The application to appoint Michael P. Mallaney to represent the debtor is hereby granted.

IT IS ORDERED that Michael P. Mallaney is appointed as attorney to represent the debtor and to perform such professional services as set out in the debtor's application at the hourly rate described therein with the final compensation to be approved by the court pursuant to 11 U.S.C. section 330.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE