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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

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U.S. BANKRUPTCY COURT  
DIST OF SOUTH CAROLINA

IN RE:

Daniel Graham Steyne,

C/A No. 97-07304-W

Adv. Pro. No. 97-80348-W

Debtor.

Joyce Linda Steyne,

Plaintiff,

v.

Daniel Graham Steyne,

JUDGMENT

Chapter 7

Defendant.

ENTERED  
FEB 19 1998

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the motion of the Plaintiff to be represented in this adversary proceeding by her brother, S. Kirk Murray, through a Power of Attorney pursuant to Rule 9010 of the Federal Rules of Bankruptcy Procedure is denied.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
February 17, 1998.

12

CERTIFICATE OF MAILING

The undersigned clerk (or deputy clerk) of the United States Bankruptcy Court for this district hereby certifies that a copy of the document on which this stamp appears was mailed on DEC 19 1998 to;

DEBTOR,

DEBTOR'S ATTY.

TRUSTEE

Deputy Clerk

*Joyce Steyne*

*Daniel Steyne*

*Judgment Index*

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IN RE:

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C/A No. 97-07304-W

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Debtor.

Joyce Linda Steyne,

Plaintiff,

v.

Daniel Graham Steyne,

Defendant.

ORDER

**ENTERED**

FEB 19 1998

Chapter 7

R. J. J.

THIS MATTER comes before the Court upon the motion of the Plaintiff to be represented in this adversary proceeding by her brother, S. Kirk Murray ("Mr. Murray"), through a Power of Attorney pursuant to Rule 9010 of the Federal Rules of Bankruptcy Procedure. Based upon the arguments of the Plaintiff and the Debtor, who also appeared *pro se*, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable by Rule 7052 of the Federal Rules of Bankruptcy Procedure.<sup>1</sup>

**FINDINGS OF FACT**

On November 24, 1997, the Plaintiff, Joyce Linda Steyne ("the Plaintiff" or "Ms. Steyne"), filed, *pro se*, her complaint with this Court captioned "Written Objections" seeking,

<sup>1</sup> Further references to the Federal Rules of Bankruptcy Procedure shall be by rule number only.

*JW* 187-

*inter alia*, the denial of discharge pursuant to 11 U.S.C. § 727 and the determination of dischargeability of a particular debt pursuant to 11 U.S.C. § 523 against her ex-husband, the Debtor, Daniel Graham Steyne ("the Debtor" or "Mr. Steyne").<sup>2</sup> The Debtor filed a timely *pro se* answer to the summons and complaint.

On January 20, 1998, this Court conducted a pre-trial conference at which time Ms. Steyne's brother, Mr. Murray, appeared with the Plaintiff and asked permission to represent the Plaintiff in this adversary proceeding. Mr. Murray is not a licensed attorney. In support of his position that he has the authority to represent the Plaintiff, Mr. Murray presented a duly witnessed and probated Power of Attorney signed by the Plaintiff. In this adversary proceeding, Mr. Murray has demonstrated to the Court that he intends to be the spokesman for Ms. Steyne, file pleadings on her behalf, conduct and participate in discovery, present evidence at trial and examine witnesses under oath. The Debtor objected to the representation of the Plaintiff by her brother.

### CONCLUSIONS OF LAW

Rule 9010 allows the representation of a creditor in a case under the Bankruptcy Code by an authorized agent, attorney in fact or proxy as long as those acts do not constitute the unauthorized practice of law.<sup>3</sup> Therefore the question before the Court is whether Mr. Murray's

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<sup>2</sup> Further reference to 11 U.S.C. § § 101, *et seq.*, shall be by section number only.

<sup>3</sup> Rule 9010 states in relevant part:

**(a) Authority to Act personally or by Attorney.** A debtor, creditor, equity security holder, indenture trustee, committee or any other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent,



representation of Ms. Steyne in this adversary proceeding constitutes the practice of law.<sup>4</sup>

Whether an action constitutes the practice of law in a bankruptcy context is a question of federal law. State Unauthorized Practice of Law Committee v. Paul Mason and Associates, Inc., 46 F.3d 469 (5<sup>th</sup> Cir. 1995).<sup>5</sup> While a federal court must be able to determine who can assist in the furtherance of justice unencumbered by state licensing requirements, federal courts traditionally look to state law for assistance in determining what constitutes the practice of law. In re Bright, 171 B.R. 799 (Bkrtcy. E.D. Mich. 1994); In re Samuels, 176 B.R. 616 (Bkrtcy. M.D. Fla. 1994); Matchem v. Frank, 1993 WL 264691 (4<sup>th</sup> Cir. July 15, 1993)(Unpubl.).<sup>6</sup>

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attorney in fact, or proxy.

<sup>4</sup> The purpose behind prohibiting laymen from practicing law and restricting the practice to those qualified and authorized by the Supreme Court, is the protection of the public. There is a longstanding public policy of protecting the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control. (citation omitted.) In addition, attorneys are held to a higher standard than a mere businessman, which requires them to comply with certain ethical criteria and codes of conduct prescribed by the individual state bars, and more generally, by the American Bar Association.

In re Samuels, 176 B.R. 616, 621 (Bkrtcy. M.D. Fla. 1994).

<sup>5</sup> A bankruptcy court's power to regulate the conduct of attorneys extends to the conduct of non-attorneys who provide assistance to debtors. In re Gunn, 171 B.R. 517 (Bkrtcy. E.D. Pa. 1994). This power includes the ability to enjoin a non-attorney engaging in the practice of law and to require that monies received from a debtor be returned. O'Connell v. David, 35 B.R. 141 (Bkrtcy. E.D. Pa. 1993).

<sup>6</sup> The importance of state law on this subject arises from Congress' decision, generally, to leave the regulation and licensing of attorneys to the states. Leis v. Flynt, 439 U.S. 438, 99 S.Ct. 698 (1979).

South Carolina law defines the practice of law to include "the management of such actions and proceedings on behalf of clients before judges and courts." State v. Despain, 319 S.C. 317, 460 S.E.2d 576, 577 (1995) [quoting In re Duncan, 83 S.C. 186, 189, 65 S.E. 210, 211 (1909)]. Section 40-5-80 of South Carolina Code Annotated provides a limited exception to this rule allowing non-attorneys to represent others before any tribunal if (1) the tribunal approves of the representation and (2) the representative is not compensated for his services.<sup>7</sup> It is within the state tribunal's sound discretion, however, whether to allow such representation pursuant to the statute. State v. Robinson, 321 S.C. 286, 468 S.E. 2d 290 (1996). However, no federal law equivalent of § 40-5-80 exists to permit Mr. Murray to represent his sister in this manner before the Court.<sup>8</sup>

Rule 9010 prescribes the manner in which an interested party may appear in a bankruptcy case either through an attorney or through an agent. Since Mr. Murray appears to hold a properly

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<sup>7</sup> **§ 40-5-80. Citizens not prevented from appearing in person or for others without reward.**

This chapter shall not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires, or the cause of another, with leave of the court first had and obtained; *provided*, that he declare on oath, if required, that he neither has accepted nor will accept or take any fee, gratuity, or reward on account of such prosecution or defense or for any other matter relating to the cause.

On September 21, 1992, the South Carolina Supreme Court issued an opinion declining to accept a subcommittee's proposed rules governing the unauthorized practice of law. Instead, the court decided to address the issue of the unauthorized practice of law on a case-by-case basis. In this opinion, the South Carolina Supreme Court discusses § 40-5-80. In re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar, 309 S.C. 304, 422 S.E. 2d 123 (1992).

<sup>8</sup> See In re Moody, 105 B.R. 368 (S.D. Tex. 1989) (party has no constitutional right in federal court to representation by a non-attorney).



probated power of attorney, he may in some respects act for his sister in this bankruptcy case, however, he may not do anything for his sister that would constitute the practice of law in the bankruptcy court.

The practice of law has been broadly defined by one bankruptcy court that has examined the issue as follows:

The question of what constitutes the practice of law is a complex one that many courts have pondered. Practicing law involves much more than merely appearing in front of a court. The bulk of a lawyer's time is spent in researching problems and advising her clients as to her opinion. There is no precise definition of what is and is not the practice of law, but some courts have tried to devise one. A good definition is set forth in Howton v. Morrow, 269 Ky. 1, 106 S.W.2d 81 (Ct.App.1937) which says:

The practice of law is not limited to the conduct of cases in Court. According to generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before Judges and Courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds and, in general, all advice to clients and all action taken for them in matters connected with the law and an "attorney at law" is one who engages in any of these branches of the practice of law.

In State ex rel. The Florida Bar v. Sperry, 140 So.2d 587, 591 (Fla.1962), rev'd 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963), the Supreme Court of Florida formulated its definition of what constitutes the practice of law:

... [I]f the giving of such advice and performance of such services affects important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such



services by one for another as a course of conduct constitute the practice of law.

Samuels, supra, at 622.

Other courts have more specifically defined what actions constitute the practice of law by non-attorneys in the bankruptcy court. The bankruptcy court for the Eastern District of Michigan has compiled a list which includes the following:

- (1) Determining when to file bankruptcy cases.
  - (2) Deciding whether to file a Chapter 7 or a Chapter 13.
  - (3) Filling out or assisting debtors in completing forms or schedules.
  - (4) Solicitation of financial information and preparation of schedules.
  - (5) Providing clients with definitions of legal terms of art.
  - (6) Advising debtors which exemptions they should claim.
  - (7) Preparing motions and answers to motions.
  - (8) Advising debtors on dischargeability issues.
  - (9) Advising debtors concerning the automatic stay.
  - (10) Habitual drafting of legal instruments for hire.
  - (11) Correcting "errors" or omissions on bankruptcy forms.
  - (12) Advising clients as to various remedies and procedures available in the bankruptcy system.
- (citations in text omitted)

Matter of Bright, 171 B.R. 799, 802 (Bkrtcy. E.D. Mich. 1994).

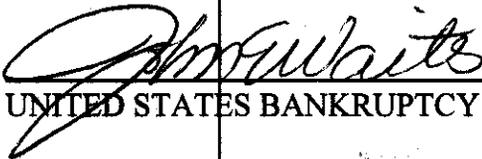
Other actions found by courts to constitute the practice of law by non-attorneys involve: appearing in court, personally or in writing, for a "customer," In re Stacy, 193 B.R. 31, 41 (Bkrtcy. D. Oregon 1996); accompanying a debtor to the courthouse for the purpose of providing advice and assistance, In re Martin, 40 B.R. 365 (Bkrtcy. N.D. Ga. 1984); and, paraphrasing or explaining bankruptcy concepts in order to solicit information from a debtor to use in a



bankruptcy computer forms program Samuels, supra, at 621.<sup>9</sup>

Unquestionably, Mr. Murray's intended representation of his sister in this adversary proceeding which includes advising her on bankruptcy law and procedure and actually representing her position before the Court by argument and the presentation of evidence in this adversary proceeding, would require him to perform actions which constitute the practice of bankruptcy law. Rule 9010 specifically prohibits this conduct. Therefore, the motion of the Plaintiff to be represented in this adversary proceeding by her brother, S. Kirk Murray, through a Power of Attorney pursuant to Rule 9010 is denied. The Plaintiff may proceed *pro se* or may retain an attorney to represent her interests in this matter.

**AND IT IS SO ORDERED**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
February 17, 1998.

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<sup>9</sup> The skill of a non-attorney is irrelevant to a determination of whether a particular act constitutes the practice of law. The practice of law is limited strictly to licensed practitioners. In re Skobinsky, 167 B.R. 45, 51 (E.D. Pa. 1994). Likewise, neither a disclaimer of legal advice nor the correctness of the advice is relevant to this determination. In re Herren, 138 B.R. 989, 995, 996 (Bkrty. D. Wyo. 1992).



**CERTIFICATE OF MAILING**

The undersigned clerk (or deputy clerk) of the United States Bankruptcy Court for this district hereby certifies that a copy of the document on which this stamp appears was mailed on FEB 7 1998 to:

DEBTOR, *Joyce Steynre*

DEBTOR'S ATTY. *Daniel Steynre*

TRUSTEE *Judgment*

Deputy Clerk *Index*