

**ENTERED**

SEP 5 2006

IN THE UNITED STATES BANKRUPTCY COURT

**K.R.W.**

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Gary Fred Henderson and Dana Lucinda  
Henderson,

Debtors.

C/A No. 05-14925-JW

Chapter 7

IN RE:

James Dwight Henson and Kathryn Gregg  
Henson,

Debtors.

C/A No. 05-14913-JW

Chapter 7

**FILED**  
O'clock & \_\_\_\_\_ M  
SEP 5 2006  
United States Bankruptcy Court  
Columbia, South Carolina (2)

**JUDGMENT**

Based upon the Findings of Fact and Conclusions of Law recited in the attached Order of the Court, the Motion to Disgorge Attorney's Fees filed by Gary Fred Henderson and Dana Lucinda Henderson is granted and the Motion to Disgorge Attorney's Fees filed by James Dwight Henson and Kathryn Gregg Henson is granted. Within five days from the entry of the attached Order, Edwards shall disgorge attorney's fees consistent with the attached Order. The Rule to Show cause is continued until September 21, 2006 at 9:00 a.m. and the Court retains jurisdiction for further consideration of sanctions, discipline, and other relief against Edwards with regard to these cases and all other cases filed by Edwards in this Court that were dismissed for a failure to file required documents or Edwards' failure to competently represent his clients.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
September 5, 2006

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**ORDER DISGORGING ATTORNEY'S FEES**

This matter comes before the Court on a Rule to Show Cause issued by the Court in each of these cases based upon a Motion to Disgorge Attorney's Fees filed by Gary Fred Henderson and Dana Lucinda Henderson (the "Hendersons") and Motion to Disgorge Attorney's Fees filed by James Dwight Henson and Kathryn Gregg Henson (the "Hensons") (collectively referred to as "Debtors"). The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. At issue is whether attorney Blaine T. Edwards ("Edwards") should disgorge attorney's fees paid by Debtors in these cases and whether the Court should sanction Edwards, including suspending Edwards from practice before this Court.<sup>1</sup>

Prior to October 17, 2006, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Reform Act"), Debtors retained Edwards to prepare and

<sup>1</sup> Edwards was suspended from the practice of law by the Supreme Court of South Carolina on August 21, 2005. According to the District Court's revised local rules, Edwards is also immediately suspended from practice before that court. See Local Rule 83.I.08, DSC (RDE Rule II(G)). Edwards' suspension before the District Court causes him to be suspended from practice before this Court. See Local Rule 83.IX.02. The Court does not conclude that suspension from the practice of law relieves an attorney of their duties of professional responsibility. See SC LBR 9010-1(d); In re Grimsley, C/A No. 04-02072-W, slip op. (Bankr. D.S.C. May 26, 2006)

file documents necessary for Debtors to commence and complete their respective cases under chapter 7 of the Bankruptcy Code. Edwards filed the respective cases for Debtors on October 16, 2005. In each case, Edwards moved to extend time to file schedules and a statement of financial affairs. The Court granted the requests and provided Debtors with additional time to file documents required by Title 11 and this Court's local rules.<sup>2</sup> These documents were not timely filed and each case was dismissed on November 16, 2005. On behalf of Debtors, Edwards moved to reconsider the dismissal of each case on grounds that the failure to file the required documents was due to no fault of Debtors but due to "ongoing technical difficulties and delays" associated with electronic filing. Edwards further represented that he would file the missing schedules and statements within two days of the reinstatement of each case. On November 22, 2005, the Court granted the motions to reconsider and provided Edwards an additional six days to file the required schedules and statements. Again, these documents were not filed and each case was dismissed on November 29, 2005.<sup>3</sup> Debtors moved in their respective cases to disgorge fees paid to Edwards prior to their petition date.

Edwards owes a duty to provide competent and diligent representation to Debtors. See In re Feagins, C/A No. 05-08208-W, slip op. at 5 (Bankr. D.S.C. Jan. 18, 2006). Edwards has failed Debtors in this regard, as admitted in the motions to reconsider in which he acknowledged that the delay in filing the necessary documents was due to no fault of Debtors. See id. at 5-6 (finding an attorney owes a duty to timely file necessary documents for a debtor). Whether the failure to file documents was due to technical difficulties, inexperience, or due to the case load which Edwards chose to assume, Edwards is nevertheless responsible for the dismissal of these

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<sup>2</sup> The undersigned was assigned these cases on March 1, 2006 upon the retirement of a former bankruptcy judge.

<sup>3</sup> Though not taken into consideration in this Order, this sequence of events is common to many cases filed by Edwards on October 16, 2005.

cases and the potential prejudice that these Debtors may suffer as a result of Edwards' delay and inaction.<sup>4</sup>

Pursuant to 11 U.S.C. § 105, this Court has the inherent authority to regulate litigants that appear in this Court. See In re Grimsley, C/A No. 04-02072-W, slip op. 15 (Bankr. D.S.C. May 26, 2006). The Court also has the duty and authority to review fees received by debtor's attorneys. See 11 U.S.C. § 329; In re Stamper, C/A No. 02-09812, slip op. at 8-9 (Bankr. D.S.C. Dec. 19, 2005). In these cases, Edwards services as an attorney added no value to Debtors' cases. Many *pro se* debtors in this Court obtain the same result for themselves that Edwards obtained for these Debtors- dismissal for failure to follow basic rules. Edwards merely filed and served a petition in each case. Though this function was necessary to commence these cases, it is elementary enough that Debtors could have filed this document *pro se* and retained the substantial fees that they paid to Edwards prior to the commencement of their cases. These Debtors did not receive the relief they sought under Title 11 and are may be irreparably harmed as they are now faced with the prospect of filing a case under the Reform Act, provisions of which may disqualify Debtors from relief under chapter 7 and preclude certain protections provided to debtors prior to the Reform Act.<sup>5</sup> See e.g., 11 U.S.C. §§ 362(c)(3)(A) and 707(b). The Court finds that any fees received by Edwards exceed the reasonable value of services he provided to Debtors.<sup>6</sup>

Problematic in the assessment of these cases is that Edwards also failed to file statements of compensation required by 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016, statements due fifteen days after the commencement of these cases. The Hendersons allege that they paid Edwards \$1,500.00 pre-petition to file their case. The Hensons allege that they paid Edwards

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<sup>4</sup> It appears that the Hensons' residence was foreclosed upon after the dismissal of their case.

<sup>5</sup> Nothing in this Order shall prohibit Debtors from filing a motion to reconsider the dismissal of their cases.

<sup>6</sup> Edwards' fee agreement with the Hensons indicated that the Hensons are not entitled to a refund. This provision is clearly contrary to 11 U.S.C. § 329(b) and is therefore invalid as a matter of federal law.

\$2,209.00 to file their case. Based upon these statements and Edwards failure to offer evidence to the contrary,<sup>7</sup> the Court finds that Edwards shall disgorge attorney's fees in the amount of \$1,500.00 to the Hendersons within five (5) days of the entry of this Order. The Court finds that Edwards shall disgorge attorney's fees in the amount of \$2,209.00 to the Hensons within five (5) days of the entry of this Order. It appears that Edwards may be due money from the chapter 13 trustees in this District based upon claims for attorney's fees in certain pending chapter 13 cases. The Court orders any funds due Edwards be held by every trustee in this District and not distributed until further order of the Court. All trustees shall advise the Court and Edwards of all amounts due Edwards within ten (10) days of the entry of this Order. The Clerk of Court shall serve a copy of this Order upon all trustees within this District, Edwards, Debtors, the United States Trustee, and the South Carolina Office of Disciplinary Counsel.

The Court continues the Rule to Show Cause until September 21, 2006 at 9:00 a.m. and retains jurisdiction for further consideration of sanctions, discipline, and other relief against Edwards with regard to these cases and all other cases filed by Edwards in this Court that were dismissed for a failure to file required documents or Edwards' failure to competently represent his clients.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
September 5, 2006

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<sup>7</sup> Edwards moved to continue the Rule to Show Cause on grounds that he was not in possession of his files as of August 28, 2006. Edwards nevertheless owed a duty under Title 11 and the Federal Rules of Bankruptcy Procedure to disclose the compensation that he received before these cases were dismissed, therefore Edwards cannot now complain that he lacks information about the fees he received in these cases, when the lack of information is due to Edwards' failure to make the required record in these cases.