UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 02-09812-W
Delores B. Stamper, Debtor.	**AMENDED JUDGMENT**[1] Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court sanctions Debtor's Counsel in the amount of $200.00, to be paid within ten (10) days of the entry of this Order. Counsel shall provide a written statement to each of her clients that despite any fee discussions or agreement terms to the contrary, Local Rule 9010-1(d) requires continued representation even without advance payment. This communication shall be completed within twenty (20) days in all cases which are pending, and Debtor's Counsel shall file an affidavit of compliance within two (2) days thereafter. Counsel, and the bar, are again placed on notice that counsel have an affirmative duty to advise their clients that the Local Rules of this Court require continued representation even if payment for additional services is not made in advance.

AND IT IS SO ORDERED.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 19, 2005

[1] This Judgment has been amended in light of entry of an Amended Order in this matter.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 02-09812-W
Delores B. Stamper, Debtor.	**AMENDED ORDER**[1] Chapter 13

This matter comes before the Court pursuant to its Rule to Show Cause requiring C. Jennalyn Dalrymple ("Debtor's Counsel" or "Counsel") to appear and show cause why sanctions should not be imposed for her failure to represent Delores B. Stamper ("Debtor") in Debtor's bankruptcy case pursuant to South Carolina Local Bankruptcy Rule 9010-1(d). A Return to Rule to Show Cause was filed on November 7, 2005. Based upon the record and the evidence presented, the Court makes the following Findings of Fact and Conclusions of Law.[2]

FINDINGS OF FACT

1. On August 19, 2002, Debtor filed a voluntary chapter 13 case with the assistance of and representation by C. Jennalyn Dalrymple. A Chapter 13 plan filed on August 19, 2002 was confirmed by Order of this Court on October 9, 2002. It appears Debtor has performed under the plan ("Confirmed Plan") since that date and Ms. Dalrymple remains her counsel of record in this case.

2. By letter to the Court dated October 20, 2005 and filed October 24, 2005, Debtor asserted a need to refinance her house to better her financial condition and in order to pay off her

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[1] At the request of Debtor's Counsel, this Order has been amended to mitigate the potential effect of the Order upon Counsel. Counsel has agreed to the terms of this amended Order as indicated by consent hereto. The Chapter 13 Trustee, as Trustee in this case as well as a party to the Debtor's Motion to Incur Debt, also consents to entry of this amended Order.

[2] To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

remaining obligations under the Confirmed Plan. In her letter, which the Court treated as a Motion to Incur Debt ("Motion"), Debtor indicated that Debtor's Counsel was requiring her to pay $450.00 in fees in advance of initiating Debtor's request to refinance. Debtor indicated that several attempts were made with Debtor's Counsel to obtain her assistance before Debtor sought *pro se* relief. The Motion indicated that Debtor did not have sufficient funds to make the advance payment but that she still needed the relief. As a result of Debtor's allegations, the Rule to Show Cause was issued.

3. On November 1, 2005, the Court received a letter from Debtor seeking to withdraw her Motion, citing a concern over having caused problems for her Counsel. The Court issued an Order supplementing the Rule to Show Cause, indicating that the matter needed further review and directing the appearance of Debtor and any attorney representing her.

4. On November 14, 2005, the Court received an additional letter from Debtor dated November 9, 2005. In the November 9, 2005 letter, Debtor indicated that she had previously sought withdrawal of her Motion because she felt frightened by the pending proceedings. She sought to reinstate her Motion in the November 9, 2005 letter and unequivocally stated that it was clear to her that Debtor's Counsel would not represent her with respect to the Motion unless she made a $450.00 advance fee payment. Debtor expressed an urgent need to refinance her home and improve her difficult financial position.

5. A hearing was held in this matter to determine the facts associated with the representation of Debtor in this case. Testifying at the hearing were Debtor, Debtor's Counsel, a paralegal for Counsel's firm, and the mortgage broker involved in the proposed loan to Debtor. The Chapter 13 Trustee also attended the hearing.

6. Based upon the testimony presented, it appears that Debtor placed two (2) direct phone calls to Counsel's firm seeking assistance in refinancing her home during her Chapter 13 case.

She was initially advised by a staff member that an advance fee of $450.00 would be required prior to representation. Knowing that she did not have an ability to pay, Debtor later called back and spoke with a paralegal and case manager at Debtor's firm.[3] Debtor again discussed her need to refinance, and it was reiterated to her that payment of $450.00 would be required in advance.[4] Debtor inquired as to whether payment of the fee through her loan closing would be an available option, but she was informed that it was not. Debtor apparently became upset during the telephone call.

7. The mortgage broker indicated that he had attempted to assist Debtor in obtaining representation with respect to the Motion. Following Debtor's phone calls, the mortgage broker also placed a telephone call to Counsel's firm. He was likewise informed that a $450.00 advance payment was required and that such fees could not be paid later through the loan closing. Understanding that she would receive no assistance without the advance payment, Debtor filed the Motion on her own behalf.[5]

8. Counsel's paralegal testified that to her knowledge, the firm requires advance payment in all such matters and that she is not permitted to make an exception to that requirement.

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[3] Although not entirely clear in Debtor's pleadings, Debtor indicated on the record of the hearing that during her first phone call to Counsel's firm she spoke with a young man that answers the phone and was told that a fee needed to be paid for additional representation. Debtor stated that she called back either later that day or the following day to inquire further. It was during this second phone call that Debtor spoke with Counsel's paralegal and was again told that she had to pay in advance before anything could be done.

[4] Debtor's Counsel testified that she charges $300.00 to file a motion to incur debt and an additional $150.00 fee to expedite the motion. Some testimony was presented that Debtor's Counsel's firm understood that the motion needed to be expedited due to the short term of the loan commitment; Debtor indicated that the urgency of the matter related to her approval based upon her credit score which could be negatively affected after a certain time period. In any event, in order to have a motion to incur debt filed and sought to be heard as soon as possible, it was expressed to Debtor by Counsel's firm that $450.00 was required in advance.

[5] Debtor further indicated at the hearing that she initially sought withdrawal of the Motion in her November 1, 2005 letter because she was intimidated by a letter sent to her from counsel retained by Ms. Dalrymple to respond to the Rule and did not want to cause trouble.

However, if she is advised by a debtor of the inability to pay, standard procedure would be for her to report such to Debtor's Counsel who could consider an exception to the policy. She further testified that in some previous instances when Counsel was informed that a debtor did not have an ability to pay, Debtor's Counsel would agree to provide representation and file a proof of claim for an additional fee to be paid later through a debtor's confirmed plan. Finally, Counsel's paralegal testified that she is not familiar with, nor has she ever been instructed concerning, this Court's Local Rule 9010-1(d) regarding representation.

9. Debtor's Counsel testified that had she known of Debtor's inability to pay the fee in advance, she would have nevertheless undertaken the representation, admitting that it is her responsibility under the Local Rule. She places the blame upon Debtor's failure to specifically disclose to her paralegal an inability to pay in advance and proposes that the matter be considered a misunderstanding. Counsel further indicated that, to her knowledge, her firm does not advise debtors nor disclose in writing the terms of SC LBR 9010-1(d) and Counsel's continuing duty to represent.

CONCLUSIONS OF LAW

South Carolina Local Bankruptcy Rule 9010-1(d) provides:

> **Extent of an Attorney's Duty to Represent.**
> Except as may be provided in an attorney's written agreement with the client concerning appeals and adversary proceedings, any attorney who files documents for or on behalf of a debtor or party in interest shall remain the responsible attorney of record for all purposes including the representation of the client at all hearings and in all matters that arise in conjunction with the case. Upon motion which details the reasons for the request for withdrawal and which details the portion of any retainer which as been earned, and after notice to the debtor, all creditors and parties in interest and a hearing, the court may permit an attorney to withdraw as attorney of record.

The local rule, or similar version, has been in place in this District since 1991, and is similar to the

representation requirements set forth in the local rules of many bankruptcy courts in the United States.[6] It clearly sets forth a requirement that upon the filing of a case by counsel on behalf of a debtor, the filing counsel remains the responsible attorney charged with representation of the debtor at all hearings and matters arising in the case.[7] Counsel, upon motion, may be excused from the responsibility only upon Court order allowing a withdrawal from representation.

Pleadings submitted on behalf of Debtor's Counsel by counsel representing her ("Defense Counsel") in response to the Rule to Show Cause appear to call into question the validity of SC LBR 9010-1(d).[8] Defense Counsel cites the Rules of Professional Conduct for South Carolina Lawyers, Rule 407 of the South Carolina Appellate Court Rules (the "Rules of Professional Conduct"), and the Local Rules of the United States District Court for the District of South Carolina (the "District Court"). Defense Counsel further argued at the hearing that Fed. R. Bankr. P. 2016 and the Disclosure of Compensation of Attorney for Debtor pursuant to 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b) (Official Form B 203) expressly contemplate the exclusion of services.

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[6] See, e.g., Northern District of Georgia (Local Rule 9010-4) (debtor's attorney shall represent debtor in all matters, including contested matters and adversary proceedings, unless withdrawal as counsel is approved by the court); Western District of North Carolina (Local Rule 2091-1) (debtor's attorney remains responsible attorney of record for all purposes for all matters in the case and conversion; relief from duty is only upon case closure or by order of the court); Middle District of North Carolina (Local Rule 2090-1) (debtor's attorney shall represent debtor in all matters, including contested matters and adversary proceedings, unless withdrawal as counsel is approved by the court); Eastern District of North Carolina (Local Rule 9011-1) (same, until case is closed or withdrawal as counsel is approved by the court; specifically noting that additional fees must be applied for pursuant to Fed. R. Bankr. P. 2016); Western District of Virginia (Local Rule 9011-1) (debtor's attorney must appear at all Court hearings unless excused or withdrawal as counsel is approved by the court); Northern District of Illinois (Local Rule 2090-5) (debtor's attorney is responsible for all purposes, excluding adversary proceeding filed against the debtor). These courts are examples of courts with similar, or even broader, representation requirements. Many expressly do not permit the exclusion of adversary proceeding and appeals as set forth in SC LBR 9010-1.

[7] The Rule is not limited to an attorney for a debtor. The Rule provides that upon the filing of a document on behalf of a party in interest, the filing attorney remains the responsible attorney of record for that party for all purposes.

[8] During the hearing, the Court was perplexed that Counsel readily admitted knowledge of the Local Rule and the continuing duty to represent Debtor with respect to the Motion, yet Defense Counsel's pleading and arguments before the Court implied that the Local Rule was either contradictory to the Rules of Professional Conduct, contrary to the Rules of the United States District Court as binding on this Court, or inconsistent with the fee disclosure requirements in 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016.

Defense Counsel indicates that the Rules of Professional Conduct are the rules that govern practice before this Court by virtue of the District Court's adoption of these Rules. See Local Civil Rules for the United States District Court District of South Carolina 83.I.08. However, attorneys practicing before this Court are not governed exclusively by the Rules of Professional Conduct. While this Court is bound to require District Court admission for eligibility to practice, Bankruptcy Judges of this District are authorized to make such rules of practice and procedure as they deem appropriate. See Local Civil Rules for the United States District Court District of South Carolina 83.IX.02. Furthermore, bankruptcy has separate processes and systems distinct from the District Court.

In relying upon the Rules of Professional Conduct, Defense Counsel cites Rules 1.2 and 1.5 of the Rules of Professional Conduct. Rule 1.2 provides that a lawyer is permitted to "limit the objectives of the representation if the client consent after consultation." See Rule 1.2(c) Scope of Representation. Rule 1.5 permits a lawyer to charge reasonable fees. See Rule 1.5 Fees. However, Defense Counsel fails to cite Rule 1.1, which states that a lawyer shall provide competent representation to a client. See Rule 1.1, Competence. An agreement concerning the scope of representation is subject to Rule 1.1, Competence, such that a client "may not be asked to agree to representation so limited in scope as to violate 1.1." See Rule 1.2, Comment. This fundamental standard, when considered in conjunction with bankruptcy representation, cannot be ignored:

> A bankruptcy case is different from a civil or criminal case in many important respects. It is a series of discrete contested matters and adversary proceedings, each of which can impact the substantive relief afforded to the debtor.

In re Davis, 258 B.R. 510, 513-14 (Bankr. M.D. Fla. 2001). In Davis, the court considered whether debtor's counsel could exclude representation following confirmation in a Chapter 13 case. The court found that such practice would leave debtors vulnerable and without representation during a

crucial part of their case. The court further noted that its local rule, which is similar to SC LBR 9010-1(d), requires representation by a debtor's attorney for all matters once a petition is filed, is not unusual or surprising, and is consistent with professional standards and practices across the nation. Id. at 512-13.

Other courts have addressed the problem of limitation of services by debtor's attorneys, citing concerns for the havoc that is often brought upon debtors and the courts as a result. In In re Egwim, the court concluded that applicable rules of professional responsibility and the local rules of the bankruptcy court obligate a debtor's attorney to represent the debtor in any matter filed in the court or related to the bankruptcy representation. 291 B.R. 559, 574 (Bankr. N.D. Ga. 2003). The court further noted that:

> It is troubling that a represented debtor *ever* make a *pro se* appearance. Such an appearance is a clear indication to the Court that counsel is not adequately representing the client because either the debtor is there for a good reason and thus needs counsel to be there also, or the debtor is there for no reason, indicating that counsel has not advised the debtor that appearance is not necessary.

Id. at 575. See also Danvers Savings Bank v. Cuddy (In re Cuddy), 322 B.R. 12 (Bankr. D. Mass. 2005) (court would not permit withdrawal of debtor's attorney for failure to obtain payment in manner set forth in fee agreement, noting that representation assumes a responsibility to both the court and the debtor).[9]

Finally, Defense Counsel argues that the Official Form that is used to disclose compensation

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[9] The court in Cuddy aptly analogized the plight of a debtor that is only partially represented as follows:

> A professional swim instructor takes on a new student with this understanding: You have paid me my initial fee. For that money I will lead you to the swimming pool, show you how to enter the water, and explain the basic elements of swimming. If, however, you should begin to drown, or if some other serious problem arises, I will leave you to your own resources unless you pay me more money.

322 B.R. at 18.

of attorney for debtor pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016 contemplates the exclusion of services, and that Counsel followed the Official Form used for such disclosures. Defense Counsel misses the point. SC LBR 9010-1(d) permits the exclusion of appeals and adversary proceedings as provided in the written agreement between debtor's counsel and debtor, thus some exclusions are proper. Additionally, the Official Form does not legally determine the scope of representation defined by this Court in SC LBR 9010-1. While an attorney may freely contract with her client, the terms of such are not binding on the Court. Davis, 258 B.R. at 514 (court has an affirmative obligation to ensure effective and orderly administration of the court; the terms of a contract limiting representation of debtor are not binding upon court). Accordingly, for all of these reasons, SC LBR 9010-1(d) is consistent with the Rules of Professional Conduct, the Local Rules of the United States District Court for the District of South Carolina, and the requirements placed upon counsel for disclosure under the Bankruptcy Code and Rules.

Despite the pleadings filed in response to the Rule, at the hearing on the Rule, Defense Counsel for Ms. Dalrymple indicated that she was not attacking this Court's Local Rules, but was asserting that her practice in this case, and in others, fits within the confines of that Rule. Accordingly, the Court will consider the actions taken by Debtor's Counsel in this case and the application of SC LBR 9010-1(d), as well as this Court's duty to address attorneys' fee arrangements with debtors before this Court.

A. *Court's Obligation to Examine Fee Arrangement*

Although Debtor's Counsel repeatedly noted that her fee arrangement in this case, and in other cases, was disclosed to the Chapter 13 Trustee, the United States Trustee, and this Court, with no objection having previously been raised, this Court has an obligation to independently review

debtor's counsel's fees and the arrangement for fee payment, regardless of the lack of objection.[10] This duty is of utmost importance inasmuch as there is little incentive for debtors or creditors to object to attorney fees. See In re Silvus, 329 B.R. 193, 204 (Bankr. E.D. Va. 2005) (citing cases). Many provisions of the United States Bankruptcy Code and Federal Rules of Bankruptcy Procedure address this Court's duty to examine and approve fees. As noted by one court with respect to 11 U.S.C. § 329 and Chapter 13 attorney fees:

> Courts have long recognized that the debtor is in a vulnerable position and is highly dependent on its attorney and therefore will be reluctant to object to the fees of the attorney. In order to prevent overreaching by an attorney, and provide protection to creditors, section 329 requires that an attorney submit a statement of compensation to be paid to enable the court to determine if the fees are reasonable.

In re Courtois, 222 B.R. 491, 494-95 (Bankr. D. Md. 1998) (citing 3 Lawrence P. King et al., *Collier on Bankruptcy* ¶ 329.01, p. 329-4 (15th ed. rev. 1998)). Further, 11 U.S.C. § 330(a)(4)(B) provides that the Court may allow compensation to a Chapter 13 debtor's attorney based upon a consideration of the benefit and necessity and other factors.

Federal Rules of Bankruptcy Procedure 2016 and 2017 implement § 329 and govern the disclosure and the provision of sufficient information to enable the Court to examine fees of a debtor's attorney. Federal Rule of Bankruptcy Procedure 2016(b) provides that a statement required under 11 U.S.C. § 329 be filed disclosing compensation paid or agreed to be paid. If additional payments are made, a supplemental statement is required to be filed pursuant to Rule 2016(b).[11] Accordingly, not only does this Court have the authority, it is this Court's obligation to review

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[10] Defense Counsel states that the fee arrangement was previously disclosed, and no objection was raised to the base fee set out in Debtor's Counsel's 2016(b) Disclosure of Compensation. Defense Counsel's argument would appear to limit this Court's ability to review these matters which is contrary to the purpose behind fee disclosure.

[11] In the matter before the Court, Debtor's Counsel testified that when additional fees are paid to her by a debtor for services beyond that set forth in her fee agreement, she usually files a supplemental statement pursuant to Rule 2016 disclosing the payment.

counsel's fees, even in instances in which there has been no objection raised by a party.[12] Courtois, 222 B.R. at 494 (bankruptcy court has the power and the duty to review fee applications, despite the lack of objection; the court has the inherent obligation to monitor the debtor's estate and serve the public interest) (citing In re Yates, 217 B.R. 296, 300 (Bankr. N.D. Okla. 1998)). A debtor is unlikely to be in a position to determine, or negotiate, the boundaries of a fair and reasonable fee agreement or the scope of work to be performed by counsel; that principle, and fundamental fairness, require a heightened degree of regulation by the Court.

B. ***Application of Local Rule 9010-1 and Policy Considerations***

The central issue before the Court is not Debtor's Counsel's claim for additional fees for further services,[13] but her apparent conditioning of representation upon advance payment by Debtor. Counsel contends that her policy of requiring payment in advance of further representation, only to continue to represent a debtor upon an affirmative indication by a debtor of an inability to pay, is not violative of SC LBR 9010-1(d).[14] Counsel's position contradicts the purpose of the representation requirement set forth in 9010-1(d).

This Court has previously noted with respect to the significance of Local Rule 9010-1(d):

> The adoption of Local Rule 9010-1(d) was an important step in maintaining

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[12] Debtor in this case effectively objected to the fee arrangement and requirement for advance payment in her Motion.

[13] This Court has not formally set standard attorney's fees for the filing of a bankruptcy case in this District by operating order or guidelines. The Court has relied upon the disclosure and review provisions of the Bankruptcy Code and Rules and further relied upon counsel to be aware of and implement the Local Rules of this Court and relied upon the Chapter 13 Trustee's review of such fees. Chapter 13 Trustees frequently raise issues before the Court regarding the amount of fees to be paid to particular debtor's counsel. For the reasons stated herein, this Court may review its previous policy and consider establishing formal guidelines for such fees and services in the future.

[14] As previously noted, Counsel contends that her practices are not in violation of any South Carolina Rule or United States District Court for the District of South Carolina Rule. At issue before the Court is Counsel's adherence to the Local Rules of this Court, therefore, the Court need not further address Counsel's reference to other Rules.

> the integrity and efficient handling of matters before the Court. Among other benefits, Local Rule 9010-1(d) allows the Court and other interested parties to determine and rely on the appearance of counsel in order to encourage the efficient administration of cases, to include coordinating the service of pleadings and objections and the noticing of hearings. Local Rule 9010-1(d) also provides a means of placing other members of the bar on notice that a particular party to the bankruptcy case has legal representation; thus, all discussions concerning the case can be directed toward that party's counsel. Furthermore, Local Rule 9010-1(d) allows the Court to determine the source of a party's legal instruction in order to hold the counsel providing assistance accountable to the applicable rules of court, other substantive requirements, and standards of conduct.
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> The positive effects provided by Local Rule 9010-1(d) are frustrated whenever an attorney either fails to completely satisfy its provisions . . . . Clients who proceed through a case without an attorney to shepherd them through the complexities of the bankruptcy process tax the resources of the Court since these pro se individuals often require more time consuming handling by the Clerk's Office and the Court in order to insure they are provided adequate due process. Additionally, pro se litigants are more likely to make errors which require the Clerk and Court to expend resources to correct. Finally, when litigants are properly represented they are more likely to obtain the full benefits of the bankruptcy laws and follow necessary procedures.

In re Mungo, 305 B.R. 762, 766 (Bankr. D.S.C. 2003).[15]

Debtor's Counsel in this case should have been well aware of the Local Rule and its requirements when she undertook the representation of Debtor in this case.[16] Not only has SC LBR 9010-1(d) been in place for many years, the requirements of Rule 9010-1(d) have been the subject of several opinions of this Court. One such opinion previously referenced, In re Mungo, has been published by this Court and details the requirements of Rule 9010-1(d) and corresponding policy

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[15] In addition, ethical standards may prohibit creditors, trustees, or the United States Trustee from direct contact and discussion with a debtor represented by counsel.

[16] From October 1999 through October 2001, at the request of debtor's counsel sitting on the local rules committee, this Court modified this local rule to allow the agreements between counsel and a debtor to govern the extent of duties between these parties. The result can be fairly described as chaos for the bankruptcy system, the Court, and trustees. Frequently, debtors appeared in response to such critical matters as a petition to dismiss or motion for relief from stay and indicated that their counsel would not represent them without an advance payment of additional fees. The result was prejudicial to debtors and almost debilitating for the Court's consumer docket, delaying cases and causing a waste of resources. As a result of these problems, and the policy considerations expressed herein, this Court reestablished its long-standing rule on October 1, 2001.

concerns. Additionally, in In re Johnson, this Court issued a written opinion as a result of the filing of pleadings by a debtor *pro se* when he was represented in his bankruptcy case by counsel. Johnson v. Bank of Travelers Rest (In re Johnson), C/A No. 02-12454, Adv. Pro. No. 03-80212, slip op. (Bankr. D.S.C. May 8, 2003). The Court therein stated as follows:

> The bar of this District should be aware of the requirements of Local Rule 9010-1(d) and be cautioned that failure to comply with or any manipulation of the Rule is considered sanctionable conduct.

Id. at *3. See also In re Halley, C/A No. 03-01156-W, slip op. (May 6, 2003) (and related pleadings) (discussing inability of counsel to limit representation to a chapter 7 case and avoid representation with respect to conversion); In re Donaldson, C/A No. 02-13215-W, slip op. (Bankr. D.S.C. Feb. 26, 2003) ("Local Rule 9010-1(d) deems a debtor's attorney responsible for representing the debtor in all hearings and matters which arise in connection with the case . . . .").[17]

No provision of the Local Rule addresses the payment of additional attorney's fees for matters and services as they later arise through the course of a debtor's case - either those anticipated or uninterrupted. By such a clear statement of responsibility of continued representation without provision for further fees, it is a fair interpretation that the duty applies with or without additional fees. Therefore, counsel should consider this responsibility at the time of undertaking the representation.

Debtors' attorneys' compliance with Rule 9010-1(d) is difficult for this Court to police, and until this point in time establishing formal procedures to do so did not appear necessary. However, the Court is concerned that debtors' attorneys are not being forthright, and it is this Court's obligation to ensure enforcement of its Rules and the adequate representation of debtors that appear

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[17] In addition, this Court has repeatedly issued rules to show cause and indicated on the record during hearings on general chapter 13 calendar days, before the majority of consumer practitioners, that requiring payment of advance fees as a condition of continuing representation is not allowed under the Local Rule.

before it. It is not a palatable excuse to contend that "I would have represented debtor if only she had said or done X." Conditioning or delaying representation is not contemplated by Rule 9010-1(d). Without full disclosure to debtors of their rights upon entry into a representation agreement,[18] debtors cannot be expected to be aware of, nor have the wherewithal to enforce, their rights. This issue is one of substantial importance to the Court and all parties that appear before it. Accordingly, this Court is again placing the bar on notice that debtor's counsel have a corresponding duty to advise their clients that the Local Rules of this Court require continued representation even if payment for additional services is not made in advance. The Local Rule and enforcement thereof is necessary to prevent overreaching by debtor's counsel and to prohibit the raising of the counsel's interest above those of the debtor.[19]

C. ***Counsel's Duty to Represent Debtor***

In the matter before the Court, and despite the response filed to the Rule and the arguments of Defense Counsel, Debtor's Counsel does not dispute her obligation to represent Debtor in all matters in the case, including the Motion to Incur Debt. Nevertheless, Counsel does not have to expressly and directly deny representation in order to communicate a refusal. It is disingenuous for Counsel to take the position that she complied with the representation requirements of SC LBR 9010-1(d) when Debtor's representation was expressed to Debtor as conditioned upon advance payment. To adopt Debtor's Counsel's procedures and interpretation of the Local Rule would allow a debtor's attorney to circumvent the clear purpose, intent, and policy of the Local Rule by simply

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[18] The Court notes that debtor's attorney's fees are not insignificant in this District, and in fact are rising due to the recent implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

[19] The Court is not at this time prohibiting advance payment in all circumstances. However, as previously stated, it is the conditioning of further representation upon such advance payment that is violative of SC LBR 9010-1(d), either implicitly or explicitly. The Court is aware that debtor's counsel in this District often file claims for additional fees to be paid through a debtor's confirmed plan, subject to review by parties, including the trustee, U.S. Trustee, and the Court.

isolating herself from her clients and disavowing personal knowledge of a debtor's need for continuing representation or inability to make payment.

Considering the credibility of the testimony and circumstances presented, the Court finds Debtor fairly and reasonably interpreted the actions of the law firm as a refusal to continue representation without payment in advance. It is undisputed that Debtor repeatedly sought the ability to pay later. The firm should have reasonably understood the request, and Debtor's distress, as an indication of a problem with advance payment. Debtor's Counsel is responsible for the actions and representations of her staff, who, it appears, purposefully serve as the primary contact with debtors in an effort to efficiently manage access to Debtor's Counsel and her time. Considering Debtor's Counsel's clear understanding of her continuing duty to represent Debtor in this matter, it is unreasonable for Counsel to demand such an advance fee and only consider an exception if a debtor volunteers an inability to pay. Debtor's Counsel admitted that neither she nor any member of her staff advised Debtor either verbally or in writing, or any other similarly situated debtor, that Counsel is obliged to continue to represent Debtor even without advance payment. Further, Counsel's paralegal was not aware of the provisions of Rule 9010-1(d). If Counsel's staff was not aware, as the primary contact with Debtor, it is difficult to comprehend how Counsel's duty to represent could have been understood by Debtor. It was evident at the hearing that the circumstances surrounding Debtor's attempt at obtaining representation, as well as having to participate at the hearing held in this matter, placed considerable stress and emotional strain upon Debtor. The actions of Debtor's Counsel and her staff were contrary to Rule 9010-1(d).

Fortunately, Debtor is not as unsophisticated or easily intimidated as many debtors who appear in this Court. Debtor timely raised her concerns regarding Counsel and her need for relief directly to the Court. The Court can only surmise how often debtors have been effectively forced

to forego representation because they were not aware of their counsel's duty to continue to represent them if they were unable to provide advance payment.

Considering the evidence before it and the totality of the circumstances, the Court finds that Debtor's Counsel violated the provisions of Local Rule 9010-1(d) and that the imposition of sanctions is necessary in this matter. However, the Court finds as a mitigating factor Counsel's prior record of service. In light of these considerations, the Court sanctions Debtor's Counsel in the amount of $200.00, to be paid within ten (10) days of the entry of this Order. This Court specifically finds that a sanction of this nature is necessary to provide a deterrent to Counsel and other debtor's counsel on this critical representation issue.

Furthermore, Counsel shall provide a written statement to each of her clients that despite any fee discussions or agreement terms to the contrary, Local Rule 9010-1(d) requires continued representation even without advance payment. This communication shall be completed within twenty (20) days in all cases which are pending, and Debtor's Counsel shall file an affidavit of compliance within two (2) days thereafter.

The ordering of sanctions in this case is based upon 11 U.S.C. § 105 and the Court's inherent authority to regulate litigants before it and address improper conduct as recognized by the Fourth Circuit Court of Appeals in McGahren v. First Citizens Bank & Trust, Co. (In re Weiss), 111 F.3d 1159 (4th Cir. 1997).[20] Further, as previously noted, Counsel, and the bar, are again placed on notice that counsel have an affirmative duty to advise their clients that the Local Rules of this Court require

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[20] The Court further notes that counsel may be liable for excessive costs in a case as follows:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927.

continued representation even if payment for additional services is not made in advance. For the reasons stated herein, proper application of Local Rule 9010-1(d) is necessary to maintain the integrity and efficiency of bankruptcy practice in this District.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 19, 2005

I SO CONSENT:

William K. Stephenson, Jr. #4388
by Gretchen D. Holland

I SO CONSENT:

C. Jennalyn Dalrymple #6724