

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Ian Mitchell Farnsworth,

Debtor.

C/A No. 05-08679-JW

Chapter 13

JUDGMENT

ENTERED

JAN 03 2007

FILED

JAN 03 2007

United States Bankruptcy Court
Columbia, South Carolina (11)

Based upon the Findings of Fact and Conclusions of Law set forth in the attached Order of the Court, David H. Hanna, Sr. ("Hanna") is suspended from filing new bankruptcy cases with this Court pursuant to the terms and conditions set forth in the attached Order. Trustee shall hold in escrow three thousand (\$3,000.00), which would otherwise be disbursed to Hanna as attorneys fees, until further order of the Court.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
January 3, 2007

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FOR THE DISTRICT OF SOUTH CAROLINA

FILED

10:00 clock & min

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IN RE:

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Chapter 13

United States Bankruptcy Court
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ORDER

K. E. P.

This matter comes before the Court upon a Rule to Show Cause ("Rule") issued by the Court on November 9, 2006. The Rule required David H. Hanna, Sr. ("Hanna") to appear on December 14, 2006 and show cause why sanctions, including disgorgement of fees and suspension from practice before this Court, should not be imposed for his representation of Debtor in this case. As a result of the hearing on the Rule, the Court issued an order on December 15, 2006 ("Interim Suspension Order"). The Interim Suspension Order suspended Hanna from filing new cases with this Court, ordered Hanna to disgorge attorney's fees received in this case to Debtor, and ordered Hanna to take certain steps to protect the interest of Debtor and his other clients. Currently before the Court are the terms and conditions of Hanna's suspension and whether Hanna should be compelled to be removed as counsel in all cases pending before this Court in which Hanna represents a party in interest, as requested by the chapter 13 trustee¹ ("Trustee").

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Based upon the record of this case and applicable law, the Court makes the following Findings of Fact and Conclusions of Law.²

¹ The current trustee in this case is Gretchen D. Holland who was substituted for the Hon. Helen E. Burris on February 1, 2006 after Judge Burris' election to the bench of this Court.

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.

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FINDINGS OF FACT

1. Hanna is an attorney who is licensed to practice law by the Supreme Court of South Carolina. Hanna is also authorized to practice before the United States District Court for the District of South Carolina and thus, prior to the Interim Suspension Order, was authorized to practice before this Court.

2. Since being admitted to practice before this Court, Hanna has filed over 500 cases, primarily for consumer debtors. At the hearing on the Rule, Trustee estimated that Hanna was the attorney of record in 96 pending chapter 13 cases and 20 of these cases had significant problems as a result of Hanna's failure to competently represent the debtors in these cases. Numerous problems existed in this case as a result of Hanna's failure to diligently and competently represent Debtor as detailed in the Interim Suspension Order.³

3. On October 24, 2006, the Trustee filed a third petition to dismiss ("Petition") Debtor's chapter 13 case on grounds that Debtor has failed to file quarterly business reports pursuant to 11 U.S.C. § 1304(c).⁴

4. Hanna failed to respond to the Petition for Debtor. The Petition was scheduled for a hearing before the undersigned on November 9, 2006. Hanna did not appear at the hearing on the Petition and did not seek to continue the hearing in accordance with this Court's guidelines.⁵ Debtor appeared at the hearing and opposed the petition on grounds that Hanna did not advise Debtor of the requirements of 11 U.S.C. § 1304(c). Debtor also indicated that Hanna failed to adequately communicate with Debtor by failing to return Debtor's phone calls over a

³ The Findings of Fact and Conclusions of Law from the Interim Suspension Order are incorporated herein.

⁴ Trustee's first two petitions to dismiss were based upon a failure to provide documents and file a confirmable plan. As set forth in the Interim Suspension Order, Hanna's office admitted in a letter to the Trustee that the failure to comply was not the fault of Debtor but the fault of Hanna.

⁵ As indicated in Trustee's return to the Rule, Hanna was issued a doctor's excuse that cleared Hanna to return to work after November 8, 2006. Hanna did not present this or other medical excuse to the Court at or before the time of the hearing on the Petition.

two month period. Trustee also raised concerns that Hanna filed an amended plan in this case without Debtor's knowledge and which contained terms and conditions unknown to Debtor.

5. On November 9, 2006, the Court issued the Rule and ordered Hanna to produce, on or before November 17, 2006, to the Bankruptcy Clerk of Court the original copy of the petition, all schedules, amended schedules, the plan, and all amended plans bearing Debtor's original signature.

6. Trustee filed a detailed return to the Rule indicating her multiple efforts to communicate with Hanna. Trustee requested that the Court suspend Hanna from practice for a period of two (2) years. At the hearing on the Rule, Trustee also orally requested that the Court relieve Hanna as counsel from other cases pending within this District.

7. Debtor appeared at the Rule and stated that he was not consulted about the amendment to his plan, which, without his knowledge or consent, increased his obligation in this bankruptcy from \$790.00 per month to \$1,818.00 per month. Debtor also stated that Hanna did not return his telephone calls and did not advise him on the filing of quarterly business reports.

8. Hanna appeared at the Rule and could not produce any of the documents that the Rule required him to produce by November 17, 2006.⁶ Hanna requests that he be allowed to continue to practice under the tutelage of another bankruptcy attorney and he would agree to attend a continuing legal education program on office management.

9. On December 15, 2006, the Court entered the Interim Suspension Order. The Interim Suspension Order removed Hanna as Debtor's counsel, suspended Hanna from filing further cases with this Court, ordered Hanna to provide Debtor with the name and telephone

⁶ Although Hanna asserted that he had the original documents that he was ordered to produce by the Rule, he did not timely produce these documents in compliance with the Rule and could not locate these documents in his file at the hearing on the Rule. Hanna did locate unsigned copies of the amended plan at issue. Hanna attributes the failure to comply with the order to produce documents set forth in the Rule to a misunderstanding by his staff.

number of his malpractice insurance carrier within 7 days,⁷ ordered Hanna to disgorge all fees to Debtor within 7 days, and ordered Hanna to serve a copy of the Interim Suspension Order on certain of his client that have cases pending before this Court or that consulted Hanna about filing a bankruptcy case with this Court. Hanna was ordered to file a certification of compliance for each of these last three requirements within 10 days of the entry of the Interim Suspension Order.

10. Hanna has failed to file the certifications required by the Interim Suspension Order and the Court has issued another Rule to Show Cause contemporaneous with this Order ordering Hanna to appear on January 11, 2007 to show cause why he should not be held in contempt and additional sanctions imposed.

CONCLUSIONS OF LAW

As found in the Interim Suspension Order, Hanna has failed to provide competent and diligent representation to Debtor. See In re Farnsworth, C/A No. 05-08679-W, slip op. (Bankr. D.S.C. Dec. 15, 2006). Hanna is in contempt of the Rule by not complying with its mandate to produce documents to the Clerk of Court and he is in contempt of the Interim Suspension Order by not filing certifications of compliance as set forth therein. He violated this Court's operating orders by failing to obtain Debtor's signature on the amended plans submitted to the Court. The harm to Debtor is evident as Debtor is required to perform under the terms of a plan to which he did not agree and that more than doubled his monthly obligations in this case, far exceeding Debtor's actual ability to pay. The submission of documents that purport to bear, but do not in fact bear, a debtor's original signature has been found to be a fraud on the Court. See In re Wenk, 296 B.R. 719 (Bankr. E.D. Va. 2002) (discussing in detail why sanctions are warranted

⁷ Hanna agreed with this portion of the sanction on the record.

for an attorney who files a petition that contained the electronic signature of a debtor where the debtor did not in fact sign the petition). This Court has previously imposed minor sanctions against Hanna for this unethical practice. See In re Ashworth, C/A No. 04-11925, slip op. (Bankr. D.S.C. July 8, 2005) (sanctioning Hanna and disgorging Hanna's attorney's fees for failing to obtain debtor's signature on the schedules and in six amended plans). In Ashworth, Hanna entered into a consent order with the United States Trustee in which he acknowledged the deficiencies in his practice and agreed to remedy these problems. Despite multiple opportunities to reform his practice, significant problems continued to exist with Hanna's practice before this Court. See In re Justice, C/A No. 03-08085, slip op. (Bankr. D.S.C. Sept. 19, 2003) (consent order waiving all fees in the case because Hanna failed to disclose previous filings of debtor); In re Culbreth, C/A No. 03-08993, slip op. (Bankr. D.S.C. Sept. 13, 2003) (same); In re Krawczyk, C/A No. 05-08793 (Bankr. D.S.C. Jun. 12, 2006) (consent order suspending Hanna for a period of 90 days in light of his deficient representation of debtor); In re Cox, C/A No. 06-1937, slip op. (Bankr. D.S.C. Jun. 21, 2006) (after violating local rules in filing a motion to extend the automatic stay, the Court adopted the sanction agreed to by Hanna in Krawczyk but cautioned Hanna that further deficiencies in his practice would result in more severe sanctions); In re Parsons, C/A No. 06-00260 (filing a motion to extend the automatic stay not in compliance with SC LBR 4001-1(b)(2)); In re Rhodes, C/A No. 06-00425 (same); In re Heltor, C/A No. 06-00426 (same); In re Brannon, C/A No. 06-00627 (same and Hanna failed to renew the motion for debtor); In re Brannon, C/A No. 06-00040 (disgorging Hanna's fees for Hanna filing a petition for debtor without debtor being eligible for relief under § 109(h)); Republic Finance v. Welborn, Adv. Pro No. 06-80039 (dismissing adversary filed by Hanna because he did not have the authority to file the proceeding for the client who engaged another firm to file the proceeding) In

re Martin, C/A No. 06-5536-HB (Hanna failed to timely remit debtor's filing fee despite being paid the fee and being issued a deficiency notice); In re Gilliland, C/A No. 06-5749-HB (same), In re Chastain, 06-5765-HB (same); In re Hardy, 06-5768-HB (same).⁸

Based upon the weight of the record in this case and in the other cases in which Hanna has been sanctioned, the Court is convinced that individuals within this District are being harmed by Hanna's representation. Hanna has demonstrated on numerous occasions in this case alone a disregard for this Court's orders and a failure to provide minimally acceptable representation to Debtor. Hanna failed to obtain Debtor's signature on documents requiring an original signature and has not been forthright about his failure to comply with the Rule and the standard of practice before this Court, attributing the blame to his staff. By presenting documents that did not bear Debtor's original signature, Hanna has breached his duties owed to this Court including a duty to not make a false statement of fact and a duty not to bring frivolous proceedings before this Court. See Wenk, 296 B.R. at 727 (finding an attorney presenting a petition that was not in fact signed by the debtor violated various state ethical rules); Rules of Professional Conduct, Rules 3.1 & 3.3(a)(1), RPC, Rule 407, SCACR. See also Preamble: A Lawyer's Responsibilities, RPC, Rule 407, SCACR ("A lawyer, being a member of the legal profession, is ... an officer of the legal system" and "has a duty to uphold legal process."). Based upon this conduct in this case, the Court finds that Hanna should be indefinitely suspended from practice before this Court. See In re Ludwick, 185 B.R. 238 (Bankr.W.D.Mich.1995) (holding that an attorney's forgery of debtor's

⁸ In In re Martin, C/A No. 06-5536-HB; In re Gilliland, C/A No. 06-5749-HB; In re Chastain, 06-5765-HB; and In re Hardy, 06-5768-HB Hanna indicated that he received the filing fee but did not remit the same to the Clerk of Court after a deficiency notice was issued providing Hanna additional time to submit the fee to the Court. As a result, each of these cases were subject to dismissal. After Hanna failed to respond to a personal letter from the Clerk of Court directing that he pay the fee by December 20, 2006, Judge Burris issued a Rule to Show Cause to Hanna in each of these cases. Hanna has since paid the filing fee in three of these case but Hanna's handling of these filing fees suggests either Hanna failed to diligently protect his clients' interest or breached his fiduciary obligations and raises further significant questions regarding Hanna's practice of law.

signature on a petition and dishonest testimony warranted reimbursement of attorney fees, monetary sanctions, and suspension from practicing before the court for two years).

Previously, the Court has imposed suspensions of a year or more for conduct similar to Hanna's conduct in this case. See McDow v. Jacobsen (In re Denis), C/A No. 03-05237-W, Adv. Pro. No. 03-80538-W, slip op. (Bankr. D.S.C. Nov. 3, 2003) (suspending an attorney for one year with conditions on gaining reinstatement to practice); In re Grimsley, C/A No. 04-02072 (Bankr. D.S.C. May 26, 2006) (same); McDow v. Held (In re Forester), C/A No. 95-72290-W, Adv. Pro. No. 95-8277-W, slip op. (Bankr. D.S.C. Mar. 14, 1996) (suspending an attorney for 18 months with conditions on gaining reinstatement to practice); In re Henderson, C/A No. 05-14925 (Bankr. D.S.C. Oct. 24, 2006) (suspending an attorney indefinitely with conditions on gaining reinstatement to practice). The record of this case warrants the indefinite suspension from filing new cases with this Court for a period of at least one year from the date of entry of this Order.⁹ See Local Rule 83.IX.02 DSC (allowing this Court to determine an attorney's eligibility to practice before this Court). Upon the conclusion of that period, Hanna may file a motion to resume full practice before this Court. However, Hanna shall not file a motion to be reinstated to practice before this Court unless he completes sixteen (16) hours of continuing legal education in the area of "ethics," twelve (12) hours of continuing legal education in the area of "office management," and twenty-four (24) hours of continuing legal education in the area of "bankruptcy," from the date of entry of this Order. All such continuing legal education courses must be approved for continuing legal education credit by the South

⁹ This Order shall not affect Hanna's ability or duty to continue to represent his current clients before this Court until such time as Hanna is relieved as counsel in pending cases. In the event that Hanna is suspended from practice by the United States District Court for the District of South Carolina, he shall be fully suspended from practicing before this Court but shall nevertheless be bound by SC LRB 9010-1 until such time as he is relieved of counsel in all pending cases.

Carolina bar. Hanna must also produce with his motion for reinstatement every return receipt card demonstrating that Hanna served his clients with the Interim Suspension Order pursuant to terms of that order. Hanna shall also comply with all current and further orders of the Court including the Interim Suspension Order, which shall remain in effect. Hanna may move for reinstatement provided he meets the conditions set forth herein, and is in good standing with the South Carolina bar and the South Carolina District Court. Any reinstatement shall be in the sole discretion of this Court and may be conditioned upon additional terms that the Court deems necessary. Prior to seeking reinstatement, Hanna shall provide thirty (30) days written notice to the United States Trustee, Debtor, and all chapter 13 trustees that he is seeking reinstatement to practice before this Court.

Based upon Hanna's failure to comply with the Interim Suspension Order, the Court has issued another Rule to Show Cause. Pursuant to 11 U.S.C. § 105 and this Court's inherent ability to address improper conduct and regulate the litigants that appear before it, Trustee shall hold in escrow three thousand (\$3,000.00) which would otherwise be disbursed to Hanna as attorneys fees. The Court shall consider at the hearing on the second Rule to Show Cause whether this sum should be distributed to Debtor pursuant to the Interim Suspension Order and whether the remainder of the sum should be paid as a sanction.

Trustee finally request that Hanna be compelled to be removed as counsel in all cases pending before this Court. The Court has previously imposed such a sanction with the consent of the sanctioned attorney. See In re Grimsley, C/A No. 04-02072, slip op. (Bankr. D.S.C. May 26, 2006). Since this sanction was not clearly identified in the Rule or in Trustee's return to the Rule, the Court declines, at this point, to impose this sanction. However, Trustee may move in

other pending cases to have Hanna relieved as counsel or to disgorge Hanna's attorney's fees if she believes that such sanctions are warranted.

Notwithstanding any provision in this Order, the Court reserves the right to impose additional sanctions against Hanna in all other cases before this Court for which Hanna is or was the attorney of record, if it finds Hanna's representation of his clients in those cases is deficient. The Court may also impose additional sanctions if Hanna fails to comply with the terms and conditions of this Order. The sanctions imposed herein survive any dismissal or closing of this case. This Order shall be served on all trustees in this District, Debtor, the United States Trustee, the South Carolina Office of Disciplinary Counsel, and all debtors represented by Hanna with active cases pending before this Court.

AND IT IS SO ORDERED.

Columbia, South Carolina
January 3, 2007


UNITED STATES BANKRUPTCY JUDGE