



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 06, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 19-11968-MKN
)	Chapter 7
TERESA KAY ALSTOTT and GRANT)	
WADEL NAIRN,)	Date: September 4, 2019
)	Time: 10:30 a.m.
Debtors.)	

ORDER ON MOTION TO DISGORGE¹

On September 4, 2019, the court heard the Motion to Disgorge (“Motion”) brought by Chapter 7 trustee, Brian D. Shapiro. The hearing was attended by the Trustee, as well as attorney Jennifer Isso, and her counsel, attorney Jeffrey Albregts. After arguments were presented, the matter was taken under submission.

BACKGROUND

On March 31, 2019, a voluntary Chapter 7 petition was filed on behalf of Teresa Kay Alstott and Grant Wadel Nairn (“Debtors”), by the Isso & Hughes Law Firm (“Law Firm”). (ECF No. 1). The case was assigned to panel Chapter 7 bankruptcy trustee Brian D. Shapiro (“Trustee”). A meeting of creditors was scheduled for May 6, 2019, and a deadline of July 5,

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. § 101, et seq. All references to “FRBP” are to the provisions of the Federal Rules of Bankruptcy Procedure. All references to “FRCPP” are to the Federal Rules of Civil Procedure. All references to “Local Rule” are to the bankruptcy provisions of the Local Rules of Practice for the District of Nevada.

1 2019 was set for any parties in interest to raise objections under Sections 523 and 727. (ECF No.
2 9).

3 The meeting of creditors was continued to June 17, 2019. (ECF No. 13). After the
4 meeting of creditors was concluded, the Trustee reported on June 18, 2019, that there were no
5 assets available for distribution to creditors. (ECF No. 18).

6 On July 5, 2019, the Trustee filed an amended report that assets were available for
7 distribution to creditors. (ECF No. 19).

8 On July 8, 2019, an Order of Discharge was entered in favor of the Debtors. (ECF No.
9 20).

10 On July 17, 2019, the Trustee filed the instant Motion. (ECF No. 22). The Motion seeks
11 an order requiring the Law Firm to: (1) disgorge all funds paid by the Debtors; (2) immediately
12 remit all disgorged funds to the Debtors; and (3) pay a sanction of \$750.00 to the Trustee. The
13 Motion also seeks the issuance of an order requiring the Law Firm to show cause (“OSC”) why it
14 should not be sanctioned under FRBP 9011, as well as any other appropriate relief. The Motion
15 is supported by the Trustee’s declaration to which 18 separate exhibits are attached. (ECF No.
16 23). The Motion was duly noticed to be heard on September 4, 2019. (ECF No. 24).

17 On August 21, 2019, the Law Firm filed a limited opposition (“Opposition”). (ECF No.
18 28). The Law Firm’s response includes a Declaration of Jennifer Isso, Esq. (“Isso Declaration”),
19 see Opposition at 2 through 5, submitted under penalty of perjury.

20 On August 22, 2019, the Trustee filed a reply. (ECF No. 28).

21 On September 3, 2019, the Trustee filed an amended supplement (“Trustee Supplement”)
22 to the Motion. (ECF No. 32).

23 **DISCUSSION**

24 The relief requested by the Trustee through the instant Motion also is being sought in
25 four other voluntary Chapter 7 cases filed in this court by the Law Firm: Kaylyn Marie Roth
26 (“Roth”), Case No. 19-11010-ABL (no discharge); Juanita Ann Shult and Stephen Foster Shult
27 (“Shult”), Case No. 18-15305-BTB (discharged); Jennifer Leigh Slade (“Slade”), Case No. 19-
28

1 11727-BTB (discharged); and Eleonore Margaret Witterland (“Witterland”), Case No. 18-17342-
2 MKN (discharged).²

3 The motion in the Roth case was heard on August 20, 2019, by Bankruptcy Judge August
4 Landis. Under the circumstances of that case, the court ordered the Law Firm to disgorge all
5 fees paid by the client pursuant to Section 329(b). In particular, the individual debtor previously
6 filed a Chapter 7 petition in December 2012 in Colorado and received a Chapter 7 discharge in
7 March 2013. When the Law Firm filed another voluntary Chapter 7 petition in Nevada in
8 February 2019, the client was not eligible for a Chapter 7 discharge under Section 727(a)(8).
9 Because the case was filed with no possibility of obtaining a Chapter 7 discharge, the court
10 concluded that the Law Firm’s services had no value to the client.

11 In addition to disgorgement of the fees paid to the Law Firm by Roth, Judge Landis
12 sanctioned the Law Firm in the amount of \$750.00 in attorney’s fees and \$93.15 in costs to the
13 Trustee as permitted by Local Rule 9004(c)(1)(D). The court concluded that the request was
14 appropriate given the Trustee’s time and effort in preparing the motion and presenting it at the
15 hearing. In light of the pending State Bar of Nevada (“Nevada Bar”) investigation, however,
16 Judge Landis denied the Trustee’s additional request to issue an OSC to consider further
17 sanctions under FRBP 9011(b). A written order memorializing the court’s ruling was entered on
18 August 23, 2019. (Roth ECF No. 36).

19 The hearing on the Motion in the instant matter was held concurrently with the Motion in
20 the Witterland case. The motions in the Shult and Slade cases are scheduled to be heard on
21 September 11, 2019, by Chief Bankruptcy Judge Bruce Beesley.

22 The common theme in all of these cases is that the Law Firm electronically filed
23 voluntary Chapter 7 petitions for the clients without the clients actually signing the petitions.
24 Issu Declaration at ¶ 7. Additionally, the Law Firm submitted client documents to the Trustee
25

26
27 ² The Trustee mentions up to ten additional cases where the Law Firm may have
28 electronically filed Chapter 7 petitions before the petitions were actually signed by the client.
See Motion at 5 n.4. The Trustee has not sought relief in connection with those cases.

1 that were accompanied by forged certifications. Isso Declaration at ¶¶ 7, 10, 11, and 12. The
2 Law Firm attributes that practice to an unsupervised paralegal who allegedly believed the actions
3 to be permissible. Isso Declaration at ¶ 12.

4 The Law Firm concedes that the fees paid by the clients in all of the cases may be
5 disgorged and remitted to the clients. Isso Declaration at ¶ 18, 19, 20, 21, 22, and 23. It also
6 concedes that the \$750.00 sanction payable to the Trustee for his legal fees in bringing the
7 Motion in each case is appropriate. Isso Declaration at ¶ 25.³ In view of these concessions, the
8 court will grant these aspects of the relief sought in the Motion.⁴

9 The court agrees with Judge Landis that issuance of an OSC under FRBP 9011⁵ is
10 unnecessary in this case. Under FRBP 9011(c)(2), a sanction imposed for conduct in violation of
11

12 ³ According to the Trustee Supplement, costs in the total amount of \$94.50 were incurred
13 in connection with this Motion.

14 ⁴ Because the instant Motion is virtually identical to the motions filed in the other four
15 cases, the court has considered whether the Trustee should charge or request the same amount of
16 legal fees in each case. In the court's view, the \$750.00 fee request is modest compared to what
17 the Trustee could charge on an hourly basis, especially in comparison to the hourly rates charged
18 by the Law Firm in connection with other bankruptcy cases. See, e.g., In re Dean Tyler Bush,
19 Case No. 17-14004-MKN, Memorandum Decision on Motion for Sanctions for Intentional
20 Violation of the Automatic Stay and Discharge Injunction, Dkt. 50 at 9:15 to 10:6 (Bankr. D.
21 Nev. March 1, 2019) (discussing a \$395.00 hourly rate sought by Law Firm). Under these
22 circumstances, the court independently concludes that the fees requested by the Trustee in
23 connection with the instant Motion (as well as the other motions) is reasonable.

24 ⁵ FRBP 9011, like FRCP 11, is designed to ensure attorney competence. See In re
25 Spickelmier, 469 B.R. 903, 910-13 (Bankr. D. Nev. 2012). In this district, sanctions imposed on
26 counsel under FRBP 9011(b) have included referrals to the Nevada Bar, referrals for criminal
27 investigation, disgorgement of fees, suspensions from practice, revocation of electronic filing
28 privileges, public reprovls, mandatory attendance of additional continuing legal education
courses, payment of legal fees, disclosures to future clients, and the like. See In re Pagaduan,
429 B.R. 752 (Bankr. D. Nev. 2010), aff'd in part and vacated in part, Goldberg v. Pagaduan (In
re Pagaduan), 447 B.R. 614 (D. Nev. 2011); In re Schivo, 462 B.R. 765 (Bankr. D. Nev. 2011);
In re Sponhouse, 477 B.R. 147 (Bankr. D. Nev. 2012); In re Spickelmier, *supra*; In re Susan
Goodman, Case No. 08-19036-MKN, Order on Motion for Sanctions, Dkt. 232 (Bankr. D. Nev.
Dec. 4, 2012), aff'd, Goldberg v. Goodman (In re Goodman), 2013 WL 4767741 (B.A.P. 9th Cir.
Sep. 5, 2013). See also In re Henry, 2017 WL 2874461, at *7-10 (Bankr. D. Alaska July 5,
2017). Compare In re Steve Herbert Hofsaess, Case No. 13-12210-BTB, Order [on Acting
United States Trustee's Motion for Disgorgement of the Compensation Paid to Attorney

1 FRCP 9011(b) “shall be limited to what is sufficient to deter repetition of such conduct or
2 comparable conduct by others similarly situated.” In this instance, the Law Firm has
3 acknowledged both the occurrence and seriousness of the misconduct. It has agreed to the
4 disgorgement of all legal fees to all five of the clients, even though four of the clients actually
5 received a Chapter 7 discharge. Unlike Roth, the other four clients were eligible for Chapter 7
6 relief at the time their cases were filed and in fact have received their discharges. Thus, the
7 services rendered by the Law Firm had at least some value of these clients. With the passage of
8 time, the likelihood of the clients losing the benefit of their Chapter 7 discharges will diminish.⁶
9 Repetition of conduct harmful to clients and the bankruptcy system, however, must be avoided.

10 Crucially, the Law Firm’s principal attests that remedial steps have been taken to ensure
11 that similar misconduct does not occur in the future. After the incidents were brought to the Law
12 Firm’s attention by the Trustee, the Law Firm represents that it immediately reported the conduct
13 to the Nevada Bar, which is conducting an investigation. Isso Declaration at ¶¶ 3, 5, and 24.
14 Moreover, the Law Firm’s principal attests that the paralegals in the firm have been re-trained,
15 and that all bankruptcy petitions, questionnaires, and other forms to be signed by the client “in
16 my presence.” Isso Declaration at ¶ 13.⁷ Additionally, the Law Firm’s principal has enrolled in

18 Christopher G. Gellner, Esq. Pursuant to 11 U.S.C. § 329, Dkt. 63 (Bankr. D. Nev. June 25,
19 2013) (requiring disgorgement of Chapter 11 retainer [and revoking electronic filing privileges
20 for 6 months]).

21 ⁶ Section 727(d) describes various circumstances under which a Chapter 7 discharge may
22 be revoked. None of those circumstances appear to apply in these cases. Additionally, the
23 length of time to seek revocation of a Chapter 7 discharge is not substantial. See 11 U.S.C. §
24 727(e). Whether a creditor or other party in interest could otherwise seek relief from the Order
25 of Discharge entered in each case by a timely motion under FRCP 59(e) or FRCP 60 is unknown.

26 ⁷ It is not clear to the court why the paralegal was not terminated by the Law Firm for
27 signing a client’s name to a document offered under penalty of perjury. It is equally unclear why
28 any person, much less a paralegal in a law firm, would not know such conduct to be both
improper and illegal. Of equal concern is the CM/ECF password used by the Law Firm to
electronically file documents with the court. The instances are legion where severe sanctions
have been imposed for abuse of the electronic filing privilege. See, e.g., In re Pina, 602 B.R. 72
(Bankr. S.D. Fla. 2019) (sanction of consumer bankruptcy attorney under FRBP 9011(b) for
electronic filing of unsigned schedules and statements in over 100 cases included a two-year

1 various continuing legal education courses in bankruptcy law and law office management to
 2 avoid similar incidents in the future. Issso Declaration at ¶ 16. The court accepts counsel's
 3 assurances that the practices that resulted in the filing of the instant Motion, as well as in the
 4 other cases, no longer continue.⁸

5 In light of the foregoing, and having considered counsel's demeanor exhibited at the
 6 hearing, the court also reaches the same conclusion as Judge Landis: additional sanctions under
 7 FRBP 9011(b) to deter repeated conduct are not necessary in light of the pending investigation
 8 by the Nevada Bar. Because there are no specific timelines for investigations and determinations
 9 by the Nevada Bar, the court will address any future misconduct by the Law Firm in an
 10 expedited, and likely more severe, fashion.⁹

11 **IT IS THEREFORE ORDERED** that the Motion to Disgorge, brought by Brian D.
 12 Shapiro, Trustee, Docket No. 22, be, and the same hereby is, **GRANTED AS SET FORTH**
 13 **BELOW.**

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 17
 18 suspension from practice and referral to Florida Bar for discipline); In re John Saba, Attorney at
 19 Law, [California] Bar No. 165415, Administrative Order 2019-04 (Bankr. D. Nev. Aug. 29,
 20 2019) (permanently terminating electronic filing privileges of disbarred California attorney
 whose electronic filing account was used by former law partner to file Nevada bankruptcy case).
 Such severe sanctions clearly are not warranted in this case.

21 ⁸ These assurances should address the concerns that might be raised in the other cases
 22 mentioned by the Trustee. See note 2, supra.

23 ⁹ Having already admitted in her declaration that the Law Firm's own paralegal signed
 24 the clients' names to a document under penalty of perjury, the Law Firm's principal attests that
 25 the agreement to disgorge fees is offered "not as an admission of fault or liability on my part but
 26 for the sake of judicial economy and to allow the cases to be resolved in a timely manner and for
 27 the clients to be able to move forward with their post-bankruptcy lives." Issso Declaration at ¶
 28 18. This is curious. If not the employer of the paralegal, who else might be at fault for the
 employee's obvious misconduct on the job? If not for the employer of the paralegal, who else
 might be liable for the employee's misconduct on the job? Counsel's statement appears to
 confuse the usual recitals found in a written settlement agreement with the submission of
 testimony in response to the factual allegations in the Motion.

1 **IT IS FURTHER ORDERED** that all fees paid by the client in this case to the Isso &
2 Hughes Law Firm (“Law Firm”) shall be disgorged. That amount must be paid back to the client
3 no later than **December 4, 2019**.

4 **IT IS FURTHER ORDERED** that attorney’s fees in the amount of \$750.00 and costs
5 advanced in the amount of \$94.50 shall be paid by the Law Firm to Brian D. Shapiro, Trustee.
6 That amount must be paid to the Trustee no later than **December 4, 2019**.

7 **IT IS FURTHER ORDERED** that the Law Firm shall have up to and including
8 **December 18, 2019**, to file a declaration that the payments required by this order have been
9 made. Redacted copies of the cancelled checks must be attached to the declaration to permit the
10 court to verify that the payments were made.

11 **IT IS FURTHER ORDERED** that the Law Firm shall file a declaration attesting to the
12 relevant continuing legal education courses that are completed by counsel through the period
13 ending one year from the entry of this order. Copies of the attendance acknowledgment forms
14 issued by the course provider must be attached to the declaration to permit the court to verify that
15 the courses were attended.

16 **IT IS FURTHER ORDERED** that the Law Firm shall provide a copy of this Order to
17 the Nevada Bar, along with copies of the written orders, if any, entered in connection with the
18 similar motions in the other four cases referenced in this Order.

19 **IT IS FURTHER ORDERED** that the Law Firm shall file a declaration with the court
20 reporting the outcome of the investigation by the State Bar of Nevada. The declaration must be
21 filed within fourteen days of receipt of the determination from the Nevada Bar.

22
23
24 Copies sent via CM/ECF ELECTRONIC FILING

25 Copies sent via BNC to:
26 TERESA K. ALSTOTT
27 GRANT W. NAIRN
28 4300 SAN DIEGO STREET
NORTH LAS VEGAS, NV 89032

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