Dated: July 24, 2018
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re	)	
	)	
TED ALLEN MILLS and	)	**Case No. 15-11766**
RHONDA JEAN MILLS,	)	
	)	
Debtors.	)	**Chapter 7**
	)	

MEMORANDUM OPINION RE ORDER FOR ATTORNEY, BENJAMIN S. DEMPSEY, TO APPEAR AND SHOW CAUSE WHY HE SHOULD NOT BE SANCTIONED AND DISCIPLINED FOR DEFICIENT CONDUCT

At issue in this matter is whether Benjamin S. Dempsey, Esquire ("Dempsey"), should be sanctioned and disciplined for deficient conduct related to his representation of the debtors in this case. The United States Trustee ("UST") asserts that Dempsey violated numerous Tennessee Rules of Professional Conduct and various sections of the Bankruptcy Code and Rules with respect to the handling of life insurance proceeds

Rhonda Jean Mills ("Ms. Mills") became entitled to during the pendency of the case. For the reasons set forth herein, the Court finds that Dempsey violated the Tennessee Rules of Professional Conduct and, as such, is subject to sanctions in the form of a suspension from the practice of law in this Court.

The Court conducted an evidentiary show cause hearing on May 23, 2018. The Court heard the testimony of Ms. Mills, chapter 7 trustee Marianna Williams ("Wiliams"), and Dempsey. The Court entered five exhibits at the evidentiary hearing. In addition to the proof tendered, the Court also took judicial notice, pursuant to Federal Rule of Evidence 201, of all documents of record filed in the Debtors' bankruptcy case and the sworn testimony of Ms. Mills at a Federal Rule of Bankruptcy Procedure 2004 examination on July 17, 2017.

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and 11 U.S.C. § 105. This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. Additionally, in accordance with *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1939 (2015), the parties have consented to the Court's entry of a final order in this matter. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052 and 9014.

A. FACTS

The debtors in this case, Ted and Rhonda Mills (collectively "Debtors"), filed their joint chapter 7 petition for bankruptcy relief on August 4, 2015. The Debtors were originally represented by attorney Paul Hutcherson ("Hutcherson"). The Debtors made two payments to Hutcherson. One in the amount of $750.00 and one in the amount of a $425.00. (Tr. of July 17, 2017 Rule 2004 Examination of Rhonda Mills at 11-12, Coll. Ex. 1;[1] *see also* ECF No. 76-2.) The two payments included Hutcherson's attorney's fee, the

[1] The transcript from the July 17, 2017 Rule 2004 Examination of Rhonda Mills will hereinafter be cited as "Coll. Ex. 1."

$50 fee for pre-petition credit counseling and the $335.00 chapter 7 filing fee. (*Id.*) Williams was appointed as the chapter 7 Trustee the same day it was filed.

Ten days after the case was filed, Ted Mills passed away. Hutcherson filed a Suggestion of Death on August 26, 2015. On September 1, 2015, Hutcherson sent a letter to attorney Michael Tabor in which he stated that Ted Mills had been insured under two life insurance policies at the time of his death.[2] Both policies named Ms. Mills as the sole beneficiary. The policies were valued at $7,000.00 and $10,000.00 respectively.[3] According to Hutcherson's letter, Ms. Mills planned to use the proceeds to pay the funeral expenses and purchase a headstone for Ted Mills. Michael Tabor forwarded the letter to Williams in her capacity as the chapter 7 trustee in this case.

USAble Life Insurance Company disbursed a check to Ms. Mills in the amount of $10,000.00 on September 30, 2015 ("USAble Proceeds"). (Coll. Ex. 1 at D.) Ms. Mills then delivered the check to her attorney's office in Dresden, Tennessee. Although Hutcherson was still the Debtors' attorney of record at this time, the USAble Proceeds were deposited in an account at BancorpSouth Bank titled in Dempsey's name. (Tr. Ex. 2 at 3.) The funds were deposited on October 14, 2015, in account number XXXX-072-3 ("Account 72-3") which was titled "BENJAMIN S DEMPSEY DBA DEMPSEY LAW OFFICE POD, PO BOX 712, DRESDEN TN 38225-0712."[4] (*Id.*) The bank statements for this account do not indicate that this account was an escrow or an IOLTA account and the proof introduced at the hearing in this case indicated it was not.[5] (*See* Tr. Ex. 2.)

[2] Neither of the parties in this matter explained why Hutcherson sent the letter regarding the life insurance policies and proceeds to Michael Tabor rather than Marianna Williams. The notice of Williams' appointment as the chapter 7 trustee was sent out on August 7, 2015, and the Court served Hutcherson with notice of her appointment. (*See* Certificate of Mailing, ECF No. 6).

[3] Within the September 1, 2015 letter to Mr. Tabor, Hutcherson states that the proceeds of the $7,000.00 life insurance policy were sent to the funeral home to cover the expenses for Ted Mills' funeral. Consequently, only the proceeds of the $10,000.00 policy are at issue in this matter.

[4] Dempsey admitted that "POD" is an abbreviation for "Payable-on-Death." Black's Law Dictionary defines this type of account as "[a] bank account whose owner instructs the bank to distribute the account's balance to a beneficiary upon the owner's death. Unlike a joint-and-survivorship account, a pay-on-death account does not give the beneficiary access to the funds while the owner is alive." *Account*, Black's Law Dictionary (10th ed. 2014). Dempsey testified that he did not know who the beneficiary was on this account. (May 23, 2018 Tr. of Hr'g at 69.)

[5] Although Account 72-3 was not a trust or escrow account, the checks for this account read "Dempsey Law Office, Escrow Account 12." (*See* Tr. Ex. 2.)

Mills did not meet with Hutcherson or Dempsey at the time of delivering the check to the Dresden office.

It was Ms. Mills' understanding that Dempsey would hold the funds until such time as the chapter 7 trustee told him how much was needed to pay the claims against the estate. (Coll. Ex. 1 at 21.) Once all claims were paid, Ms. Mills understood that she would receive any remaining funds. (*Id.*)

The 11 U.S.C. § 341 meeting of creditors was originally scheduled for September 8, 2015; however, Hutcherson failed to appear at the initial setting. (*Id.* at 14.) He also failed to appear at the second setting. For this reason, Williams continued the meeting one more time to October 20, 2015. Although Hutcherson again failed to appear, attorney Cayce Dempsey-Maddox ("Dempsey-Maddox") appeared and informed Ms. Mills that Hutcherson had "turned over his bankruptcies to [Benjamin] Dempsey."[6] (*Id.* at 15.) This was the first time Ms. Mills learned that Hutcherson was no longer representing her in the bankruptcy case. Neither Hutcherson nor his law office ever contacted Ms. Mills to inform her that he had transferred responsibility of her case to Dempsey. (*Id.* at 15-16.) Prior to the § 341 meeting, neither Dempsey nor his law office ever contacted Ms. Mills to let her know that Dempsey had taken over as her attorney. (*Id.* at 16.) At no time during this case did Ms. Mills enter into an agreement to pay Dempsey any fees related to his role as Debtors' counsel. She never signed an employment contract with Dempsey or made any verbal commitment to pay him a separate attorney's fee. (*Id.* at 16, 21-22.)

Although Dempsey was allegedly taking over as the Debtors' attorney of record as of at least October 20, 2015, there seemed to be some confusion between Hutcherson and Dempsey as to who was representing the Debtors after this time. Dempsey attempted to file amended schedules for the Debtors on October 20, 2015; however, because the incorrect event code was used, the Court voided the amended schedules.[7] Dempsey also attempted to file a Financial Management Course Certificate for Ms. Mils on November 18, 2015; however, because he was not the attorney of record, the Court

[6] Cayce Dempsey-Maddox is an attorney at the Dempsey Law Firm and is Benjamin Dempsey's daughter.
[7] It is unclear why the Court did not also reject the filings since Dempsey was not the attorney of record at the time the amended schedules were submitted.

voided the filing. Hutcherson then filed the certificate for Ms. Mills on November 24, 2015. It was not until November 30, 2015, that Hutcherson and Dempsey filed a consent order substituting Dempsey as the Debtors' attorney. The consent order did not state what, if any, compensation Dempsey would receive for representing the Debtors in this case. Nor did the order state whether Hutcherson would be permitted to share any of the previously-paid attorney's fee with Dempsey. Dempsey never filed a Federal Rule of Bankruptcy Procedure 2016 Disclosure of Compensation or an application for compensation in this case.

Pursuant to the amended schedules Dempsey attempted to file on October 20, 2015, as well as the debtor's testimony at the § 341 meeting, Ms. Mills claimed an exemption in the proceeds of both life insurance policies. The proceeds of the $7,000.00 policy were claimed as exempt personal property under Tennessee Code Annotated § 26-2-103. The description of the property was "Insurance Proceeds on deposit with Murphy Funeral Home, Martin, TN for deceased co-debtor husband Ted Mills' funeral expense." (Am. Schedule C, ECF No. 11 at 8.) The $10,000.00 USAble Proceeds were claimed as exempt life insurance proceeds under Tennessee Code Annotated § 56-7-203. The description of this property was "Escrow account with Dempsey Law Office at Bancorpsouth, Dresden, TN, holding co-debtor's life insurance proceeds." (*Id.*) Neither Hutcherson nor Dempsey ever correctly filed the amended schedules.

After learning about the insurance policies at the § 341 meeting, Williams notified the Court that she had located an asset with which to pay allowable claims. In accordance therewith, the Court notified creditors of the need to file proofs of claim. Five creditors subsequently filed claims.

Williams filed an objection to the debtor's claimed exemption in the USAble Proceeds on November 18, 2015.[8] The basis for Williams' objection was as follows:

> TCA § 56-7-203 exempts from the claims of creditors the net amount payable under any policy of life insurance or annuity contract upon the life of any person made for the benefit of or assigned to the spouse and/or

[8] Although neither Dempsey nor Hutcherson ever correctly filed the amended schedules, Williams recognized the exemption and filed an objection thereto.

> children or any dependent relatives of said person. However the proceeds are not exempt from the claims of creditors of the beneficiary.

(*Id.*) Dempsey filed a Response to the Trustee's objection on December 14, 2015, in which he claimed the following:

> Debtor asserts that this insurance money is exempt from the claims of the estate of Debtor Ted Mills and also exempt from joint claims against the estate of Ted Mills and the Bankrupt[c]y Estate of Rhonda Mills. However, the exemption would not apply to claims solely against the bankruptcy estate of Debtor Rhonda Jean Mills. See: IN RE: BILLY W. KELLEY AND DOROTHY A KELLEY, CHAPTER 7, DEBTORS, CASE NO. 04-12920. Accordingly Debtor Rhonda Jean Mills files this limited and specific exception to the Trustee's objection.

(ECF No. 29.)

Prior to the filing of Dempsey's response, he and Williams entered into negotiations to resolve the exemption issue. Once an agreement was reached, Williams emailed Dempsey to solidify the terms thereof. The November 20, 2015 email from Williams read:

> Ben:
>
> > I want to make sure we are on the same page in this case.
> >
> > You are holding $10,000 in your escrow account which is a portion of the proceeds from a life insurance policy on the life of [T]ed Mills. That money is claimed as exempt under TCA 56-7-203 so it [is] exempt from the claims of any creditor of Mr. Mills but not from the claims of Rhonda Mills' creditors. Once the claims period has run I will determine which claims belong to Mrs. Mills and object to any claim which is not hers.
> >
> > Please confirm that this is your understanding.

(Coll. Ex. 1 at C-2.) Nine days later, Williams received an email from "DLO Bankruptcy Department bky@thedempseylawoffice.com which read "yes this is ok. Ben."[9] (*Id.*) Dempsey and Williams entered an agreed order resolving the matter on February 9, 2016. The parties agreed that the exemption would be allowed as to the individual creditors of

[9] At the show cause hearing, Dempsey appeared to assert that he did not send this email. Rather, he alleged that someone in his office sent it and signed his name to the email. Regardless of this fact, Dempsey did not deny entering into the agreement with Williams.

Ted Mills and the joint creditors of Ted and Rhonda Mills, but disallowed as to Ms. Mills' individual creditors.

The Court issued the Debtors their chapter 7 discharge on March 18, 2016.

On May 6, 2016, Williams filed an objection to three claims filed by individual creditors of Ted Mills. The Court granted the objection at a hearing at June 9, 2016. Williams entered an order granting her objection on June 14, 2016.

After her objection to claims was granted and the claims bar date had passed, Williams emailed Dempsey to inform him that he needed to remit $6,500.00 of the USAble Proceeds to her for the payment of allowable claims. (Coll. Ex. 1 at C-3.) Williams sent her email on June 10, 2016. Dempsey responded eight days later, on June 18, 2016, that "dollars mailed 6.18.16—should be there Monday on Mills ins claims[.] ty-Ben." (*Id.*) Although the USAble Proceeds had been deposited in Account 72-3 at BancorpSouth Bank, Dempsey did not send the funds to Williams in a check drawn on this account. Rather, he sent Williams two separate cashier's checks from FirstBank: one in the amount of $3,000.00 and one in the amount of $3,500.00. (Coll. Ex. 1 at C-4.)

Williams filed her final report on November 29, 2016. She paid a total of three claims in the case in the amounts of $1,503.28, $3,001.39, and $488.75. Williams also filed an application for her fees and expenses as the chapter 7 trustee in the case. She sought $1,314.10 in statutory compensation and $192.38 in expenses. The Court approved Williams' administrative claims and granted her application for compensation on January 10, 2017. The Court issued an order discharging the chapter 7 trustee and closing the case on April 5, 2017.

Upon receiving notice that the bankruptcy case had been closed, Ms. Mills attempted to contact Dempsey to inquire about the $3,500.00 in remaining USAble Proceeds he was holding. Mills testified that she called him four times before he contacted her. When he finally returned her call, he told her that her case was "under review" and that he would "call and see what was going on." (Coll. Ex. 1 at 23-24.)

Dempsey never got back in touch with Ms. Mills. Consequently, on April 25, 2017, Ms. Mills contacted Williams to inform her that she had asked Dempsey to disburse the

$3,500.00 in remaining USAble Proceeds and that he had refused to do so. (Decl. of Marianna Williams, ECF No. 76-3 at 2.) Williams subsequently informed the UST of the issue.

On May 4, 2017, the UST filed a motion to reopen this case in order to review Dempsey's handling of the USAble Proceeds. The Court granted that motion on June 14, 2017. Sometime thereafter, Rhonda Mills sent Dempsey a certified letter in which she stated "As of June 16, 2017, I Rhonda J. Mills am terminating you as my lawyer. Your services are no longer needed." (Coll. Ex. 1 at E.) An employee at Dempsey's office signed for the letter on June 21, 2017. (*Id.* at 27-28.) Dempsey admitted that the person who signed for the letter was his employee, but claimed that the letter was never given to him by his staff. (*Id.* at 6.)

The UST filed a Motion for Examination of Debtor Pursuant to Fed. R. Bankr. P. 2004 and Request for Production of Documents on June 28, 2017. The Court granted that motion on June 29, 2017.

Dempsey filed a motion to withdraw as the Debtors' attorney on July 12, 2017. In support of his motion, Dempsey stated

> Attorney asserts that he has lost communication with his client in that she does not make office meetings and fails to keep appointments and does not return phone calls. Also, there may exist a conflict of interest as to the facts of the case[.] Accordingly movant request[s] that he be allowed to withdraw as counsel.

(ECF No. 71.) Dempsey did not serve a copy of the motion on Ms. Mills. The Court granted Dempsey's motion on September 11, 2017.

Carrie Ann Rohrscheib ("Rohrscheib"), a trial attorney in the UST's office, conducted the Rule 2004 examination ("2004 Exam") of Ms. Mills on July 17, 2017. Both Mills and Dempsey appeared at the examination. As of the morning of the 2004 exam, Ms. Mills still had not received the remaining $3,500.00 of the USAble Proceeds from Dempsey. During the examination, Dempsey claimed that he had previously sent Mills a check for $3,000.00 in April 2017. (Coll. Ex. 1 at 34.) Dempsey claimed that the check was numbered 1220 and was drawn on Account 72-3 at BancorpSouth Bank ("Check

1220").[10] (*Id.* at 35.) The morning of the 2004 Exam, Dempsey called his bank to inquire about the status of Check 1220. (*Id.* at 34.) Dempsey claimed it was not until he made that phone call that he learned that the check had never been negotiated. (*Id*.) Because Check 1220 still had not been cashed, Dempsey asked BancorpSouth Bank to stop payment thereon. (*See* Tr. Ex. 3.) Dempsey then issued a $3,000.00 "replacement" check to Ms. Mills on the morning of the 2004 Exam. (Coll. Ex. 1 at G.) Dempsey did not present the parties with a copy of Check 1220. Although Dempsey claimed that Check 1220 had been drawn on Account 72-3 at BancorpSouth Bank, the "replacement" check was a cashier's check from FirstBank.

Dempsey also presented the parties with a "Settlement Sheet" for the USAble Proceeds at the 2004 Exam. Pursuant to this statement, Dempsey had remitted $6,500.00 of the proceeds to Williams for claims, refunded $3,000.00 to the debtor and retained $500.00 as an "Attorney Fee." (Coll. Ex. 1 at F.) Ms. Mills asked Dempsey "what the 500 attorney fee is when it's already been paid up front [to Hutcherson]." (*Id.* at 33.) Dempsey stated that

> I inherited this [case]. And all I ever did was – you see the paperwork. There never was a lot of activity as you saw it go through about the claims. And we disputed some claims and objected. And there was litigation over whether the money was payable to joint creditors, individual creditors. And Ms. Williams and I spent a lot of time. I'm sure I have probably $3,000 of time, 4,000 in the thing.
>
> But that's not – she didn't – I wasn't going to take her money. She didn't agree to any of that. But I'm certain I put a lot of time into it.

(*Id.* at 36-37.)

During the 2004 Exam, Rohrscheib also asked Ms. Mills about her contact with Dempsey following his statement that the case was "under review."

[10] At the time Dempsey allegedly sent Check 1220 in April 2017, the highest check number that cleared Account 72-3 that month was check number 1176. (Tr. Ex. 2, 04/30/17 Statement at 1.) As of July 31, 2017, the highest check number that had cleared the account was check 1208 which was written on March 1, 2017. (*Id.* at 03/31/17 Statement and 07/31/17 Statement.) That is the only check with a number above 1200 that cleared the account through July 2017.

Q. And so just – the last communication you had with Mr. Dempsey's office, he indicated that the case was under review? That was the last communication you had with him?

A. Yes.

Q. And did you attempt to contact him any after that?

A. No, I did not.

Q. And you haven't received any other communication from his office?

A. He has contacted – he has texted me, but I have not talked to him.

Q. Okay. So he has – he has attempted to contact you?

A. Yes.

Q. Has he – did he – what – what was the content of his attempts to contact you with respect – was – was there any update on the case, or basically, what was –

A. No. Basically it was after he got the letter --

Q. Okay.

A. -- when I fired him. Because he'd probably got it that Wednesday, and that's when I started getting the text [sic].

Q. Okay. So he was sending – Mr. Dempsey was sending you text messages?

A. Yes.

Q. And what was the content of the messages? Was it related to the – this is content related to the case?

A. He tried to make it relate. I just didn't respond to any of them.

Q. Okay. So you didn't respond. And I'm not going to make your phone a record. So if you want to like summarize for me the content –

A. Okay. He – after he got the letter saying I no longer needed him –

Q. Okay. You believe that these texts were received after that. Do you know what –

A. He's never texted me before.

Q. Okay. So do you know what –

A. And he doesn't call me. I've had to call up there.

Q. Do you – does your – does it indicate what date you would have received the text on?

A. Yeah. 6/21.

Q. Okay. 6/21. And what was the content –

A. And that was saying, this is Benjamin Dempsey, please call me at your earliest convenience. And then again – that was at 11:00 a.m. Then again on 6/21 at 5:48, it was just thanks.

And then on 6/22 at 6:42 p.m., it was thanks. And then on 6/26 at 6:43 p.m., it said, sorry you missed your appointment; call me when we can reschedule at your convenience. But I didn't have an appointment because I hadn't talked to him.

Q. And you haven't received any other written communication from Mr. Dempsey's office?

A. No.

(Coll. Ex. 1 at 29-31). At no time during the 2004 Exam did Dempsey dispute that he sent the text messages to Ms. Mills.

On July 26, 2017, Rohrscheib sent Dempsey the following email:

Pursuant to our previous conversation on July 17, 2017, I requested you return the remaining $500.00 of insurance proceeds to Ms. Mills. I also requested you provide me with a copy of the check to Ms. Mills. You indicated you would respond to my request by Friday, July 21, 2017. I have not heard from you regarding the return of these funds.

This email constitutes a formal request that you return the $500.00 remaining of the insurance proceeds belonging to Ms. Mills that were to be held in your trust account. You alleged the $500 was retained by you as an attorney fee in the case. However, it appears you have no right to retain the $500 as an attorney fee.

Pursuant to Tennessee Rules of Professional Conduct Rule 1.5(b) "The scope of representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client." Additionally 11 U.S.C. Section 528(a) requires a written contract that explains the services to be provided and the fees or charges for such services and the terms of payment.

You had admitted that you have [had] no contact with Ms. Mills regarding the additional attorney fee in violation of 11 U.S.C. Section 528(a). Ms. Mills indicated that you never communicated to her that you were charging any additional fee for your services in the bankruptcy case in violation of both Tennessee Rule of Professional Conduct Rule 1.5(b) and 11 U.S.C. Section 528(a). Based on the foregoing, I believe you have no right to the funds or

> to charge Ms. Mills an additional attorney fee in this case. I am requesting that you return the $500 in remaining insurance proceeds to Ms. Mills on or before **Friday, August 4, 2017** and by such time provide me with a copy of the check to Ms. Mills as proof of such.

(*Id.* at H.) On July 28, 2017, Dempsey provided the UST with a copy of a check made out to Ms. Mills in the amount of $500.00. The check was dated July 22, 2017, and was drawn on the "Dempsey Law Office Escrow Account 12" at BancorpSouth Bank.[11] (*Id.* at I.) Dempsey indicated he had sent it to Ms. Mills by certified mail. He did not, however, indicate when he had sent it. Sometime thereafter, Ms. Mills confirmed with the UST that she had received these funds.

On February 26, 2018, the UST filed a Motion for Order to Show Cause Why Benjamin S. Dempsey, Esq., Should Not be Sanctioned and Disciplined for Deficient Conduct ("Show Cause Motion"). The UST asserted that Dempsey's handling of the USAble Proceeds violated numerous Tennessee Rules of Professional Conduct and various provisions of the United States Bankruptcy Code. Dempsey filed an objection to the motion on March 20, 2018, in which he requested additional time to investigate and file a detailed objection and response.

The Court heard the UST's Show Cause Motion and Dempsey's objection thereto on March 29, 2018. At the hearing, Dempsey stated he was in agreement with granting the UST's motion because he wanted an opportunity to explain the situation in this case. The Court, therefore, granted the UST's motion and set a show cause hearing for May 23, 2018. The parties filed a consent order on April 10, 2018, directing Dempsey to appear and show cause at the May 23, 2018 hearing as to why he should not be sanctioned and disciplined for deficient conduct.

On May 18, 2018, the UST filed a Supplemental Memorandum in Support of Suspension from Practice Before the Bankruptcy Court as Appropriate Sanction and Discipline for Attorney Benjamin S. Dempsey's Deficient Conduct in this Case. Within this memo, the UST urged the Court to suspend Dempsey from practicing before this Court and to impose any other sanction that the Court deemed appropriate. The UST set

[11] The account number on the exhibit was redacted. Consequently, the Court cannot concretely state that this check was drawn on Account 72-3.

forth caselaw in support of his argument that suspension was the proper remedy in this case. The UST also cited the relevant Tennessee Supreme Court's Rules of Professional Conduct as well as the Court's local rules in support of his suspension argument.

One day before the show cause hearing, Dempsey attempted to file a response to the Show Cause Motion. (ECF No. 88.) Due to several deficiencies within the pleading, the Court voided Dempsey's response. (*See* "Request for Correction by Filer" on May 22, 2018.) Dempsey attempted to correct the deficiencies prior to the hearing, but failed to do so. (*Id.*) As will be discussed *infra*, a staff member in Dempsey's office properly filed the response shortly after the show cause hearing began.

The Court conducted the show cause hearing on May 23, 2018 ("Show Cause Hearing"). Rohrscheib appeared on behalf of the UST. Dempsey appeared without an attorney.

During opening statements, Dempsey orally moved the Court to dismiss the action. In so doing, Dempsey asserted that he had never represented the Debtors in this case.

> MR. DEMPSEY: … It's just a motion to dismiss. And it basically says Ms. Mills was not our client and that wasn't our account. And as exhibits and documents that indicate, that was handled by Mr. Hutcherson and his office. And the record reflects that Ms. Mills was retained by Mr. -- Mr. Hutcherson in August and paid him and met with him. And his office has continued to handle it.
>
> The operating account that's in question was handled by Mr. Hutcherson and his staff, and we were not –
>
> THE COURT: Were you substituted as counsel on this?
>
> MR. DEMPSEY: Much later, I did substitute in but after most of these transactions had taken place. And we relied on his office and his staff to handle this.
>
> And I didn't handle any of the money. I never got the check. I never met with her. I didn't have anything to do with it.
>
> And our response says, had we been able to get the file – Mr. Hutcherson had some problems, and we were asked to pick up his cases for him. And we have worked through them, a lot of problems, a lot of things.
>
> THE COURT: When were you substituted as counsel?

MR. DEMPSEY: I have the document. I can look.

THE COURT: Were you representing her at the 341 meeting of creditors?

MR. DEMPSEY: Sorry. I didn't hear you.

THE COURT: Were you representing her at the time of the 341 meeting of creditors?

MR. DEMSPEY: I do not know that.

THE COURT: Why do you not know that? Do you know how serious these proceedings are?

MR. DEMPSEY: Absolutely. I've practiced here for 20 years, had thousands of cases. I've never been challenged as I have in this case.

And this isn't my case, and I didn't do it. And it's very serious.

. . .

In this ---this short time, I cannot tell when I substituted. I would think the trustee could tell us that information without me looking down.

Do you know when I substituted in?

MS. ROHRSCHEIB: November 30th of 2015, Docket Number 26.

THE COURT: So you've been counsel of record since 2015, but you had nothing to do with this case? Is that what you're telling the Court?

MR. DEMPSEY: Mr. Hutcherson's staff handled these cases. There were –

THE COURT: You were counsel of record, Mr. Dempsey.

MR. DEMPSEY: I understand.

THE COURT: I'm afraid you don't. . . . Your motion to Dismiss is denied.

(May 23, 2018 Tr. of Hr'g at 15-17, ECF No. 92.)[12]

After the Court denied his motion to dismiss, Dempsey continued to assert that he had very little do to with this case: "And the case had been pending quite some time

[12] The transcript from the May 23, 2018 Show Cause Hearing will be hereinafter cited as "ECF No. 92."

before I got into it. And then the insurance problems [in this case] came up later. And we were asked to participate in that in a very minor way." (*Id.* at 18.)

Rohrscheib called Williams as her first witness at the hearing. Williams testified that she has served as a chapter 7 panel trustee in the Western District of Tennessee for 18 years. During this time, she has served as trustee in 12,210 cases. Asked whether "there [would] have been any reason to send two cashier's checks," Williams responded "not that I know of." (*Id.* at 30.) She stated that she routinely accepts checks written on an attorney's escrow account and never requires attorneys to submit estate funds to her in cashier's checks or money orders. (*Id.* at 29-30.) She also stated that she typically allows debtor's attorneys to hold money in their escrow accounts in cases like this rather than holding it herself for one simple reason: she is charged a fee on money held in her trustee's account. (*Id.* at 26.) By allowing debtor's attorneys to hold the funds, Williams preserves the total amount of the money until such time as she can determine what portion belongs to the estate. (*Id.*)

During his cross examination, Dempsey asked Williams whether she had ever had any trouble in dealing with him as a debtor's attorney. (*Id.* at 36.) Williams testified that in a vast majority of cases he had acted entirely appropriately, but that there were some instances in which he had been less than candid with her and had acted in an "unprofessional" or "[in]appropriate" manner. (*Id.*)

Rohrscheib next called Ms. Mills as a witness. Ms. Mills stated that the employee she worked with at the Dresden, Tennessee office was Sandra Klutts ("Klutts"). (*Id.* at 46.) According to Ms. Mills, Klutts was Hutcherson's employee at the time the Debtors met with Hutcherson and filed their bankruptcy petition. (*Id.*) Ms. Mills also asserted that once Dempsey took over Hutcherson's cases, Klutts began working for Dempsey. (*Id.*) Rohrscheib asked Ms. Mills to elaborate on this assertion:

> Q. And when you called [Klutts], what office did you call [Klutts] at?
>
> A. The one in Dresden.
>
> Q. And your understanding of that was that was Mr. Dempsey's office in Dresden. Correct?
>
> A. Yes.

Q. Had that office ever been Mr. – Mr. Hutcherson's office?
A. Not that I know of.
Q. And did you visit the office in Dresden?
A. Mr. Hutcherson's?
Q. Did you visit the office that was Mr. Dempsey's office in Dresden?
A. Yes.
Q. And is that where you took the check?
A. Yes.

(*Id.* at 47-48.)

Ms. Mills asserted that she attempted to contact Dempsey at the Dresden office and at his main office in Huntingdon on more than one occasion. (*Id.* at 47.) She also asserted that she visited Dempsey's Huntingdon office to ask about the status of the remaining insurance proceeds. Mills testified that during that visit Dempsey came out into the hallway and told her that he was working on her case. (*Id.* at 48.) Ms. Mills also testified that she again attempted to contact Dempsey regarding the insurance proceeds after she received the order closing her case. The only update she ever received from him after that time was that her case was "under review." (*Id.* at 49.) Ms. Mills testified that Dempsey never told her what portion of the USAble Proceeds she was going to receive or that he had sent her a check. She also claimed that he never told her he was going to charge her an attorney's fee. (*Id.* at 49-50.) Dempsey chose not to cross-examine Ms. Mills.

Rohrscheib then called Dempsey as a witness. Because he had consented to entry of the order requiring him to show cause, Rohrscheib asked Dempsey if he wanted to first present affirmative testimony. Dempsey responded, "I will -- it's difficult for me to ask myself questions. I will take the stand for her to examine me." (*Id.* at 57.)

During questioning by Rohrscheib, Dempsey admitted that he did not have any written agreement with Hutcherson to substitute as counsel in his open cases. (*Id.* at 58.) He also admitted that he did not have any agreement, written or otherwise, with Hutcherson to share any portion of the attorney's fees in those cases. (*Id.*) Dempsey

testified that he has been engaged in the practice of law in Tennessee since 1980. (*Id.* at 58.)

Dempsey then began a pattern of offering testimony that, at best, can be described as inconsistent. The first issue on which Dempsey offered contradictory testimony concerned the existence of a contract between himself and the Debtors. When asked by Rohrscheib whether he had any type of contract with Ms. Mills, Dempsey initially responded "*Only* if she had a contract with Mr. Hutcherson and if that substitution created some third party beneficiary contract." (*Id.* at 61 (emphasis added).) However, when Rohrscheib followed that answer up by asking Dempsey whether he had "separately execute[d] a contract with Ms. Mills," Dempsey indicated that such a contract might exist. (*Id.*) Dempsey stated that he had instructed Klutts to execute a contract, but that he could not find a copy of it. (*Id.*) He asserted that if there had been a contract it may have been destroyed in a fire at the Dresden office. (*Id.*)

The next topic on which Dempsey was inconsistent was whether Klutts was his employee. When Rohrscheib asked Dempsey whether he had notified Hutcherson's clients that he was taking over their cases, he stated that he had never contacted the clients directly, but that he had instructed Klutts to do so. (ECF No. 92 at 58.) He also claimed that he put Klutts in charge of opening the escrow account for the USAble Proceeds and that he allowed her to have control over Account 72-3. (*Id.* at 64, 104.) However, when Rohrscheib asked him directly whether Klutts worked for him, Dempsey responded "I thought she worked for me, but she did not." (*Id.* at 59.) He stated that Klutts never followed his instructions and that he was never truly in charge of that office. (*Id.*) When Rohrscheib later asked Dempsey who supervised Klutts, he responded "Apparently, no one." (*Id.* at 72.)

The third topic on which Dempsey offered contradictory testimony was whether the law office in Dresden was his. Dempsey never concretely answered the question. Initially he claimed that it was Hutcherson's office. (*Id.* at 101.) Later, he stated that he had assumed the Dresden office was his because he thought he was in charge of the staff, but he came to realize he never had control of the Dresden employees. (*Id.*at 103). Consequently, he concluded the office had never been his. (*Id.*) Interestingly, when a

fire destroyed the Dresden office in March 2017, Dempsey represented to this Court and local media that the office was his. *See, e.g.,* Mot. To Extend Deadline for Filing Payment Advices and Tax Returns, Case No. 17-10480, ECF No. 12 ("For cause, the Debtor gives notice that the bankruptcy office suffered significant fire damage and loss on the morning of Wednesday, March 15, 2017 and these documents were damaged and must be replaced."); W. Eric Perry, *Law office goes up in flames, arson suspected,* http://www.wbbjtv.com/2017/03/15/law-office-goes-flames-arson-suspected, (March 15, 2017) (last visited June 12, 2018). Dempsey was the original attorney of record in case number 17-10480. Thus, logic dictates that the "bankruptcy office" referred to in the motion to extend was Dempsey's.

Dempsey also gave contradictory testimony about two aspects of the financial nature of his law practice in relation to this case. Although Dempsey agreed to hold the USAble Proceeds in his escrow account, he said doing so was difficult for him because he did "not normally hold money like this." (ECF No. 92 at 64.) He testified that he did not have an escrow account or an interest bearing trust account (commonly referred to as an IOLTA account) at the time he agreed to hold the insurance proceeds in this case. (*Id.*) A short time later during his examination, however, Dempsey claimed he had escrow accounts at both First Bank and Carroll Bank and Trust. (*Id.* at 67.) He also claimed that he had a registered IOLTA account at "[e]ither First Bank or Carroll Bank in Huntingdon." (*Id.* at 100.) When asked why his information about these accounts was so vague, he stated "I don't handle my banking. I have clerical people who do that." (*Id.*) He also claimed that he does not "handle a lot of IOLTA funds" and so he does not use the IOLTA account "very often." (*Id.* at 99.) Dempsey did not present any evidence of the existence of these accounts to the Court.

The second financial issue Dempsey vacillated on was the degree of control he had over Account 72-3. Although the account is titled in his name, Dempsey initially asserted that it was not his account. (*Id*. at 15, 18, 71.) He stated that he had nothing to do with the account and that he had never handled the money in that account. (*Id.* at 15-16, 18, 72.) He described it as "the Dresden operating account that Ms. Klutts managed." (*Id.* at 68.) He also asserted that he had "never issued a check" from that account. (*Id.*

at 72.) However, when presented with copies of checks drawn on Account 72-3, Dempsey admitted that some of the writing and signatures could be or were, in fact, his. (*Id.* at 73, 88, 98.) He then testified that he was the only signatory on the account and that he had a debit card for that account. (*Id.* at 74-75.) He admitted to making some of the charges listed on the account statements. (*Id.* at 74, 76, 78.) He admitted that he instructed Klutts to open the account and that he allowed her to have access to the debit cards and to manage the account. (*Id.* at 64, 75-77, 93.) At the 2004 Exam, Dempsey asserted that he had remitted the remaining insurance proceeds to Ms. Mills by sending her Check 1220 from Account 72-3 in April 2017.[13] (Coll. Ex. 1 at 34.) Because that check was never negotiated, Dempsey testified that he asked BancorpSouth to stop payment on the check on July 17, 2017. (*Id.*) In support of this assertion, Dempsey submitted a copy of a letter from BancorpSouth into evidence. (Tr. Ex. 3). Within this letter, BancorpSouth acknowledged Dempsey's request to stop payment on Check 1220 from Account 72-3. (*Id.*)

Despite making contradictory claims about a number of issues in the case, Dempsey gave clear testimony regarding an accounting of the funds once they had been deposited. As stated *supra*, the USAble proceeds were deposited in Account 72-3 at BancorpSouth Bank on October 14, 2015. Dempsey testified that Account 72-3 was the operating account for the Dresden law office. (ECF No. 92 at 69.) Dempsey admitted that this account was not an escrow or IOLTA account. (*Id.* at 65.)

Rohrscheib introduced copies of the monthly bank statements for Account 72-3 into evidence at the Show Cause Hearing. The Court marked these statements as Trial Exhibit 2. The statements cover September 2015 through July 2017. There are some business related debits from this account, including filling fees for bankruptcy cases and payroll checks for Klutts. (*see, e.g.*, Tr. Ex. 2, 9/30/15 Statement at 1; 10/31/15 Statement at 2, 5/31/16 Statement at 1; 11/30/16 Statement at 1.) However, the vast majority of charges appear to be for personal expenses, including restaurants, fuel, and

[13] At the Show Cause Hearing, Dempsey claimed that he did not have any recollection of sending Ms. Mills a check from Account 72-3. However, when Rohrscheib read Dempsey excerpts from the 2004 Exam in which Dempsey said he sent her a check from that account, Dempsey responded "I don't disagree with what I said." (ECF No. 92 at 91.)

Amazon.com purchases. (*Id.*; Tr. Ex. 2, 12/31/15 Statement at 1.) The statements also reflect several checks made out to "Cash." (*see, e.g.,* Tr. Ex. 2, 10/31/15 Statement at 4; 01/31/16 Statement at 3.) As stated *supra*, the account statements do not indicate that this account was a trust or escrow account. The checks, however, read "Dempsey Law Office, Escrow Account 12."

The ending balance in Account 72-3 as of September 30, 2015, was $3,431.51. (Tr. Ex. 2, 9/30/15 Statement at 1.) The USAble Proceeds were deposited into this account on October 14, 2015. The ending balance for October 2015 was $10,694.10. (Tr. Ex. 2, 10/31/15 Statement at 1.) As the following table makes clear, the ending balance of the account never exceeded $10,000.00 after October 2015.

Statement Date	**Ending Balance**
November 30, 2015	$8,961.31
December 31, 2015	$7,192.75
January 31, 2016	$5,483.42
February 29, 2016	$5,273.54
March 31, 2016	$4,912.55
April 30, 2016	$5,617.82
May 31, 2016	$1,785.82
June 30, 2016	$462.34
July 31, 2016	$214.03
August 31, 2016	$340.60
September 30, 2016	$221.95

October 31, 2016	$82.27
November 30, 2016	$2,397.39
December 31, 2016	$166.52
January 31, 2017	$273.74
February 28, 2017	$285.18
March 31, 2017	$1,734.90
April 30, 2017	$1,639.95
May 31, 2017	$1,600.00
June 30, 2017	$1,560.05
July 31, 2017	$1,024.00

(Tr. Ex. 2.)

A thorough review of the daily balances from each statement indicates that Account 72-3 had a balance exceeding $10,000.00 for approximately five weeks after the USAble Proceeds were deposited. (*Id.* at 10/31/15 Statement at 1 and 11/30/15 Statement at 2.) However, after that time, the account balance slowly dwindled. It never exceeded $9,000.00 after November 27, 2015. (*Id.* at 11/30/15 Statement at 2.) Beginning in June 2016, the balance was often less than $1,000.00.

The daily balances make clear that Account 72-3 never contained sufficient funds at any relevant time in this case. When Williams notified Dempsey to remit $6,500.00 to her for claims and expenses in June 2016, the account did not contain over $2,004.44. (*Id.* at 6/30/16 Statement at 1.) When Dempsey allegedly sent Ms. Mills the $3,000.00 in remaining insurance proceeds in April 2017, the account did not contain more than $1,734.90. (*Id.* at 4/30/17 Statement at 1.) And when Dempsey allegedly obtained the

"replacement" money order for the $3,000.00 in July 2017, the account never contained over $2,974.00. (*Id.* at 7/31/17 Statement at 1.)

When asked about the account balances during the Show Cause Hearing, Dempsey admitted that Account 72-3 never had sufficient funds after October 31, 2015, to cover the $6,500.00 owed to the estate or the $3,500.00 owed to Ms. Mills. (ECF No. 92 at 95.) He claimed, however, that he properly accounted for and segregated the USAble Proceeds at all times during this case. Dempsey offered two arguments in support of this assertion.

The briefer of Dempsey's two arguments was that Account 72-3's overdraft protection would have covered the $3,000.00 check he allegedly sent Ms. Mills in April 2017. Dempsey offered this argument during questioning by Rohrscheib.

> Q. So at no time would there have been sufficient funds in the account for -- to cover a check for $3,000 to Ms. Mills?
>
> A. Yes. Every time, there would be. The bank had a notice that they got a check that wasn't sufficient, and it was covered within the same day, it was a good check. Ms. Klutts knew that, and the bank knew that, and I knew that.
>
> Q. But there weren't sufficient funds in this account at any time to cover a $3,000 check?
>
> A. There were funds available at the bank because we had overdraft privileges should something like that come up.

(*Id.* at 95.) When Rohrscheib asked him whether he "regularly [relied] on the overdraft protection and credit on the account to fund the payments," Dempsey responded "I never rely on that. If it occurs, I'm aware of it, and it's available." (*Id.*)

The other argument offered by Dempsey was that he properly safeguarded the USAble Proceeds in a trust ledger he maintained for the cases he took over from Hutcherson. Dempsey introduced a copy of this ledger at the Show Cause Hearing as Trial Exhibit 4. The ledger is 13-pages long and is titled "Trust Ledger-Hutcherson Office and Cases - #72-3 and # 668." ("Ledger). Dempsey testified that the two accounts reflected in this Ledger are Account 72-3 at BancorpSouth and account number 668 at Carroll Bank and Trust ("Account 668"). (*Id.* at 83.) At the hearing in this matter, Dempsey stated that Account 668 was "a capital account." (*Id*. at 64.) When asked by

Rohrscheib to define a "capital account," Dempsey responded "[a]n account that holds money that's insured and just protects it, was not subject to being disbursed by staff members." (*Id.* at 65.) Dempsey admitted it was not an escrow or IOLTA account. (*Id.*) He testified that it is a personal interest-bearing account that belongs to his wife. (*Id.* at 65-66.)

The Ledger shows debits and credits along with a running balance. (Tr. Ex. 4.) It covers transactions between September 10, 2015, and June 14, 2016. There do appear to be some business related expenses on the Ledger, including transactions labeled as "USBC Court Cost," but the vast majority of charges appear to be for non-business related expenses, such as McDonalds, Food Mart, Paris Swimming, etc. (*Id.*) The Ledger itself does not indicate who prepared it or when it was generated. Dempsey was unclear about who maintained the Ledger and how often it was reconciled. Rohrscheib questioned Dempsey about this at the Show Cause Hearing:

> Q. Who created the trust ledger?
>
> A. I did that and keep up with that.
>
> Q. And so when you – when you make the entries on the trust ledger, do you do them contemporaneously?
>
> A. No.
>
> Q. You do it on a monthly basis?
>
> A. I don't know exactly. I have a lady that does the data entries. I get the information. And I don't know how often she does it.
>
> It may be based on the workload. If the office is busy with incoming customers or if it's a slow day, then they update date. So I don't know.

(ECF No. 92 at 97.)

The Ledger lists a $10,000.00 deposit dated October 14, 2015 with the notation "Deposit Mills Check." (ECF No. 89-2 at 2.) The next entry is a $10,000.00 deduction dated October 14, 2015, with the notation "DEBIT OPT ACCT/CR CAPITAL." The Ledger does not provide an account number for the "OPT ACCT/CR CAPITAL" account nor does it indicate where this account is maintained. It also fails to include any type of notation that indicates this deduction was related to the USAble Proceeds or the Debtors' case.

During Rohrscheib's examination, Dempsey claimed that he learned Klutts had mistakenly deposited the $10,000.00 of insurance proceeds in Account 72-3 the same day the deposit was made. (*Id.* at 65.) Dempsey claimed he immediately corrected the mistake by moving the funds from Account 72-3 to Account 668. (*Id.* at 81.) Although reluctant to do so, Dempsey eventually admitted that he never physically transferred any money between the two accounts. Rather, he merely made an entry on the Ledger which purported to transfer the funds from Account 72-3 to Account 668. Rohrscheib asked Dempsey about this issue extensively.

Q. Mr. Dempsey, can you show me on these bank records where you withdrew $10,000 that was deposited in [Account 72-3]?

A. I withdrew it on the trust ledger, not on the statement.

Q. So the $10,000 that was Ms. Mills never left this account?

A. It left it in my accounting in my trust ledger. I withdrew it the same day.

. . .

Q. When did you transfer $10,000 from [Account 72-3] into account 668?

A. The same day that the money went into the operating account by error.

Q. Where is the deduction on [Account 72-3] showing you withdrew the $10,000?

A. It was a ledger entry where the money had already been placed in the account. And we balanced the account by moving the capital account by ledger entry.

. . .

Q. And when you say ledger entry, you mean you made an accounting entry?

A. Correct.

Q. You never withdrew the funds from [Account 72-3]?

A. Didn't take any dollars out, but I moved the money out. Yes.

Q. You never physically withdrew the money from [Account 72-3]?

A. No.

Q. Now, when you say you moved the money out, you mean you used it for operating expenses and personal expenses?

A. I had a trust account ledger, and the ledger had the balances entered and had capital entry. And that's part of my motion to dismiss.

And we balanced that against the capital account when I found out she didn't know how to open a trust account.

Q. And a trust account ledger is an accounting device.

A. Correct.

Q. Is that correct?

A. Correct.

Q. It's not an actual account?

A. Correct.

Q. It doesn't contain any money?

A. The account it refers to contains the money.

Q. How many accounts does that ledger refer to?

A. [Account 72-3] and account 668.

Q. But that's just an accounting practice. There are no funds held in a single trust account that is represented by that ledger. Is that correct?

A. This money was held in that account by entry and by deposit in a bank. Yes.

Q. In what account?

A. 668.

Q. How did it get from [Account 72-3] to 668?

A. [Account 72-3] in the trust ledger, began with a capital injection of $12,000 in the middle of September.

When the money had trouble in October, I changed the capital injection back into the capital account to move the entry from that account because [Klutts] had not opened the trust account. And to make sure the trust ledger was accurate, we made offsetting entries the same day.

Q. Those are all accounting entries?

A. That describe banks with the money and cycle.

Q. But not movement between banks of actual funds?

A. Correct.

Q. There was no movement between banks of actual dollars. Is that correct?

A. Correct.

Q. You made accounting entries that represented your movement of money through accounts?

A. Correct.

Q. But there was no actual withdrawal of funds from [Account 72-3]. Is that correct?

A. Correct.

Q. And no funds were ever deposited in account number 668 from [Account 72-3]?

A. Correct.

(*Id.* at 71-72 and 81-84.)

During Rohrscheib's questioning about the USABle Proceeds, Dempsey admitted that the funds were used for operating expenses at the Dresden office.

Q. Can you show me on this bank account where this $10,000 was withdrawn?

A. It was not withdrawn in this bank account in a lump sum. But apparently, it was disbursed by Ms. Klutts over a period of time.

Q. Disbursed to who?

A. She paid operating expenses for several months apparently with it.

(*Id.*at 71.)

Although Dempsey asserted that he properly segregated the USAble Proceeds by transferring them to Account 668 in the Ledger, he did not remit the proceeds to Williams or Ms. Mills from this account. (*Id.* at 85.) Instead, he purchased cashier's checks from First Bank with cash he allegedly had on hand from his Social Security practice. (*Id.* at 86.) When asked to elaborate on this, Dempsey stated that he sometimes receives large lump sum payments for social security cases he handles. (*Id.*) Dempsey did not explain how or why he receives those funds in cash.

As stated *supra*, Dempsey sent Williams two separate cashier's checks rather than one check for $6,500.00. (*See* Coll. Ex. 1 at C-4.) When asked about this at the Show Cause Hearing, Dempsey stated that he had just finished four years of litigation with the Secret Service in which he was told that cashier's checks over $4,000.00 were subject to

federal forfeiture laws. (ECF No. 92 at 86.) Dempsey did not offer the Court any evidence or support for this claim. (*Id.*)

As stated *supra*, a staff member in Dempsey's office properly filed his response to the UST's Show Cause Motion ("Response") shortly after the Show Cause Hearing began. (ECF No. 89.) Within this Response, Dempsey asserted the following:

> In the fall of 2015, a staff clerk for Attorney Paul Hutcherson contacted me and indicated that the U.S. Trustee required Mr. Hutcherson to surrender his cases and terminate bankruptcy practice, because some of those cases had problems and irregularities that were adversely affecting the clients. The staff worker further indicated that I was supposed to take over some 30 to 40 cases to conclude them. Most of the cases had already paid the other attorney, such that much of this work was done without compensation to me and my office. I was asked to take over the cases both pending and open, to correct their problems and obtain a discharge for the clients. Most of the cases had significant problems and errors because both the prior attorney and staff did not really understand bankruptcy law.
>
> I ostensibly managed these cases long distance through his staff at his annex office in Dresden, and that was destroyed completely by fire on March 15, 2017. One of the cases was the "Ted Allen Mills and Rhonda Jean Mills", that's now the topic of this complaint. Much of the documentary information about this case and the others were destroyed in the fire, but I have recovered data and the damaged hard drives and have been attempting to collect information and other documents; but I will respond at this time, according to my memory.

(ECF No. 89 at 1-2.)

Dempsey also included an affirmative defense and a motion to dismiss within his Response.

> **AFFIRMATIVE DEFENSE**
>
> No money was lost or not properly paid. All of the insurance proceeds were properly segregated and secured by a Trust Ledger of Hutcherson Office and Cases. All of the some 30 to 40 cases assumed by Attorney Dempsey from Attorney Hutcherson were properly corrected, conducted, paid and they received a discharge.
>
> WHEREFORE, Respondent requests that no disciplinary action be taken considering the totality of this case and the other problem cases assumed by Mr. Dempsey.

VERIFIED MOTION TO DISMISS

> The facts alleged, combined with the affirmative defenses, and the evidence within the exhibits to this motion, fail to state a claim upon which relief may be granted. Accordingly, Respondent moves the Court to dismiss this proceeding.

(ECF No. 89 at 8.) Dempsey failed to provide any legal argument in support of his affirmative defense or motion to dismiss. He did not cite any statutes, rules, or relevant caselaw that supported his defense or motion to dismiss. He also asserted he was entitled to the $500.00 attorney's fee under theories of quantum meruit or third party beneficiary; however, he failed to state, let alone develop, any legal argument with respect to this claim.

Dempsey attached two exhibits to his Response. Exhibit A was a print-out of case summaries for eleven other bankruptcy cases in this Court in which Dempsey has served as the debtor's attorney since 2005. Aside from indicating that all of these cases had proceeded to discharge, Dempsey failed to explain what significance or probative value these cases have for the issue currently before the Court. None of these cases appear to be ones Dempsey "inherited" from Hutcherson and Dempsey was the original attorney of record in all but one of the cases. Since 2005, Dempsey has filed at least 1,686 cases as the debtor's attorney in this Court, over 1,600 of which were chapter 7 cases.

Exhibit B to Dempsey's Response consists of two documents. The first part is a copy of the Ledger. The last 3 pages of Exhibit B to Dempsey's response are 3 separate one-page account statements from Carroll Bank and Trust for Account 668. The first page is dated September 21, 2015, and lists a closing balance of $60,414.46. (ECF No. 89-2 at 11.) The second page is dated June 20, 2016, and shows a closing balance of $37,747.00. The last page of this part of the exhibit is dated July 18, 2016, and shows a closing balance of $36,705.93. None of these pages show any transactions related to the $10,000.00 in life insurance proceeds in the Mills case.

For reasons that will be made clear in the Analysis section of this Opinion, the Court finds it necessary to set forth some of the factual assertions set forth in the UST's

Show Cause Motion and Dempsey's Response thereto. The Trustee's assertions are set forth in italics. Dempsey's responses thereto are set forth in bold text.[14]

> *¶ 38. Ms. Mills testified that she never signed a contract related to Mr. Dempsey's representation of her in the bankruptcy case. She never agreed at any time during the bankruptcy case to pay any fees to Mr. Dempsey for his representation in the bankruptcy case. Ms. Mills testified that she was unaware of any agreement between Mr. Hutcherson and Mr. Dempsey to share any portion of the attorney's fee she paid to Mr. Hutcherson for his bankruptcy representation.* **Averment number 38 is admitted except that the staff clerk was instructed to execute new and additional contracts based upon the orders of substitution.**
>
> *¶ 43. Subsequent to the U.S. Trustee's questioning of Ms. Mills at the Rule 2004 Exam, Mr. Dempsey presented Ms. Mills with an undated document titled Settlement Sheet. The Settlement Sheet indicated the disposition of the insurance proceeds and indicated Ms. Mills was due a refund of $3,000 and there was an attorney fee of $500.* **Averment number 43 is admitted in that a settlement sheet was prepared that accurately reported the status of the insurance money including a nominal fee for Mr. Dempsey for developing an exemption that provided Ms. Mills the $3,000.00; upon at least theories of quantum mer[u]it and/or third-party beneficiary to Mr. Hutcherson's contract.**
>
> *¶ 72. Mr. Dempsey first took on representation of Ms. Mills at the [Meeting of Creditors] and on that same day first filed a pleading in the case on her behalf. Mr. Dempsey was formally substituted as her counsel on November 30, 2015. By his own admission, Mr. Dempsey never had a contract for representation or fees with Ms. Mills.* **Averment number 72 is admitted that Mr. Dempsey was substituted as counsel in November and he provided substantial assistance in researching and advocating the exemptions that allowed her to keep most of the insurance, admitted that no new contract was executed by Mr. Dempsey relied upon the legal theories of "third party beneficiary" to Mr. Hutcherson's contract and also, the legal principal of quantum meruit.**

(U.S. Tr.'s Mot. For Order to Show Cause at ¶¶ 38, 43, and 72, ECF No. 76; Resp. at ¶¶ 38, 43, and 72, ECF No. 89.)

[14] The paragraph numbers are taken from the U.S. Trustee's Show Cause Motion. The Court has deleted references to the record.

II. ANALYSIS

In the case of *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123 (1991), the Supreme Court recognized that federal courts possess an inherent power to sanction parties.

> It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others. For this reason, Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates. These powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.

501 U.S. at 43 (internal quotation marks and citations omitted). This inherent power

> reaches both conduct before the court and that beyond the court's confines, for the underlying concern that gave rise to the contempt power was not … merely the disruption of court proceedings. Rather it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial.

Id. at 44 (internal quotation marks and citations omitted). A court's inherent authority to impose sanctions exists independently from any "sanctioning scheme" set forth in statutes or rules. *Id.*at 46; *see also Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017). "Because of their very potency, inherent powers must be exercised with restraint and discretion. A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers*, 501 U.S. at 44-45 (internal citations omitted). "Bankruptcy courts, like Article III courts, enjoy inherent power to sanction parties for improper conduct."[15] *Mapother & Mapother v. Cooper* (*In re*

[15] Bankruptcy courts also have the ability to impose sanctions pursuant to 11 U.S.C. § 105(a). "The clear language of 11 U.S.C. § 105(a) grants this Court significant equitable powers as well as latitude in framing the relief necessary to carry out both the specific provisions of the statute as well as its philosophical underpinnings." *John Richards Homes Bldg. Co., L.L.C. v. Adell* (*In re John Richards Homes Bldg. Co., L.L.C.*), 404 B.R. 220, 227 (E.D. Mich. 2009) (citing *In re Ludwick,* 185 B.R. 238, 245 (Bankr. W.D. Mich.1995)).

Downs), 103 F.3d 472, 477 (6th Cir. 1996) (citation omitted); *see also In re MPM Enters., Inc.*, 231 B.R. 500, 504 (E.D.N.Y. 1999) (Holding that "[a]s a unit of the district court pursuant to 28 U.S.C. § 151, a bankruptcy court is a federal court" and, thus, has the same inherent power to impose sanctions.).

In *First Bank of Marietta v. Hartford Underwriters Inc. Co.*, 307 F.3d 501 (6th Cir. 2002), the Sixth Circuit determined that "the imposition of inherent power sanctions requires a finding of bad faith" or of "conduct that was tantamount to bad faith." *Id.* at 517 (internal quotation marks and citation omitted). "Bad faith, in turn, is associated with conduct that is intentional or reckless." *Plastech Holding Corp. v. WM Greentech Auto. Corp.*, 257 F. Supp. 3d 867, 872 (E.D. Mich. 2017) (citation omitted). For purposes of a court's inherent authority, "[r]ecklessness is defined as more than mere negligence but less than intent." *United States v. Wheeler*, 154 F. Supp. 2d 1075, 1078 (E.D. Mich. 2001) (internal quotation marks and citation omitted). "The Sixth Circuit has defined 'recklessness' as 'highly unreasonable conduct which was an extreme departure from the standards of ordinary care evidencing a reckless state of mind.' " *Id.* (citing *Ohio Drill & Tool Co. v. Johnson*, 625 F.2d 738, 741 (6th Cir. 1980)). "[I]n order for a court to find bad faith sufficient for imposing sanctions under its inherent powers, the court must find *something more* than that a party knowingly pursued a meritless claim or action at any stage of the proceedings." *BDT Prod., Inc. v. Lexmark Int'l, Inc.,* 602 F.3d 742, 753–54 (6th Cir. 2010).

The burden of proof required for the imposition of inherent power sanctions is not a well settled area of the law. Some courts have required proof of a party's bad faith by clear and convincing evidence. *Almeciga v. Ctr. for Investigative Reporting, Inc.*, 185 F. Supp. 3d 401, 427 (S.D.N.Y. 2016); *In re Brican Am., LLC Equip. Lease Litig.*, 977 F. Supp. 2d 1287, 1300 (S.D. Fla. 2013); *Shepherd v. Am. Broad. Cos., Inc.*, 62 F.3d 1469, 1476 (D.C. 1995). Other courts have determined that the standard of proof depends on the nature of the sanctions to be imposed. The bankruptcy court in *In re Cochener*, 360 B.R. 542 (Bankr. S.D. Tex. 2007) held that the imposition of monetary sanctions requires proof by a "preponderance of the evidence," whereas attorney disbarment or suspension requires "clear and convincing evidence." *Id.* at 573-74. The Fifth Circuit has held that

"[i]n attorney suspension and disbarment cases, the finding of bad faith must be supported by clear and convincing proof." *Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001). The Sixth Circuit has not definitively determined the burden of proof required for the imposition of inherent power sanctions; however, in the case of *In re Spicer*, 126 F.2d 288 (6th Cir. 1942), it held that a court should not disbar attorneys "except in *clear* cases of misconduct." *Id.* at 289 (emphasis added). "Clear and convincing evidence may be defined as that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established." *In re Wilson*, 336 B.R. 338, 347 (Bankr. E.D. Tenn. 2005) (internal quotation marks and citation omitted). Because clear and convincing evidence exists in this case, this Court need not determine whether the lesser standard of a "preponderance of the evidence" would suffice.

A party seeking the imposition of sanctions carries the burden of proof. *Cook v. Am. S.S. Co.*, 134 F.3d 771, 776 (6th Cir. 1998). The issuance of a show cause order does not shift this burden. *Id.* Instead,

> a show cause order only acts as notice to the relevant party by informing the party what conduct is alleged to be sanctionable, and allows the party an opportunity to respond; by presenting evidence and arguments why sanctions should not be imposed, the party has the opportunity to "persuade" the court that sanctions are not warranted. … Therefore, the burden of proof has not been shifted; the show cause order merely facilitated the due process requirements[.]

Id. This burden allocation is the same when a party seeks the imposition of a court's inherent power sanctions. *Michael v. Boutwell*, 138 F. Supp. 3d 761, 784-85 (N.D. Miss. 2015) (holding that "[w]hen invoked, the moving party bears the burden to justify the exercise of the Court's inherent power to sanction.").

Although the standards used in determining whether to admit or suspend an attorney in federal court "are a matter of federal law," federal courts are "entitled to rely on the attorney's knowledge of the state code of professional conduct applicable in that state court[.]" *Snyder*, 472 U.S. at 645 n.6 (internal quotation marks and citation omitted). As the U.S. District Court for the Eastern District of Tennessee has recognized,

> It is the ubiquitous practice of the courts of this country to put great faith in attorneys, as officers of the court …, to conform to the ethical and professional standards inherent in the practice of law. However, when an attorney has demonstrated that this faith is misplaced in him, the court can no longer safely rely upon that attorney to follow those standards in the future. A suspended attorney has demonstrated that he or she is unwilling or unable to conform to the ethical and professional standards required; as such, the court cannot place that attorney in any position…which would permit that attorney to further expose the public, the judiciary, other lawyers, and any parties to the dangers created by his or her unethical and unprofessional conduct.

In re Moncier, 569 F. Supp. 2d 725, 733 (E.D. Tenn. 2008). In addition, because "there is no uniform procedure for disciplinary proceedings" in federal courts, "[t]he individual judicial districts are free to define the rules to be followed and the grounds for punishment." *Searer*, 950 F. Supp. at 813 (citation omitted).

A number of federal courts have held that a court may impose inherent authority sanctions on attorneys for violations "of the Rules of Professional Responsibility, the Federal Rules of Civil Procedure, the Local Rules or the general obligations of attorneys practicing in the federal courts to work towards a just, speedy and efficient resolution of claims."[16] *Cannon v. Cherry Hill Toyota, Inc.*, 190 F.R.D. 147, 161 (D.N.J. 1999) (citing *Eash v. Riggins Trucking, Inc.*, 757 F.2d 557, 561 (3rd Cir. 1985)); *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1322–23 (11th Cir. 2002); *In re Chase*, 372 B.R. 142, 155 (Bankr. S.D.N.Y. 2007); *Nick v. Morgan's Foods, Inc.*, 99 F. Supp. 2d 1056, 1061 (E.D. Mo. 2000); *In re Fisherman's Wharf Fillet, Inc.*, 83 F. Supp. 2d 651 (E.D. Va. 1999). The Sixth Circuit has determined that a "bankruptcy court is vested with the inherent power to sanction attorneys for breaches of fiduciary obligations." *Downs*, 103 F.3d at 477 (citing *In re Arlan's Dep't Stores, Inc.,* 615 F.2d 925, 943 (2d Cir.1979)); *see also In re Landstreet*, 490 F. App'x 698, 701-02 (6th Cir. 2012) ("Any court possessing power to admit attorneys to practice has authority to sanction them for unprofessional conduct.").

[16] 28 U.S.C. § 2071 and Federal Rule of Civil Procedure 83 "explicitly recognize the authority of federal district courts to promulgate local rules of procedure, provided only that such local rules must not conflict or be inconsistent with any other federal statute or uniform rule of procedure." *White v. Raymark Indus., Inc.*, 783 F.2d 1175, 1177–78 (4th Cir. 1986).

Lower courts within the circuit have also sanctioned attorneys for violations of a court's local rules and a state's ethical rules. *Graves v. Standard Insurance Co.*, Civil Action No. 3:14-CV-558-DJH, 2015 WL 13714166 at *1 (W.D. Ky. May 22, 2015); *Moncier*, 569 F. Supp. 2d at 733; *Republic Servs., Inc. v. Liberty Mut. Ins. Co.,* No. CIVA 03-494 KSF, 2006 WL 3004014, at *4 (E.D. Ky. Oct. 20, 2006) ("A district court has inherent authority to disqualify an attorney as a sanction for *professionally unethical conduct*. (emphasis added) (citation omitted)); *Pioneer Res. Corp. v. Nami Res. Co., LLC*, No. CIV.A. 6:04-465-DCR, 2006 WL 1464785, at *2 (E.D. Ky. May 22, 2006); *Cavender v. U.S. Xpress Enters., Inc*., 191 F. Supp. 2d 962, 965 (E.D. Tenn. 2002).

A court's inherent authority to sanction includes the power to "suspend or disbar lawyers" who appear before it. *In re Snyder*, 472 U.S. 634, 643, 105 S. Ct. 2874, 2880 (1985) (citing *Ex parte Garland*, 4 Wall. 333, 378–379, 71 U.S. 333, (1867); *Ex parte Burr*, 9 Wheat. 529, 531, 22 U.S. 529 (1824). "This inherent power derives from the lawyer's role as an officer of the court which granted admission." *Id*. (citation omitted); *Chambers*, 501 U.S. at 43 ("[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it.").

> Membership in the bar is a privilege burdened with conditions. An attorney is received into that ancient fellowship for something more than private gain. He becomes an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.

Snyder, 472 U.S. at 644 (internal quotation marks and citations omitted). "As a general matter, a suspension from practice is an intermediate sanction between disbarment and lesser sanctions such as reprimands and admonitions." *In re Moncier*, 569 F. Supp. 2d 725, 728 (E.D. Tenn. 2008). As the district court recognized in *Cavender*, a court must exercise great care in analyzing motions to suspend or disbar attorneys. Such motions

> are very sensitive and require the Court to exercise judgment with an eye toward upholding the highest ethical standards of the profession, protecting the interest of the litigants in being represented by the attorney of their choosing, protecting the loyalty and confidences a prior client may have placed in a law firm or an attorney, and the overriding societal interests in the integrity of the judicial process.

Cavender, 191 F. Supp. 2d at 965 (citations omitted).

"Courts have broad discretion in selecting appropriate contempt sanctions" and in determining whether disbarment or suspension is warranted. *In re Computer Dynamics, Inc.*, 253 B.R. 693 (E.D. Va. 2000) (citing *In re Evans,* 801 F.2d 703, 706 (4th Cir.1986) (internal quotation marks omitted)); *Stilley v. Bell*, 155 F. App'x 217, 219 (6th Cir. 2005) "[T]he exercise of the authority to admit, deny, or suspend an attorney is left to the discretion of the district court." (citing *Snyder*, 472 U.S. at 645, n. 6)). In exercising this discretion, "[c]ourts should impose the minimum sanction necessary to both protect the public and deter future misconduct." *In re Burton*, 442 B.R. 421, 467 (Bankr. W.D.N.C. 2009) (citing Byrd v. Hopson, 108 F. App'x 749, 756 (4th Cir. 2004)). Because it is a discretionary determination, "one court's decision to admit an applicant does not diminish another court's discretion to refuse to do so." *Stilley,* 155 F. App'x at 219.

In invoking its inherent powers to sanction, a court must provide the offending party with due process. As the District Court for the Western District of Michigan stated in *In re Searer*, 950 F. Supp. 811 (W.D. Mich. 1996),

> The nature of a disciplinary proceeding is neither civil nor criminal, but an investigation into the conduct of the lawyer-respondent. The purpose of a disciplinary proceeding is not to punish, but rather to determine whether misconduct implicates fitness to continue to function as an officer of the Court. The real question at issue is the public interest and an attorney's right to continue to practice a profession imbued with public trust. The Court must thus consider both the fitness of one of its officers and the need to protect the public from an unqualified or unscrupulous practitioner.

Id. at 813 (internal citations omitted); *see also In re Moncier*, 550 F. Supp. 2d 768, 772 (E.D. Tenn. 2008) (citing *Cunningham v. Ayers,* 921 F.2d 585, 586 (5th Cir.1991)). Because such proceedings are "adversarial and quasi-criminal in nature," an attorney must be provided with due process "which includes notice and an opportunity to be heard in disbarment or suspension proceedings." *Moncier*, 550 F. Supp. 2d at 772 (citation omitted); *see also In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1226 (1968); *Metz v. Unizan Bank*, 655 F.3d 485, 491 (6th Cir. 2011) (citation omitted).

A number of bankruptcy courts across the country have suspended attorneys for violations of a state's rules of professional responsibility. *In re Gates*, No. MC 18-00301-

KRH, 2018 WL 1684302, at *3 (Bankr. E.D. Va. Apr. 5, 2018) (suspending attorney from practicing before the court for a period of six months and barring attorney from entering the courthouse); *Burton*, 442 B.R. at 468; *In re Hoffman*, No. MC 1:16-MP-00001MDF, 2016 WL 2637707, at *4 (Bankr. M.D. Pa. May 5, 2016); *In re LaFond*, No. 03-91303, 2003 WL 22992068, at *2 (Bankr. C.D. Ill. Dec. 17, 2003); *In re Assaf*, 119 B.R. 465, 467 (E.D. Pa. 1990); *Matter of Lowe*, 18 B.R. 26, 27 (Bankr. N.D. Ga. 1982). On appeal, courts have affirmed such decisions. *In re Gleason*, 492 F. App'x 86, 89 (11th Cir. 2012); *In re Parker*, No. 3:14CV241, 2014 WL 4809844, at *6 (E.D. Va. Sept. 26, 2014); *Williams v. Lynch*, No. 5:13-CV-696-BO, 2014 WL 2872222, at *4 (E.D.N.C. June 24, 2014); *Oldham v. McCarty*, No. 3:11CV00143 JLH, 2011 WL 5294799, at *6 (E.D. Ark. Nov. 3, 2011); *In re Computer Dynamics, Inc.*, 253 B.R. 693, 699 (E.D. Va. 2000). The Eighth Circuit recently affirmed that a bankruptcy court's "suspension was proper under the … court's inherent authority to discipline attorneys appearing before it and pursuant to the local rules authorizing exercise of that authority[.]" *In re Steward*, 828 F.3d 672, 686 (8th Cir. 2016). Bankruptcy courts have also used their inherent authority to permanently bar attorneys from the practice of law in their courts. *In re Dobbs*, 535 B.R. 675, 699 (Bankr. N.D. Miss. 2015).

The Local Rules for the United States Bankruptcy Court for the Western District of Tennessee provide that attorneys who appear before this Court are bound by "the Tennessee Rules of Professional Conduct and the Local Rules of the United States District Court for the Western District of Tennessee (which include Guidelines for Professional Courtesy and Conduct)." TNWB LBR 1004-1. The Local Rules also grant this Court authority to sanction attorneys who willfully violate these standards or rules. *Id.* "Discipline may include a fine, an order to attend continuing legal education courses, a temporary suspension from practice before the Court, and, in extreme cases, a permanent prohibition against practicing before the Court." *Id.*

The local rules for the United States District Court for the Western District of Tennessee contain similar provisions.

> (g) Conduct and Discipline. All attorneys practicing before the United States District Court for the Western District of Tennessee shall

> comply with these Local Rules, the Rules of Professional Conduct as then currently promulgated and amended by the Supreme Court of Tennessee, and with the Guidelines for Professional Courtesy and Conduct as adopted by this court (APPENDIX C).
>
> (1) For a willful violation of the said Code or these Rules, an attorney is subject to appropriate disciplinary action by the Court in accordance with the procedures contained in this Court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.

TNWD LR 83.4(g)(1). The District Court's Guidelines for Professional Courtesy and Conduct provide that "A lawyer should strive to achieve *higher* standards of conduct than those called for by the Code of Professional Responsibility." *Id.* at Appendix C, "Guidelines for Professional Courtesy and Conduct," Preamble (emphasis added). They also provide that "A lawyer should recognize the importance of communication with both clients and adversaries. A lawyer should return all telephone calls and respond to all correspondence promptly." *Id*. at § I(8). The District Court's Order Adopting Rules of Disciplinary Enforcement also include the following provisions:

> Rule IV: Standards for Professional Conduct.
>
> A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.
>
> B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court *shall* constitute misconduct and *shall* be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this Court is deemed to be the Code of Professional Responsibility adopted by the highest court of a state in which the respondent-attorney is admitted to practice.

September 29, 1980 Order Adopting Rules of Disciplinary Enforcement at Rule IV, available from the United States District Court for the Western District of Tennessee Clerk's Office (emphasis added). Clearly, attorneys who practice before this Court are

bound by the Tennessee Rules of Professional Conduct and may be sanctioned for any violations thereof.

The UST has argued that Dempsey violated a number of the Tennessee Rules of Professional Conduct, including Rule 1.3: *Diligence*, Rule 1.4: *Communication*, Rule 1.5: *Fees*, and Rule 1.15: *Safekeeping Property and Funds*. The UST also asserted that Dempsey's actions may implicate Rule 3.3: *Candor Toward the Tribunal*, Rule 4.1: *Truthfulness in Statements to Others*, and Rule 8.4: *Misconduct*.

A. Tennessee Supreme Court Rule 8, RPC 1.3

Rule 1.3 of the Tennessee Rules of Professional Conduct ("TN RPC") requires lawyers to "act with reasonable diligence and promptness in representing a client." Tenn. S. Ct. R. 8, RPC 1.3. As used in this rule, "reasonable" "denotes the conduct of a reasonably prudent and competent lawyer." Tenn. S. Ct. Rule 8, RPC 1.0(h). A court is well within its discretion to determine that an attorney has violated this rule even if the lack of diligence did not prejudice the client's interests. *In re Lewellen*, 56 F. App'x 663, 667 (6th Cir. 2003). In order to act diligently within the meaning of this rule, an attorney "should not rely solely on informal means of gathering information, but should instead conduct an adequate amount of legal research to safeguard a client's interests." *State ex rel. Flowers/Newman v. Tennessee Trucking Ass'n Self Ins. Grp. Tr.*, No. M200602242SCWCMWC, 2008 WL 2510577, at *6 (Tenn. Workers Comp. Panel June 20, 2008) (citing Tenn. S. Ct. R. 8, RPC 1.3). Bankruptcy courts have suspended attorneys who failed to act diligently in representing their clients even when the clients did not suffer any significant harm. *In re Hoffman*, No. MC 1:16-MP-00001MDF, 2016 WL 2637707, at *4 (Bankr. M.D. Pa. May 5, 2016); *In re T.H.*, 529 B.R. 112, 146 (Bankr. E.D. Va. 2015).

The record in this case is replete with examples of Dempsey's failure to act in a diligent and prompt manner. Ms. Mills remitted the USAble Proceeds to the Dresden office in early October 2015. The funds were deposited in Account 72-3 on October 14, 2015. Williams and Dempsey negotiated a settlement of Williams' objection the exemption in the insurance proceeds in November 2015. The governmental claims bar date expired on April 22, 2016. Dempsey remitted the estate's portion of the USAble

Proceeds to Williams in June 2016. The case was closed on April 6, 2017. Yet it was not until the UST's Rule 2004 Exam in July 2017 that Dempsey remitted a portion of the proceeds to Ms. Mills. Even though Dempsey admitted he was not entitled to an attorney's fee in this matter at the 2004 Exam, it took another two weeks and the involvement of the UST before he remitted the remaining $500.00 to Ms. Mills. More than 650 days elapsed between the time the USAble Proceeds were deposited in Dempsey's account and the time Dempsey remitted the entirety of Ms. Mills' portion to her. Over 450 days went by from the time the governmental claims bar date passed in April 2016 and the time Ms. Mills received her share of the proceeds in July 2017. And, more than 100 days elapsed between the time the case was closed and the time Dempsey remitted all of Ms. Mills proceeds to her. Clearly, Dempsey failed to act with reasonable diligence in handling the insurance proceeds in this case.

Additionally, Dempsey told Ms. Mills that her case was under review in April 2017. In order to comply with Rule 1.3's diligence requirement, Dempsey was obligated to timely research the matter and determine when he could remit Ms. Mills' share of the proceeds to her. He was not entitled to tell Ms. Mills that he needed to review the case and then do nothing until the UST became involved in the matter.

B. Tennessee Supreme Court Rule 8, RPC 1.4

TN RPC 1.4 addresses an attorney's obligations to communicate with clients. Subsections (a)(3) and (4) require an attorney to "keep the client reasonably informed about the status of the matter" and to "promptly comply with reasonable requests for information[.]" Tenn. S. Ct. Rule 8, RPC 1.4(a)(3) and (4). As the comments for Rule 1.4 explain, "[a] lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation." The comments also state that

> [w]hen a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer or member of the lawyer's staff should promptly respond to or acknowledge client communications.

Tenn. S. Ct. Rule 8, RPC 1.4, Comment [4]; *see also* Tenn. S. Ct. Rule 8, Preamble [5] ("A lawyer should maintain communication with a client concerning the representation.") Bankruptcy courts have suspended attorneys for failing to adequately communicate with their clients. *In re Henry*, No. A16-00405-GS, 2017 WL 2874461, at *10 (Bankr. D. Alaska July 5, 2017); *In re Hoffman*, No. MC 1:16-MP-00001MDF, 2016 WL 2637707, at *4 (Bankr. M.D. Pa. May 5, 2016); *In re T.H.*, 529 B.R. at 146.

In the case at bar, Dempsey clearly failed to comply with the requirements of TN RPC 1.4(a)(3) and (4). Ms. Mills turned the USAble Proceeds over to the law office in October 2015. Ms. Mills testified that she understood Dempsey would hold the funds until such time as Williams determined what portion would be necessary to pay claims against the estate. Ms. Mills also testified that she understood she would be entitled to any remaining funds. It is unclear who explained the process to Ms. Mills; however, it is abundantly clear that the only communications Ms. Mills received from Dempsey about the proceeds was his comment that her case was "under review" in April 2017 and his presentation of the Settlement Sheet at the 2004 Exam in July 2017.

Dempsey had numerous opportunities to update Ms. Mills on the status of the USAble Proceeds between October 2015 and April 2017. He and Williams negotiated a settlement of the exemption issue in the fall of 2015. Williams emailed Dempsey in June 2016 to inform him that he needed to remit $6,500.00 of the proceeds to her for payment of claims. Dempsey mailed the funds to Williams on June 18, 2016; however, he never contacted Ms. Mills to let her know the claims had been settled and that he had remitted the estate's portion of the proceeds to Williams. The claims bar dates had passed by that time. No adversary proceedings were ever filed in the case. Accordingly, Dempsey should have known with relative certainty as of at least June 10, 2016, that Ms. Mills would be entitled to the remaining $3,500.00. Even if he felt he could not disburse the remaining funds to Ms. Mills until such time as the case was formally closed, he should have communicated that fact to her sometime in June 2016.

When the case closed in April 2017, Dempsey still failed to update Ms. Mills on the status of the proceeds. Instead, Ms. Mills was forced to reach out to him for the information he should have been providing. Even then, she had to call him four times

before he responded. The only update he provided her with was that her case was "under review." There was no proof presented that Ms. Mills had been a bothersome client or that she harassed Dempsey or his office staff. It appears that this was the only time she was able to talk to him since he had substituted as her attorney. Dempsey's response was simply not reasonable under the Tennessee Rules of Professional Conduct or the District Court's Guidelines for Professional Courtesy and Conduct.

At the Show Cause Hearing, Dempsey stressed that he has been a bankruptcy practitioner in this Court for a number of years. Since 2005, he has served as the Debtor's attorney in over 1,600 chapter 7 cases. He is well-versed in the chapter 7 process. With his ample experience, he should have known that once the case was closed Ms. Mills was entitled to the remaining insurance proceeds. Yet, he never communicated this fact to her.

After Dempsey failed to update her on the status of her case, Ms. Mills had to take on the responsibility of attempting to get the remaining USAble Proceeds from Dempsey herself. She contacted Williams who in turn contacted the UST. It was not until the UST conducted the 2004 Exam on July 17, 2017, that Dempsey provided Ms. Mills with any kind of information on the insurance proceeds. He presented the Settlement Statement to her which indicated how he had allegedly disbursed the money. Although he took over the case from Hutcherson in November 2015, this was the first written communication Dempsey had with Ms. Mills about the proceeds. He took no actions between November 2015 and July 2017 to communicate anything to Ms. Mills about the insurance proceeds. When he told Ms. Mills that her case was "under review" in April 2017, he was required to provide her with a prompt response or, at the very least, advise her as to when he would have an actual update. There is simply no conclusion for this Court to reach other than Dempsey wholly failed to comply with the requirements of Rule 1.4. He did not keep Ms. Mills reasonably informed about the status of the USAble Proceeds nor did he promptly comply with her extremely reasonable request for an update. One vague non-descript comment over a period of over 18 months is clearly insufficient.

C. Tennessee Supreme Court Rule 8, RPC 1.5

TN RPC 1.5(b) provides

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible *shall be* communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Tenn. S. Ct. Rule 8, RPC 1.5(b) (emphasis added). Comment 2 to the rule states that "A written statement concerning the terms of the engagement reduces the possibility of misunderstanding." Tenn. S. Ct. Rule 8, RPC 1.5, Comment [2]. Bankruptcy courts have concluded that failure to comply with RPC 1.5's requirements may serve as a basis for suspending an attorney. *In re Burton*, 442 B.R. 421, 468 (Bankr. W.D.N.C. 2009) (analyzing the requirement for fee agreements under North Carolina's version of Rule 1.5(b)).

The uncontroverted proof in this case establishes that Dempsey did not have a fee agreement with Ms. Mills. He admitted this at the Rule 2004 Exam when he stated "I wasn't going to take her money. She didn't agree to any that." (Coll. Ex. 1 at 36-37.) He also admitted this in his responses to ¶¶ 38 and 72 of the UST's Show Cause Motion when he admitted that "Ms. Mills … never signed a contract related to Mr. Dempsey's representation of her in the bankruptcy case" and that he "never had a contract for representation or fees with Ms. Mills." (ECF No. 76 at 7,17 and ECF No. 89 at 4, 6.) He also admitted this in his response to ¶ 43 of the UST's Show Cause Motion when he claimed he was entitled to the $500.00 attorney fee under a theory of quantum meruit or third party beneficiary—both of which provide compensation to parties in the absence of formal fee agreements. Although Dempsey was less clear about whether he did, in fact, have a contract with Ms. Mills at the Show Cause hearing, the Court concludes that the weight of the evidence demonstrates that he did not.

In ¶ 75 of his response to the UST's Show Cause Motion, Dempsey tried to mitigate his failure to execute a contract with the Debtors by claiming he "never was paid or

collected the $500.00" attorney's fee. (ECF No. 89 at 6.) The Court finds this to be a disingenuous claim. Dempsey's staff deposited the $10,000.00 in insurance proceeds in the Dresden operating account on October 14, 2015. Dempsey remitted $6,500.00 of the proceeds to Williams in June 2016. He then brought a $3,000.00 check to Ms. Mills at the 2004 Exam on July 17, 2017. He retained $500.00 of the proceeds as his attorney fee. The fact that he never "collected" the fee is not true. He retained the money in his account and did not turn it over to Ms. Mills until the UST demanded he do so two weeks after the Rule 2004 Exam.

D. Tennessee Supreme Court Rule 8, RPC 1.15

TN RPC 1.15 provides

> (a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.
>
> (b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in a financial institution, deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) and/or National Credit Union Association (NCUA), having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 35.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Tenn. S. Ct. Rule 8, RPC 1.15(a) and (b). This rule clearly provides that client property and funds must be kept separate and apart from an attorney's own property. When the property is money, an attorney is required to hold the funds in a trust account. *See* Tenn. Sup. Ct. R 8, RPC 1.15, Comments [1] and [2]. In addition, § 35.1(a)(1) of Tennessee Supreme Court Rule 9 provides that

> Attorneys who practice law in Tennessee shall deposit all funds held in trust in this jurisdiction in accounts clearly identified as "trust" or "escrow"

> accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise.

Tenn. S. Ct. R. 9, § 35.1(a)(1). Section 35.1(a)(2) requires attorneys to maintain records of their trust accounts. *Id.* at § 35.1(a)(2). The Board of Professional Responsibility set forth guidelines for trust account record keeping on December 9, 1989, in Formal Ethics Opinion 89-F-121 "Mechanics of Trust Accounting," 1989 WL 1712339 (TN Jud. Eth. Comm 1989).

Depositing client funds in an attorney's operating account or in a personal account instead of a trust account may subject an attorney to disciplinary action. *Skouteris v. Bd. Of Prof. Resp. of S. Ct. of Tenn.*, 430 S.W.3d 359. 370 (Tenn. 2014); *Milligan v. Bd. Of Prof. Resp. of S. Ct. of Tenn.*, 166 S.W.3d 665, 672 (Tenn. 2005). Commingling non-client funds with client funds may also subject an attorney to discipline. *Bd. Of Prof. Resp. v. Allison*, 284 S.W.3d 316, 324 (Tenn. 2009). This is true even if the client does not lose any money. *Id.* Failure to maintain adequate trust accounting records may also result in discipline. *Id.* Using client funds to pay for personal or operating expenses is also a sanctionable offense. *Id.*

In *Skouteris*, 430 S.W.3d, the Tennessee Supreme Court affirmed a decision to disbar attorney George Skouteris for numerous violations of the Tennessee Rules of Professional Conduct in relation to his mishandling of client funds in several cases. One violation concerned Skouteris's failure to maintain his clients funds in his trust account. Although Skouteris deposited the funds in his trust account in accordance with TN RPC 1.15(a), he thereafter used the money to pay personal expenses. *Id.* at 363, 365. In another case, Skouteris deposited a client's settlement funds in his operating account rather than his trust account. *Id.* at 364. The hearing panel for the Board of Professional Responsibility determined that all of these actions violated TN RPC 1.15(a). *Id.* at 369. In defending his actions, Skouteris argued that his clients eventually " 'received every cent' of their settlements." *Id.* The hearing panel considered this fact, but ultimately concluded that the clients "were subjected to potentially serious injury by Mr. Skouteris's

mishandling of their funds." *Id.* As such, the hearing panel concluded that Skouteris's actions justified disbarrment. *Id.*

On appeal, Skouteris argued that the hearing panel erred in disbarring him for his actions. Instead, he argued that a suspension was more appropriate. The Supreme Court rejected this assertion. In so doing, the Supreme Court relied on the hearing panel's findings with respect to Skouteris's handling of client funds:

> In finding that Mr. Skouteris's misconduct amounted to conversion for personal gain, the Panel correctly noted: "It is obvious that Mr. Skouteris converted funds in his trust account for personal use in that he utilized any funds available to keep his practice afloat and to make payments to others and to make withdrawals for himself." Even if Mr. Skouteris intended to pay his clients all that they were owed in due time, converting their property for his own use *for any period of time* was a serious ethical violation and a breach of his fiduciary duty. By continuing to describe his trust account violations as insignificant, Mr. Skouteris shows a lack of understanding that his conduct is wrong. Mr. Skouteris also argues that his punishment should be reduced in light of his twenty-four-year law career. Under the [American Bar Association] Standards, however, substantial experience in the practice of law is an aggravating factor, not a mitigating factor. ABA Standard 9.22(i).

Id. at 371 (emphasis added).

The facts in *Skouteris* mirror the facts in the present case. The USAble Proceeds were deposited in Account 72-3 at BancorpSouth Bank on October 14, 2015. Dempsey admitted this was the operating account for the Dresden law office and not an escrow or IOLTA account. (*Id.* at 69, 71.) He also admitted to paying personal expenses out of this account. (*Id.* at 74, 76, 78.) The account never contained more than $9,000.00 after November 27, 2015. It is clear that Dempsey failed to deposit the life insurance proceeds in an escrow or IOLTA account. It is also clear that he failed to maintain the proceeds once they were deposited in Account 72-3.

Dempsey attempted to defend his violation of TN RPC 1.15(a) by claiming that he transferred the USAble Proceeds out of Account 72-3 and into Account 668 immediately upon learning of the error. The Court finds this irrelevant for two reasons. First, and foremost, Dempsey admitted he never physically withdrew the $10,000.00 from Account 72-3. (*Id.* at 81-84.) He merely made an entry on his Ledger that purported to transfer

the money from one account to the other; however, the funds never left Account 72-3. They were comingled with other funds. Dempsey admitted that the USAble Proceeds remained in Account 72-3 and were used to pay operating expenses for the Dresden law office. When Dempsey eventually did remit the $6,500.00 to Williams and the $3,500.00 to Ms. Mills, the funds did not come from Account 72-3. It is clear that Dempsey did not comply with TN RPC 1.15(a) when depositing the USAble Proceeds into a non-trust account.

The second problem with Dempsey's claim is that Account 668 was Dempsey's wife's personal account. It also was not an escrow or IOLTA account. It held personal funds belonging to Dempsey's wife and was used to pay her personal expenses. Thus, even if Dempsey had actually transferred the USAble Proceeds from Account 72-3 to Account 668, he still would have violated TN RPC 1.15(a) and Tennessee Supreme Court Rule 9, § 35.1(a).

The Tennessee Rules of Professional Conduct are clear. Attorneys are required to deposit client funds in an escrow or IOLTA account separate and apart from personal funds. They are also required to maintain those funds until such time as they are disbursed to the proper party. Dempsey testified at the Show Cause Hearing that the USAble Proceeds were not deposited in a trust account and were comingled with other funds. The proof introduced by Rohrscheib clearly demonstrated that after November 27, 2015, Account 72-3 never had more than $8,961.31 in it. As the months passed, the account balance dwindled down to a low of $82.27. (*See* Tr. Ex. 2.) Although money was deposited in Account 72-3 after November 2015, the deposits were never enough to bring the balance back up to $10,000.00.

Assuming, for the sake of argument, that Account 72-3 had been an escrow or IOLTA account, Dempsey still violated TN RPC 1.15(a). The proof conclusively established that Dempsey comingled client and non-client funds in the account. He testified that he used the USAble Proceeds to pay operating expenses for the Dresden law office. When he eventually remitted the $6,500.00 to Williams and the $3,500.00 to Ms. Mills, the funds did not come from Account 72-3. Instead, he allegedly used cash from his social security practice to purchase cashier's checks at First Bank. Dempsey

completely failed to properly segregate or safeguard the USAble Proceeds throughout the entirety of this case. The fact that he eventually remitted all of the proceeds to Williams and Ms. Mills does not excuse his mishandling of the funds. As the Tennessee Supreme Court recognized in *Skouteris*, using any portion of a client's funds "for any period of time" amounts to a conversion of that property and is a "serious ethical violation." *Skouteris*, 430 S.W.3d at 371.

The safekeeping of client funds is one of the most sacred and serious obligations an attorney has for one very simple reason: the money does not belong to him. It belongs to the client. When an attorney holds client funds in trust he does so as a fiduciary. He is obligated, by virtue of being granted the privilege of a law license, to comply with a state's ethical rules regarding the money in his possession. The money is not his to do with as he pleases until such time as he must turn it over to the owner. Given the facts of this case, the Court is extremely concerned that the $3,500.00 in insurance proceeds may never have been remitted to Ms. Mills had it not been for her diligence in seeking turnover of the money. This is more than a case of a debtor having to remind her attorney to turn her money over to her—for she did that to no avail. Instead, she had to contact Williams who in turn had to involve the UST. Even that was not enough to spur Dempsey into action. It took another month after the case was reopened and the 2004 Exam was scheduled for Dempsey to look into whether Check 1220 had ever been negotiated.

The Court also is concerned that Dempsey's Ledger does not satisfy the guidelines adopted by the Tennessee Board of Professional Responsibility in Formal Ethics Opinion 89-F-121. Neither account reflected in the Ledger is a trust or escrow account. The running balance listed thereon has little to no probative value. It appears to reflect all funds in account 72-3 but only part of the funds in Account 668. Additionally, the entry on October 14, 2015, states that the $10,000.00 deposit was related to the Mills' case; however, the $10,000.00 withdrawal entry immediately below it does not. Dempsey did not introduce any evidence that he maintains separate client ledgers for any money he holds in trust as required by the Tennessee Rules of Professional Conduct. It is questionable whether these are sound accounting practices or would be sanctionable offenses. In any event, the Court concludes that an entry on a trust ledger, without any

actual movement of funds, is not sufficient to satisfy the requirements of RPC 1.15 and Supreme Court Rule 9, § 35.1(a).

Throughout the Show Cause Hearing, Dempsey asserted that Klutts was responsible for the mishandling of the USAble Proceeds. Even if this is true, Dempsey is responsible for Klutts's errors. TN RPC 5.3, titled Responsibilities Regarding Nonlawyer Assistants, provides:

> With respect to a nonlawyer employed or retained by or associated with a lawyer:
>
> (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;
>
> (b) a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and
>
> (c) a lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
>
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the nonlawyer is employed, or has direct supervisory authority over the nonlawyer, and knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Sup. Ct. R 8, RPC 5.3. As the Tennessee Board of Professional Responsibility recognized in its Tennessee Attorney's Trust Account Handbook, an attorney may delegate responsibility for trust account transactions to a nonlawyer employee; however, if that employee violates the rules of trust accounting, the attorney may be held ethically responsible for the errors:

> Whether you find it easy or difficult, the fact is that if you agree to hold money in trust, you take on a non-delegable, personal fiduciary responsibility to account for every penny as long as the funds remain in your possession. This responsibility can't be transferred, and isn't excused by

> your or your employees' ignorance, inattention, incompetence or dishonesty. The legal and ethical obligation to account for those monies is yours and yours alone, regardless of how busy your practice is or how hopeless you are with numbers. You may employ others to help you fulfill this duty, but if you do, you must provide adequate training and supervision as required by RPC 5.3. Failure to live up to this responsibility can result in personal monetary liability, fee disputes, loss of clients and public discipline.

Tennessee Attorney's Trust Account Handbook at 16, available at the Tennessee Board of Professional Responsibilities website, http://www.tbpr.org/for-legal-professionals (last visited July 18, 2018).

At the Show Cause Hearing in this matter, Dempsey testified that he agreed to hold the USAble Proceeds in trust until such time as Williams determined what portion would be needed to pay claims against the estate. He also testified that he learned Klutts had deposited the proceeds in the wrong account the same day the deposit was made--October 14, 2015. He stated that he knew this was a mistake; however, he took no steps to properly rectify the problem. In failing to transfer the funds to a trust account and to take any action against Klutts for her alleged mistake, Dempsey ratified Klutts's error. He was the fiduciary in the situation and he had the responsibility of ensuring the funds were held properly. It is no one's fault but his own. As the comment from the Trust Account Handbook set forth above makes clear, Dempsey's ignorance and/or incompetence in handling trust accounts is also no defense.

The Court concludes that all of Dempsey's actions in this case justify the imposition of sanctions. Dempsey *voluntarily* substituted as counsel in this case. Although he stated that the UST mandated Hutcherson surrender his cases, nothing obligated Dempsey to accept them. He could have declined to do so. In his responsive pleadings to the UST's Show Cause Motion, Dempsey asserted that his ability to competently handle this case was impeded by the fact that all of Hutcherson's cases had significant problems and he had no control over the staff at the Dresden law office. However, Dempsey failed to direct the Court's attention to any other case in which there was an issue and the Court is unaware of such. More importantly, the problems in this case did not arise until *after* Dempsey took over representation of the Debtors.

As the Court has set forth herein, Dempsey violated a number of the Tennessee Rules of Professional Conduct in this case. He never executed any type of fee agreement or contract with the Debtors, but then tried to retain a $500.00 attorney's fee. He was beyond lackadaisical in keeping Ms. Mills updated on the status of the case and the insurance proceeds. He was dilatory in responding to requests for information and/or action from Williams and Rohrscheib. He knowingly failed to hold the insurance proceeds in trust despite voluntarily agreeing to do so. He offered contradictory testimony at the hearing in this matter. Dempsey took no responsibility for the errors that occurred in this case. He placed the blame on employees and Ms. Mills. He also argued that his actions should be excused because all of the proceeds were eventually remitted to Williams and Ms. Mills. This claim evinces a clear misunderstanding of his ethical responsibilities as an attorney at law.

The Court also concludes that Dempsey's violations of the Tennessee Rules of Professional Conduct were tantamount to bad faith. As the Court noted *supra*, "Bad faith, … is associated with conduct that is intentional or reckless." P*lastech Holding Corp.*, 257 F. Supp. 3d at 872. "Recklessness," in turn, is defined as "highly unreasonable conduct which is an extreme departure from the standards of ordinary care. While the danger need not be known, it must at least be so obvious that any reasonable man would have known it." *Ohio Drill & Tool Co. v. Johnson*, 625 F.2d 738, 741 (6th Cir. 1980) (internal quotation marks and citations omitted). As Dempsey stated at the Show Cause Hearing, he has been licensed to practice law since 1980. He is a high volume filer in this Court and is well acquainted with the legal process as it relates thereto. He voluntarily agreed to hold the USAble Proceeds in trust in this case and took on the burden of ensuring that he did so in compliance with Tennessee's ethical rules and responsibilities. His assertion that he attempted to correct the mistake with the deposit demonstrates that he was at least familiar enough with his ethical duties to know the deposit was improper. He testified that he attempted to correct the mistake by transferring the funds to Account 668 on the Ledger. These actions clearly establish that Dempsey was aware of the trust account requirements under the Tennessee Rules of Professional Conduct, but that he recklessly failed to comply with them.

Given the fact that Dempsey's ethical violations in this case are numerous, coupled with the fact that he did not accept any responsibility for the errors that occurred, the Court finds that a suspension from practice before this Court is the appropriate sanction. The Court has the authority to suspend Dempsey from practice before it by virtue of its inherent authority and the local rules for the Western District of Tennessee District Court and the Western District of Tennessee Bankruptcy Court. The Court also finds that suspension is appropriate given the fact that Dempsey was on notice that the Court was considering such a sanction by virtue of the UST's Show Cause Motion (ECF 76) and the UST's supplemental memorandum in support thereof. (ECF No. 86.) He had every opportunity to persuade this Court that his actions do not warrant the imposition of sanctions, but completely failed to do so.

Because the Court has concluded that Dempsey's violations of TN RPC 1.3, 1.4, 1.5, and 1.15 justify a suspension of his ability to practice law in this Court, it finds it unnecessary to address the UST's allegations with respect to TN RPC 3.3, 4.1, and 8.4, or 11 U.S.C. §§ 526 and 528.

III. CONCLUSION

The Court concludes that Dempsey's violations of the Tennessee Rules of Professional Conduct set forth herein warrant the imposition of sanctions. This sanction shall take the form of a suspension from the practice of law in this Court, both the Eastern and Western Divisions, for a period of three years subject to the conditions set forth in the order entered in accordance herewith.

Mailing List

Debtors
Benjamin S. Dempsey, Respondent
Marianna Williams, Chapter 7 Trustee
United States Trustee

Dated: July 24, 2018
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re	)	
	)	
TED ALLEN MILLS and	)	**Case No. 15-11766**
RHONDA JEAN MILLS,	)	
	)	
Debtors.	)	**Chapter 7**
	)	

ORDER RE: APRIL 10, 2018 ORDER FOR ATTORNEY, BENJAMIN S. DEMPSEY, TO APPEAR AND SHOW CAUSE WHY HE SHOULD NOT BE SANCTIONED AND DISCIPLINED FOR DEFICIENT CONDUCT COMBINED WITH NOTICE OF THE ENTRY THEREOF

For the reasons set forth in the Court's Memorandum Opinion re: Order For Attorney, Benjamin S. Dempsey, To Appear And Show Cause Why He Should Not Be Sanctioned And Disciplined For Deficient Conduct entered contemporaneously herewith, the Court **HEREBY SUSPENDS** Benjamin S. Dempsey, Esquire, from the practice of law in the United States Bankruptcy Court for the Western District of Tennessee, Eastern and Western Divisions, for a period of 3 years from the date of entry of this Order pursuant to Local Rule 1004-1 of the United States Bankruptcy Court for the Western District of Tennessee and Local Rule 83.4(g)(1) of the United States District Court for the Western District of Tennessee.

Upon entry of this Order, Dempsey is prohibited from filing any new bankruptcy cases or new proceedings in any pending bankruptcy cases until his privilege to practice in the United States Bankruptcy Court for the Western District of Tennessee, Eastern and Western Divisions, is reinstated. Dempsey may not share fees, directly or indirectly, with an employee, associate, or attorney for any bankruptcy cases or proceedings filed after entry of this Order. If a client decides to retain an employee or associate of Dempsey's and gives fees to the employee or associate, no part of the fees may inure to the benefit of Dempsey. The employee or associate cannot share the fees with Dempsey, cannot have the fees go through Dempsey's bank account, and cannot use any of the fees to pay or defray Dempsey's office expenses, such as rent, clerical support, office equipment, computer and communication services and the like.

Dempsey's suspension in any cases or proceedings pending before this Court at the time this Order is entered will take effect 30 days from entry of this Order. After this time, Dempsey is prohibited from providing legal services to anyone, collecting or sharing fees from, or lending his name to the representation of clients with a matter, proceeding, or case before either the Western or Eastern Division of the United States Bankruptcy Court for the Western District of Tennessee. In accordance with Tennessee Supreme Court Rule 9 § 28.6, Dempsey must refund any fees, expenses or costs paid to him by clients in advance that have not been earned or expended after expiration of the 30 days.

Dempsey shall notify his current clients and any other interested parties of this suspension in compliance with Tennessee Supreme Court Rule 9, § 28.2. Within this notification, Dempsey must

1. inform his clients that they are free to select any attorney licensed to practice law in the State of Tennessee as their counsel of record; and

2. in accordance with Tennessee Supreme Court Rule 9, § 28.5, provide instructions to his clients on how to obtain their papers and other property currently in Dempsey's possession.

Dempsey must maintain records of the steps he has taken to comply with Tennessee Supreme Court Rule 9, § 28.2. Within 20 days of his suspension, he must also submit an affidavit to this Court that he has complied with these requirements as provided for in Tennessee Supreme Court

Rule 9, § 28.9(a). Failure to notify all of his clients in compliance with these instructions and failure to file an affidavit of such will result in the forfeiture of his right to seek early reinstatement of his practice privileges.

After a period of 18 months, Dempsey may seek reinstatement of his privilege to practice before this Court if he presents to the Court:

1. evidence that he has completed a minimum of 18 hours of continuing legal education from a certified provider, all of which must be ethics hours; and

2. evidence that his trust accounting practices and procedures are in compliance with the Tennessee Rules of Professional Conduct and the Tennessee's Attorney's Handbook on Trust Accounting, available at www.tbpr.org.

This suspension is personal to Dempsey. Any attorney associated with Dempsey who is a member in good standing with the United States Bankruptcy Court for the Western District of Tennessee is free to practice before this Court subject to the terms and conditions mentioned above and enjoys all the powers, prerogatives, and privileges of a member of the bar of the United States Bankruptcy Court for the Western District of Tennessee.

IT IS SO ORDERED and NOTICE IS HEREBY GIVEN:

Mailing List
Debtors
Benjamin S. Dempsey, Respondent
Marianna Williams, Chapter 7 Trustee
United States Trustee