

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

IN RE:

STACIE TAYLOR,

Debtor.

**UNITED STATES BANKRUPTCY COURT
WESTERN DIVISION
FILED**

APR 02 1997

**JED G. WEINTRAUB
CLERK OF COURT
WESTERN DISTRICT OF TENN.**

Case No. 97-22151-L

Chapter 13

**MEMORANDUM OPINION AND ORDER
ON TRUSTEE'S MOTION FOR SANCTIONS**

THIS MATTER came on for hearing on April 1, 1997, upon the motion of George W. Stevenson, standing Chapter 13 Trustee, for sanctions against the debtor and the debtor's attorney, Jimmy McElroy. The debtor did not appear. Mr. McElroy was present and made statements on his own behalf. Because the debtor did not appear, the court continued for another day consideration of sanctions to be imposed upon the debtor. This opinion thus deals only with the sanctions to be imposed upon the attorney. This is a core proceeding. 28 U.S.C. § 157(b). This memorandum constitutes findings of fact and conclusions of law. Bankruptcy Rule 7052.

FINDINGS OF FACT

According to the Trustee, the debtor has filed fourteen Chapter 13 petitions in the past eight years, none of which has resulted in the successful completion of a Chapter 13 plan. In the case just prior to the present one, the debtor filed a voluntary petition on September 5, 1996. That case was dismissed on January 7, 1997 as the result of the debtor's willful failure to appear at the meeting of creditors. In dismissing that case, the debtor was specifically ordered not to file another bankruptcy petition for a period of 180 days. Mr. McElroy did not serve as counsel for

the debtor in that case.

In his statements to the court, Mr. McElroy said that he understood that the Trustee's motion sought sanctions against him as well as against his client, and that he preferred not to continue the hearing with respect to his own actions until a day when the debtor would also be before the court. In his statements to the court, Mr. McElroy admitted that he had served as counsel for the debtor in two prior cases, most recently in 1992, but that neither he nor anyone in his office recognized the debtor when she came to his office on February 11, 1997 seeking assistance in the present case. Mr. McElroy further stated that because of a computer failure that occurred in August of 1996, his records of prior cases were not available to him. He stated that the debtor was asked about prior bankruptcy cases filed in the past six years in a questionnaire provided by his office to all his bankruptcy clients, but that the debtor indicated that she had no prior filings. He stated that he believed the debtor to be honest, and thus made no further inquiry, but accepted as true the statements made by the debtor in response to his questionnaire. Mr. McElroy stated that he knew that the Chapter 13 Trustees have established a telephone "hotline" whereby counsel can determine whether an individual has filed prior bankruptcy petitions in this district, but that he had not instructed his staff to make this telephone call in every case. The voluntary petition filed in this case falsely indicated that the debtor had no prior bankruptcy cases filed within the last six years, and was signed by Mr. McElroy as attorney for the debtor.

CONCLUSIONS OF LAW

Bankruptcy Rule 9011, which tracks Rule 11 of the Federal Rules of Civil Procedure, requires in relevant part that every petition filed in a case under the Bankruptcy Code on behalf

of a party represented by an attorney be signed by at least one attorney of record in the attorney's individual name. The signature of the attorney constitutes a certificate that "the attorney has read the document; that to the best of the attorney's knowledge, information, and *belief formed after reasonable inquiry* it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of the case." Fed. R. Bankr. P. 901 1(a)(emphasis added).

In this case, there is no question that the petition filed by Mr. McElroy was not well-grounded in fact and not warranted under existing law. The debtor was not eligible for bankruptcy relief both because of the provisions of 11 U.S.C. §109(g)(1)¹ and the prior dismissal order prohibiting the debtor from filing another petition for a period of 180 days. The sole question for the court is whether it was reasonable for Mr. McElroy to simply rely upon the statement of the debtor that she had filed no prior bankruptcy cases without making a telephone call to the Chapter 13 Trustees' "hotline" to determine whether this assertion was accurate. The court concludes that it was not. Had a telephone call been made, Mr. McElroy would have learned of the numerous previous bankruptcy petitions filed by this debtor. Minimal additional investigation would have uncovered the prior order expressly prohibiting the debtor to file another bankruptcy petition for a period of 180 days. The use of this valuable service provided

¹ 11 U.S.C. §109(g) provides:

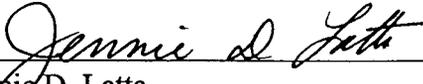
Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if--
(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case.

by the Chapter 13 Trustees imposes a minimal burden upon debtors' attorneys. It is reasonable and appropriate to require its use.

Bankruptcy Rule 9011 (a) provides that an attorney who violates its provisions shall be sanctioned. The motion filed by the Trustee did not request a specific sanction. The court has surveyed certain other opinions dealing with the issue of the appropriate sanction for an attorney's violation of the certification rule in connection with the improper filing of repeated bankruptcy petitions. See, e.g., *In re Armwood*, 175 B.R. 779 (Bankr. N.D. Ga. 1994); *In re Smail*, 129 B.R. 676 (Bankr. M.D. Fla. 1991); *In re Bono*, 70 B.R. 339 (Bankr. E.D.N.Y. 1987). The purpose of sanctions is both to deter abusive practice and to compensate the offended party. *In re Smail*, 129 B.R. at 17. In this case where the motion was brought by the standing Chapter 13 Trustee serving a quasi-governmental function and no creditor appeared, assessment of attorneys fees in favor of the Trustee is not an appropriate sanction. See *In re Armwood*, 175 B.R. at 790. The court finds that payment by Mr. McElroy of \$250 to the Clerk of the United States Bankruptcy Court for the Western District of Tennessee is an appropriate sanction. In this case, however, because this is the first instance of which the court is aware that Mr. McElroy has been involved in a violation of this sort, the sanction imposed will be held in abeyance. In the event that Mr. McElroy comes before the court again as the result of a similar violation, the sanctions will be cumulative. Accordingly, it is hereby

ORDERED that a sanction in the amount of \$250 is imposed upon Mr. McElroy, which, however, is held in abeyance pending further order of the court.

BY THE COURT



Jennie D. Latta
United States Bankruptcy Judge

Date: 4-2-97

xc: Jimmy McElroy, Esq.
George W. Stevenson, Esq.

Mailed on 4-2-97 ~~1997~~
 Debtor, debtor's attorney and trustee
 above listed parties
Sandy Beck, Administrative Secretary
United States Bankruptcy Court