UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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In re

JOHN FRANKLIN COPPER, Case No. 02-23450-L
Chapter 7

Debtor.

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ATHENA CHEN COPPER and the
ESTATE OF SUMIKO YAMAOKA,
Plaintiffs,

v. Adv. Proc. No. 02-0610

JOHN FRANKLIN COPPER,
Defendant.

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**ORDER GRANTING MOTION FOR SANCTIONS**
**PURSUANT TO RULE 9011**

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THIS MATTER came on for hearing on November 10, 2003, upon the motion of Athena Chen Copper for sanctions pursuant to FED. R. BANKR. PROC. 9011 against her ex-husband, the Debtor, John Franklin Copper, and his attorney, Ted I. Jones. At the hearing, the Plaintiff was represented by Mimi Phillips and R.H. "Chip" Chockley. Mr. Jones was represented by Ben Sissman. The Debtor chose to be represented by Mr. Jones, and Mr. Jones agreed to continue to represent him even after both of them were warned by the court of the potential conflict of interest involved in the representation.

In a previous Memorandum Opinion, dated October 31, 2003, the court denied the discharge of the Debtor pursuant to 11 U.S.C. § 727(a)(4) and denied the Debtor's motion to convert his case to Chapter 13. The court found that the Debtor gave a false oath in connection with his bankruptcy

case when he filed schedules that were materially false and fraudulent. The court further found that the Debtor made these false statements as part of a "continuing pattern of efforts to thwart Mrs. Copper in her endeavor to be paid the amounts owed to her." The present motion arises out of the filing by the Debtor of a series of six bankruptcy cases all for the sole and improper purpose of delaying and hindering the Plaintiff in her efforts to enforce the lawful orders of the Circuit Court of Tennessee. In the hearing on the motion for sanctions, the court focused especially upon the knowledge and motivation of Mr. Jones in connection with his representation of the Debtor. For the following reasons, the court concludes that sanctions must be imposed upon Mr. Jones and the Debtor to deter them from further abuse of bankruptcy process. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(a) and 1334. This is a core proceeding because it arises out of a complaint objecting to discharge. 28 U.S.C. § 157(b)(2)(J).

## I. FINDINGS OF FACT

An extensive discussion of the facts underlying the dispute between these parties is found in the court's prior memorandum opinion. A summary will be provided here.

The Debtor is the Stanley J. Buckman Distinguished Professor of International Studies at Rhodes College in Memphis, Tennessee. His gross salary for the current year is $89,000. The Debtor and Mrs. Copper were married in 1967 and divorced on October 15, 1993. As a result of the divorce and subsequent events, the Debtor is indebted to Mrs. Copper in the amount of $70,657.60,

representing sums found to have been taken from Mrs. Copper's parents and interest accrued on those amounts;[1] and in the amount of $3,100.00, representing attorneys' fees awarded to Mrs. Copper as a result of the Debtor being found to be in civil contempt of the orders of the state court as a result of his conversion to his own use of certain pension funds awarded to Mrs. Copper. Substantial interest has accrued on these debts since they were originally incurred. In addition, the Plaintiff claims that the Debtor is obligated for an additional $3,278.93, representing additional pension funds converted by him but not discovered until after the original order for contempt was entered. This amount has not been reduced to judgment and was not relied upon by the court in reaching its decision.

Although Dr. Copper represented himself at the trial of his divorce, he engaged Mr. Jones to represent him immediately thereafter. Mr. Jones signed the Final Decree of Divorce as attorney for Dr. Copper. Mr. Jones has continuously represented the Debtor since 1993, through an appeal of the Final Decree of Divorce to the Tennessee Court of Appeals; an application for permission to appeal to the Tennessee Supreme Court; the motion for civil contempt that resulted in the award of attorney fees to Mrs. Copper; one or more motions to set payments in lieu of garnishment in the state court; and in connection with the filing of six bankruptcy petitions. The only break in this

[1] This award was originally made to Sumiko Yamaoka, now deceased. Mrs. Copper has produced evidence demonstrating that this claim has been assigned to her by her siblings. Ownership of this claim is not material to the determination of the issues before the court.

continuous representation occurred for approximately one year in 1999-2000 when the Debtor was represented in the state court by Mr. Larry Rice.

In the ten years since the entry of the Final Decree of Divorce, the Debtor has made regular alimony payments in the amount of $2,000 per month. He has never, however, made a voluntary payment toward the other amounts owed to Mrs. Copper. Instead, beginning in 1997, the Debtor has filed series of six bankruptcy petitions in order to avoid the collection efforts of Mrs. Copper. The cases filed by Dr. Copper, the reason for filing and the disposition of each case are as follows:

1. A Chapter 11 case, number 97-29388, filed on July 1, 1997, following a garnishment of the Debtor's wages and his successful effort to set installment payments in lieu of garnishment. Although payments were set at only $450 per month, the Debtor made no payments. The Chapter 11 petition was filed without schedules. A motion to extend the time to file schedules was filed by Mr. Jones, but no schedules were ever filed. Instead, the case was dismissed upon the recommendation of the United States Trustee on July 23, 1997.

2. A Chapter 7 case, number 97-31703, filed August 12, 1997, twenty-three days after the dismissal of the prior Chapter 11 case. In this case, schedules and the statement of financial affairs were timely filed. The Plaintiff filed an adversary complaint objecting to the discharge and seeking a determination of the dischargeability of the particular debts owed to her. The Plaintiff also filed a motion

to dismiss the bankruptcy case, and the court lodged its own sua sponte motion to dismiss pursuant to FED. R. BANKR. PROC. 7052. A lengthy hearing was conducted by Chief Bankruptcy Judge David S. Kennedy. At the conclusion of the hearing, Judge Kennedy declined to exercise jurisdiction over the essentially "two-party dispute," and dismissed the case.

3. A Chapter 7 case, number 00-28249, filed July 12, 2000, in order to avoid a hearing set that day in the state court on the Plaintiff's motion to dispose of the Debtor's motion to set installment payments in lieu of garnishment. The bankruptcy petition was filed without schedules or a statement of financial affairs. Mr. Jones filed a motion to extend the time to file schedules, which was granted. No schedules were filed and the case was dismissed upon the recommendation of the United States Trustee on August 25, 2000.

4. A Chapter 7 case, number 00-35607, filed December 6, 2000. It appears the schedules and a statement of financial affairs were filed in connection with this case, but the case was dismissed nevertheless upon the failure of the Debtor to attend the meeting of creditors.

5. A Chapter 7 case, number 01-37454, filed November 8, 2001, in order to prevent the garnishment of the Debtor's wages. No schedules or statement of financial affairs were filed with the petition. A motion to extend the time to file

schedules was filed by Mr. Jones and granted by the court. No schedules were ever filed and the case was dismissed as a result of the failure to complete the filing on January 9, 2002.

6. The present Chapter 7 case, number 02-23450, filed February 25, 2002, as the result of a garnishment issued on January 17, 2002. The Debtor filed schedules and a statement of financial affairs in this case, which the court has previously found to be false.

In each of the cases except the present one, the Debtor did not pay the case filing fee with the petition, but rather filed a motion to pay the filing fee in installments. The filing fee remains unpaid in each of the prior five cases except the second one. Despite Mr. Jones' statement that the cases were filed in order to obtain a determination that the debts owed to Mrs. Copper were dischargeable, the Debtor has never sought a determination of the dischargeability of the debts in any of his cases. Significantly, and most troubling, the schedules filed in the Debtor's second bankruptcy case were actually more accurate than the schedules filed in the present case. Unlike the false schedules filed in this case, the schedules in the second case reflected the value of the Debtor's pension plan, did not list debts owed to the Debtor's former attorneys that were compromised in 1996, and correctly listed the Debtor's marital status as married rather than divorced. Thus, while the court originally thought that some of the false statements contained in the

present schedules crept in as the circumstances changed over time, it is now clear that the false statements were deliberate and intentional.

At the hearing on the motion for sanctions, Dr. Copper continued his prior pattern of forgetfulness and avoidance. He attempted to shift all the responsibility for the false statements in his schedules to his attorney, although he admitted signing the schedules. He claimed not to remember being found in contempt of the state court, and not to remember having prior bankruptcy cases dismissed because of his failure to provide information to his attorney and/or failure to attend the meetings of creditors.

When asked by the court why he had filed each of his bankruptcy cases, Dr. Copper's only response was that he wanted to avoid the effects of the garnishments issued on behalf of Mrs. Copper. He said that he did not understand how the [state] court could take so much money from him. He thought that perhaps the court did not understand how little money he had. He went to Mr. Jones for help in fixing the problem. He claimed not to know the difference between a Chapter 7 case and a Chapter 13 case. He never mentioned the need to obtain a determination of the dischargeability of the debts owed to Mrs. Copper. He never mentioned a desire to repay her.

Based upon his testimony, it is clear that Dr. Copper believed or was told that the filing of a bankruptcy petition would place him in a stronger position to negotiate a cash settlement with Mrs. Copper. Mr. Jones admitted that he had successfully coerced the settlement with Caywood and Shea by threatening to file a bankruptcy case for Dr. Copper. There was testimony from Mrs. Copper's

attorney indicating that she had received one verbal offer of settlement from Mr. Jones, in which he asked whether Mrs. Copper would "go away" for $25,000. Ms. Phillips testified that she asked whether the offer was serious and was told by Mr. Jones that he did not know. Ms. Phillips asked that the offer be reduced to writing, but she never received a written offer of settlement. Dr. Copper insisted that he had authorized Mr. Jones to try to settle the dispute, but Mr. Jones testified that he did not communicate all of Dr. Copper's offers because some of them were "ridiculous." In particular, Mr. Jones recalled that Dr. Copper wanted him to offer $1,000 to settle the claims. Mr. Jones recalled that there were some discussions with Dr. Copper about taking funds from his retirement account to settle the claims.

Dr. Copper was asked by the court why he never made a voluntary payment to Mrs. Copper. His answer indicated that he thought that if she were not actively attempting to collect the debt, then maybe she did not want to be paid. He said he thought she might remarry and leave the country, and then he would not have to pay her. At no time in his testimony did Dr. Copper take responsibility for his actions or express remorse for the trouble he had caused.

Mr. Jones, on the other hand, was much more forthcoming. On at least two occasions, he admitted that the filing of the four bankruptcy cases after Judge Kennedy's decision to abstain from hearing the dispute was "ill-advised" and a "mistake." Mr. Jones accepted responsibility for his role in thwarting Mrs. Copper's efforts to be paid. Mr. Jones could not, however, explain the false statements in the Debtor's schedules but thought that they resulted from "over-reliance on previous

schedules" and resulted from a "mistake or negligence." When it was pointed out to Mr. Jones that the earlier schedules were more accurate than the later ones, he had no explanation. Mr. Jones acknowledged that he permitted Dr. Copper's schedules to be signed by him and filed with the court even though he knew that information was missing. Mr. Jones admitted that he did not require that Dr. Copper provide the missing information as a condition to filing the documents.

Mr. Jones testified that some of the Debtor's testimony at the prior hearing was new to him. He said that he was not aware that Dr. Copper is in the habit of cashing his paychecks and putting large sums of cash in a drawer for the use of his current wife. Mr. Jones acknowledged that he had discussed with Dr. Copper the fact that all of his assets were held in his current wife's name, and had also discussed with him what amount his wife earns and where she works. Mr. Jones claimed that this information was omitted from the Debtor's schedules because the income of a non-filing spouse was "not as important in 1997 as it is now." Mr. Jones said that he had not thought about the omissions from the schedules from the perspective of honesty, and that he did not attempt to evaluate whether Dr. Copper was "honest, sincere or earnest" in seeking relief from the bankruptcy court. Mr. Jones admitted that this was a mistake.

Unfortunately, Mr. Jones' conduct in this case is not unusual for him. Bankruptcy Judge William Houston Brown of this district recently found that "Mr. Jones has demonstrated a pattern in consumer cases of filing repeatedly for many debtors, ... and that there often appears to be, at best, little justification for some of these serial filings." *In re Renell White*, Case No. 03-33042, Order

Granting United States Trustee's Motion for Sanctions Pursuant to FED. R. BANKR. PROC. 9011, slip op. at 1 (Bankr. W.D. Tenn. October 27, 2003). The undersigned judge has had frequent discussions with Mr. Jones about his tendency to do very little screening of the cases that he files.

Although this case has many of the attributes of a typical serial filing, it goes beyond those cases based on desperation and unfounded hope, and represents a definite instance of abuse. More often than not, in this district, serial cases are filed under Chapter 13. The debtor may or may not have income at the time of filing, but the filing is triggered by the need to prevent foreclosure of a home mortgage, eviction from an apartment, or repossession of a car, or to provide for the reinstatement of utility services. These cases are dismissed when the debtor has inadequate income to service the plan, or at some point loses his job or is injured. These debtors often file new cases shortly after dismissal when employment is regained or health restored or disability payments received. The good faith of the debtor is generally apparent even when there is objectively speaking very little hope that the debtor will be successful in the refiled case. Mr. Jones has gained a reputation for filing the third or fourth cases for these types of debtors when other attorneys have turned them away.

Other types of serial filing border on abuse. These are the cases in which the debtor has filed a series of cases, but never makes the first payment and/or fails to attend the meetings of creditors. These cases also represent a form of desperation. The debtor needs relief, but simply does not have the ability to pay. This fact may or may not be known to the filing attorney. This type of debtor is

trying to stave off foreclosure or eviction one more month because he or she has nowhere else to turn. It is not always clear whether the debtor ever intended to make the required payments, but it is at least clear that the debtor is in need of some assistance. While the court does not condone the use of the bankruptcy courts where there is no real intent to repay, the court at least finds this behavior understandable. Mr. Jones has often been involved in these types of cases as well.

The cases filed for Dr. Copper represent a wholly other type of case. Dr. Copper has never proposed the repayment of his obligations to Mrs. Copper. Mr. Jones testified that in the past he had discussed the filing of a Chapter 13 case with Dr. Copper, but that Dr. Copper had opted instead for the filing of Chapter 7 cases. In its prior opinion, the court denied the Debtor's motion to convert this case to Chapter 13 because the court found that the motion was not proposed in good faith. Coming on the literal eve of trial, it was simply too late. Although Mr. Jones tried to suggest that Dr. Copper filed these cases because he had a desire to determine the dischargeability of the obligations owed to Mrs. Copper, the record speaks otherwise. Dr. Copper has never sought a determination of dischargeability, and in fact acquiesced in the dismissal of his second case rather than asking Judge Kennedy to make a determination of dischargeability. The failure of the Debtor to either propose repayment of his marital obligations or seek a determination of their dischargeability leaves room for no other conclusion than that the Debtor intended the filings to serve some other, improper purpose. Indeed, the Debtor filed cases even after he had obtained orders permitting installment payments from the state court. As the court concluded in its prior

opinion, the Debtor has never had and does not now have an intention to repay Mrs. Copper, and has used the bankruptcy courts to delay, hinder and harass Mrs. Copper in her endeavors to be repaid. The undersigned judge has never known Mr. Jones to be involved in this type of case in the past.

What is so troubling, and what requires the court's attention in this case, is that Mr. Jones seems not to have understood and appreciated that with this case, he crossed the line from desperation and unfounded hope to abuse. At some point he lost the ability to objectively evaluate his client's motives and became caught up in his client's bad acts. Mr. Jones allowed his skill and expertise to be used by his client for an improper purpose. With Mr. Jones' aid, Dr. Copper has caused Mrs. Copper to spend the last ten years of her life in frustrating, time consuming and expensive litigation. Over the course of these bankruptcy cases, Mrs. Copper has incurred attorneys' fees and expenses in the amount of $44,674.18. In connection with the hearing on the motion for sanctions, Mrs. Copper presented the testimony of James E. Bailey, a well-respected bankruptcy attorney from this district. Mr. Bailey reviewed the time and billing records of Ms. Phillips and Mr. Chockley and opined that their billings were reasonable and necessary for the post-divorce collection efforts required by the actions of Dr. Copper. The Debtor offered no rebuttal witness. The Court agrees with the opinion of Mr. Bailey and finds that the attorneys fees and expenses incurred by Mrs. Copper were reasonable and necessary.

## II. CONCLUSIONS OF LAW

The resolution of the Plaintiff's motion requires the court to consider the application of FED. R. BANK. PROC. 9011 to the facts of this case. That rule provides in pertinent part:

> **(b) REPRESENTATIONS TO THE COURT.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, —
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
>
> **(c) SANCTIONS.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

The court has found that the bankruptcy petitions filed on behalf of Dr. Copper were filed for the improper purpose of harassment and delay. The petitions were signed and filed both by Dr. Copper and by Mr. Jones.

The Sixth Circuit has indicated that the court should consider the following when determining an appropriate sanction under Rule 11:

> In determining an appropriate sanction under amended Rule 11, the court should consider the nature of the violation committed, the circumstances in which it was committed, the circumstances (including the financial state) of the individual to be sanctioned, and those sanctioning measures that would suffice to deter that individual from similar violations in the future. The court should also consider the circumstances of the party or parties who may have been adversely affected by the violation.

*Orlett v. Cincinnati Microwave, Inc.,* 954 F.2d 414, 420 (6th Cir. 1992) (quoting with approval American Judicature Society, Studies of the Justice System, *Rule 11 in Transition: The Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11*, p. 40 (1989)).

The court turns first to consideration of an appropriate sanction for Dr. Copper. As the result of Dr. Copper's improper conduct, the court has previously denied the discharge of the Debtor. This in itself ordinarily would be a very serious sanction. In this case, however, the court has found that the Debtor never seriously desired or needed a discharge, but merely used the bankruptcy court as an instrument in his plan to harass Mrs. Copper. Thus, an additional sanction is warranted. Because Dr. Copper is an individual and not an attorney, it is difficult to determine what non-monetary sanction might deter him in the future. He has shown little understanding of and no remorse for his past misconduct. He was not deterred by his professional standing or personal ethics from engaging in this sordid business. Thus, the court can only conclude that a monetary sanction must be imposed. Because of the Debtor's past deceit, the court has no method to evaluate the Debtor's

actual ability to pay a monetary sanction, but the court suspects that it is substantially greater than Dr. Copper would have us believe. Thus, the court will impose as a sanction for Dr. Copper's past misconduct in filing six bankruptcy petitions for the sole and improper purpose of harassment and delay **a judgment in favor of Mrs. Copper in the full amount of her attorney fees incurred in connection with these bankruptcy cases, $44,674.18.**

With respect to Mr. Jones, there are additional factors that the court will take into consideration. As was stated before, unlike his client, Mr. Jones accepted personal responsibility for his misconduct. He admitted his wrongdoing to Mrs. Copper and apologized to her. Further, the court questioned Mr. Jones carefully about his personal financial situation, and learned that as the result of his own divorce, Mr. Jones does not have the ability to pay a large monetary award. The specific conduct that the court wants to deter with respect to Mr. Jones is his inability or reluctance to say "no," when asked to file bankruptcy petitions. Specifically, the court wants to encourage Mr. Jones to carefully evaluate his clients and their motives and abilities before undertaking their representation in bankruptcy court. Thus the court will impose as a sanction on Mr. Jones for his willing complicity in the wrongful conduct of Dr. Copper that **for a period of ninety days beginning on the thirtieth day after this order becomes final, Mr. Jones may accept no new bankruptcy cases for filing.** This does not preclude Mr. Jones from appearing in bankruptcy court for the purpose of representing his current clients, but does preclude him from filing new petitions for new or existing clients. In addition, during the period of this sanction, Mr.

Jones **will attend and certify to the court that he has attended nine hours of continuing legal education in the area of ethics.** Failure of Mr. Jones to comply with this portion of the sanction will result in an extension of the period in which he cannot file bankruptcy petitions until the requirement is fulfilled.

With respect to Dr. Copper, the court will enter a separate judgment consistent with this order.

**IT IS SO ORDERED.**

BY THE COURT,

JENNIE D. LATTA
United States Bankruptcy Judge

Date: December 8, 2003