

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

In re

TONY WYATT WILLIAMS,
Debtor.

Case No. 91-20696-K
Chapter 7

TONY WYATT WILLIAMS,
Plaintiff,

vs.

Adv. Proc. No. 92-0991

MEMPHIS STATE UNIVERSITY,
UNITED STATES DEPARTMENT OF
EDUCATION, NATIONAL DIRECT
STUDENT LOAN,

Defendants.

**SUA SPONTE ORDER RE ABOVE-CAPTIONED ADVERSARY PROCEEDING AND
"MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF" COMBINED WITH
RELATED ORDERS AND NOTICE OF THE ENTRY THEREOF**

It appears to the Court, on its own initiative, that the following core proceedings were scheduled to be considered on March 16, 1993: (1) a final pre-trial conference arising out of the above-captioned adversary proceeding pursuant to 11 U.S.C. §523(a)(8)(A) and (B) and (2) a "Motion To Withdraw As Counsel For Plaintiff" filed heretofore by Philip F. Counce, Esq., the attorney of record for the above-named debtor-plaintiff. Due to a family emergency, Mr. Counce was unable to attend these scheduled matters on March 16, 1993, although Tina L. Greer, Esq., Assistant Attorney General for the defendant, Memphis State University, did appear.

In open court on March 16, 1993, the Court orally stated, inter alia, that the undersigned bankruptcy judge is currently employed this semester as an adjunct-professor with the

defendant, Memphis State University [School of Law] and feels, considering a totality of the particular facts and circumstances, that sua sponte abstention of this adversary proceeding would be appropriate. See, e.g., 28 U.S.C. §1334(c)(1); Bellotti v. Baird, 428 U.S. 132, 143 n.10 (1976); In re Southmark Storage Associates, Ltd. Partnership, 132 B.R. 231 (Bankr. Conn. 1991). The Court notes that by virtue of 28 U.S.C. §1334(b) concurrent jurisdiction exists regarding the instant adversary proceeding.

The main case file reflects in relevant part here that the Chapter 7 Trustee has filed a "Trustee's Report Of No Distribution"; that pursuant to F.R.B.P. 4004(c) the discharge of the debtor is perhaps ready to be entered (with the reservation of a judicial determination regarding the instant adversary proceeding); and that the case filing fee pursuant to 28 U.S.C. §1930(a)(1) has been paid by the above-named debtor-plaintiff.

Once the discharge of the debtor-plaintiff is granted and by virtue of 11 U.S.C. §362(c)(2)(C), the parties may litigate the student loan matter in an appropriate non-bankruptcy forum as the limited chapter 7 discharge does not, ipso facto, discharge debts under 11 U.S.C. §523(a)(8). Mr. Counce's representation of the debtor-plaintiff in the non-bankruptcy forum will then be a new matter between him and the debtor-plaintiff.

Having exercised discretionary or permissive abstention of this adversary proceeding pursuant to 28 U.S.C. §1334(c)(1), it is now unnecessary for the Court to consider the pre-trial conference regarding this adversary proceeding or the instant motion seeking to withdraw as counsel for the plaintiff - both proceedings which are now dismissed as being rendered moot as a result of the abstention ruling.

Based on the foregoing and the case record as a whole, **IT IS SO ORDERED AND NOTICE IS HEREBY GIVEN** without legal prejudice to an objection being filed along with a request for a formal hearing, if such objection is filed and served within ten days from the date of the Clerk's mailing of this Order and Notice to the entities listed below.

BY THE COURT

DAVID S. KENNEDY
CHIEF UNITED STATES BANKRUPTCY JUDGE

DATE: March 17, 1993

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