



Dated: March 24, 2020
The following is ORDERED:

Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
WILLIAM H. THOMAS, JR.,
Debtor.

Case No. 16-27850-L
Chapter 11

ORDER GRANTING MOTION FOR PROTECTIVE ORDER

BEFORE THE COURT is Glankler Brown, PLLC's Motion for Protective Order Striking or Limiting Discovery, filed February 26, 2020. [Dkt. No. 855]. The Debtor, William H. Thomas, Jr., filed an objection to the motion on March 23, 2020. [Dkt. No. 910]. The motion and objection arise out of the Final Application for Compensation filed by Glankler Brown, PLLC, on December 18, 2019. [Dkt. No. 753]. Glankler Brown, PLLC, prays that the court strike Debtor's discovery requests and/or find that Glankler Brown is not required to respond to them.

BACKGROUND FACTS

This case was commenced by the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Florida on June 2, 2016. [Dkt. No. 1]. The Debtor was initially represented by Attorney John E. Venn, Jr., of Pensacola, Florida. The case was transferred to the Western District of Tennessee by order entered August 11, 2016. [Dkt. No. 86]. Glankler Brown, PLLC, was appointed as counsel for the Debtor, nunc pro tunc to August 11, 2016, and served until November 20, 2018, when Glankler Brown, PLLC's Emergency Motion to Withdraw as Attorneys was granted for cause. [Dkt. No. 461]. Glankler Brown, PLLC's Final Application for Compensation seeks compensation for the period August 9, 2018, through October 31, 2018. It seeks fees in the amount of \$39,082.00, and expenses in the amount of \$1,873.71, for a total request of \$40,955.71. A breakdown of the activities performed by Glankler Brown, PLLC, together with its detailed billing statements are attached to the Application.

The Debtor filed his initial Objection to the Final Application on January 7, 2020. [Dkt. No. 762]. As grounds for the objection, the Objection states that Michael P. Coury, an attorney member of Glankler Brown, PLLC, "failed to render competent legal advice to the Debtor prior to his withdrawal as counsel" and "failed to properly advocate as counsel for debtor prior to his withdrawal as counsel." The Objection further states that "Coury made disparaging and false statements about the Debtor in pleadings which reflected adversely on the Debtor before this Court and third parties."

The court conducted an initial hearing to consider the Application and Objection on January 16, 2020. At the hearing, the court informed the Debtor that the Objection was insufficient

in failing to identify any particular acts of Coury that he deemed improper. The court gave the Debtor until February 13, 2020, to file an amended objection.

On February 13, 2020, the Debtor filed a Supplemental Objection to Movant's Final Application combined with a Request to Continue Hearing Until Discovery is Complete. [Dkt. No. 826]. The Supplemental Objection recites as follows:

1. Debtor filed his objection as ECF # 762 on January 7, 2020.
2. Debtor has submitted discovery to Movant, Michael Coury with Glankler Brown on January 29, 2020.
3. Debtor after receiving proper responses to the submitted discovery will promptly schedule depositions of Michael Coury and Jessica Indingaro and then supplement his written objections.

Attached to the Motion for Protective Order are copies of the Debtor's First Set of Interrogatories and First Request for Production, which the motion states were submitted on January 29, 2020. The Interrogatories ask for responses from January 1, 2018, through the present day, but the Application only relates to the period August 8, 2018, through October 31, 2018. The temporal scope of the interrogatories is overbroad.

Interrogatories 1-5 relate to Glankler Brown, PLLC's Emergency Motion to Withdraw as Attorney. Neither the Objection to the Application nor the Supplement to the Objection allege that the Debtor was charged a fee in connection with the Emergency Motion to Withdraw.

Interrogatories 6-13 relate to communications by and between Glankler Brown, PLLC, the Debtor, and Butler Snow, LLP, relating the defenses and claims which the Debtor might assert against Clear Channel, Tennison Brothers, and the Tennessee Department of Transportation ("TDOT"). Neither the Objection to the Application nor the Supplement to the Objection make

any allegation concerning such communications. In fact, Glankler Brown, PLLC, filed an objection to the claims of Clear Channel and Tennison Brothers prior to its withdrawal, and the Debtor subsequently filed an objection to the claim of TDOT. These facts are well known to the Debtor.

The Request for Production simply asks that Glankler Brown, PLLC, produce “[a]ll communications covered by responses to Interrogatories Nos. 1 thru 13.” Motion for Protective Order, Dkt. No. 855, Ex. 1.

ANALYSIS

Unless otherwise ordered by the court, the scope of discovery is as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Federal Rule of Civil Procedure 26(b)(1). At the very least, discovery must be relevant to a party's claim or defense. The original Objection filed by the Debtor raised no issues concerning the two areas about which the Debtor now seeks discovery: (1) the Emergency Motion to Withdraw, and (2) conversations concerning potential objections to the claims of Clear Channel, Tennison Brothers, or TDOT. When given an opportunity to supplement his objection, the Debtor refused to do so. No issues have been joined by the Objection or Supplement to the Objection to which discovery could relate. The Motion for Protective Order should be granted for that reason alone.

This is not the first fee application filed by Glankler Brown, PLLC, in this case. Three prior interim applications have been filed and approved. *See* Dkt. Nos. 205, 218, 349, 354, 397, and 424. Neither the Debtor nor anyone else raised an objection to the previous applications.

Moreover, the Debtor did not raise an objection to the Emergency Motion to Withdraw even though it recited conflicts between the Debtor and his counsel as the basis for the motion. *See* Motion for Protective Order, Dkt. No. 855, Ex. 2. The Motion for Protective Order asserts that the Debtor's motive in filing the Objection now is to annoy Glankler Brown, PLLC, and put it to unnecessary expense. Given the opportunity to respond, the Debtor merely stated, "Debtor's discovery request [sic] are relevant to his objections that are based upon actions of Movant's regarding their legal representation of Debtor and Movant's misrepresentation to this Court." [Dkt. No. 910]. The Objection provides no basis upon which the court may conclude that the Debtor's motives are anything other than harassment and delay.

CONCLUSION

The Debtor has requested discovery that does not relate to any issue presently before the court. He has offered no explanation of his need for the requested discovery. The requests are thus outside the permitted scope of discovery. Accordingly, the Motion of Glankler Brown, PLLC, is **GRANTED**. The "William H. Thomas, Jr. First Set of Interrogatories and Request for Production of Documents" is **STRICKEN** and may be disregarded by the Movant, Glankler Brown, PLLC.

cc: Debtor (pro se)
Glankler Brown, PLLC
Attorney for Glankler Brown, PLLC
Chapter 11 Trustee
Attorney for Chapter 11 Trustee
United States Trustee
Attorney for United States Trustee