



**Dated: May 28, 2020**  
**The following is ORDERED:**

A handwritten signature in cursive script that reads "Jennie D. Latta".

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**Jennie D. Latta**  
**UNITED STATES BANKRUPTCY JUDGE**

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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

Case No. 16-27850-L  
Chapter 11

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**ORDER GRANTING AWARD OF ATTORNEY FEES  
TO TENNESSEE ATTORNEY GENERAL'S OFFICE**

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BEFORE THE COURT is the "Motion to Award Reasonable Attorney Fees Incurred in Defending the Debtor's Motion for Sanctions to the Tennessee Attorney General's Office," filed April 7, 2020. [Dkt. No. 960] (the "Motion"). The Motion results from this court's "Order Denying 'Motion for Sanctions Pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure Against the Office of the Tennessee Attorney General Including Michael Willey," entered February 26, 2020. [Dkt. No. 854] (the "February 26 Order"). In support of the Motion, the Tennessee Attorney General's Office ("TAGO") filed the Affidavit of Stuart F. Wilson-Patton, Senior Assistant Attorney General. [Dkt. No. 920]. Mr. Wilson-Patton attests that he has practiced law for more than 33 years; that he has spent the last 15 years in the Bankruptcy Division of the

TAGO; that when his time is billed in a fee-generating matter, his hourly rate is \$425; that based upon his time records, he spent 18.85 hours defending the TAGO against the Debtor's motion; that the time spent defending the motion was reasonable and necessary; and that the total amount of attorney fees that is sought is \$8,011.25. Attached to the Affidavit is a detailed list of the activities of Mr. Wilson-Patton and the time spent on each in tenths of an hour.

The Debtor filed his "Objection to a Hearing of TDOT's Motion to Award Reasonable Attorney Fees ECF No. 960" on May 12, 2020. [Dkt. No. 1044]. The Debtor asked that the Motion be denied because he has filed an appeal from the Order of February 26, 2020, and thus that the court has no jurisdiction to hear the Motion. The Debtor further states that the amount of fees requested is "unreasonable and clearly redundant" because "[t]he bulk of the fees involved was for communication between the affiant Mr. Wilson-Patton and his fellow attorney generals [sic] and purposes of which are not set forth." The Debtor also asserts that Michael Willey (Senior Counsel, TAGO, Bankruptcy Division) was very familiar with the allegations made by the Debtor and thus, there was no reason for Mr. Wilson-Patton to become involved. The Debtor states that Mr. Wilson-Patton made a number of material misstatements in his pleading which were relied upon by the court. Specifically, the Debtor says that Mr. Wilson-Patton stated that the Debtor's appeal from Judge Lipman's order affirming the appointment of a trustee in the bankruptcy case had been dismissed, which is not true. The Debtor says that the court's reliance upon this statement was "clearly erroneous."

The TAGO filed a reply on May 19, 2020. [Dkt. No. 1078]. In response to the Debtor's arguments, it states that (1) the filing of the appeal to the Bankruptcy Appellate Panel did not deprive this court of jurisdiction to entertain the Motion because the February 26 Order is not a final order; (2) the Debtor does not contest any specific time entry nor does he request a reduction

in the number of hours spent on the matter; and (3) the Debtor's allegation that Mr. Wilson-Patton misstated the status of appeals from the court's appointment of a trustee in bankruptcy is itself a misstatement because all that the Objection to the Debtor's motion for sanctions stated was: "Following the Debtor's appeal of the appointment of the Chapter 11 Trustee, in U.S. District Court Case No. 2:19-cv-02065-SHL-[dkv], United States District Judge Sheryl H. Lipman dismissed the Debtor's appeal as moot (U.S. District Court Doc. 45)." The TAGO asserts that this is a true statement.

### ANALYSIS

In the February 26 Order, this court denied the Debtor's motion for sanctions against the TAGO for three reasons: (1) The Debtor lacked standing to bring the motion as the result of the appointment of Michal E. Collins as trustee in bankruptcy. (2) The Debtor did not comply with Rule 11 before filing his motion. Specifically, this court found that the motion did not reference any specific pleading, motion, or other paper the Debtor claimed to be objectionable. The court nevertheless addressed each of the matters that the TAGO *surmised* the Debtor found objectionable. The court found that none of the Debtor's concerns, in the event the ones identified by the TAGO *were* the Debtor's concerns, were sanctionable. (3) The motion was not served as required by Federal Rules of Bankruptcy Procedure 9011 and 7004.

The court also considered whether it was appropriate to award reasonable expenses and attorney's fees to the TAGO. The court said:

The Attorney General asks that the court award him reasonable expenses and attorney's fees incurred in opposing the Debtor's motion. Rule 9011 specifically provides for the award to the prevailing party on a motion for sanctions the "reasonable expenses and attorney's fees incurred in presenting or opposing the motion." The Debtor's motion was wholly without merit. Moreover, the Debtor is a licensed attorney who should be fully aware of the consequences of filing motions unsupported "by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Federal

Rule of Bankruptcy Procedure 9011. The court finds that it is appropriate to award the Attorney General the reasonable expenses and attorney's fees incurred in opposing the Debtor's motion and invites the Attorney General to submit an affidavit setting forth those expenses and fees for the court's consideration.

February 26 Order, pp. 5-6. The court has already determined that an award of reasonable expenses and attorney's fees is appropriate. The TAGO submitted the Affidavit of Mr. Wilson-Patton pursuant to the prior order. The Affidavit indicates that 18.85 hours were necessarily and reasonably spent in the response; that \$425 is the hourly rate that is charged for Mr. Wilson-Patton's time; and thus, that the TAGO should be reimbursed \$8,011.25.

The court will consider each of the Debtor's objections in turn before making its own determination concerning the necessity and reasonableness of the requested amount.

First, the Debtor asserts that this court lacks jurisdiction to impose sanctions because of his pending appeal from the February 26 Order. The TAGO is correct that the February 26 Order is not final. Although it did conclude that sanctions should be awarded, it anticipated the filing of an affidavit by the TAGO upon which to determine the amount of that award. According to 28 U.S.C. § 158(a), the United States district courts have jurisdiction to hear appeals from final judgments, orders, and decrees, and interlocutory orders and decrees entered under 11 U.S.C. § 1121(d) (and, with leave of court, other interlocutory orders and decrees) of bankruptcy judges entered in cases and proceedings referred to them under 28 U.S.C. § 157. "Orders in bankruptcy cases qualify as 'final' when they definitively dispose of discrete disputes within the overarching bankruptcy case." *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 587, 205 L. Ed. 2d 419 (2020), citing *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501, 135 S. Ct. 1686, 191 L. Ed. 2d 621 (2015). The February 26 Order clearly was not final under this standard. It did not "definitively dispose" of the Debtor's motion for sanctions. It anticipated the filing of an affidavit by the TAGO and the entry of a monetary sanction by this court.

Second, the Debtor argues that the amount of fees requested is “unreasonable and clearly redundant.” He complains that the bulk of the time spent by Mr. Wilson-Patton was spent in consultation with his colleagues. The Debtor does not point to any particular consultation that was unnecessary. A review of the itemized statement attached to Mr. Wilson-Patton’s Affidavit shows that 3.1 hours of the total of 18.85 were spent in “conferences” with other attorneys. Time spent in conferences with colleagues clearly does not represent the “bulk” of the time spent in preparing the responses. Moreover, the request includes only Mr. Wilson-Patton’s time and not the time of the attorneys he consulted with, so there is no duplicative billing. The Debtor also complains that Mr. Willey was more familiar with the proceedings implying that he should have been the one to prepare the response of the TAGO. The internal staffing decisions of the TAGO are not subject to review by the Debtor. Further, it was the Debtor who created the need for consultation by failing to specify in his motion the particular pleadings or conduct he believed violated Rule 11, as the TAGO points out. The court finds no reason to reduce the number of hours requested by the TAGO as the result of Mr. Wilson-Patton’s consultation with his colleagues.

Third, the Debtor asserts that Mr. Wilson-Patton made “material mis-statements” in his objection to the Debtor’s motion. The only “misstatement” the Debtor points to is a misstatement by the court, not by Mr. Wilson-Patton. Mr. Wilson-Patton correctly stated that the Debtor’s appeal of Judge Kennedy’s appointment of a trustee in bankruptcy was dismissed by the district court as moot. The undersigned judge, who received this case by transfer in January 2020, incorrectly stated in the February 26 Order that the order appointing the trustee is final. This judge was not aware of the Debtor’s Motion to Reconsider the order dismissing the appeal as moot pending before the District Court at the time of the February 26 Order. That fact, however, is immaterial to the outcome of the Debtor’s motion for sanctions. No stay of the court’s order

appointing a trustee was granted, and Mr. Collins has been functioning as trustee in bankruptcy since his appointment on January 24, 2019. Thus, he has standing to represent the estate rather than the Debtor.

Since receiving the transfer of this case in January, the undersigned has become increasingly aware of the Debtor's litigation tactics and the extra work that they create for the court and for opposing attorneys. As the court found in the February 26 Order, despite the fact that the Debtor is a licensed attorney, the motion that he filed was wholly without merit. The court had hoped that its order would remind the Debtor of his obligations as a licensed attorney. Especially in view of the Debtor's failure to specify the conduct of the TAGO that he found objectionable and because of his tendency to multiply proceedings unnecessarily,<sup>1</sup> the court finds that 18.85 hours was not an unreasonable amount of time for the TAGO to devote to its response to the Debtor's motion for sanctions. A response to the motion clearly was necessary. The hourly rate of \$425 per hour also seems reasonable for an attorney of Mr. Wilson-Patton's experience. The Debtor did not suggest that it was not, nor did he present proof to contradict Mr. Wilson-Patton's sworn statement. The court finds and concludes that an award of \$8,011.25 to the TAGO as a sanction against the Debtor is appropriate.

### CONCLUSION

For the foregoing reasons, the court supplements its February 26 Order by awarding \$8,011.25 to the TAGO as a sanction against William H. Thomas, attorney and Debtor, for filing the meritless motion for sanctions.

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<sup>1</sup> See, e.g., Judge Kennedy's "Memorandum and Order re 'Debtor's Motion for Leave Pursuant to Bankruptcy Rule 8004 for Appeal under 28 U.S.C. § 158(a)' Combined with Notice of the Entry Thereof," *In re Thomas* (January 16, 2019) [Dkt. No.525], in which Judge Kennedy states that the Debtor filed his *Motion for Leave Pursuant to Bankruptcy Rule 8004 for Appeal Under 28 U.S.C. § 158(a)(3)*, December 21, 2018 [Dkt. No. 507], **in which to appeal "(not a court order but) this Court's calendar agenda of proceedings."**

cc: Debtor (pro se)  
Tennessee Attorney General's Office  
Attorney for Tennessee Attorney General's Office  
Chapter 11 Trustee  
Attorney for Chapter 11 Trustee  
United States Trustee