Attachment 201

Affidavits and documents provided by Briggs to the Trustees

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

	)	Judge Charles E. Rendlen III
In re:	)	Chapter 7
EVETTE NICOLE REED,	)	
Debtor.	)	Case No. 14-44818-705
	)	
In re:	)	
PAULINE A. BRADY,	)	
Debtor.	)	Case No. 14-44909-705
	)	
In re:	)	
LAWANDA LANAE LONG,	)	
Debtor.	)	Case No. 14-45773-705
	)	
In re:	)	
MARSHALL LOUIS BEARD,	)	
Debtor.	)	Case No. 14-43751-705
	)	
In re:	)	
DARRELL MOORE and	)	
JOCELYN ANTOINETTE MOORE,	)	
Debtors.	)	Case No. 14-44434-705
	)	
In re:	)	
NINA LYNNE LOGAN,	)	
Debtor.	)	Case No. 14-44329-705
	)	
In re:	)	
JOVON NEOSHA STEWART,	)	
Debtor.	)	Case No. 14-43912-705
	)	
In re:	)	
ANGELIQUE RENEE SHIELDS,	)	
Debtor.	)	Case No. 14-43914-705

) **RESPONSE TO ORDER DIRECTING**
) **THE CHAPTER 7 TRUSTEES TO FILE**
) **FORTHWITH COPIES OF ALL**
) **AFFIDAVITS PROVIDED BY**
) **ATTORNEY ROSS BRIGGS**
)
) Kristin J. Conwell, Chapter 7 Trustee
) EDMO #58735MO
) Conwell Law Firm, LLC
) PO BOX 56550
) St. Louis, Missouri 63156
) (314) 652-1120
) kconwell@conwellfirm.com

COMES NOW, Chapter 7 Trustee Kristin J. Conwell file this her Response to Order Directing the Chapter 7 Trustees To File Forthwith Copies Of All Affidavits Provided By Attorney Ross Briggs and in support thereof, states as follows:

1. Debtors Darrell Moore and Jocelyn Antoinette Moore ("Debtor Moore") filed a Chapter 7 Petition for Relief under the provisions of Chapter 7 of Title 11 on May 30, 2014.

2. Kristin J. Conwell was appointed Chapter 7 Trustee for Debtor Moore in Case No. 14-44434.

3. On March 26, 2015, the Court entered an Order Directing the Chapter 7 Trustees to file forthwith copies of all affidavits provided by Attorney Ross Briggs.

4. Attorney Ross H. Briggs sent an envelope postmarked January 20, 2015 to Trustee Conwell which contained various affidavits. *See* attached Exhibit "A".

5. Trustee Conwell did not receive an affidavit from Debtors Darnell and Joceyln Moore; she only received a copy of a money order payable to the Moore's. *See* attached Exhibit "A" page 19.

6. Attorney Briggs represented to this Court that he has not entered an appearance for the Moore's at the January Show Cause Hearing.

Respectfully Submitted,

CONWELL LAW FIRM LLC
By: /s/ Kristin J. Conwell
Kristin J. Conwell - EDMO #58735MO
PO Box 56550
St. Louis, Missouri 63156
Phone: (314) 652-1120
E-mail: kconwell@conwelllawfirm.com
Chapter 7 Trustee for Debtors Darrell Moore and Jocelyn Antoinette Moore

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In:
Lawanda Long
Debtor(s)

Case No.: 14-45773-705
Chapter 7

EXHIBIT "A"

AFFIDAVIT OF DEBTOR LAWANDA LONG

Comes Now Debtor Lawanda Long, and upon her oath states:

1. I am the Debtor in this cause.
2. On or about September 13, 2013, I retained James C. Robinson, dba Critique Services, to file a Chapter 7 bankruptcy on my behalf. Exhibit 1, attached to this Affidavit, is a true and accurate copy of the receipt that I received for the cash payment of $299 that I made to retain the legal services of Attorney Robinson. I made this payment to an African-American women whose name I believe is Bey.
3. Although I recall signing a Retainer Agreement with Attorney Robinson on the same day I made the above payment, I cannot find a copy of the agreement despite a review of my file and documents. In the event that I locate this agreement, I will forward the agreement to my existing legal counsel.
4. I have no knowledge about where my cash payment of $299 was held, deposited or disbursed after making this payment.
5. I have no knowledge of or access to the checks, accounts or ledgers of Attorney Robinson or Critique Services.
6. I understand that I am required to provide my notarized affidavit to the Trustee by noon, January 20. Because January 19 is a holiday, I request that I be given additional time to find a notary and supplement this Affidavit with my notarized signature as soon as possible after January 20

Dated: 1-19-15

Lawanda Long 1-19-15
Lawanda Long

date 9 / 13 / 2013 No. 452302

received from Lawanda Long $ [redacted]

amount Processing Fee / Critique dollars

for payment of Three Hundred Dollars 0/100

(x) cash ( ) money order ( ) credit card ( ) check # _____

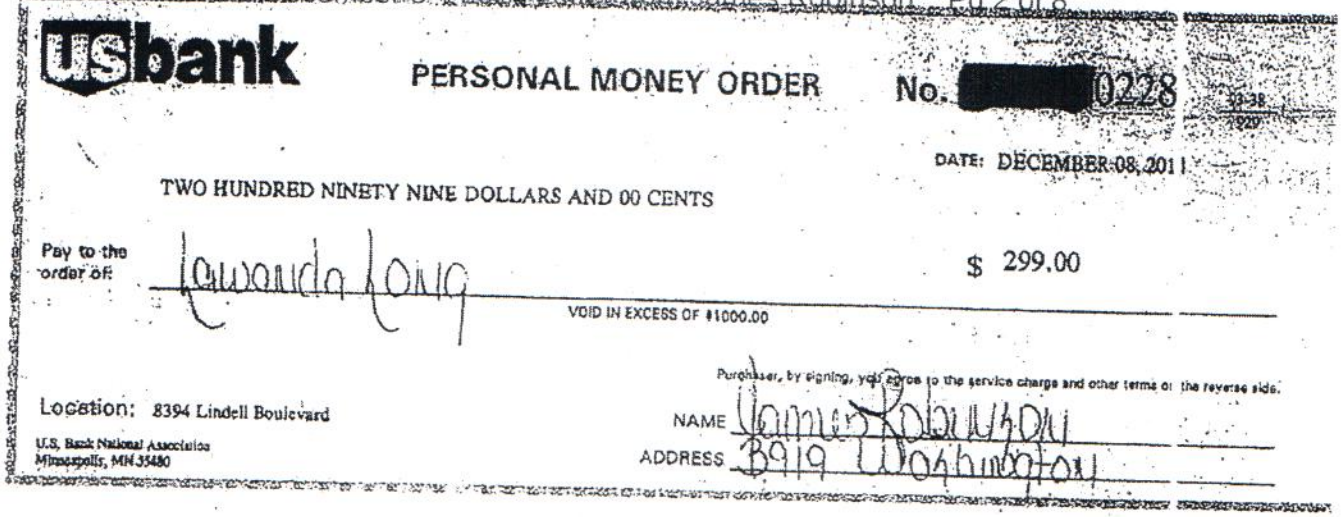
[redacted] 300.00

from 9/12 to 9/12

signature T. Bug

88SWS

Ex. 1



usbank

PERSONAL MONEY ORDER No. [redacted]0228

DATE: DECEMBER 08, 2011

TWO HUNDRED NINETY NINE DOLLARS AND 00 CENTS

Pay to the order of: Lawanda Long $ 299.00

VOID IN EXCESS OF $1000.00

Purchaser, by signing, you agree to the service charge and other terms on the reverse side.

Location: 8394 Lindell Boulevard

U.S. Bank National Association
Minneapolis, MN 55480

NAME James Robinson

ADDRESS 8919 Washington

[redacted]0228 [redacted]5479

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In:		
Angelique Shields	)	
Debtor(s)	)	Case No.: 14-43914-705
	)	Chapter 13
	)	
	)	
	)	
	)	
	)	

AFFIDAVIT OF DEBTOR ANGELIQUE SHIELDS

Comes Now Debtor Angelique Shields, and upon her oath states:

1. I am the Debtor in this cause.
2. On or about March 5, 2014, I retained James C. Robinson, dba Critique Services, to file a Chapter 7 bankruptcy on my behalf. Exhibit 1, attached to this Affidavit, is a true and accurate copy of the Retainer Agreement which I executed on March 5, 2014 to retain the legal services of Attorney Robinson.
3. I paid Attorney Robinson $299 to represent me in my Chapter 7 bankruptcy. Exhibit 2, attached to this Affidavit, is a true and accurate copy of the receipt that I received for the cash payment of $300 that I made to retain the legal services of Attorney Robinson. I made this payment to an African-American women whose name I believe is Bey. Because neither Bey nor I had change, we agreed that my overpayment of $1 would be credited toward my filing fee.
4. I have no knowledge about where my cash payment of $300 was held, deposited or disbursed after making this payment.
5. I have no knowledge of or access to the checks, accounts or ledgers of Attorney Robinson or Critique Services.
6. I understand that I am required to provide my notarized affidavit to the Trustee by noon, January 20. Because January 19 is a holiday, I request that I be given additional time to find a notary and supplement this Affidavit with my notarized signature as soon as possible after January 20.

Dated:

Angelique Shields

RETAINER AGREEMENT

This Agreement is made and entered into by and between James C. Robinson, Attorney d/b/a Critique Services, herein "Attorney" and Angelique Shields *herein "Client".*

Client hereby retains and employs Attorney for the fee of:

X Int. $299.00 Single Petition or ____Int. $349.00 for Joint Petition

By agreement with the Client, the above agreement includes the following services:

Analysis of financial situation and rendering of advice in determining filing of Bankruptcy Petition;
Preparation and filing of bankruptcy petition, schedules and statement of financial affairs that may be required;
Representation of the Client at the first scheduled 341 hearing and /or meeting of creditors.

By agreement with the Client, the above agreement does not include the following services:
Representation of Client in any discharge ability actions, judicial liens avoidances, relief from stay actions, stipulation agreement and any other adversary proceeding.
Preparation and filing of reaffirmation agreements and motions.
Representation of the Client in any contested matters involving a redemption.
Revising and updating of credit report data.
Appearance at continued 341 hearing, amendments to petition, additional copies of petition, letters to creditors and/or credit bureau, faxes to creditors, garnishment recovery.

Client agrees to review the petition and all documents for accuracy prior to the filing of the petition and assume all responsibility for error or omission after this point.
Client does understand that the bankruptcy petition cannot and will not be filed without all necessary and/or requested information.
Client does understand that it is necessary to complete a credit counseling course prior to the filing of the case and a financial management course within 45 days of the meeting of creditor hearing or discharge will be withheld, (additional fees apply)
Client understands that if their case is closed without discharge there is a $310.00 fee to reopen said case.
Client understands there will be no refunds issued after the signing of this agreement and court filing fee and all missing information listed on the attorney request form must be receive within 90 days of the initial consultation or your processing fees will be forfeited..

Client(s) affirms that her and/or she has read, understands and agrees to this agreement.

Client Signature

3/5/14
Date

Client Signature

Date

Ex. 1

RECEIPT DATE 3/5/2014 No. 647729

RECEIVED FROM Angelique R. Shields $ 300

Three Hundred + 0/100 DOLLARS

○ FOR RENT
○ FOR Proc Fee / Critique Svcs

ACCOUNT	300	
PAYMENT	300	
BAL. DUE	~~0~~	

● CASH
○ CHECK
○ MONEY ORDER
○ CREDIT CARD

FROM 3/5 TO 3/5

BY T. Perry

3-11

Ex. 2

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In:		
Pauline Brady	)	
Debtor(s)	)	Case No.: 14-44909-705
	)	Chapter 13
	)	
	)	
	)	
	)	
	)	

AFFIDAVIT OF DEBTOR PAULINE BRADY

Comes Now Debtor Pauline Brady, and upon his oath states:

1. I am the Debtor in this cause.
2. On or about December 3, 2013, I retained James C. Robinson, dba Critique Services, to file a Chapter 7 bankruptcy on behalf of myself and my husband, Leon Brady. Exhibit 1, attached to this Affidavit, is a true and accurate copy of the Retainer Agreement which I executed on December 3, 2013 to retain the legal services of Attorney Robinson.
3. I paid Attorney Robinson $349 to represent myself and my husband in a Chapter 7 bankruptcy. Exhibit 2, attached to this Affidavit, is a true and accurate copy of the receipt that I received for the cash payment of $349 that I made to retain the legal services of Attorney Robinson. I made this payment to an African-American woman whose name I believe is Charlotte.
4. Exhibit 3, attached to this Affidavit, is a note signed by my husband, Leon Brady, informing Attorney Robinson that he did not wish to continue in my bankruptcy.
4. I have no knowledge about where my cash payment of $349 was held, deposited or disbursed after making this payment.
5. I have no knowledge of or access to the checks, accounts or ledgers of Attorney Robinson or Critique Services.
6. I understand that I am required to provide my notarized affidavit to the Trustee by noon, January 20. Because January 19 is a holiday, I request that I be given additional time to find a notary and supplement this Affidavit with my notarized signature as soon as possible after January 20.

Dated:

Pauline Brady

RETAINER AGREEMENT

This Agreement is made and entered into by and between James C. Robinson, Attorney d/b/a Critique Services, herein "Attorney" and Leon & Pauline Brady *herein "Client".*

Client hereby retains and employs Attorney for the fee of:

_____Int. $299.00 Single Petition or LB P.B X Int. $349.00 for Joint Petition

By agreement with the Client, the above agreement includes the following services:

Analysis of financial situation and rendering of advice in determining filing of Bankruptcy Petition;
Preparation and filing of bankruptcy petition, schedules and statement of financial affairs that may be required;
Representation of the Client at the first scheduled 341 hearing and /or meeting of creditors.

By agreement with the Client, the above agreement does not include the following services:
Representation of Client in any discharge ability actions, judicial liens avoidances, relief from stay actions, stipulation agreement and any other adversary proceeding.
Preparation and filing of reaffirmation agreements and motions.
Representation of the Client in any contested matters involving a redemption.
Revising and updating of credit report data.
Appearance at continued 341 hearing, amendments to petition, additional copies of petition, letters to creditors and/or credit bureau, faxes to creditors, garnishment recovery.

Client agrees to review the petition and all documents for accuracy prior to the filing of the petition and assume all responsibility for error or omission after this point.
Client does understand that the bankruptcy petition cannot and will not be filed without all necessary and/or requested information.
Client does understand that it is necessary to complete a credit counseling course prior to the filing of the case and a financial management course within 45 days of the meeting of creditor hearing or discharge will be withheld, (additional fees apply)
Client understands that if their case is closed without discharge there is a $310.00 fee to reopen said case.
Client understands there will be no refunds issued after the signing of this agreement and court filing fee and all missing information listed on the attorney request form must be receive within 90 days of the initial consultation or your processing fees will be forfeited..

Client(s) affirms that her and/or she has read, understands and agrees to this agreement.

Leon Brady
Client Signature
12-3-13
Date

Pauline Brady
Client Signature
12-3-13
Date 12-3-13

Ex. 1

date 12 3 13 No. 452660

received from Brady, Leon + Pauline $ 349.00

amount _____ dollars

for payment of Atty Fee

○ cash ○ money order ○ credit card ○ check # _____

amount paid 349.00

from 12/3/13 to 12/3/13

signature [signature]

885WS

Ex. 2

3-15-14

I Jon Bush change my mind about filing Bankruptcy. All the fines apply's to my wife.

March 15, 2014

Jon Bush

Ex. 3

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In:		
Marshall Beard	)	
Debtor(s)	)	Case No.: 14-43751-705
	)	Chapter 13
	)	
	)	
	)	
	)	
	)	

AFFIDAVIT OF DEBTOR MARSHALL BEARD

Comes Now Debtor Marshall Beard, and upon her oath states:

1. I am the Debtor in this cause.
2. On or about February 25, 2014, I retained James C. Robinson, dba Critique Services, to file a Chapter 7 bankruptcy on my behalf. Exhibit 1, attached to this Affidavit, is a true and accurate copy of the Retainer Agreement which I executed on February 25, 2014 to retain the legal services of Attorney Robinson.
3. I paid Attorney Robinson $299 to represent me in my Chapter 7 bankruptcy. Exhibit 2, attached to this Affidavit, is a true and accurate copy of the receipt that I received for the cash payment of $299 that I made to retain the legal services of Attorney Robinson. I made this payment to an African-American women whose name I do not remember. I cannot make out the name of the person who signed Ex 1.
4. I have no knowledge about where my cash payment of $299 was held, deposited or disbursed after making this payment.
5. I have no knowledge of or access to the checks, accounts or ledgers of Attorney Robinson or Critique Services.
6. I understand that I am required to provide my notarized affidavit to the Trustee by noon, January 20. Because January 19 is a holiday, I request that I be given additional time to find a notary and supplement this Affidavit with my notarized signature as soon as possible after January 20.

Dated: 1-19-15

Marshall Beard

STATE OF MO

COUNTY OF St. Charles

NOTARIAL CERTIFICATE OF ACKNOWLEDGMENT

On this 19 day of January 2015, before me, S. L. Burton

the undersigned notary public, personally appeared

Marshall Louis Beard

- [ ] personally known to me - or -
- [ ] proved to me on the basis of satisfactory evidence
  - [x] form(s) of identification: Missouri Driver's License
  - [ ] credible witness(es)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same voluntarily for the purpose expressed therein.

S. L. BURTON
Notary Public - Notary Seal
Comm. Number 13788064
STATE OF MISSOURI
St. Charles County
My Commission Expires: Oct. 30, 2017

WITNESS my hand and official seal.

S. L. Burton

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document

titled/for the purpose of ① Affidavit of Debtor ② Retainer Agreement ③ Attorney receipt

containing 3 pages, and dated 1-19-15

The signer(s) capacity or authority is/are as:

- [ ] Individual(s)
- [ ] Attorney-in-Fact
- [ ] Corporate Officer(s)

Title(s)

- [ ] Guardian/Conservator
- [ ] Partner - Limited/General
- [ ] Trustee(s)
- [ ] Other

representing:

Name(s) of Person(s) or Entity(ies) Signer is Representing

Notary Journal Entry

The person(s) executing this document appeared before the Notary Public and is/are recorded in the Notary Journal:

Volume

Page #

Entry #(s)

Notary Contact:

Other

- [ ] Additional Signer(s)
- [ ] Signer(s) Thumbprint(s)

RETAINER AGREEMENT

This Agreement is made and entered into by and between James C. Robinson, Attorney d/b/a Critique Services, herein "Attorney" and _____herein "Client".

Client hereby retains and employs Attorney for the fee of:

_____Int. $299.00 Single Petition or ____Int. $349.00 for Joint Petition

By agreement with the Client, the above agreement includes the following services:

Analysis of financial situation and rendering of advice in determining filing of Bankruptcy Petition;
Preparation and filing of bankruptcy petition, schedules and statement of financial affairs that may be required;
Representation of the Client at the first scheduled 341 hearing and /or meeting of creditors.

By agreement with the Client, the above agreement does not include the following services:
Representation of Client in any discharge ability actions, judicial liens avoidances, relief from stay actions, stipulation agreement and any other adversary proceeding.
Preparation and filing of reaffirmation agreements and motions.
Representation of the Client in any contested matters involving a redemption.
Revising and updating of credit report data.
Appearance at continued 341 hearing, amendments to petition, additional copies of petition, letters to creditors and/or credit bureau, faxes to creditors, garnishment recovery.

Client agrees to review the petition and all documents for accuracy prior to the filing of the petition and assume all responsibility for error or omission after this point.
Client does understand that the bankruptcy petition cannot and will not be filed without all necessary and/or requested information.
Client does understand that it is necessary to complete a credit counseling course prior to the filing of the case and a financial management course within 45 days of the meeting of creditor hearing or discharge will be withheld, (additional fees apply)
Client understands that if their case is closed without discharge there is a $310.00 fee to reopen said case.
Client understands there will be no refunds issued after the signing of this agreement and court filing fee and all missing information listed on the attorney request form must be receive within 90 days of the initial consultation or your processing fees will be forfeited..

Client(s) affirms that her and/or she has read, understands and agrees to this agreement.

Client Signature

2-25-14
Date

Client Signature

Date

Ex. 1

date 2 / 25 / 14 No. 623948

received from Beard, Marshall $ 299.00

amount _____ dollars

for payment of Atty Fee's

(✓) cash ( ) money order ( ) credit card ( ) check # _____

amount due		
amount paid	299	00
balance		

from _____ to _____

signature Charlotte Th

88SWS

Ex. 2

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In:	)	
Evette Reed, et al,	)	Case No.: 14-44818-705
Debtor(s)	)	Chapter 13
	)	
	)	
	)	
	)	
	)	

AFFIDAVIT OF ROSS H. BRIGGS IN COMPLIANCE WITH ORDER ON MOTION TO COMPEL

Comes Now Ross H. Briggs, Attorney At Law, and upon his oath states, and in compliance with this Court's Order On Motion To Compel:

1. This Affidavit in prepared based upon the guidance provided by this Court from the bench at the January 13, 2015 hearing on the Trustees' Motion To Compel and in anticipation of a written Order to issue on said motion. However, at the time of the preparation of this Affidavit on January 19, 2015, no written Order is available on the motion of the Trustees.
2. Since the hearing on the Trustees' motion on January 13, 2015, I have succeeded in contacting the debtors in the following cases: In re Evette Reed, Case Number 14-44818-705; In re Pauline Brady, Case Number, 14-44909-705; In re Lawanda Long, Case Number 14-45773-705; In re Marshall Beard, Case Number, 14-43751-705. Each of these debtors have executed, or have promised to execute, a statement in sufficient time to allow for the production of such statements to the Trustees by noon on January 20, 2015. Several of the debtors have requested additional time to supplement their production to the Trustees with a notarized affidavit which they could not obtain by noon of January 20. Such notarized affidavits will be forwarded to the Trustees upon receipt.
3. In the above statements, the debtors have set forth their personal knowledge regarding to whom they paid fees in retaining Attorney James Robinson as their bankruptcy counsel, and where such fees were held and disbursed after remittance. Debtors have also provided to the Trustees the receipts and Retainer Agreements which memorialize the retention of Mr. Robinson with the exception that Debtor Lawanda Long, after review of her file and documents, cannot presently locate her Retainer Agreement with Mr. Robinson. Debtor continues her search and, in the event this document is located, such document will be provided the Trustees.
4. Since the hearing of January 13, 2015, I have been unable to contact Debtor Jovon Stewart in In re Jovon Stewart, Case Number, 14-43912-705. I request additional time to produce debtor's statement and documents to the Trustees upon debtor's response to my phone call or correspondence.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In:	)	
Evette Reed	)	Case No.: 14-44818-705
Debtor(s)	)	Chapter 13
	)	
	)	
	)	
	)	
	)	

AFFIDAVIT OF DEBTOR EVETTE REED

Comes Now Debtor Evette Reed, and upon her oath states:

1. I am the Debtor in this cause.
2. On or about February 10, 2014, I retained James C. Robinson, dba Critique Services, to file a Chapter 7 bankruptcy on my behalf. Exhibit 1, attached to this Affidavit, is a true and accurate copy of the Retainer Agreement which I executed on February 10, 2014 to retain the legal services of Attorney Robinson.
3. I paid Attorney Robinson $299 to represent me in my Chapter 7 bankruptcy. Exhibit 2, attached to this Affidavit, is a true and accurate copy of the receipt that I received for the cash payment of $299 that I made to retain the legal services of Attorney Robinson. I made this payment to an African-American women whose name I believe is Bey.
4. I have no knowledge about where my cash payment of $299 was held, deposited or disbursed after making this payment.
5. I have no knowledge of or access to the checks, accounts or ledgers of Attorney Robinson or Critique Services.

Dated: 1/20/15

Evette Reed

Subscribed and sworn to before me this 20 day of January, 2015

Notary Public

LEAH KINNAMON
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: Sept. 22, 2017
Commission # 13872437

RETAINER AGREEMENT

This Agreement is made and entered into by and between James C. Robinson, Attorney d/b/a Critique Services, herein "Attorney" and Evette Rue *herein "Client".*

Client hereby retains and employs Attorney for the fee of:

EJ Int. $299.00 Single Petition or ____Int. $349.00 for Joint Petition

By agreement with the Client, the above agreement includes the following services:

Analysis of financial situation and rendering of advice in determining filing of Bankruptcy Petition;
Preparation and filing of bankruptcy petition, schedules and statement of financial affairs that may be required;
Representation of the Client at the first scheduled 341 hearing and /or meeting of creditors.

By agreement with the Client, the above agreement does not include the following services:
Representation of Client in any discharge ability actions, judicial liens avoidances, relief from stay actions, stipulation agreement and any other adversary proceeding.
Preparation and filing of reaffirmation agreements and motions.
Representation of the Client in any contested matters involving a redemption.
Revising and updating of credit report data.
Appearance at continued 341 hearing, amendments to petition, additional copies of petition, letters to creditors and/or credit bureau; faxes to creditors, garnishment recovery.

Client agrees to review the petition and all documents for accuracy prior to the filing of the petition and assume all responsibility for error or omission after this point.
Client does understand that the bankruptcy petition cannot and will not be filed without all necessary and/or requested information.
Client does understand that it is necessary to complete a credit counseling course prior to the filing of the case and a financial management course within 45 days of the meeting of creditor hearing or discharge will be withheld, (additional fees apply)
Client understands that if their case is closed without discharge there is a $310.00 fee to reopen said case.
Client understands there will be no refunds issued after the signing of this agreement and court filing fee and all missing information listed on the attorney request form must be receive within 90 days of the initial consultation or your processing fees will be forfeited..

Client(s) affirms that her and/or she has read, understands and agrees to this agreement.

Evette Rue
Client Signature
2/16/14
Date

Client Signature

Date

Ex. 1

date 2 / 10 / 14 No. 619162

received from Evette Reed $ 299

amount Two Hundred Ninety Nine dollars

for payment of Attorney Fee

(X) cash ( ) money order ( ) credit card ( ) check # _____

amount due	299	
amount paid	299	
balance		

from _____ to _____

signature T. Bry

88SWS

Ex. 2

USbank **PERSONAL MONEY ORDER** No. [redacted]

DATE: DECEMBER 05, 2014

THREE HUNDRED FORTY NINE DOLLARS AND 00 CENTS

Pay to the order of: Darrell Mooke & Jocelyn Mooke $ 349.00

VOID IN EXCESS OF $1000.00

Purchaser, by signing, you agree to the service charge and other terms on the reverse side.

Location: 8394 Lindell Boulevard

U.S. Bank National Association
Minneapolis, MN 55480

NAME James Robinson

ADDRESS 3919 Washington

[redacted] 0220 [redacted] 5479

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Case No. 14-44818-705
EVETTE NICOLE REED,	)	Judge Charles E. Rendlen III
Debtor.	)	Chapter 7
	)	
In re:	)	Case No. 14-44909-705
PAULINE A. BRADY,	)	Judge Charles E. Rendlen III
Debtor.	)	Chapter 7

Chapter 7 Trustee E. Rebecca Case's Response to the Court's Order Directing the Chapter 7 Trustees to File Forthwith Copies of All Affidavits Provided by Attorney Ross Briggs

Chapter 7 Trustee E. Rebecca Case ("Trustee Case") files this her Response to the Court's Order Directing the Chapter 7 Trustees to File Forthwith Copies of All Affidavits Provided by Attorney Ross Briggs:

1. Trustee Case is the Chapter 7 Trustee for Debtor Pauline A. Brady, Case No. 14-44909-705.

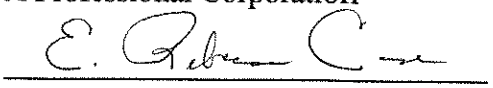
2. The Supplemental Affidavit of Ross H. Briggs in Compliance with Order on Motion to Compel ("Supplemental Briggs Affidavit") filed on January 30, 2015 is Docket No. 59 in the case of Debtor Evette Reed, Case No. 14-44818-705.

3. The Supplemental Briggs Affidavit filed on January 30, 2015 is Docket No. 52 in the case of Debtor Pauline A. Brady.

4. Attached are the Affidavit of Debtor Pauline A. Brady, Exhibit 1 Retainer Agreement dated December 3, 2013, Exhibit 2 Receipt, and Exhibit 3 letter from Leon Brady.

Respectfully submitted,

STONE, LEYTON & GERSHMAN,
A Professional Corporation

By: 

E. Rebecca Case, EDMO #38010MO,
MO Bar #38010
7733 Forsyth Blvd., Suite 500
St. Louis, Missouri 63105
(314) 721-7011
(314) 721-8660 Facsimile
chapter7trustee@stoneleyton.com
Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via first class, United States mail, postage prepaid and/or electronic notice on March 30, 2015 to the following:

1.	Pauline A. Brady 1732 Delrosa Way St. Louis, Missouri 63138	Debtor
2.	Evette Nicole Reed 2816 Burd Avenue St. Louis, Missouri 63120	Debtor
3.	Ross H. Briggs Post Office Box 58628 St. Louis, Missouri 63158	Attorney for Debtors
4.	Office of the United States Trustee Thomas F. Eagleton Courthouse 111 South Tenth Street, Suite 6353 St. Louis, Missouri 63102	
5.	Seth A. Albin Albin Law 7710 Carondelet Avenue, Suite 405 St. Louis, Missouri 63105	Chapter 7 Trustee in case number 14-44818, Evette Nicole Reed, Debtor

/s/ E. Rebecca Case
E. Rebecca Case

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In:		
Pauline Brady	)	
Debtor(s)	)	Case No.: 14-44909-705
	)	Chapter 13
	)	
	)	
	)	
	)	
	)	

AFFIDAVIT OF DEBTOR PAULINE BRADY

Comes Now Debtor Pauline Brady, and upon his oath states:

1. I am the Debtor in this cause.
2. On or about December 3, 2013, I retained James C. Robinson, dba Critique Services, to file a Chapter 7 bankruptcy on behalf of myself and my husband, Leon Brady. Exhibit 1, attached to this Affidavit, is a true and accurate copy of the Retainer Agreement which I executed on December 3, 2013 to retain the legal services of Attorney Robinson.
3. I paid Attorney Robinson $349 to represent myself and my husband in a Chapter 7 bankruptcy. Exhibit 2, attached to this Affidavit, is a true and accurate copy of the receipt that I received for the cash payment of $349 that I made to retain the legal services of Attorney Robinson. I made this payment to an African-American woman whose name I believe is Charlotte.
4. Exhibit 3, attached to this Affidavit, is a note signed by my husband, Leon Brady, informing Attorney Robinson that he did not wish to continue in my bankruptcy.
4. I have no knowledge about where my cash payment of $349 was held, deposited or disbursed after making this payment.
5. I have no knowledge of or access to the checks, accounts or ledgers of Attorney Robinson or Critique Services.
6. I understand that I am required to provide my notarized affidavit to the Trustee by noon, January 20. Because January 19 is a holiday, I request that I be given additional time to find a notary and supplement this Affidavit with my notarized signature as soon as possible after January 20.

Dated:

Pauline Brady
Pauline Brady

RETAINER AGREEMENT

This Agreement is made and entered into by and between James C. Robinson, Attorney d/b/a Critique Services, herein "Attorney" and Leon & Pauline Brady *herein "Client".*

Client hereby retains and employs Attorney for the fee of:

_____Int. $299.00 Single Petition or X Int. $349.00 for Joint Petition

By agreement with the Client, the above agreement includes the following services:

Analysis of financial situation and rendering of advice in determining filing of Bankruptcy Petition;
Preparation and filing of bankruptcy petition, schedules and statement of financial affairs that may be required;
Representation of the Client at the first scheduled 341 hearing and /or meeting of creditors.

By agreement with the Client, the above agreement does not include the following services:
Representation of Client in any discharge ability actions, judicial liens avoidances, relief from stay actions, stipulation agreement and any other adversary proceeding.
Preparation and filing of reaffirmation agreements and motions.
Representation of the Client in any contested matters involving a redemption.
Revising and updating of credit report data.
Appearance at continued 341 hearing, amendments to petition, additional copies of petition, letters to creditors and/or credit bureau, faxes to creditors, garnishment recovery.

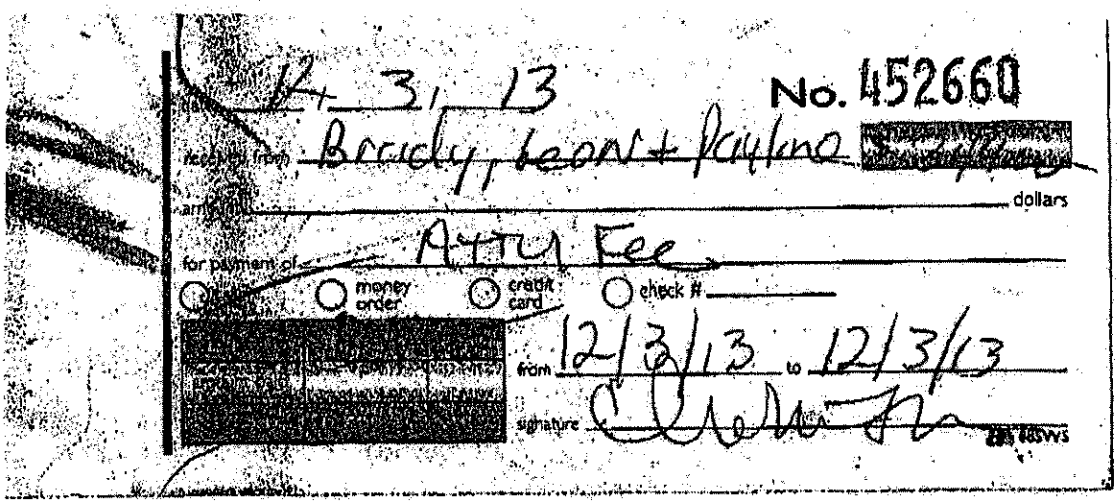
Client agrees to review the petition and all documents for accuracy prior to the filing of the petition and assume all responsibility for error or omission after this point.
Client does understand that the bankruptcy petition cannot and will not be filed without all necessary and/or requested information.
Client does understand that it is necessary to complete a credit counseling course prior to the filing of the case and a financial management course within 45 days of the meeting of creditor hearing or discharge will be withheld, (additional fees apply)
Client understands that if their case is closed without discharge there is a $310.00 fee to reopen said case.
Client understands there will be no refunds issued after the signing of this agreement and court filing fee and all missing information listed on the attorney request form must be receive within 90 days of the initial consultation or your processing fees will be forfeited..

Client(s) affirms that her and/or she has read, understands and agrees to this agreement.

Leon Brady
Client Signature
12-3-13
Date

Pauline Brady
Client Signature
12-3-13
Date 12-3-13

Ex. 1



12-3-13 No. 452660

received from Brady, Leon + Pauline [redacted]

amount [redacted] dollars

for payment of Attn Fee

cash ○ money order ◉ credit card ○ check # _____

[redacted]

from 12/3/13 to 12/3/13

signature [redacted]

Ex. 2

3-15-14

I Jim Bob change my mind about filing Bankruptcy. All the firm applys to my wife.

March 15, 2014

Jim Bob

Ex. 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Case No. 14-44818-705
	)	Judge Charles E. Rendlen, III
EVETTE NICOLE REED,	)	Chapter 7
	)	
Debtor.	)	

CHAPTER 7 TRUSTEE SETH A. ALBIN RESPONSE TO THE COURT'S ORDER DIRECTING THE CHAPTER 7 TRUSTEES TO FILE FORTHWITH COPIES OF ALL AFFIDAVITS PROVIDED BY ATTORNEY ROSS BRIGGS

Chapter 7 Trustee Seth A. Albin ("Trustee Albin") files this his Response to the Court's Order Directing the Chapter 7 Trustees to File Forthwith Copies of All Affidavits Provided by Attorney Ross Briggs:

1. Trustee Albin is the Chapter 7 Trustee for Debtor Evette Nicole Reed, Case No. 14-44818-705.

2. The Supplemental Affidavit of Ross H. Briggs in Compliance with Order on Motion to Compel ("Supplemental Briggs Affidavit") filed on January 30, 2015 is Docket No. 59 in the case of Debtor Evette Reed.

3. Attached are Exhibit 1, the Affidavit of Debtor Evette Reed, Exhibit 2, the Retainer Agreement dated February 10, 2014, and Exhibit 3, the Receipt dated February 10, 2014.

Respectfully submitted,
ALBIN LAW

By: /s/ Seth A. Albin

Seth A. Albin, #46483 MO
Chapter 7 Trustee
Albin Law
7710 Carondelet Avenue, Suite 405
Clayton, MO 63105
(314) 721-8844 / (314) 721-8855 fax
albintrustee@albinlawstl.com

CERTIFICATE OF SERVICES

I hereby certify that a true and correct copy of the foregoing was sent via first class, United States mail, postage prepaid and/or electronic notice on March 31, 2015 to the following:

Office of the United States Trustee
Thomas F. Eagleton Courthouse
111 South Tenth Street, Suite 6353
St. Louis, MO 63102

Evette Nicole Reed
2816 Burd Avenue
St. Louis, MO 63120

Ross H. Briggs
P.O. Box 58628
St. Louis, MO 63158

/s/ Ellen M. Gillen

RETAINER AGREEMENT

This Agreement is made and entered into by and between James C. Robinson, Attorney d/b/a Critique Services, herein "Attorney" and Estelle Ra *herein "Client".*

Client hereby retains and employs Attorney for the fee of:

EJ Int. $299.00 Single Petition or ___Int. $349.00 for Joint Petition

By agreement with the Client, the above agreement includes the following services:

Analysis of financial situation and rendering of advice in determining filing of Bankruptcy Petition;
Preparation and filing of bankruptcy petition, schedules and statement of financial affairs that may be required;
Representation of the Client at the first scheduled 341 hearing and /or meeting of creditors.

By agreement with the Client, the above agreement does not include the following services:
Representation of Client in any discharge ability actions, judicial liens avoidances, relief from stay actions, stipulation agreement and any other adversary proceeding.
Preparation and filing of reaffirmation agreements and motions.
Representation of the Client in any contested matters involving a redemption.
Revising and updating of credit report data.
Appearance at continued 341 hearing, amendments to petition, additional copies of petition, letters to creditors and/or credit bureau; faxes to creditors, garnishment recovery.

Client agrees to review the petition and all documents for accuracy prior to the filing of the petition and assume all responsibility for error or omission after this point.
Client does understand that the bankruptcy petition cannot and will not be filed without all necessary and/or requested information.
Client does understand that it is necessary to complete a credit counseling course prior to the filing of the case and a financial management course within 45 days of the meeting of creditor hearing or discharge will be withheld, (additional fees apply)
Client understands that if their case is closed without discharge there is a $310.00 fee to reopen said case.
Client understands there will be no refunds issued after the signing of this agreement and court filing fee and all missing information listed on the attorney request form must be receive within 90 days of the initial consultation or your processing fees will be forfeited..

Client(s) affirms that her and/or she has read, understands and agrees to this agreement.

Estelle Ra
Client Signature
2/18/14
Date

Client Signature

Date

EXHIBIT
tabbies
2

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In:		
Evette Reed	)	
Debtor(s)	)	Case No.: 14-44818-705
	)	Chapter 13
	)	
	)	
	)	
	)	
	)	

AFFIDAVIT OF DEBTOR EVETTE REED

Comes Now Debtor Evette Reed, and upon her oath states:

1. I am the Debtor in this cause.
2. On or about February 10, 2014, I retained James C. Robinson, dba Critique Services, to file a Chapter 7 bankruptcy on my behalf. Exhibit 1, attached to this Affidavit, is a true and accurate copy of the Retainer Agreement which I executed on February 10, 2014 to retain the legal services of Attorney Robinson.
3. I paid Attorney Robinson $299 to represent me in my Chapter 7 bankruptcy. Exhibit 2, attached to this Affidavit, is a true and accurate copy of the receipt that I received for the cash payment of $299 that I made to retain the legal services of Attorney Robinson. I made this payment to an African-American women whose name I believe is Bey.
4. I have no knowledge about where my cash payment of $299 was held, deposited or disbursed after making this payment.
5. I have no knowledge of or access to the checks, accounts or ledgers of Attorney Robinson or Critique Services.
6. I understand that I am required to provide my notarized affidavit to the Trustee by noon, January 20. Because January 19 is a holiday, I request that I be given additional time to find a notary and supplement this Affidavit with my notarized signature as soon as possible after January 20.

Dated: 1/17/15

Evette Reed

EXHIBIT
tabbies
1

date 2 / 10 / 14 No. 619162

received from Evette Reed $ 299

amount Two Hundred Ninety Nine dollars

for payment of Attorney Fee

(X) cash ( ) money order ( ) credit card ( ) check #

amount paid	299

from to

signature J. Bm

EXHIBIT

tabbies 3

December 8, 2011 Letter from Seattle Police Dept.

usbank

PERSONAL MONEY ORDER No. [redacted]0215

DATE: DECEMBER 06, 2011

TWO HUNDRED NINETY NINE DOLLARS AND 00 CENTS

Pay to the order of: Seattle Police

$ 299.00

VOID IN EXCESS OF $1000.00

Purchaser, by signing, you agree to the service charge and other terms on the reverse side.

Location: 8394 Lindell Boulevard

U.S. Bank National Association
Minneapolis, MN 55480

NAME [illegible]

ADDRESS [illegible]

[redacted]0215 [redacted]5479

Attachment 202

Order Denying Mass's Motion to Dismiss

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	
	§	
Evette Nicole Reed,	§	**Case No. 14-44818-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Pauline A. Brady,	§	**Case No. 14-44909-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Lawanda Lanae Long,	§	**Case No. 14-45773-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Jovon Neosha Stewart,	§	**Case No. 14-43912-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

ORDER DENYING MOTION TO DISMISS

Currently pending in these Cases are three Show Cause Orders issued against James Robinson, an attorney suspended on June 10, 2014 from the privilege of practicing before this Court for contempt and abuse of process. As set forth in the Show Cause Orders, prior to his suspension, Robinson collected fees from the above-referenced debtors (the "Debtors"). Based on the records of the Court, it appears that Robinson could not have earned some or all of those fees following his suspension. Accordingly, beginning on November 26, 2014, the Court issued the Show Cause Orders, directing Robinson to show cause as to why the fees should not be disgorged pursuant to 11 U.S.C. § 329 and why he should not be sanctioned under § 105(a) for failing to timely return the fees. The Court also directed the chapter 7 trustees (the "Trustees") to account to the Court as to certain facts related to the fees, so that the Court could make the determinations regarding disgorgement and sanctions.

Robinson responded to the Show Cause Orders by suddenly returning all the fees to the Debtors, then insisting that the issues in the Show Cause Orders are moot—as if he could erase months of improperly holding unearned fees by returning the fees after the issuance of the Show Cause Orders. The Trustees attempted to comply with their obligations under the Show Cause Orders, but were stonewalled in their efforts to obtain information and documentation by Robinson, his "firm" Critique Services L.L.C., and Ross Briggs, an attorney with a long-time relationship (whether formal or informal) with Critique Services L.L.C. and the now-defunct Critique Legal Services L.L.C.

In the face of the stonewalling, Trustees filed a Motion to Compel Turnover, requesting that the Court direct turnover of the documents and information they had requested. On January 13, 2015, the Court held a hearing on the Motion to Compel Turnover. On January 23, 2015, the Court entered a Turnover Order directing Robinson, Critique Services L.L.C. and Briggs to turn over the information and documentation requested by the Trustees. On February 4, 2015, the Court held a status conference regarding compliance with the Turnover Order. At the hearing, it was established that full compliance had not

even been attempted. The Court then advised the parties that it would consider the representations made at the February 4, 2015 hearing and enter an order with further directives. The Court currently is preparing that order.

In the meantime, in the latest attempt to avoid obeying the Court,[1] on February 11, 2015, Critique Services L.L.C. filed a Motion to Dismiss the "Proceedings to Disgorge" for lack of subject-matter jurisdiction. Presumably, this means that Critique Services L.L.C. seeks dismissal of the Show Cause Orders. The Court interprets the Motion to Dismiss to request dismissal pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(1), which provides that "[e]very defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion . . . lack of subject-matter jurisdiction . . . " Setting aside the issue of whether Critique Services L.L.C. has standing to seek dismissal of the Show Cause Orders that are issued against Robinson and not against Critique Services L.L.C., the Motion to Dismiss is without merit.

First, a Rule 12(b) defense (including the defense of lack of subject-matter jurisdiction) can be asserted only to "a claim for relief in any pleading." Here, there is no "claim for relief." The Show Cause Orders were issued by the Court; no party is making a claim for relief. Second, there is no "pleading." A pleading is a document filed by a party, in which that party "pleads for" relief from the Court. The Show Cause Orders are not pleadings; they are Court orders.

In addition, the Court clearly has subject-matter jurisdiction of the issues raised in the Show Cause Orders. First, the Court has subject-matter jurisdiction over the issue of whether disgorgement is proper under 11 U.S.C. § 329. If Robinson believes that disgorgement is not necessary now because the fees were returned, he is free to make that argument. However, as the Court has repeatedly noted, the determination of whether disgorgement is required is ***not*** the only issue before the Court. The Show Cause Orders are not limited—as

[1] Since the issuance of the Show Cause Orders, Robinson and Critique Services L.L.C. have undertaken an assortment of other efforts to avoid complying with the Show Cause Orders and the Turnover Order, including motions to recuse, motions to dismiss, last-minute filings, and false and misleading statements.

Critique Services L.L.C. appears to believe they are—to determining whether disgorgement is proper. If the fees were unearned and improperly held by Robinson for months before finally being returned, sanctions pursuant to 11 U.S.C. § 105(a) may be warranted—and the Court needs to make that determination. Despite Critique Services L.L.C.'s suggestion that Robinson's recent return of his long-held fees somehow "moots out" the Show Cause Orders, Robinson cannot buy (with his own clients' money) his way out of a sanctions determination by returning the fees to his former clients now. Moreover, the December 2014 return of the fees, itself, raises the issue of possible impropriety. Robinson and Briggs apparently agreed that Robinson would transfer the fees—which are property of the estate—to the debtors, most of whom are now Briggs's clients. Property of the estate cannot be transferred without Court authority, regardless of any agreement by attorneys.

Further, Critique Services L.L.C.'s suggestion that a Chapter 7 Trustee Handbook deprives this Court of subject-matter jurisdiction over the Show Cause Orders is ridiculous. Jurisdiction is not determined by an administrative handbook, and the Trustees are not excused from complying with the directives in the Show Cause Orders based on an administrative manual.[2] The Court also notes that the Trustees clearly believe that responding to the directives issued to them in the Show Cause Orders is within the scope of their duties, and the U.S. Trustee has expressed on the record his Office's support for the directives made in the Show Cause Orders. The Court finds Critique Services L.L.C.'s wholly self-interested "interpretation" of how the chapter 7 trustees should do their jobs based on an administrative manual to be unpersuasive as a basis for dismissal.

[2] The directives in the Show Cause Orders direct the Trustees to account to the Court for the administration of the estate—including to account for the whereabouts of assets of the estate during the administration of the estate, when such an accounting is necessary. This is the job of a chapter 7 trustee.

Accordingly, the Court **ORDERS** that the Motion to Dismiss be **DENIED**.

DATED: February 12, 2015
St. Louis, Missouri 63102
mtc

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

COPY MAILED TO:

Ross H. Briggs
Post Office Box 58628
St. Louis, MO 63158

James Clifton Robinson
Critique Services
3919 Washington Blvd.
St. Louis, MO 63108

Laurence D. Mass
230 S Bemiston Ave
Suite 1200
Clayton, MO 63105

Office of US Trustee
111 S Tenth St, Ste 6.353
St. Louis, MO 63102

Robert J. Blackwell
Blackwell and Associates (trustee)
P.O. Box 310
O'Fallon, MO 63366-0310

David A. Sosne
Summers Compton Wells LLC
8909 Ladue Rd.
St. Louis, MO 63124

Tom K. O'Loughlin
O'Loughlin, O'Loughlin et al.
1736 N. Kingshighway
Cape Girardeau, MO 63701

Kristin J Conwell
Conwell Law Firm LLC
PO Box 56550
St. Louis, MO 63156

Seth A Albin
Albin Law
7710 Carondelet Avenue
Suite 405
St. Louis, MO 63105

E. Rebecca Case
7733 Forsyth Blvd.
Suite 500
Saint Louis, MO 63105

Attachment 203

Mass's Memorandum to "Clarify" the Record

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	)	
	)	
Evette Nicole Reed,	)	Case No. 14-44818-705
	)	
Debtor.	)	
	)	
In re:	)	
	)	
Pauline A. Brady,	)	Case No. 14-44909-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Lawanda Lanae Long,	)	Case No. 14-45773-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Marshall Beard,	)	Case No. 14-43751-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Darrell Moore,	)	Case No. 14-44434-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Nina Lynne Logan,	)	Case No. 14-44329-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Jovon Neosha Stewart,	)	Case No. 14-43912-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Angelique Renee Shields,	)	Case No. 14-43914-705
	)	
Debtor	)	
	)	

MEMORANDUM

This Memorandum is to clarify statements that the undersigned counsel for Critique Services, LLC and Beverly Holmes-Diltz made regarding the relationship between Critique Services, LLC and attorney James Robinson during the hearing on February 4, 2015.

At the hearing on February 4, 2015, counsel for Critique Services, LLC represented that its relationship with James Robinson complied with the structure established in the July 31, 2007 Settlement Agreement in Adversary Proceeding 05-4254 in Bankruptcy 05-43244-A659-7 (In re: Hardge). Counsel represented that Critique Services, LLC did not have employees other than its sole member and that the employees that worked in the building in which Mr. Robinson had his offices and who had interactions with Mr. Robinson's clients (debtors filing mostly Chapter 7 cases) were employees of Mr. Robinson. That is correct. Counsel for Critique Services, LLC also represented that Critique Services, LLC was paid by Mr. Robinson in accordance with invoices that it rendered to him based upon fixed monthly charges (*i.e.*, for use of the name "Critique Services," rent, the provision of business systems) and upon variable monthly charges (*i.e.*, for training staff, supplies, etc.).

Counsel has learned certain details whereby what he represented in Court may have left an incomplete impression upon the Court. First, although Mr. Robinson was billed each month, he did not necessarily pay the billed amount the following month. Some months he paid less than what had been billed and some months he paid more. Over the course of a twelve (12) month period, he never paid more than what was billed.

Second, as part of the payments made by Mr. Robinson to Critique Services, LLC, when a client came into Mr. Robinson's office and paid the fee that Mr. Robinson charged using a debit card, that fee was paid into Critique Services, LLC's bank account. Those amounts were credited

to Mr. Robinson's payments toward amounts billed. The number of debit card payments made this way to Critique Services, LLC would vary each month. They were never the same percentage of clients served by Mr. Robinson each month.

However, none of Debtors in the above eight styled cases paid fees to Mr. Robinson by using a debit card. Critique Services, LLC did not receive any payments from Mr. Robinson when these Debtors paid fees to him

Counsel believes that in spite of these new representations, Critique Services, LLC's conduct complied with the structure established in the July 31, 2007 Settlement Agreement referenced above.

Respectfully submitted,

/s/ Laurence D. Mass
Laurence D. Mass #30977
Attorney for Critique Services, LLC
230 So. Bemiston Ave., Suite 1200
Clayton, Missouri 63105
Telephone: (314) 862-3333 ext. 20
Facsimile: (314) 862-0605
Email: laurencedmass@att.net

CERTIFICATE OF SERVICE

By signature above I hereby certify that I electronically filed the foregoing with the Clerk of the United States District Court, Eastern District of Missouri by using the CM/ECF system, and that a copy will be served by the CM/ECF system upon those parties indicated by the CM/ECF system. An additional copy has been served by email to Mr. Paul Randolph, U.S. Trustee (Paul.A.Randolph@usdoj.gov) and Ms. Kristen Conwell (Kconwell@conwellfirm.com).

By: /s/ Laurence D. Mass

Attachment 204

Order Striking in Part the Memorandum to ‘Clarify’ the Record

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	
	§	
Evette Nicole Reed,	§	**Case No. 14-44818-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Pauline A. Brady,	§	**Case No. 14-44909-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Lawanda Lanae Long,	§	**Case No. 14-45773-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Jovon Neosha Stewart,	§	**Case No. 14-43912-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

ORDER STRIKING THE MEMORANDUM, TO DEGREE THAT IT PURPORTS TO MODIFY THE COURT'S RECORD OF THE FEBRUARY 4, 2015 HEARING

As set forth below, the Court orders that the Memorandum be stricken to the degree that it purports to modify the Court's record of the February 4, 2015 hearing held in the above-referenced cases (the "Cases"). The Memorandum otherwise may stand.

I. BACKGROUND

Currently before the Court are three Show Cause Orders (the "Show Cause Orders"), wherein James C. Robinson, the former (and now-suspended) attorney for the Debtors, has been directed to show cause as to why he should not be sanctioned for failing to timely return to the Debtors the fees he collected from them prior to his suspension on June 10, 2014. In addition, the chapter 7 trustees assigned to these Cases (the "Chapter 7 Trustees") have been directed to account to the Court for the whereabouts of the fees since Robinson's suspension. In connection with attempting to meet their obligations, the Chapter 7 Trustees have requested documents and information from Robinson, his "firm," Critique Services L.L.C., and Ross Briggs (an attorney with a long-time affiliation (formal and informal) with the "Critique Services" business,[1] and who now represents six of the eight Debtors). In response to the Chapter 7 Trustees' requests for documents and information, Robinson, Critique Services L.L.C. and Briggs have played a game of avoidance, finger-pointing, talking around the issue, and refusing to comply. They have produced very little to nothing that is responsive to the Chapter 7 Trustees' requests.

[1] Over the past approximately twenty years, one permutation or another of a bankruptcy services-related business with the phrase "Critique" in its name has operated in St. Louis. These "Critique"-named businesses (which the Court will collectively refer to as the "Critique Services business") have been repeatedly sued by the United States Trustee on allegations of the unauthorized practice of law and other unlawful business practices. The Critique Services business, its owner, Beverly Holmes Diltz, and attorneys and non-attorneys affiliated with it, have been enjoined from unlawful practices.

The last hearing in the Cases was held February 4, 2015. At that hearing, it was established that Robinson, Critique Services L.L.C. and Briggs have not complied with the Order Compelling Turnover and have no sincere intention of complying. The Court currently is determining how to proceed in the face of this non-compliance.

On May 12, 2015, Laurence Mass, the attorney for Critique Services L.L.C., filed a document captioned "Memorandum."

II. THE MEMORANDUM

The Court makes the following observations about the Memorandum:

First, in the Memorandum, Mass states that he "represented that Critique Services, LLC did not have employees other than its sole member and that the employees that worked in the building in which Mr. Robinson had his offices and who had interactions with Mr. Robinson's clients (debtors filing mostly Chapter 7 cases) were employees of Mr. Robinson. That is correct." It is, indeed, correct that Mass made representations along these lines at the February 4 hearing. However—to be clear—the Court has made no finding of fact accepting these representations as true, regardless of Mass's declaration that they are "correct." Mass's representations are not evidence. Mass was not on the stand; he was not a witness; he was not subject to cross-examination.

Second, Mass states that, at the February 4 hearing, he "represented that Critique Services, L.L.C. was paid by Mr. Robinson in accordance with invoices that it rendered to him based upon fixed monthly charges (i.e., for use of the name 'Critique Services,' rent, the provision of business systems) and upon variable monthly charges." However, a review of the transcript of the February 4 hearing does not show representations by Mass related to invoices or fixed or variable monthly charges. The Court is uncertain of what Mass is referencing.

Third, Mass states that he "has learned certain details whereby what he represented in Court may have left an incomplete impression upon the Court." However, there is no such thing as "leaving an incomplete impression upon the Court." "Incomplete" would not describe the Court's resulting impression—although it might describe the disclosures, if the disclosures were lacking in

adequacy or candor. There is such a thing as "leaving a *false* impression upon the Court."[2] It appears that what Mass means is: he left a false impression upon the Court as a result of making incomplete disclosures.[3] The Court notes the irony of Mass attempting to change a false impression by misleadingly characterizing the situation as one of "an incomplete impression"—a phrase that appears to have been utilized to sound more innocuous than "false."

Fourth, in the Memorandum, Mass makes certain representations about payments to Critique Services L.L.C. by Robinson, the use of debit cards, and the receipt of fees paid by the Debtors in these Cases. These statements, unsupported by any documentation or affidavit, do not constitute evidence and do not constitute compliance by Critique Services L.L.C. with the Order Compelling Turnover.

Fifth, Mass states that he "believes" that Critique Services L.L.C.'s "conduct complied with the structure established" in the 2007 injunction[4]—as if Mass's personal belief is determinative of compliance. To any degree, it is unclear why Mass feels the need to share his belief on this point with the Court in these Cases, given that the issue of whether the 2007 injunction was violated is currently before another Judge of this Court on motions filed in other cases. It is not an issue in these Cases. This was previously explained to Mass by the Court at the February 4 hearing, after Mass incorrectly insisted that the Show Cause Orders raised the issue. Because Mass appears, once again, to need this pointed out, the Court will, once again, state: the issue of whether the 2007

---

[2] *Knowingly* leaving a false impression is called *misleading*; and misleading the Court, when done by an attorney, is called *failing to meet the ethical expectation of candor with the Court*; and misleading by the making of a false statement, when done under oath, is called *perjury.* But none of these result in the leaving of an "incomplete impression upon the Court."

[3] This is not a finding that Mass knowingly made incomplete disclosures.

[4] In 2007, Critique Services L.L.C. agreed to an injunction prohibiting it from performing certain services in bankruptcy cases.

injunction was violated is not an issue raised for determination in these Cases.[5] The Show Cause Orders do not refer to the 2007 injunction. There has been no motion to enforce the 2007 injunction. No party is seeking relief under the 2007 injunction. The issue presented by the Show Cause Orders is whether Robinson should be sanctioned for failing to timely return unearned fees that were property of the estate—an issue is separate from the issue of whether the 2007 injunction was violated.

Sixth, it is not clear what Mass intends by seeking to "clarify" his representations at the February 4 hearing. Mass is free to make whatever representations he wishes. However, the record is what the record is. Nothing in the Memorandum can reach back in time and replace the representations made at the February 4 hearing. Mass's new representations in the Memorandum stand in contrast to, or in comparison with, or in complement to, his representations at the February 4 hearing.

III. CONCLUSION

To avoid any confusion about the effect of the Memorandum, the Court **ORDERS** that the Memorandum be **STRICKEN** to the degree that it purports to modify or change the Court's record of the February 4 hearing. The Memorandum otherwise may stand.

DATED: May 15, 2015
St. Louis, Missouri 63102
mtc

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

[5] Of course, the fact that this is not an issue in these Cases is not a finding that Critique Services L.L.C. operates in compliance with the 2007 injunction. It means only that the issue has not been raised in these Cases.

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Attachment 205

July 6, 2015 Notice to Robinson, Critique Services L.L.C. and Briggs Regarding Sanctions

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	
	§	
Evette Nicole Reed,	§	**Case No. 14-44818-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Pauline A. Brady,	§	**Case No. 14-44909-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Lawanda Lanae Long,	§	**Case No. 14-45773-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Jovon Neosha Stewart,	§	**Case No. 14-43912-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

NOTICE AND DEADLINES

On December 12, 2014, the chapter 7 trustees (the "Trustees") in the above-referenced cases (the "Cases") filed a Motion to Compel Turnover seeking turnover of documents and information necessary for the Trustees to comply with the Court's directive that they account for property of the estate in the form of unearned attorney's fees that were collected by the Debtors' now-suspended former counsel, James C. Robinson. On January 13, 2015, the Court held a hearing on the Motion to Compel Turnover. Thereafter, on January 23, 2015, the Court entered an Order Compelling Turnover [Docket No. 52], compelling Robinson, attorney Ross Briggs, and Robinson's affiliated "firm," Critique Services L.L.C. (the "Respondents") to turn over the documents and information.

On February 4, 2015, the Court held a status conference regarding the compliance of the Respondents with the Order Compelling Turnover. At the status conference, it was established that the Respondents failed to comply with the Order Compelling Turnover. The excuses offered by the Respondents were not credible and the arguments offered by the Respondents were not persuasive. The Court does not believe the claims by the Respondents that they do not have or cannot obtain the documents and information subject to turnover.

Five months have passed since that status conference, during which time the Respondents have remained obligated to comply with the Order Compelling Turnover. The time has now come for the issues raised in the Show Cause Orders to be determined and for any noncompliance with the Order Compelling Turnover to be addressed. Accordingly, the Court gives **NOTICE** that it is considering the imposition of monetary and/or nonmonetary sanctions or the taking of any other appropriate action for non-compliance. The Respondents have seven (7) days from entry of this Order to comply with the Order Compelling Turnover. Each of the Respondents also may file, within seven (7) days of entry of this Order a brief, addressing why sanctions or other actions should not be imposed.

The Court **DIRECTS** each of the Trustees to file, within ten (10) days of entry of this Order, an affidavit attesting to: (i) whether any turnover has occurred

since the February 4, 2015 hearing and, if so, the nature and scope of such turnover, and (ii) whether he or she has become aware of any additional facts that bear on the issue of compliance with the Order Compelling Discovery or the representations made at the January 13 or February 4 hearings. Any such affidavit may be filed jointly, if the Trustees so wish.

DATED: July 6, 2015
St. Louis, Missouri 63102
mtc

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

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Attachment 206

Robinson's Response and Amended Response to the July 6, 2015 Notice; the Order Striking Robinson's Response; and the Order Striking in Part the Amended Response

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

	Judge Charles E. Rendlen, III
In re:	Chapter 7
EVETTE NICOLE REED,	Main Cause # 14-45773
Debtor.	Case No. 14-44818-705
In re:	
PAULINE A. BRADY,	
Debtor.	Case No. 14-44909-705
In re:	
LAWANDA LANAE LONG,	
Debtor.	Case No. 14-45773-705
In re:	
MARSHALL LOUIS BEARD,	
Debtor.	Case No. 14-42751-705
In re:	
DARRELL MOORE and	
JOCELYN ANTOINETTE MOORE,	
Debtors.	Case No. 14-44434-705
In re:	
NINA LYNNE LOGAN,	
Debtor.	Case No. 14-44329-705
In re:	
JOVON NEOSHA STEWART,	
Debtor.	Case No. 14-43912-705
In re:	
ANGELIQUE RENEE SHIELDS,	
Debtor.	Case No. 14-43914-705

ATTORNEY JAMES C. ROBINSON RESPONSE AND MOVES TO SETASIDE NOTICE AND DEADLINE ORDER (Docket #80 Entered July 6, 2015)

COMES NOW, Respondent, James C. Robinson, in response to Notice and Deadline Order to compel documentation and information surrounding attorney fees, does not waive any Objections previously filed and moves to Set Aside said Order as follows:

BACKGROUND

On June 10, 2014, Attorney James C. Robinson, was suspended by Judge Charles E. Rendlen, III from the privilege of being able to earn a living, practicing before the U.S. Bankruptcy Court for the Eastern District of Missouri, as a Bankruptcy attorney in Memorandum and Order (as amended) entered in *In re Latoya Steward*, Case No. 13-46399-705. After the year suspension ended this Court in *In re Latoya Steward*, Case No. 13-46399-705 on June 15, 2015 entered an Order continuing the suspension of Attorney C. Robinson. Currently, the suspension remains while an appeal is pending in the U. S. Court of Appeals.

Due to Respondent's suspension Attorney Briggs, on June 25, 2014, was ordered by this court to file an affidavit, in Court, to the amount of fees refunded by Mr. Robinson to each Debtor. The June 25, 2014 Order to Mr. Briggs was to inquire of Mr. Robinson had he remitted any attorney fees he owed Debtors. This Order to Mr. Briggs was without a hearing to determine whether or not Mr. Robinson had owed any attorney fees that were part of the Estate of a Debtor as excessive then unearned; prior to the filing of their petitions for relief in Bankruptcy.

Respondent (Mr. Robinson) in response to the Order directed to Mr. Briggs, dated June 25, 2014, stated to Mr. Briggs, I did not owe any fees. They were all earned (which were not unreasonable, not excessive, and not part any of Debtor's estate prior to the filing of their petitions for relief in Bankruptcy). At this time Respondent had no knowledge of who the fees where owed to and how much. There was not an Order directing payment of fees from Respondent until November 26, 2014 amended December 2, 2014 and subsequently amended December 10, 2014.

In response by this Court, on November 26, 2014, on its own initiative, issued a Show Cause Order in case number In re: Reed, et al 14-44818-705, Document #18, directing (1) James Robinson to show cause as to why his fees should not be disgorged under § 329(b) and (2) ordering the Chapter 7 Trustees to COLLECT the fees as unearned and provide information related to fees. Again, on December 2, 2014, Document #17, the Court issued an amended Show Cause Order in this matter to disgorge fees and seeking information related to those fees by the U. S. Trustees. All of the Orders ordered the Trustees to COLLECT under Rule 2017 the fees and why monetary sanctions should not be imposed.

On December 10, 2014 (Case Number 14-45773, Document #26) Respondent filed a petition for Recusal of Judge Rendlen, III in this matter. In response, the same day, on December 10, 2014 (Document #28), the Judge in this matter issued an amended Show Cause Order for Trustees to COLLECT the unearned fees and now why MONETARY and NON MONETARY sanctions should not be imposed for not returning fees unlawfully held. The next day, on December 11, 2014, in Document #27 Respondent's motion for Recusal of the Judge in this matter was denied.

On December 6, 2014, in a timely manner, in dispute, Respondent, under protest, to avoid litigation in this matter remitted all of the attorney fees to all Debtors as Judge Rendlen, III ordered (all the Debtors who received the fees are listed in the caption).

On December 12, 2014, the Chapter 7 Trustees in this matter filed a motion seeking to Compelling Turn-Over of documentation and information surrounding the attorney fees unlawfully held. Respondent, in a timely manner replied fully in responds to the Trustees' request (this is further evidenced by Docket #67-1). Thereafter, on January 2, 2015, Respondent timely filed objections and motion to dismiss as moot since the fees had been returned and had fully responded to Trustees' request.

All Respondent's objections and motions were denied.

On January 13, 2015, the Court held a hearing on the Trustees' Motion to Compel Turnover despite Respondent's objections. The Trustees' Motion was granted on January 23, 2015 (See Docket #52). Following the January 13, 2015 Order, in good faith, Respondent replied to Attorney Brigg's compliance request.

On February 4, 2015, the Court held a Status Conference in this matter. Respondent did not appear.

The January 23, 2015 Order (Docket #52) is the subject of this Notice and Deadlines as to why monetary and non-monetary sanctions pursuant to 11 U.S.C. § 105 should not be imposed by this Court. In that Respondent has refused to respond to Trustees' Motion for Turnover and failing to timely return unearned fees.

ARGUMENT

In the case at bar, this Court noted in its' Order Striking the Memorandum as to the February 4, 2015 Status Conference (which the Court has now labeled as a "Hearing" in Docket #78, entered on May 15, 2015), stated "The issue presented by the Show Cause Orders is whether Robinson should be sanctioned for failing to timely return unearned fees that were property of the estate..."

To avoid litigation on this issue, before the last amended Show Cause Order dated December 10, 2015 directing the Trustees to COLLECT; on December 6, 2015 all the fees where timely remitted under protest. Despite this fact, the court will deem it proper to sanction Respondent for failing to timely return unearned fees that were property of the estate. The Respondent has always maintained that the fees were earned prior to Respondent's suspension, and filing of Debtor's petition for relief.

This is evidenced by the receipt dates of attorney Robinson's engagements to Debtors filed by Attorney Briggs in his compliance to Trustees' Motion to Compel Turnover (See Docket entry #67).

During the time of engagement, prior to Respondent's suspension, Robinson provided to each Debtor analysis of their financial situations and rendered advice in determining relief. Credit reports were issued to each Debtor. Prepared and filed Bankruptcy petitions for five (5) Debtors (evidenced by Court records), three (3) Debtors Attorney Briggs had to complete and file. No attorney fees here transferred, funneled or fungible to Mr. Briggs. No additional attorney fees were ever requested at any time from Debtors.

In this case, all Respondent's clients were serviced in a competent manner. The fees were not unreasonable, disclosed and thus, not excessive. Said fees were earned in a competent manner and not part of the Debtor estate upon the commencement date of Debtor's filed petition for relief. Pre-petition non-excessive fees not held or on hand, prior to the filing of Debtor's petition for relief are not part of the Debtor's estate. The Debtor's estate includes. "*all legal or equitable interests of the debtor in property as of the commencement of the case,*" *11 U.S.C. §541 (a) (1) emphasis added*).

Even where fees were given by Debtor to Respondent in anticipation of Respondent filing a petition for three (3) Debtors but did not due to suspension, is not unearned. As in this case, Respondent placed the Debtor's in a position to receive their discharge in a competent manner (See *Rittenhouse v Eisen, 404 F3d 3a5, 6th Cir. 2005.*).

Therefore the fees in question were not excessive and earned.

To date no Debtor had ever demanded any return of their attorney fee. Only this Court on its own initiative pursuant to 11 U. S. C. *§ 329 (b) and Rule 2017* Ordered the Trustees to COLLECT the fees prior to any hearing mandated by law. Under 11 U. S. C. *§ 329 (b) and Rule 2017* there is no power provided to this Court or granted in its' discretionary power to Order the trustees to COLLECT under Rule 2017 prior to a notice and hearing.

Federal Bankruptcy Rule 2017 Examination of Debtor's Transactions with Debtor's Attorney

> **(a) PAYMENT OR TRANSFER TO ATTORNEY BEFORE ORDER FOR RELIEF. On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.**
>
> **(b) PAYMENT OR TRANSFER TO ATTORNEY AFTER ORDER FOR RELIEF. On motion by the debtor, the United States trustee, or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefore is for services in any way related to the case.**

The word COLLECT is not written or implied in the meaning of the Federal Rules Of Bankruptcy Procedure Rule 2017 or 11 U. S. C. *§* 329 (b)

Ordering the trustees to COLLECT implies the Respondent, to any reasonable prudent person, the fees were owed. Thus, a foregone conclusion and an established fact that the fees must be COLLECTED. Which the Court in this matter invited the Trustees to come in to do, on December 3, 2014 (See Docket #15). To further persuade the necessary and needed participation of the Trustees, on December 2, 2014 in the Show Cause Order, the Court stated, "The fact that Mr. Robinson apparently has not returned any un-earned fees raises the concern of whether there has been attempted impropriety in these cases…" A reasonable person would view this comment and action as bias to support an unfounded and predetermined allegation that cannot be reversed in a subsequent hearing.

Further, on December 10. 2014 Show Cause Order, the Court stated, "The Court is concerned that this forum and these cases have been used as a vehicle for improperly retaining property of the estate – that Mr. Robinson kept his unearned fees, assuming the Court would not notice and the Chapter 7 Trustees would not care". The Trustees then there after filed a Motion to Compel against Respondent on December 15, 2014 on this matter in Document #30, to COLLECT as Ordered. This Court had already determined from the tone of these Orders that the fees were owed absent a hearing under Rule 2017 for excessiveness. This is an abuse of discretion and an appealable error. *(See Walton, 223 F. 3d at 863 Snyder v Dewoskin (In re Mahendra), 131 F. 3d 375; 757. (8th Cir 1997)*

Even more so , for this Court to exam the payment of attorney fees to Respondent there must have been an entry of an Order for relief to each Debtor, Rule 2017 states, "after entry of an order for relief" All the cases in this matter are still open and void to entry of any Order declaring excessiveness. There has been to date no entry of an Order for relief in these voluntary petitions for relief for excessiveness. The test is excessiveness not unearned. This court has misplaced the procedural due process of law, its' excessive first then unearned for fees after the commencement of a filed petition by the Debtor *(See In re Homer G Walters U. S. court of appeals 87-1114 (1989).* Bankruptcy Rule 2017 implements § 329 payments to attorney after the commencing of a case for excessiveness. Then after notice and a hearing Rule 2017 provides for the examination of those fees as to how much is part of the Debtor's estate. The Show Cause Orders here fail to demonstrate or even mention that the attorney fees received or services rendered where excessive after the commencement of case. Only that the fees were unearned after the commencement due to Respondent's suspension thus unearned. Again the Court has misplaced the procedural law. This Court cannot implement Rule 2017 for unearned fees if not excessive by Law. Therefore, these entire proceedings are void for lack of procedural due process, jurisdiction, mootness and subject matter as to enforcement of Bankruptcy Rule 2017 and § 329. The Show Cause Orders and the Trustees Motion to Compel are invalid and void of enforcement as fruits of a poison tree.

This action is further mooted by this Court's own action. On June 15, 2015 this Court mooted the Motion To Compel Turnover (Docket #52) in its' Order continuing the suspension of Robinson stating "In the, In re Reed, et al. cases it has been established that Robinson improperly kept unearned client fees for months following his suspension, kept no records about those debtors and their fees, and personally pocketed the fees upon collection prior to the fees being earned"... In re Reed et al. is now the cases at bar.

Respondent is citing the findings not for the truth of the matter but for the fact that the Court has already ruled and established findings as to the Motion to Compel Turnover (Docket #52) in order to continue the suspension of Robinson. Ironically, the Court now directs Respondent to undue these findings and given seven days from the Notice and Deadline Order to do so ,or face even more sanctions under 11 U.S. C. § 105 (a). This is an abuse of discretion an appealable error. *(See Walton, 223 F. 3d at 863 Snyder v Dewoskin (In re Mahendra), 131 F. 3d 375; 757. (8th Cir 1997).* This abuse of discretion further subjects Respondent to double jeopardy for Civil Contempt. Respondent has already been held in civil competent

by the punitive nature of extending the suspension of Respondent after serving an entire year. The impact of In re: Reed the case at bar, has shackled Respondent with an open end suspension and denied the right to earn a living; is excessive in violation of the 8th amendment. (This is a Forfeiture of Respondent's right to earn a living as a Bankruptcy attorney for many past years). In re: Reed and In re: Steward, case #11-46399, Respondent's suspension **can only be lifted by sole discretion** of Judge Rendlen, III which is clearly futile.

In that Respondent, in good faith, has remitted all earned attorney fees in a timely manner when ordered, and in good faith fully responded to the Trustees' Motion to Compel Turnover for documentation and information surrounding those fees , so why the Notice and Deadline Order.

This Court has already established in this case there are no records and has provided Respondent notice that no records exist. Therefore there is no information surrounding no records. The Order of Notice and Deadline lacks proper notice and directives to Respondent since no records exist. It is unclear when the Court at what stage of these proceeding made the findings that no records exist to its satisfaction. It appears this determination was made at or after the status conference that was held on February 4, 2015. This Court, now under the same set of facts, in the same case, desires to further sanction Respondent in the same cause of action for monetary and non-monetary sanction, for refusing and failure to comply can only result in double jeopardy punishment.

The Motion to Compel Turnover, the Order of Notice and Deadline are no longer live controversies, where mooted by this Court on June 15, 2015. To proceed further subjects Respondent to double jeopardy of law in violates Respondent's six amendment rights.

LEGAL STANDARD

Article III of the Constitution permits federal courts to adjudicate only actual cases or controversies. *Louis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). This means litigants must suffer, or be threatened with, an actual injury traceable to the defendant's actions, and that the federal court must be able to grant effectual relief. *See id.* This case-or-controversy requirement must be satisfied at every stage of judicial proceedings. *Id.* If it is not, the federal court lacks the power to adjudicate the case and must dismiss for lack of subject matter jurisdiction. *E.g., Home Builders Ass'n of Miss., Inc. v. City of Madison, 143 F.3d 1006, 1010 (5th Cir. 1998).* Respondent has returned all the fees as directed to avoid litigation eliminating any live case or controversy.

The Constitution confines the judicial power to actual cases or controversies. *See* U.S. Const. art. III § The Supreme Court has explained that the "triad of injury in fact, causation, and redress ability constitutes the core of Article III's case-or-controversy requirement." A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.,* 529 U.S. 277, 287 (2000) (quoting *County of Los Angeles v. Davis,* 440 U.S. 625, 631 (1979).

The double jeopardy clause of the 6th Amendment of the U. S. Constitution prohibits a person from being punished twice for the same offense. The Supreme Court's interpretation of the Constitution, that a civil sanction can be so punitive in nature that it implicates the double jeopardy clause. (See United States v. Halper) 490 U.S. 435 1989 and Austin v. U. S. 113 S.ct.2801 (1993).

In Halper, Justice Blackman declared that a civil sanction can constitute punishment within the meaning of the double jeopardy clause if, in the individual case, the sanction serves the goals of punishment. The Halper , court concluded that if a civil sanction does not serve a remedial purpose, but relates to retributive or deterrent goals, it can only be characterized as punitive and cannot be imposed if the defendant has previously been punished for the same offense.

In the case at bar Respondent has been punished by the opened ended extension of the suspension and threatened with monetary and again with non-monetary sanctions.

This Court, now under the same set of facts, in the same case, desires to further sanction Respondent in the same cause of action for monetary and non-monetary sanction, can only result in double jeopardy punishment. There is nothing remedial about denying Respondent the Constitutional right to earn a living. Further, the Court's extension of Respondent's open ended suspension is an excessive forfeiture of Respondent's right to earn a living in violation of the 8th Amendment.

CONCLUSION

For the reasons stated above, this Cause should be Set Aside for lack of subject matter jurisdiction, mootness, denial of Rule 2017 for procedural Due Process, double jeopardy and a violation of Respondent's right to earn a living as excessive under the 8th Amendment.

Respectfully submitted,

/S/ James C. Robinson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via first class, United States mail, postage paid and/or electronic notice on this 13 day of July, 2015 to:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via first class, United States mail, postage paid and/or electronic notice on this 13 day of July, 2015 to:

1. Ross H. Briggs
Post Office Box 58628
St. Louis, Missouri 63158

2. Critique Legal Services
3919 Washington Boulevard
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2136 E. Alice, 1st Floor
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224 Country Shire Drive
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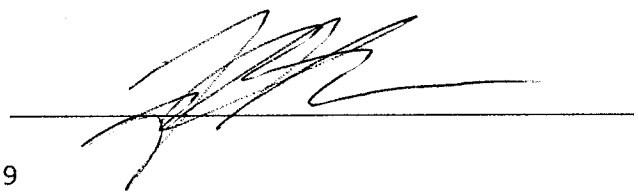

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

	)	Judge Charles E. Rendlen, III
In re:	)	Chapter 7
EVETTE NICOLE REED,	)	Main Cause # 14-45773
Debtor.	)	Case No. 14-44818-705
	)	
In re:	)	
PAULINE A. BRADY,	)	
Debtor.	)	Case No. 14-44909-705
	)	
In re:	)	
LAWANDA LANAE LONG,	)	
Debtor.	)	Case No. 14-45773-705
	)	
In re:	)	
MARSHALL LOUIS BEARD,	)	
Debtor.	)	Case No. 14-42751-705
	)	
In re:	)	
DARRELL MOORE and	)	
JOCELYN ANTOINETTE MOORE,	)	
Debtors.	)	Case No. 14-44434-705
	)	
In re:	)	
NINA LYNNE LOGAN,	)	
Debtor.	)	Case No. 14-44329-705
	)	
In re:	)	
JOVON NEOSHA STEWART,	)	
Debtor.	)	Case No. 14-43912-705
	)	
In re:	)	
ANGELIQUE RENEE SHIELDS,	)	
Debtor.	)	Case No. 14-43914-705

AMENDED *

ATTORNEY JAMES C. ROBINSON RESPONSE AND MOVES TO SETASIDE NOTICE AND DEADLINE ORDER (Docket #80 Entered July 6, 2015)

COMES NOW, Respondent, James C. Robinson, in response to Notice and Deadline Order to compel documentation and information surrounding attorney fees, does not waive any Objections previously filed and moves to Set Aside said Order as follows:

BACKGROUND

On June 10, 2014, Attorney James C. Robinson, was suspended by Judge Charles E. Rendlen, III from the privilege of being able to earn a living, practicing before the U.S. Bankruptcy Court for the Eastern District of Missouri, as a Bankruptcy attorney in Memorandum and Order (as amended) entered in *In re Latoya Steward*, Case No. 13-46399-705. After the year suspension ended this Court in *In re Latoya Steward*, Case No. 13-46399-705 on June 15, 2015 entered an Order continuing the suspension of Attorney C. Robinson. Currently, the suspension remains while an appeal is pending in the U. S. Court of Appeals.

Due to Respondent's suspension Attorney Briggs, on June 25, 2014, was ordered by this court to file an affidavit, in Court, to the amount of fees refunded by Mr. Robinson to each Debtor. The June 25, 2014 Order to Mr. Briggs was to inquire of Mr. Robinson had he remitted any attorney fees he owed Debtors. This Order to Mr. Briggs was without a hearing to determine whether or not Mr. Robinson had owed any attorney fees that were part of the Estate of a Debtor as excessive then unearned; prior to the filing of their petitions for relief in Bankruptcy.

Respondent (Mr. Robinson) in response to the Order directed to Mr. Briggs, dated June 25, 2014, stated to Mr. Briggs, I did not owe any fees. They were all earned (which were not unreasonable, not excessive, and not part any of Debtor's estate prior to the filing of their petitions for relief in Bankruptcy). At this time Respondent had no knowledge of who the fees where owed to and how much. There was not an Order directing payment of fees from Respondent until November 26, 2014 amended December 2, 2014 and subsequently amended December 10, 2014.

In response by this Court, on November 26, 2014, on its own initiative, issued a Show Cause Order in case number In re: Reed, et al 14-44818-705, Document #18, directing (1) James Robinson to show cause as to why his fees should not be disgorged under § 329(b) and (2) ordering the Chapter 7 Trustees to COLLECT the fees as unearned and provide information related to fees. Again, on December 2, 2014, Document #17, the Court issued an amended Show Cause Order in this matter to disgorge fees and seeking information related to those fees by the U. S. Trustees. All of the Orders ordered the Trustees to COLLECT under Rule 2017 the fees and why monetary sanctions should not be imposed.

On December 10, 2014 (Case Number 14-45773, Document #26) Respondent filed a petition for Recusal of Judge Rendlen, III in this matter. In response, the same day, on December 10, 2014 (Document #28), the Judge in this matter issued an amended Show Cause Order for Trustees to COLLECT the unearned fees and now why MONETARY and NON MONETARY sanctions should not be imposed for not returning fees unlawfully held. The next day, on December 11, 2014, in Document #27 Respondent's motion for Recusal of the Judge in this matter was denied.

On December 6, 2014, in a timely manner, in dispute, Respondent, under protest, to avoid litigation in this matter remitted all of the attorney fees to all Debtors as Judge Rendlen, III ordered (all the Debtors who received the fees are listed in the caption).

On December 12, 2014, the Chapter 7 Trustees in this matter filed a motion seeking to Compelling Turn-Over of documentation and information surrounding the attorney fees unlawfully held. Respondent, in a timely manner replied fully in responds to the Trustees' request (this is further evidenced by Docket #67-1). Thereafter, on January 2, 2015, Respondent timely filed objections and motion to dismiss as moot since the fees had been returned and had fully responded to Trustees' request.

All Respondent's objections and motions were denied.

On January 13, 2015, the Court held a hearing on the Trustees' Motion to Compel Turnover despite Respondent's objections. The Trustees' Motion was granted on January 23, 2015 (See Docket #52). Following the January 13, 2015 Order, in good faith, Respondent replied to Attorney Brigg's compliance request.

On February 4, 2015, the Court held a Status Conference in this matter. Respondent did not appear.

The January 23, 2015 Order (Docket #52) is the subject of this Notice and Deadlines as to why monetary and non-monetary sanctions pursuant to 11 U.S.C. § 105 should not be imposed by this Court. In that Respondent has refused to respond to Trustees' Motion for Turnover and failing to timely return unearned fees.

ARGUMENT*

In the case at bar, this Court noted in its' Order Striking the Memorandum as to the February 4, 2015 Status Conference (which the Court has now labeled as a "Hearing" in Docket #78, entered on May 15, 2015), stated "The issue presented by the Show Cause Orders is whether Robinson should be sanctioned for failing to timely return unearned fees that were property of the estate..."

To avoid litigation on this issue, before the last amended Show Cause Order dated **December 10, 2014 directing the Trustees to COLLECT; on December 6, 2014*** all the fees where timely remitted under protest. Despite this fact, the court will deem it proper to sanction Respondent for failing to timely return unearned fees that were property of the estate. The Respondent has always maintained that the fees were earned prior to Respondent's suspension, and filing of Debtor's petition for relief.

This is evidenced by the receipt dates of attorney Robinson's engagements to Debtors filed by Attorney Briggs in his compliance to Trustees' Motion to Compel Turnover (See Docket entry #67).

During the time of engagement, prior to Respondent's suspension, Robinson provided to each Debtor analysis of their financial situations and rendered advice in determining relief. Credit reports were issued to each Debtor. Prepared and filed Bankruptcy petitions for five (5) Debtors (evidenced by Court records), three (3) Debtors Attorney Briggs had to complete and file. No attorney fees here transferred, funneled or fungible to Mr. Briggs. No additional attorney fees were ever requested at any time from Debtors.

In this case, all Respondent's clients were serviced in a competent manner. The fees were not unreasonable, disclosed and thus, not excessive. Said fees were earned in a competent manner and not part of the Debtor estate upon the commencement date of Debtor's filed petition for relief. Pre-petition non-excessive fees not held or on hand, prior to the filing of Debtor's petition for relief are not part of the Debtor's estate. The Debtor's estate includes. "*all legal or equitable interests of the debtor in property as of the commencement of the case,*" *11 U.S.C. §541 (a) (1) emphasis added*).

Even where fees were given by Debtor to Respondent in anticipation of Respondent filing a petition for three (3) Debtors but did not due to suspension, is not unearned. As in this case, Respondent placed the Debtor's in a position to receive their discharge in a competent manner (See *Rittenhouse v Eisen, 404 F3d 3a5, 6th Cir. 2005.*).

Therefore the fees in question were not excessive and earned.

To date no Debtor had ever demanded any return of their attorney fee. Only this Court on its own initiative pursuant to 11 U. S. C. *§ 329 (b) and Rule 2017* Ordered the Trustees to COLLECT the fees prior to any hearing mandated by law. Under 11 U. S. C. *§ 329 (b) and Rule 2017* there is no power provided to this Court or granted in its' discretionary power to Order the trustees to COLLECT under Rule 2017 prior to a notice and hearing.

Federal Bankruptcy Rule 2017 Examination of Debtor's Transactions with Debtor's Attorney

> **(a) PAYMENT OR TRANSFER TO ATTORNEY BEFORE ORDER FOR RELIEF. On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.**
>
> **(b) PAYMENT OR TRANSFER TO ATTORNEY AFTER ORDER FOR RELIEF. On motion by the debtor, the United States trustee, or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefore is for services in any way related to the case.**

The word COLLECT is not written or implied in the meaning of the Federal Rules Of Bankruptcy Procedure Rule 2017 or 11 U. S. C. *§* 329 (b)

Ordering the trustees to COLLECT implies the Respondent, to any reasonable prudent person, the fees were owed. Thus, a foregone conclusion and an established fact that the fees must be COLLECTED. Which the Court in this matter invited the Trustees to come in to do, on December 3, 2014 (See Docket #15). To further persuade the necessary and needed participation of the Trustees, on December 2, 2014 in the Show Cause Order, the Court stated, "The fact that Mr. Robinson apparently has not returned any un-earned fees raises the concern of whether there has been attempted impropriety in these cases…" A reasonable person would view this comment and action as bias to support an unfounded and predetermined allegation that cannot be reversed in a subsequent hearing.

Further, on December 10. 2014 Show Cause Order, the Court stated, "The Court is concerned that this forum and these cases have been used as a vehicle for improperly retaining property of the estate – that Mr. Robinson kept his unearned fees, assuming the Court would not notice and the Chapter 7 Trustees would not care". The Trustees then there after filed a Motion to Compel against Respondent on December 15, 2014 on this matter in Document #30, to COLLECT as Ordered. This Court had already determined from the tone of these Orders that the fees were owed absent a hearing under Rule 2017 for excessiveness. This is an abuse of discretion and an appealable error. *(See Walton, 223 F. 3d at 863 Snyder v Dewoskin (In re Mahendra), 131 F. 3d 375; 757. (8th Cir 1997)*

Even more so , for this Court to exam the payment of attorney fees to Respondent there must have been an entry of an Order for relief to each Debtor, Rule 2017 states, "after entry of an order for relief" All the cases in this matter are still open and void to entry of any Order declaring excessiveness. There has been to date no entry of an Order for relief in these voluntary petitions for relief for excessiveness. The test is excessiveness not unearned. This court has misplaced the procedural due process of law, its' excessive first then unearned for fees after the commencement of a filed petition by the Debtor *(See In re Homer G Walters U. S. court of appeals 87-1114 (1989).* Bankruptcy Rule 2017 implements § 329 payments to attorney after the commencing of a case for excessiveness. Then after notice and a hearing Rule 2017 provides for the examination of those fees as to how much is part of the Debtor's estate. The Show Cause Orders here fail to demonstrate or even mention that the attorney fees received or services rendered where excessive after the commencement of case. Only that the fees were unearned after the commencement due to Respondent's suspension thus unearned. Again the Court has misplaced the procedural law. This Court cannot implement Rule 2017 for unearned fees if not excessive by Law. Therefore, these entire proceedings are void for lack of procedural due process, jurisdiction, mootness and subject matter as to enforcement of Bankruptcy Rule 2017 and § 329. The Show Cause Orders and the Trustees Motion to Compel are invalid and void of enforcement as fruits of a poison tree.

This action is further mooted by this Court's own action. On June 15, 2015 this Court mooted the Motion To Compel Turnover (Docket #52) in its' Order continuing the suspension of Robinson stating "In the, In re Reed, et al. cases it has been established that Robinson improperly kept unearned client fees for months following his suspension, kept no records about those debtors and their fees, and personally pocketed the fees upon collection prior to the fees being earned"... In re Reed et al. is now the cases at bar.

Respondent is citing the findings not for the truth of the matter but for the fact that the Court has already ruled and established findings as to the Motion to Compel Turnover (Docket #52) in order to continue the suspension of Robinson. Ironically, the Court now directs Respondent to undue these findings and given seven days from the Notice and Deadline Order to do so ,or face even more sanctions under 11 U.S. C. § 105 (a). This is an abuse of discretion an appealable error. *(See Walton, 223 F. 3d at 863 Snyder v Dewoskin (In re Mahendra), 131 F. 3d 375; 757. (8th Cir 1997).* This abuse of discretion further subjects Respondent to double jeopardy for Civil Contempt. Respondent has already been held in civil competent

by the punitive nature of extending the suspension of Respondent after serving an entire year. The impact of In re: Reed the case at bar, has shackled Respondent with an open end suspension and denied the right to earn a living; is excessive in violation of the 8th amendment. (This is a Forfeiture of Respondent's right to earn a living as a Bankruptcy attorney for many past years). In re: Reed and In re: Steward, case #11-46399, Respondent's suspension **can only be lifted by sole discretion** of Judge Rendlen, III which is clearly futile.

In that Respondent, in good faith, has remitted all earned attorney fees in a timely manner when ordered, and in good faith fully responded to the Trustees' Motion to Compel Turnover for documentation and information surrounding those fees , so why the Notice and Deadline Order.

This Court has already established in this case there are no records and has provided Respondent notice that no records exist. Therefore there is no information surrounding no records. The Order of Notice and Deadline lacks proper notice and directives to Respondent since no records exist. It is unclear when the Court at what stage of these proceeding made the findings that no records exist to its satisfaction. It appears this determination was made at or after the status conference that was held on February 4, 2015. This Court, now under the same set of facts, in the same case, desires to further sanction Respondent in the same cause of action for monetary and non-monetary sanction, for refusing and failure to comply can only result in double jeopardy punishment.

The Motion to Compel Turnover, the Order of Notice and Deadline are no longer live controversies, where mooted by this Court on June 15, 2015. To proceed further subjects Respondent to double jeopardy of law in violates Respondent's six amendment rights.

LEGAL STANDARD

Article III of the Constitution permits federal courts to adjudicate only actual cases or controversies. *Louis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). This means litigants must suffer, or be threatened with, an actual injury traceable to the defendant's actions, and that the federal court must be able to grant effectual relief. *See id.* This case-or-controversy requirement must be satisfied at every stage of judicial proceedings. *Id.* If it is not, the federal court lacks the power to adjudicate the case and must dismiss for lack of subject matter jurisdiction. *E.g., Home Builders Ass'n of Miss., Inc. v. City of Madison, 143 F.3d 1006, 1010 (5th Cir. 1998).* Respondent has returned all the fees as directed to avoid litigation eliminating any live case or controversy.

The Constitution confines the judicial power to actual cases or controversies. *See* U.S. Const. art. III § The Supreme Court has explained that the "triad of injury in fact, causation, and redress ability constitutes the core of Article III's case-or-controversy requirement." A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.,* 529 U.S. 277, 287 (2000) (quoting *County of Los Angeles v. Davis,* 440 U.S. 625, 631 (1979).

The double jeopardy clause of the 6th Amendment of the U. S. Constitution prohibits a person from being punished twice for the same offense. The Supreme Court's interpretation of the Constitution, that a civil sanction can be so punitive in nature that it implicates the double jeopardy clause. (See United States v. Halper) 490 U.S. 435 1989 and Austin v. U. S. 113 S.ct.2801 (1993).

In Halper, Justice Blackman declared that a civil sanction can constitute punishment within the meaning of the double jeopardy clause if, in the individual case, the sanction serves the goals of punishment. The Halper , court concluded that if a civil sanction does not serve a remedial purpose, but relates to retributive or deterrent goals, it can only be characterized as punitive and cannot be imposed if the defendant has previously been punished for the same offense.

In the case at bar Respondent has been punished by the opened ended extension of the suspension and threatened with monetary and again with non-monetary sanctions.

This Court, now under the same set of facts, in the same case, desires to further sanction Respondent in the same cause of action for monetary and non-monetary sanction, can only result in double jeopardy punishment. There is nothing remedial about denying Respondent the Constitutional right to earn a living. Further, the Court's extension of Respondent's open ended suspension is an excessive forfeiture of Respondent's right to earn a living in violation of the 8th Amendment.

CONCLUSION

For the reasons stated above, this Cause should be Set Aside for lack of subject matter jurisdiction, mootness, denial of Rule 2017 for procedural Due Process, double jeopardy and a violation of Respondent's right to earn a living as excessive under the 8th Amendment.

Respectfully submitted,

/S/ James C. Robinson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via first class, United States mail, postage paid and/or electronic notice on this 14th day of July, 2015 to:

STEWART, MITTLEMAN, HEGGIE & HENRY

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222 South Central Avenue, Suite 501
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Chapter 7 Trustee for Debtor Evette Nicole Reed

STONE, LEYTON & GERSHMAN
A Professional Corporation

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Chapter 7 Trustee for Debtor Pauline A. Brady

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CONWELL LAW FIRM LLC

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Chapter 7 Trustee for Debtors Darrell Moore And Jocelyn Antoinette Moore

O'LOUGHLIN, O'LOUGHLIN et al

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E-mail: tomo@oloughlinlawfirm.com
Chapter 7 Trustee for Debtor Nina Lynne Logan

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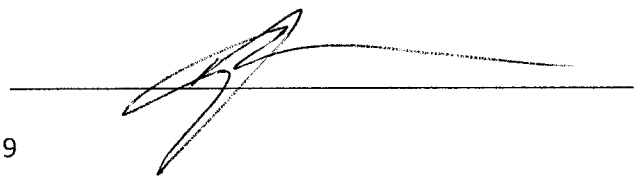

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In re:	)	**Chapter 7**
EVETTE NICOLE REED, ET AL	)	**Main Cause # 14-45773**
Debtor.	)	**Case No. 14-44818-705**
	)	

NOTICE OF FILING AMENDED RESPONSE

TO AMEND "ARGUMENT" ON PAGE 3 ONLY

Comes now, Attorney James C. Robinson, hereby amends and files Response to "Set Aside Notice and Deadline Order (Docket #80 Entered July 6, 2015)" initially filed on Monday, July 13, 2015.

Respectfully submitted,

/S/ James C. Robinson

James C. Robinson #30969
Attorney at Law
3919 Washington Ave.
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Fax (314) 533-4356

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Chapter 7 Trustee for Debtor Nina Lynne Logan

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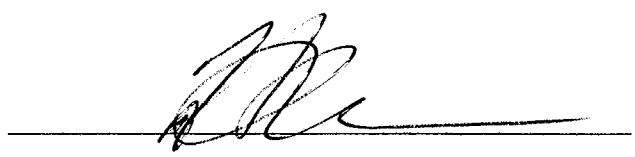

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FOR THE EASTERN DISTRICT OF MISSOURI

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	§	
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	§	
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	§	
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	§	
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	§	
In re:	§	
	§	
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	§	
Debtor.	§	
	§	
In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
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In re:	§	
	§	
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	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

ORDER STRIKING JULY 14, 2015 RESPONSE OF JAMES C. ROBINSON [DOCKET NO. 88]

On July 13, 2015, James C. Robinson filed a document [Docket No. 83[1]] in which he affixed, without any authority to do so, the signatures of the Trustees assigned to these matters, resulting in the false impression that the Trustees had signed or consented to the representations therein. Later that day, the Court entered an Order [Docket No. 84], in which it referred the document and its false representations to the Missouri Supreme Court's Office of Chief Disciplinary Counsel (the "OCDC"). As the Court noted in the Order, it made the referral based on Robinson's long history in the *In re Reed, et al.* matters and other cases of making false and misleading representations to the Court. Robinson is not a truthful person, as he commonly makes unsubstantiated or blatantly false representations in court documents. The Court is well-within its experienced judgment to assume that Robinson's latest misrepresentation is yet-another effort to mislead.

On July 14, 2015, Robinson filed a "response" to the Order [Docket No. 88] to the Order. The Court **ORDERS** that the "response" to the Order be **STRICKEN**. There is no such thing as a "response" to a court order. A court order is a disposition; it not a solicitation for responses, opinion, further thoughts, representations, or commentary. If Robinson wants to explain his false representations to the OCDC, he is certainly free to do so.

A copy of this Order will be forwarded to the OCDC.

DATED: July 14, 2015
St. Louis, Missouri 63102
mtc

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

[1] The Cases are not jointly administered or substantively consolidated. Unless otherwise indicated, docket entry citations in this Order are to the indicated docket number of the first-captioned Case, *In re Reed*. The Court will not indicate the docket number where said order was entered in each of the remaining seven Cases. Unless otherwise indicated, each order was entered in each Case.

COPY MAILED TO:

Ross H. Briggs
Post Office Box 58628
St. Louis, MO 63158

James Clifton Robinson
Critique Services
3919 Washington Blvd.
St. Louis, MO 63108

Office of US Trustee
111 S Tenth St, Ste 6.353
St. Louis, MO 63102

Robert J. Blackwell
Blackwell and Associates (trustee)
P.O. Box 310
O'Fallon, MO 63366-0310

David A. Sosne
Summers Compton Wells LLC
8909 Ladue Rd.
St. Louis, MO 63124

Tom K. O'Loughlin
O'Loughlin, O'Loughlin et al.
1736 N. Kingshighway
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Suite 500
Saint Louis, MO 63105

Laurence Mass
230 S Bemiston Ave Suite
1200 Clayton, MO 63105

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	
	§	
Evette Nicole Reed,	§	**Case No. 14-44818-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Pauline A. Brady,	§	**Case No. 14-44909-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Lawanda Lanae Long,	§	**Case No. 14-45773-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Jovon Neosha Stewart,	§	**Case No. 14-43912-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

ORDER STRIKING IN PART THE "AMENDED" RESPONSE OF JAMES C. ROBINSON [DOCKET NO. 87]

On July 13, 2015, James C. Robinson filed a document that he captioned to be a "Response and Moves [sic] to Set Aside Notice and Deadline Order" (the original "Response") [Docket No. 83[1]]. Later on July 13, 2015, the Court entered an Order [Docket No. 84] denying the Response as to its request that the Court set aside its July 6, 2015 Notice and Deadline. In addition, the Court referred the Response to the Missouri Supreme Court's Office of Chief Disciplinary Counsel (the "OCDC"). In the Certificate of Service attached to the Response, Robinson affixed, without any authority to do so, the signatures of the Trustees assigned to these matters, resulting in the false impression that the Trustees had signed or consented to the representations therein. As the Court noted in the Order, it made the referral based on Robinson's long history in the *In re Reed, et al.* matters and other cases of making false and misleading representations to the Court. Robinson is not a truthful person, as he commonly makes unsubstantiated or blatantly false representations in court documents. The Court is well-within its experienced judgment to assume that this last misrepresentation by Robinson is yet-another effort to mislead.

On July 14, 2015, Robinson filed an "Amended" Response [Docket No. 87], seeking to "amend" the original Response. This effort to "amend" appears to relate to the false signature representations. To the degree that Robinson is attempting to "un-do" his false representations in the original Response by "amending" now, the Court **ORDERS** that the Amended Response be stricken. Robinson cannot rewrite his history of making false representations by amending the offending document, after the Court has noted the false representations. By "amending" now, Robinson is just admitting that the representations should not

[1] The Cases are not jointly administered or substantively consolidated. Unless otherwise indicated, docket entry citations in this Order are to the indicated docket number of the first-captioned Case, *In re Reed*. The Court will not indicate the docket number where said order was entered in each of the remaining seven Cases. Unless otherwise indicated, each order was entered in each Case.

have been made in the first place. And to the degree that the "Amended" Response also seeks to request, again, relief in the form of "setting aside" the Notice and Deadline, the Court **ORDERS** that the "Amended" Response be stricken. A party cannot "amend" a request for relief after that request has been ruled upon, as it has been here.

The Amended Response otherwise will be preserved.

A copy of this Order will be forwarded to the OCDC.

DATED: July 14, 2015
St. Louis, Missouri 63102
mtc

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

COPY MAILED TO:

Ross H. Briggs
Post Office Box 58628
St. Louis, MO 63158

James Clifton Robinson
Critique Services
3919 Washington Blvd.
St. Louis, MO 63108

Office of US Trustee
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Suite 500
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Laurence Mass
230 S Bemiston Ave Suite
1200 Clayton, MO 63105

Attachment 207

Critique Services L.L.C.’s Response to the July 6 Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	)	
	)	
Evette Nicole Reed,	)	Case No. 14-44818-705
	)	
Debtor.	)	
	)	
In re:	)	
	)	
Pauline A. Brady,	)	Case No. 14-44909-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Lawanda Lanae Long,	)	Case No. 14-45773-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Marshall Beard,	)	Case No. 14-43751-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Darrell Moore,	)	Case No. 14-44434-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Nina Lynne Logan,	)	Case No. 14-44329-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Jovon Neosha Stewart,	)	Case No. 14-43912-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Angelique Renee Shields,	)	Case No. 14-43914-705
	)	
Debtor	)	
	)	

CRITIQUE SERVICES, LLC'S RESPONSE TO THE BANKRUPTCY COURT'S NOTICE AND DEADLINES FILED JULY 6, 2015

In its Notice and Deadlines of July 6, 2015 the Bankruptcy Court refers to Critique Services, LLC as an "affiliated 'firm.'" With regard to the eight Debtors in the above-captioned matter, there has been no evidence showing what affiliation, if any, that Critique Services, LLC had with Robinson except the contract between the two of them which Critique Services, LLC produced. In response to this Bankruptcy Court's Turnover Directives of January 23, 2015, Critique Services, LLC stated that with regard to the eight Debtors named that it had no documents that would respond to and satisfy the six Turnover Directives except for the Agreement that Critique Services, LLC had with James Robinson dated August 10, 2007 produced to Trustee Sosne and which is attached hereto as Exhibit 1.

The Order of this Court specifically directed Critique Services, LLC to produce documents (*i.e.*, engagement letters, contracts with regard to any of the eight named Debtors) that Mr. Robinson or Mr. Briggs possessed. It also required turnover of different checks and money orders for payments of fees and expenses and to refund fees and expenses paid by and to these eight Debtors. In response, Critique Services, LLC stated that it had none of the documents requested, except for its contract with Mr. Robinson. In spite of the fact that pursuant to the Bankruptcy Court's Settlement Agreement and Court Order of July 31, 2007 in Case No. 05-43244-659, Adversary Case No. 05-04254-659 providing that Critique Services, LLC could contract to handle the bookkeeping work for James Robinson and the contract between the two allowing the same, Critique Services, LLC has never provided bookkeeping services to Mr. Robinson.

Robinson's attorney's files for each of these Debtors and for any of his clients are

maintained separately in storage under his control. To the extent his attorney files for these eight Debtors were transferred to Briggs, he has control over them. Since August 10, 2007 Robinson has continually had control over his attorney files. Although Critique Services, LLC provides computer and software services to Robinson and trains Robinson's staff on the use of the software designed to process bankruptcy cases, it has not had access to Robinson's computer records. Critique Services, LLC has never had possession or knowledge of passwords or any other protective means for securing that information in the computers that Robinson and his staff have used for these eight Debtors and for other debtors he served.

The only copy of any refund checks or retainer agreements that Critique Services, LLC has with regard to these eight Debtors are those produced in these cases for this Bankruptcy Court by Robinson or Briggs. Critique Services, LLC's response to the Bankruptcy Court's turnover directive (filed on January 29, 2015), accurately represents that Critique Services, LLC does not have any of the documents, checks, money orders, ledgers or other materials for which the Bankruptcy Court directed turnover and that the only document it has responsive to this Court's Directive was the contract Critique Services, LLC had with James Robinson.

Although it appears to Critique Services, LLC that the Bankruptcy Court does not believe Critique Services, LLC's representations, no one has produced any evidence to the contrary. Unlike other proceedings, in the instance of these eight Debtors, this Bankruptcy Court initiated the current proceedings and has instructed the Trustees to pursue them. The Bankruptcy Court is currently threatening sanctions for non-compliance with its Directives even though Critique Services, LLC has provided answers to the Bankruptcy Court's Directives to the best of its abilities. Guidance for this case can be found from Shcherbakovskiy v. Da Capo Al Fine, Ltd, 490 F.3d 130 (2nd Cir. 2007) in which the Second Circuit addresses the authority of a court to

sanction a party that disobeys discovery orders pursuant to F.R. Civ. Proc. 37. The Second Circuit explained that under the risk of sanctions a party cannot be made to produce documents that it does not possess or cannot otherwise obtain without compulsory process that is available to any other party seeking the documents. In the instant case the trustees for these eight Debtors have the authority to subpoena documents from Robinson or Briggs. However, the Bankruptcy Court's Turnover Directives to all party Defendants should have been sufficient to have caused Robinson and Briggs to produce whatever records they have responsive to this Court's Directives.

In the current case, there is no showing that Critique Services, LLC has control over or possession of Mr. Robinson's documents. It would not be appropriate for Critique Services, LLC to have such control or access. For example, under the Rules of Professional Conduct (Mo. Rule 4-1.15) Robinson had the responsibility to maintain his books and records of all moneys received from his clients. The fact that Critique Services, LLC provided the computer, software and computer training to Robinson's employees so that he could serve his clients, did not give Critique Services, LLC control of any records he maintained or transferred to Briggs. Access to those records by compulsory service available to the trustees or by order of the Court does not make Critique Services, LLC responsible for them.

In a case with many similarities to the instant one, the court in Meyers v. Blumenthal, 2014 U.S. Dist. LEXIS 120267 (D. Neb. 2014) refused to impose sanctions on the defendant who failed to comply with discovery. That bankruptcy case concerned efforts by the plaintiff, a bankruptcy trustee, to compel a defendant to produce various documents in an effort to void preferential payments made before the filing of the bankruptcy petition. There was a complicated relationship between the defendant and the party which had the actual documents. However, the

plaintiff trustee had not proven that the defendant had control over the records sought through discovery in the possession of a different entity run by a person other than the defendant. There was no proof, just like in the instant case, that the defendant had control over or could compel the party with the documents and the information sought to produce it other than through a subpoena available to any party. Therefore, the District Court in Nebraska refused to impose sanctions upon the defendant. In that Opinion, numerous cases, some premised upon Shcherbakovskiy, *supra*, are cited to support that a party who has no control over documents cannot be sanctioned for failure to produce them; *i.e.*, Hagemeyer N. Am., Inc. v. Gateway Data Sciences Corp., 222 F.R.D. 594, 598 (E.D. Wis. 2004); see Meyers v. Blumenthal, 2014 U.S. Dist. LEXIS 120267, at 15-16.

Although this case does not arise under the Federal Rules of Civil Procedure governing discovery, the directives by the court are very much in that vein. The cases addressing sanctions under those rules are instructive. There has been no showing that Critique Services, LLC has control over the records this Bankruptcy Court seeks. Even though the Bankruptcy Court stated that Critique Services, LLC is "affiliated" with Robinson and Briggs, there is no showing what the nature of that "affiliation" is and what control, if any, Critique Services, LLC has with regard to the records sought. The only "affiliation" between these parties that has been shown on the record in the case of these eight Debtors is the contract that Critique Services, LLC had with Robinson, which it produced. Nothing in that contract gives Critique Services, LLC control over the financial and other records of Robinson (or of Briggs) such that Critique Services, LLC would be able to produce the documents this Bankruptcy Court seeks. Under these circumstances, sanctions would be inappropriate and not supported by legal authority.

For all of the reasons stated, this Court should release Critique Services, LLC from any

further obligation with regard to the matters concerning these eight Debtors.

Respectfully submitted,

/s/ Laurence D. Mass
Laurence D. Mass #30977
Attorney for Critique Services, LLC
230 So. Bemiston Ave., Suite 1200
Clayton, Missouri 63105
Telephone: (314) 862-3333 ext. 20
Facsimile: (314) 862-0605
Email: laurencedmass@att.net

CERTIFICATE OF SERVICE

By signature above I hereby certify that I electronically filed the foregoing with the Clerk of the United States District Court, Eastern District of Missouri by using the CM/ECF system, and that a copy will be served by the CM/ECF system upon those parties indicated by the CM/ECF system. An additional copy has been served by email to Mr. Paul Randolph, U.S. Trustee (Paul.A.Randolph@usdoj.gov) and Ms. Kristen Conwell (Kconwell@conwellfirm.com).

By: /s/ Laurence D. Mass

Attachment 208

Briggs's Response to the July 6 Notice; and Order Denying Briggs's request for the Court to "withdraw" the matter or "transfer" the matter to the District Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:) Evette Nicole Reed, Debtor,	Case No. 14-44818-705
In re: Pauline A. Brady, Debtor,	Case No. 14-44909-705
In re: Lawanda Lanae Long, Debtor,	Case No. 14-45773-705
In re: Marshall Beard, Debtor,	Case No. 14-43751-705
In re: Darrrell Moore, Debtor,	Case No. 14-44434-705
In re: Nina Lynne Logan, Debtor,	Case No. 14-44329-705
In re: Jovon Neosha Stewart, Debtor.	Case No. 14-43912-705
In re: Angelique Renee Shields, Debtor.	Case No. 14-43914-705

BRIEF OF RESPONDENT ROSS H. BRIGGS

Statement of Compliance

There is no basis for imposing sanctions upon Respondent Ross H. Briggs inasmuch as Respondent Briggs has complied with this Court's Order of January 23, 2015. After personally meeting with each of the following Debtors on one or more occasions, and after review of the documents in the custody of Respondent Briggs and the Debtor, the following documents were conveyed to the assigned Chapter 7 Trustee on or before January 30, 2015 and are now contained in the court file. (Because Respondent Briggs has never represented the Debtors in *In re Darrell Moore*, Case No. 14-44434-705 and *In re Nina Lynne Logan*, Case No. 14-44329, no documents were sought or obtained from these parties).

1. ***In re Evette Nicole Reed,*** Case No. 14-44818-705**:** Respondent has produced a February 10, 2014 Retainer Agreement executed by Debtor Reed to retain the legal services of Respondent James Robinson; a receipt, dated February 10, 2014, memorializing the cash payment of $299 to retain the legal services of Respondent Robinson; and, a January 20, 2015 Affidavit of Debtor Evette Reed which authenticated the foregoing documents and which further averred that debtor had no knowledge about where her cash payment was held, deposited or disbursed and further averred that debtor had no knowledge or access to the checks, accounts or ledgers of Respondent Robinson or Critique Services.
2. ***In re Pauline A. Brady,*** Case No. 14-44909-705**:** Respondent has produced a December 3, 2013 Retainer Agreement executed by Debtor Brady to retain the legal services of Respondent Robinson; a receipt , dated December 3, 2013,

memorializing the cash payment of $349 to retain the legal services of Respondent Robinson; a note, signed by Debtor's husband informing Respondent Robinson that the husband did not want to file bankruptcy; and a statement of Debtor Brady which authenticated the foregoing documents and which further averred that debtor had no knowledge about where her cash payment was held, deposited or disbursed and further averred that debtor had no knowledge or access to the checks, accounts or ledgers of Respondent Robinson or Critique Services.

3. ***In re Lawanda Lanae Long***, Case No. 14-45773-705: Respondent has produced a receipt , dated September 9, 2013 memorializing the cash payment of $299 to retain the legal services of Respondent Robinson; and an Affidavit dated January 19, 2015 which authenticated the foregoing document and which further averred that debtor had no knowledge about where her cash payment was held, deposited or disbursed and further averred that debtor had no knowledge or access to the checks, accounts or ledgers of Respondent Robinson or Critique Services.
4. ***In re Marshall Beard***, Case No. 14-43751-705: Respondent has produced a February 25, 2014 Retainer Agreement executed by Debtor Beard to retain the legal services of Respondent James Robinson; a receipt, dated February 25, 2014, memorializing the cash payment of $299 to retain the legal services of Respondent Robinson; and, a January 19, 2015 Affidavit of Debtor Marshall Beard which authenticated the foregoing documents and which further averred that debtor had no knowledge about where her cash payment was held, deposited or disbursed and further averred that debtor had no knowledge or access to the checks, accounts or ledgers of Respondent Robinson or Critique Services.

5. ***In re Angelique Renee Shields***, Case No. 14-43914-705: Respondent has produced a March 5, 2014 Retainer Agreement executed by Debtor Reed to retain the legal services of Respondent James Robinson; a receipt, dated March 5, 2014, memorializing the cash payment of $300 to retain the legal services of Respondent Robinson; and, a January, 2015 Statement of Angelique Shields which authenticated the foregoing documents, which explained that $1 of the $300 payment was allocated for Debtor's filing fee and which further averred that debtor had no knowledge about where her cash payment was held, deposited or disbursed and that debtor had no knowledge or access to the checks, accounts or ledgers of Respondent Robinson or Critique Services.
6. ***In re Jovon Stewart***, Case No. 14-43912-705: Respondent has produced an April 10, 2014 Retainer Agreement executed by Debtor Stewart to retain the legal services of Respondent James Robinson; a receipt, dated April 10, 2015, memorializing the cash payment of $299 to retain the legal services of Respondent Robinson; and, a January 30, 2015 Affidavit of Debtor Stewart which authenticated the foregoing documents and which further averred that debtor had no knowledge about where his cash payment was held, deposited or disbursed and further averred that debtor had no knowledge or access to the checks, accounts or ledgers of Respondent Robinson or Critique Services .

ARGUMENT

I

The July 6, 2015 Order to Show Cause (the "July 2015 Show Cause Order"), states that the Court's January 23, 2015 Order compels "Respondents," thereafter defined collectively as "James Robinson, Respondent Briggs, and Robinson's Affiliated firm, Critique Services, L.L.C.," to turn over documents and information. (July 2015 Show Cause Order, Doc 80, p. 2). The Order states that "Respondents have failed to comply with the Order Compelling Turnover." (Id.). The Respondents are presumably in possession of different documents and they have different duties with respect to the documents. For example, neither Debtors nor Respondent Briggs have custody, control, or possession of Robinson's trust account records and bank records. See Supplemental Affidavit of Respondent Briggs and Affidavits and Statement of Debtors. Respondent Briggs has produced the documents in his possession that are responsive, and he has obtained the documents from his clients that are responsive.

II

As this Court has noted, the November 26, 2014 Show Cause Order, the December 2, 2014 Show Cause Order, and the December 10, 2014 Order (collectively "the 2014 Show Cause Orders") are directed to Respondent Robinson, not to Respondent Briggs.[1] The January 23, 2015 Order ruling on the Trustee's Motion to Compel, is the first Order directed to Respondent Briggs. This Order concerns the production of information and documents.

[1] "As shown by the plain language of the Show Cause Orders, Mr. Briggs and Critique Legal Services are not Respondents in the Show Cause orders." (Order, 1/9/15, DOC 39, p. 9).

The Trustees sought the turnover of information and documents pursuant to 11 U.S.C.§329(b), Rule 2017, 11 U.S.C.§542(e), and 11 U.S.C.§105(a).

11 U.S.C.§542(e) provides that a bankruptcy court may "order an attorney,…, that holds information, including books, documents, records and papers, relating to the debtor's property or financial affairs" to turn over the documents. Respondent Briggs has turned over information in his possession, custody and control sought by the Trustees. He dos not "hold" records of Respondent Robinson's trust account or bank accounts.

11 U.S.C.§329(b) and Rule 2017(a) authorize the Court to determine whether a debtor's attorneys' fees have been excessive and to order the return of any excessive fees. Neither the statute nor the rule provides a procedure for such a matter.[2]

11 U.S.C.§105(a) does not authorize a bankruptcy court to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity. ***In re Kalikow***, 602 F.3d 82, 96-7 (2d Cir. 2010). Section 105(a) confers on the bankruptcy court only a limited equitable power, that being "the power to exercise equity in carrying out the *provisions* of the Bankruptcy Code, rather than to further the purposes of the Code generally, or otherwise to do the right thing." *Id*. at 97. (internal quotation marks omitted). Section 105(a) does not confer upon federal courts the authority to create new substantive rights and remedies for bankruptcy litigants not delineated elsewhere in the Bankruptcy Code.

[2] Presumably no procedure is required because the Court is presumed to be an expert in determining the reasonableness of attorneys' fees in matters before it**.** ***Spirtas Co. v. Insurance Co***, 555 F3d 647,654 (8th Cir. 2009). Once the Court has determined that amount of the fee charged by the attorney, the Court can simply determine whether some, or all, the fee should be returned.

It is against this statutory backdrop that Respondent Briggs' conduct must be considered. Initially, as this Court has noted, excessive attorney fees paid pre-petition are encompassed within the bankruptcy estate. 11 USC Section 329(b)(1)(A). Until abandonment, the Trustee has the exclusive authority to hold and pursue assets of the bankruptcy estate and to seek to avoid any tranfers as authorized by law. See, 11 USC Sections 541-547. Because the Trustees did not abandon their interest in the Debtors' attorney fees until December, 2014, see attached Affidavit of Respondent Ross Briggs, Debtors had no standing to pursue any excessive fee that might have been paid by Debtors to Respondent Robinson. When there existed no standing, Respondent Briggs had no authority to file any adversary proceeding, serve a subpoena, etc…to secure the return of attorney fees; that power rested exclusively with the Trustee.

Secondly, Debtor's counsel may not take any action to pursue the interests of the debtor absent the authority of the debtor. ***In re Ms. Interpret***, 222 BR 409, 415 (Bankr. SD NY 1998). Thus, although this Court raised the issue of the excessive fees paid to Respondent Robinson in various Orders some time ago, none of the Debtors herein directed or authorized Respondent Briggs to seek the return of such fees. While debtors were willing to receive the refund of fees when offered by Respondent Robinson, none of the Debtors directed or authorized Respondent Briggs to take adverse action in regard to Respondent Robinson to secure the return of excessively-paid fees. Absent such authority, Respondent Briggs was not permitted to act.

III

In any event, there no longer exists a case or controversy pursuant to 11 USC Section 329 regarding the payment of excessive fees since Respondent Robinson has refunded ***all*** of the attorney's fees paid by Debtors. The issue that remains—this Court has noted- is whether the retention of the fess prior to refund "violated the rules of professional conduct…" Order of January 23, 2015 at 7.

While always an important matter, issues regarding attorney compliance with the Rules of Professional Conduct implicate non-core issues that extend beyond the statutory and constitutional authority of this Court to issue a final Order.. *In re Sheridan,* 362 F.3d 96 (1st Cir. 2014). Respondent Briggs does not consent to the authority of this Court to issue a final ruling on its Order of July 6, 2015. Pursuant to Article III of the United States Constitution, and the guidance provided by the United States Supreme Court in *Stern v. Marshall*, 564 U.S. __, 131 S. Ct.2594 (2011) and *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. __, 134 S. Ct. 2165 (2014), Respondent Briggs respectfully prays for a *de novo* hearing before the District Court on all matters raised in the July 6, 2015 Order.

Finally, the Court has repeatedly expressed its view the Respondent Briggs only agreed to represent Respondent Robinson's clients *pro bono* after this Court entered orders determining that Respondent Briggs was required to represent Robinson's clients on a *pro bono* basis. This finding is incorrect and without factual support.

Respondent Robinson was suspended on June 10, 2014. Shortly thereafter, Respondent Briggs agreed to represent many of Robinson's Chapter 7 clients and agreed that all representation of such Chapter 7 clients would be without charge. (Briggs

Affidavit, Exhibit 3). The vast majority of this pro bono representation was initiated well before any rulings of this Court on the topic. For example, on June 16, 2014, Respondent Briggs filed a Motion for Protective Order in the case of *In re Galbreath*, Case No. 14-44814-659, disclosing the *pro bono* representation in that case and requesting the guidance of Judge Surratt-States regarding how such representation could proceed consistent with the ruling of this Court suspending Respondent Robinson. This motion was filed only after Respondent Briggs shared the fact of his pro bono representation with the office of the United States Trustee and after seeking guidance from that office. Briggs Affidavit at 3. This motion was filed before the June 25, 2014 ruling of this Court .

Similarly, Respondent Briggs represented many of Respondent Robinson's chapter 7 clients before Judges Schermer and Surratt-States. In each instance, Respondent Briggs represented these Chapter 7 debtors without charge and filed attorney disclosure statements to that effect. Neither Judge Schermer nor Judge Surratt-States filed any orders in any of these cases which "required" Respondent Briggs to enter his appearance on behalf of these debtors for free. Instead, as the record reflects, Respondent Briggs volunteered his services pro bono to assist numerous Chapter 7 debtors who were at risk of failing their cases.

For the foregoing reasons, this Court should withdraw its Order of July 6, 2015 or transfer this matter to the United States District Court for further proceedings.

Respectfully submitted,

/s/Ross Briggs #2709 #31633
Ross Briggs
Attorney At Law
4144 Lindell Ste 202
St Louis MO 63108
314-652-8922 Fax: 314-652-8202

r-briggs@sbcglobal.net

CERTIFICATE OF SERVICE:

By my signature above it is certified that a copy of the above was electronically filed by using the CM/ECF system the Clerk of the Bankruptcy Court for the Eastern District of Missouri and Trustees Seth A. Albin, E. Rebecca Case, David A. Sosne, Robert J. Blackwell, Kristin J. Conwell and Tom K. O'Loughlin on this 13th day of July, 2015.

/s/ Ross H. Briggs

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	
	§	
Evette Nicole Reed,	§	**Case No. 14-44818-705**
	§	
Debtor.	§	
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In re:	§	
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Pauline A. Brady,	§	**Case No. 14-44909-705**
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In re:	§	
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In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
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In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Jovon Neosha Stewart,	§	**Case No. 14-43912-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

ORDER DENYING THE REQUEST TO "WITHDRAW" THE JULY 6, 2015 NOTICE AND DEADLINE ISSUED BY THE COURT, OR TO "TRANSFER" THE MATTER FOR A HEARING BEFORE THE U.S. DISTRICT COURT

On December 12, 2014, the chapter 7 trustees (the "Trustees") in the above-referenced cases (the "Cases") filed a Motion to Compel Turnover [Docket No. 30][1]. They sought turnover of certain documents and information necessary to comply with the Court's directive to them to account for property of the estate in the form of any unearned attorney's fees collected by James C. Robinson, the now-suspended former attorney of the debtors (collectively, the "Debtors") in these Cases. On January 13, 2015, the Court held a hearing on the Motion to Compel Turnover. On January 23, 2015, the Court entered an Order Compelling Turnover [Docket No. 52], compelling Robinson, attorney Ross Briggs (who now serves as counsel for six of the eight Debtors), and Critique Services L.L.C., Robinson's "firm" (collectively, the "Respondents") to turn over the requested documents and information. On February 4, 2015, the Court held a status conference regarding the compliance of the Respondents with the Order Compelling Turnover. At the status conference, it was established that the Respondents failed to comply with the Order Compelling Turnover. On July 6, 2015, the Court issued a Notice and Deadline [Docket No. 80], in which it gave notice to the Respondents that it was considering sanctions and/or other action for their non-compliance and gave the Respondents seven days to comply in full with the Order Compelling Turnover. On July 13, 2015, Briggs filed a Response [Docket No. 85], which included a request "for a de novo hearing before the [U.S.] District Court on all matters raised in the July 6, 2015 Order." In the prayer paragraph, Briggs asks that the Court "withdraw its Order of July 6, 2015 or transfer this matter to the [U.S.] District Court for further proceedings." The Court denied this request for the reasons that follow.

---

[1] The Cases are not jointly administered or substantively consolidated. Unless otherwise indicated, docket entry citations in this Order are to the indicated docket number of the first-captioned Case, *In re Reed*. The Court will not indicate the docket number where said order was entered in each of the remaining seven Cases. Unless otherwise indicated, each order was entered in each Case.

First, this Court does not have the authority to "transfer" a matter for hearing before the U.S. District Court, as Briggs requests. This Court is an arm of the U.S. District Court. The automatic referral is *from* the U.S. District Court *to* this Court; it doesn't run the other way. If Briggs believes that it is proper for the U.S. District Court to withdraw its automatic reference and hear these eight Cases, he is free to seek such withdrawal from the U.S. District Court. Or, he may, of course, appeal a final order when one is entered. But he cannot obtain a backdoor "reverse reference" in the form of a "transfer" back to the U.S. District Court that this Court does not have the authority to make.

Second, Briggs misstates the issues raised in the Notice and Deadline. The issue is not whether Robinson and Briggs have committed "professional misconduct" as attorneys. The issues are whether the Respondents have willfully and without excuse refused to comply with the Order Compelling Turnover and, if so, whether sanctions or other directives imposed by this Court are proper in light of such refusal. While an attorney who commits contempt of court may be subject to discipline for professional misconduct, that does not strip the Court of the authority to sanction for contempt or refusal to comply with Court orders or to enforce its own orders; nor does it make the issue of whether sanctions are proper "non-core."

Third, Briggs challenges the Court's subject matter jurisdiction over the issues raised in the Notice and Deadline. Briggs states that he "does not consent to the authority of this Court to issue a final ruling on" the issues raised in the Notice and Deadline, arguing that the Court does not have subject matter jurisdiction under *Stern v. Marshall*, 134 S.Ct. 2594 (2011). Briggs's reliance on *Stern v. Marshall* is misplaced. *Stern v. Marshall* holds that, as a matter of constitutional law, the bankruptcy court lacks the authority to enter a final judgment on a compulsory state law counterclaim that does not arise under Title 11 or in a case under Title 11, even though such authority is expressed codified at 28 U.S.C § 157(b)(2)(C). The issue of whether sanctions for the refusal to comply with bankruptcy court order is not a state counterclaim. It is a matter than arises under Title 11 and the inherent power of the Court to enforce its own

orders. *Stern v. Marshall* does not strip the Court from its authority to sanction for refusal to comply with its orders, and the Court does not need Briggs's "consent" to exercise its jurisdiction over the issues set forth in the Notice and Deadline.

Accordingly, the Court **ORDERS** that the request, as made to this Court in the Response, for a directive that the U.S. District Court hold a hearing on the issue of whether the Respondents should be sanctioned, be **DENIED**. The Response is otherwise preserved.

DATED: July 14, 2015
St. Louis, Missouri 63102
mtc

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

COPY MAILED TO:

Ross H. Briggs
Post Office Box 58628
St. Louis, MO 63158

James Clifton Robinson
Critique Services
3919 Washington Blvd.
St. Louis, MO 63108

Office of US Trustee
111 S Tenth St, Ste 6.353
St. Louis, MO 63102

Robert J. Blackwell
Blackwell and Associates (trustee)
P.O. Box 310
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E. Rebecca Case
7733 Forsyth Blvd.
Suite 500
Saint Louis, MO 63105

Laurence Mass
230 S Bemiston Ave Suite
1200 Clayton, MO 63105

Attachment 209

Trustee Conwell's Affidavit (with copies of the photographs and receipt attached)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

	)	Judge Charles E. Rendlen III
In re:	)	Chapter 7
EVETTE NICOLE REED,	)	
Debtor.	)	Case No. 14-44818-705
	)	
In re:	)	
PAULINE A. BRADY,	)	
Debtor.	)	Case No. 14-44909-705
	)	
In re:	)	
LAWANDA LANAE LONG,	)	
Debtor.	)	Case No. 14-45773-705
	)	
In re:	)	
MARSHALL LOUIS BEARD,	)	
Debtor.	)	Case No. 14-43751-705
	)	
In re:	)	
DARRELL MOORE and	)	
JOCELYN ANTOINETTE MOORE,	)	
Debtors.	)	Case No. 14-44434-705
	)	
In re:	)	
NINA LYNNE LOGAN,	)	
Debtor.	)	Case No. 14-44329-705
	)	
In re:	)	
JOVON NEOSHA STEWART,	)	
Debtor.	)	Case No. 14-43912-705
	)	
In re:	)	
ANGELIQUE RENEE SHIELDS,	)	
Debtor.	)	Case No. 14-43914-705

AFFIDAVIT OF KRISTIN J. CONWELL, CHAPTER 7 TRUSTEE

I, Kristin J. Conwell, being duly sworn upon my oath, state the following:

1. I am over the age of eighteen and competent to make this Affidavit.
2. I am the Chapter 7 Trustee for Debtors Darrell Moore and Jocelyn Antoinette Moore, Case No. 14-44434-705.
3. I am filing this Affidavit in compliance with this Court's Order entered on July 6, 2015.
4. I have received no turnover since the February 4, 2015 hearing.
5. The Court may deem the following facts relevant to the issue of compliance with the Order Compelling Discovery and the representations made at the January 13 and/or February 4 hearings.
6. On January 13, 2015 at 10:00 a.m., I attended a hearing on the Motion to Compel Turnover in Bankruptcy Courtroom 7 South before the Honorable Charles E. Rendlen, III.
7. Attorney Ross Briggs was present at the aforementioned hearing.
8. After the hearing concluded, I left the courthouse and went directly to Crazy Bowls and Wraps located at 3852 Lindell Boulevard in Saint Louis MO. The restaurant is 3.17 miles from the courthouse; which is approximately five minutes driving distance.
9. While standing in line I heard Mr. Briggs voice. I looked in the direction of the voice; and I saw Mr. Briggs sitting next to an African American woman to my right.
10. I overheard parts of their conversation the details of which follow:
    a. The woman said, "the debtors don't remember [expletive deleted]."
    b. She also said "you know how they are…the UST, Lumaghi."
    c. Attorney Briggs told the woman that "they would have to tell the truth."

d. She responded that "I know that."

e. The woman also stated that "we" haven't been accepting checks since 2007.

11. I left the restaurant and went directly to my office; and I immediately made notes to document the conversation I overheard.

12. I took pictures of Mr. Briggs and the woman; and I kept my receipt which is stamped with the date and time. I am filing an attachment of the pictures and receipt with this affidavit.

13. I emailed the pictures to Trustee Rebecca Case; she identified the woman as Beverly Holmes-Diltz.

Further Affiant sayeth not.

Respectfully submitted,
Conwell Law Firm, LLC

/s/ Kristin J. Conwell
Kristin J. Conwell, Chapter 7 Trustee
MO Bar #58735
Conwell Law Firm LLC
520 North Skinker Boulevard
Saint Louis, MO 63130
Phone: 314-652-1120
Email: kconwell@conwellfirm.com

STATE OF MISSOURI
~~COUNTY~~ City OF St Louis

Subscribed and sworn to before me this 15 day of July, 2015.

Stuart R. Berkowitz
Notary Public, Notary Seal
State of Missouri
St Louis County
Commission # 14433179
My Commission Expires June 29, 2018

Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via first-class, United States mail, postage prepaid and/or electronic notice on July 16, 2015 to:

1. Ross H. Briggs (by electronic notice)
   Post Office Box 58628
   St. Louis, Missouri 63158

2. Ross H. Briggs (by electronic notice)
   Attorney at Law
   4144 Lindell, Suite 202
   St. Louis, Missouri 63108

3. James Clifton Robinson (by first-class mail)
   Attorney at Law
   Critique Services
   3919 Washington Boulevard
   St. Louis, Missouri 63108

4. Laurence D. Mass (by electronic service)
   Attorney for Critique Services, LLC, and
   Beverly Holmes Diltz
   230 South Bemiston Avenue, Suite 1200
   Clayton, Missouri 63105

5. Robert J. Blackwell (by first-class mail)
   Blackwell and Associates (Trustee)
   P.O. Box 310
   O'Fallon, Missouri 63366-0310

6. David A. Sosne (by electronic service)
   Summers Compton Wells LLC
   8909 Ladue Road
   St. Louis, Missouri 63124

7. Tom K. O'Loughlin (by electronic service)
   O'Loughlin, O'Loughlin et al.
   1736 N. Kingshighway
   Cape Girardeau, Missouri 63701

8. Seth A. Albin (by electronic service)
   Albin Law
   7710 Carondelet Avenue, Suite 405
   St. Louis, Missouri 63105

9. Office of the United States Trustee (by electronic service)
Thomas F. Eagleton Courthouse
111 South Tenth Street, Suite 6353
St. Louis, Missouri 63102

10. E. Rebecca Case
7733 Forsyth Blvd. Suite 500
Saint Louis, MO 63105

/s/ Kristin J. Conwell
Kristin J. Conwell

3852 Lindell
St. Louis, MO 63108
(314) 533-9727
www.crazybowlsandwraps.com

127 Nick

Check: 1092 Guests: 1
01/13/2015 12:18PM

1	Buffalo Wrapper LIGHT Brown Breast Wheat	7.75
1	Table # kristen	0.00
	Cash	8.54
	Sub-Total	7.75
	Tax	0.79
	Payment	8.54
	Change Due	**$0.00**

---------- Check Closed ----------
01/13/2015 12:19:08PM

Attachment 210

Trustee Case's Affidavit

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: EVETTE NICOLE REED, Debtor.	Judge Charles E. Rendlen III Chapter 7 Case No. 14-44818-705
In re: PAULINE A. BRADY, Debtor.	Case No. 14-44909-705
In re: LAWANDA LANAE LONG, Debtor.	Case No. 14-45773-705
In re: MARSHALL LOUIS BEARD, Debtor.	Case No. 14-43751-705
In re: DARRELL MOORE and JOCELYN ANTOINETTE MOORE, Debtors.	Case No. 14-44434-705
In re: NINA LYNNE LOGAN, Debtor.	Case No. 14-44329-705
In re: JOVON NEOSHA STEWART, Debtor.	Case No. 14-43912-705
In re: ANGELIQUE RENEE SHIELDS, Debtor.	Case No. 14-43914-705

AFFIDAVIT OF CHAPTER 7 TRUSTEE E. REBECCA CASE

I, E. Rebecca Case being duly sworn upon oath, state the following:

1. I am over the age of eighteen and competent to make this Affidavit.

2. I am the Chapter 7 Trustee for Debtor Pauline A. Brady, Case No. 14-44909-705.

3. I am filing this Affidavit in compliance with this Court's Order entered on July 6, 2015.

4. I have received no turnover since the February 4, 2015 hearing.

5. I attended the hearing on January 13, 2015 which started at 10:00 a.m. before the Honorable Charles E. Rendlen, III.

6. Numerous representations were made on the record during the lengthy hearing in regard to Critique Services.

7. Very shortly after the hearing I received a photograph from Chapter 7 Trustee Kristin Conwell which appeared to contradict the representations made during the hearing.

8. I identified the individuals in the photograph as attorney Ross Briggs and Beverly Holmes a/k/a Beverly Holmes-Dilz.

Further Affiant sayeth not.

Respectfully submitted,
STONE, LEYTON & GERSHMAN
A PROFESSIONAL CORPORATION

/s/ E. Rebecca Case

E. Rebecca Case, EDMO #38010MO
MO Bar #38010
Stone, Leyton & Gershman
7733 Forsyth Blvd., Suite 500
St. Louis, Missouri 63105
(314) 721-7011
(314) 721-8660 (facsimile)
chapter7trustee@stoneleyton.com

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

Subscribed and sworn to before me this 14th day of July, 2015.

KAREN M. TRINKLE
My Commission Expires
October 10, 2017
St. Louis County
Commission #13877742

Karen M. Trinkle
Notary Public
My commission expires: 10-10-17

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via first-class, United States mail, postage prepaid and/or electronic notice on July 16, 2015 to:

1. Ross H. Briggs (by electronic notice)
Post Office Box 58628
St. Louis, Missouri 63158

2. Ross H. Briggs (by electronic notice)
Attorney at Law
4144 Lindell, Suite 202
St. Louis, Missouri 63108

3. James Clifton Robinson (by first-class mail)
Attorney at Law
Critique Services
3919 Washington Boulevard
St. Louis, Missouri 63108

4. Critique Legal Services (by first-class mail)
Attn: Managing Agent
Attn: Ross H. Briggs
Attn: James Clifton Robinson
3919 Washington Boulevard
St. Louis, Missouri 63108

5. Laurence D. Mass (by electronic service) Attorney for Critique Services, LLC
230 South Bemiston Avenue, Suite 1200
Clayton, Missouri 63105

6. Robert J. Blackwell (by first-class mail)
Blackwell and Associates (Trustee)
P.O. Box 310
O'Fallon, Missouri 63366-0310

7. David A. Sosne (by electronic service)
Summers Compton Wells LLC
8909 Ladue Road
St. Louis, Missouri 63124

8. Tom K. O'Loughlin (by electronic service)
O'Loughlin, O'Loughlin et al.
1736 N. Kingshighway
Cape Girardeau, Missouri 63701

9. Kristin J. Conwell (by electronic service)
Conwell Law Firm LLC
PO Box 56550
St. Louis, Missouri 63156

10. Seth A. Albin (by electronic service)
Albin Law
7710 Carondelet Avenue, Suite 405
St. Louis, Missouri 63105

11. Office of the United States Trustee (by electronic service)
Thomas F. Eagleton Courthouse
111 South Tenth Street, Suite 6353
St. Louis, Missouri 63102

12. Pauline A. Brady (by first-class mail) Debtor
1732 Delrosa Way
St. Louis, Missouri 63138

13. Evette Nicole Reed (by first-class mail) Debtor
2816 Burd Avenue
St. Louis, Missouri 63120

/s/ E. Rebecca Case
E. Rebecca Case

Attachment 211

July 22, 2015 Notice to Briggs Regarding Sanctions

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	
	§	
Evette Nicole Reed,	§	**Case No. 14-44818-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Pauline A. Brady,	§	**Case No. 14-44909-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Lawanda Lanae Long,	§	**Case No. 14-45773-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Jovon Neosha Stewart,	§	**Case No. 14-43912-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

NOTICE REGARDING THE COURT'S INTENT TO IMPOSE SANCTIONS, ISSUE DIRECTIVES, AND/OR MAKE DISCIPLINARY REFERRALS RELATED TO BRIGGS'S REPRESENTATIONS REGARDING HIS RELATIONSHIP WITH CRITIQUE SERVICES L.L.C. AND BEVERLY HOLMES DILTZ, AND DEADLINE TO RESPOND AND SHOW CAUSE

On December 12, 2014, the chapter 7 trustees (the "Trustees") in the above-referenced cases (the "Cases") filed a Motion to Compel Turnover [Docket No. 30][1]. They sought turnover of documents and information necessary for them to comply with the directive [Docket Nos. 19, 21 & 27] that they account to the Court for property of the estate in the form of any unearned attorney's fees collected by James C. Robinson, the now-suspended former attorney of the debtors in the Cases (collectively, the "Debtors"). Turnover was sought from Robinson, "Critique Services," and Ross Briggs, the attorney who took over representation of six of the eight Debtors shortly after Robinson's suspension.

On January 13, 2015, the Court held a hearing on the Motion to Compel Turnover, at which Robinson and Briggs appeared, each representing himself. At that hearing, it was established that compelling turnover was proper. On January 23, 2015, the Court entered an Order Compelling Turnover [Docket No. 52], directing Briggs, Robinson and Critique Services L.L.C. (Robinson's "firm") (collectively, the "Respondents") to turn over the documents and information. On February 4, 2015, the Court held a status conference regarding the compliance of the Respondents with the Order Compelling Turnover, at which Robinson and Briggs, each representing himself, and Critique Services L.L.C., represented through counsel, appeared. It was established that the Respondents failed to comply with the Order Compelling Turnover.

During these two proceedings, Briggs insisted to the Court that he is not affiliated with Critique Services L.L.C. and is not in the "inner sanctum" of power

[1] The Cases are not jointly administered or substantively consolidated. Unless otherwise indicated, docket entry citations in this Order are to the indicated docket number of the first-captioned Case, *In re Reed*. The Court will not indicate the docket number where said order was entered in each of the remaining seven Cases. Unless otherwise indicated, each order was entered in each Case.

at Critique Services L.L.C. When asked to name the non-attorney staff persons working at the office of the Critique Services business, Briggs did not deny knowing such people; he just insisted that he has "no formal relationship" with the business. That is, he tried to avoid responding by suggesting that he could not answer because he is not currently in a "formal relationship" with Critique Services L.L.C. However, the question was not posed to Briggs as an agent of the Critique Services L.L.C. or in some capacity created by a "formal relationship"; the question was asked to him in his personal capacity and as an officer of the court. (Later, it came out that, not only did Briggs know the first names of two of the non-attorney staff persons—Charlotte and Bay—but he could describe them in physical detail.) Briggs also claimed that he could not name the owner of Critique Services L.L.C.

Briggs's Sergeant Schultz[2] performance of ignorance was uncomical, unconvincing, and highly suspicious, given that:

- Briggs's formal and informal affiliation with Beverly Holmes Diltz, the organizer and owner of Critique Services L.L.C.,[3] and her various "Critique"-named businesses, goes back more than a decade.
- Briggs is a former employee of one of the "Critique"-named businesses owned by Diltz,[4] and previously had "Critique Services" registered with the Missouri Secretary of State as his d/b/a.
- Briggs, Diltz and her business were co-defendants in a suit brought by the United States Trustee for unlawful business practices.
- When Briggs took over representation of six of the Debtors from Robinson (a Critique Services L.L.C.-affiliated attorney), Briggs attempted to assist Robinson in end-running his suspension. Briggs filed Notices of Appearance and Bankruptcy Rule 2016(b) Disclosures of Attorney

[2] "I know *nothing*!" – Master Sergeant Schultz, "Hogan's Heroes."

[3] Critique Services L.L.C. has represented in these Cases that its sole owner is Beverly Holmes Diltz.

[4] *Briggs v. LaBarge (In re Phillips)*, 433 F.3d 1068, 1070 (8th Cir. 2006).

Compensation, in which he represented that Robinson would serve as Briggs's "co-counsel" in "joint representation" of the clients, and that they would fee-share in the attorney's fees that had been paid to Robinson. Of course, Robinson was suspended, as Briggs well-knew, and therefore could not practice in any capacity, including as Briggs's co-counsel, in any matter before the Court. (The Court ordered Briggs's documents be stricken and denied, deemed Briggs to have agreed to represent the clients for free, and directed Briggs to file non-false Notices of Appearance and Bankruptcy Rule 2016(b) Statements,[5] which Briggs later did.)

- Currently, Briggs's office street address, as listed with the U.S. District Court, is 4144 Lindell, St. Louis, Missouri—the same street address listed by Critique Services L.L.C. in its Articles of Organization filed with the Missouri Secretary of State.
- Currently, Briggs appears on occasion for clients of Critique Services L.L.C.-affiliated attorneys at § 341 meetings.
- As recently as May 11, 2015, Briggs filed documents with the Court in which he represents that he does business as "Critique Services."

On July 6, 2015, the Court issued a Notice and Deadline [Docket No. 80], in which it gave notice to the Respondents that it was considering sanctions and/or other directives or actions for their non-compliance with the Order Compelling Turnover, and gave the Respondents seven days to comply with the Order Compelling Turnover or to file responses. It also directed that each of the Trustees file an affidavit attesting to any turnover that had been received since February 4, 2015, and to any additional facts that bear on the issue of compliance with the Order Compelling Turnover or the representations made to the Court on January 13, 2015 and February 4, 2015.

On July 13, 2015, each of the Respondents filed a response to the Notice and Deadline [Docket Nos. 82, 83 & 85]. On July 16 and 17, 2015, each of the

[5] *In re Tamika Ecole Henry, et al.* (Lead Case No. 14-44922) [Docket No. 8].

Trustees, except one, filed an affidavit. Each responding Trustee indicated that no further turnover had been made.

In addition, in one of the affidavits, the attesting Trustee attached photographs and a receipt [Docket No. 96], and included the following attestation: Shortly after the January 13 hearing ended, the Trustee entered a restaurant and came upon Briggs and a woman sitting together, conversing. (Being a comparatively new chapter 7 trustee, this Trustee apparently did not recognize the woman with Briggs). The Trustee heard remarks (at least one of which was vulgar) that indicated that Briggs and his companion were discussing the hearing that had just ended. The Trustee took photographs of Briggs and his companion and made notes of what she witnessed. She also retained her time-stamped meal receipt. She later provided the photographs to another of the Trustees, who identified the woman with Briggs as Diltz. The other Trustee filed an affidavit [Docket No. 95] attesting to her identification of Diltz.

As such, it appears that, after Briggs repeatedly insisted to the Court that he is outside the power circle at Critique Services L.L.C. and is far removed from the goings-on of the business—so much so that he cannot answer basic questions or seek documents and information on behalf of his clients—he rushed off from the January 13 hearing to a tête à tête with none other than Diltz.

Briggs's representations on January 13 and February 4 struck the Court, at the time they were made, as evasive and disingenuous. Briggs appeared focused on creating the impression of great distance between himself and Critique Services L.L.C. and Diltz, rather than on assisting his clients by obtaining the documents and information so that the matters could move forward and his clients' Cases could be closed. Now, by way of his fortuitous choice of a public dining establishment, Briggs appears to have self-proved the dishonesty of which he was suspected.

Briggs's insistence he is not in the "inner sanctum" of power at Critique Services L.L.C. appears to be a false narrative, as Briggs apparently reported to the owner of Critique Services L.L.C. within an hour of a hearing involving the business's interests. Briggs's claim that he cannot identify who owns Critique

Services L.LC. appears to be equally lacking in credibility, as he lunched with the owner of Critique Services L.L.C. immediately after a hearing affecting her business. Briggs's entire presentation to the Court regarding his relationship with Critique Services L.L.C. and Diltz seems to be bastardization of *Ipse se nihil scire id unum sciat* [6]: "I know *that I want you to believe* that I know nothing."

The Court hereby gives **NOTICE** to Briggs that it is considering imposing sanctions, issuing directives, and/or making referrals to the proper authorities to address his apparently false or misleading representations to the Court regarding his relationship with Critique Services L.L.C. and Diltz. Briggs may file a response to this Notice by July 31, 2015. If Briggs responds by agreeing to certain terms, as set forth herein, the Court will assume that Briggs realizes the gravity of his actions, and in recognition of such realization, will not impose additional sanctions against him, issue additional directives related to him, or make a referral to the Missouri Supreme Court's Office of Chief Disciplinary Counsel (the "OCDC") or the U.S. District Court for possible disciplinary actions or proceedings.

Briggs must agree to:

(i) a six-month voluntary suspension from the privilege of practicing before this Court in any capacity, to begin on August 12, 2015. This suspension would be construed in the broadest possible terms, and would include, but not be limited to, suspension from: (a) serving (whether for compensation or without charge) as counsel to, co-counsel to, or in "joint representation of" any other person (whether natural or artificial) in any matter (regardless of case any chapter, or whether brought in a main case or in an adversary proceeding) filed in or anticipated to be filed in this Court; (b) advertising or representing to anyone that he can provide services in a case filed in or anticipated to be filed in this Court, (c) preparing any document to be filed in this Court or

[6] The Socratic Paradox, commonly translated as, "I know that I know nothing." Briggs's version presents such no profundity, but only the intent to deceive.

ghost-writing any document anticipated to be filed in this Court; and (d) in any other way practicing before this Court through "a backdoor" or "behind the scenes";[7]

(ii) attend ten hours of continuing legal education in ethics and provide the Court with proof of such attendance;

(iii) never again conduct any business with Diltz, with any current or former employee or independent contractor of Diltz, or with any business that Diltz owns, is employed by, controls, or is affiliated with (whether through employment, independent contracting, referrals, fee-sharing, or in any other form, whether formal or informal), related to any matter that is filed or is anticipated to be filed with this Court;

(iv) never again appear at a § 341 meeting on behalf of any client of any business of Diltz or of any attorney associated with, employed by, or in any way affiliated with (whether formally or informally) Diltz or any business of Diltz; and

(v) never again accept referrals from, serve as "co-counsel" with, provide joint representation with, or in any way do business with Robinson, related to any matter filed in or anticipated to be filed in this Court.

Briggs is not obligated to agree to these terms. He is free to decline to agree to them. He is free to decline to respond to this Notice. He is free to respond in whatever way he believes best advocates for his interests. If he believes that sanctions, directives, or referrals are not proper, he should use his response as an opportunity to explain why there is no cause for such an order. The Court will carefully consider whatever response he may file. However, if the Court determines that sanctions, directives and/or referrals are proper, the Court will not be limited to the terms outlined above. Any sanctions, directives and/or

[7] This suspension would not prohibit Briggs from representing himself in any proceeding or matter before this Court.

referrals may include the above terms, additional terms, or different terms.

DATED: July 22, 2015
St. Louis, Missouri 63102
mtc

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

COPY MAILED TO:

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Attachment 212

Briggs's Response to the July 22, 2015 Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re Evette Nicole Reed, Debtor,	Case No. 14-44818-705
In re: Pauline A. Brady, Debtor,	Case No. 14-44909-705
In re: Lawanda Lanae Long, Debtor,	Case No. 14-45773-705
In re: Marshall Beard, Debtor,	Case No. 14-43751-705
In re: Darrell Moore, Debtor,	Case No. 14-44434-705
In re: Nina Lynne Logan, Debtor,	Case No. 14-44329-705
In re: Jovon Neosha Stewart, Debtor.	Case No. 14-43912-705
In re: Angelique Renee Shields, Debtor.	Case No. 14-43914-705

RESPONSE OF RESPONDENT ROSS H. BRIGGS

Respondent submits that there is no basis for imposing any sanction upon Respondent.

I.

The "Owner of Critique"

As Respondent understands this Court's Order, one of the bases for the proposed six-month suspension is "Briggs's claim that he cannot identify who owns Critique Services, LLC…." (July 22, 2015 Order, DOC 102, pp. 5-6). [1] Respondent Briggs never made such a "claim" or representation.

The following exchange occurred between the Court and Respondent Briggs:

The Court: So who does have the information and access of Critique?

Respondent: Probably who owns and controls it. Not me.

The Court: Who is that to your knowledge on the record?

Respondent: Missouri Secretary of State has a document –

The Court: No, no, no. Who –

Respondent: I know –

The Court: Who is it –

Respondent: Mr. Robinson may well be. It may – it may be Beverly Dilz [sic]. It may --- but –

The Court: What do you mean maybe?

Respondent: That's what the Missouri Secretary of State says. I assume it's correct.

[1]For convenience, citations are made to the record of *In re Evette Nicole Reed*, Case No. 14-44818, unless otherwise indicated.

(Exhibit A, Partial Transcript, January 13, 2015, pp. 44-5).

To the extent that the Court's question regarding "Critique" was directed at Critique Services, LLC, Respondent accurately represented the owner as Beverly Diltz; to the extent that the Court's question pertained to the attorney doing business as "Critique Services," Respondent accurately identified the owner as Respondent James Robinson.

Public filings demonstrate the accuracy of Respondent Briggs' statement. More specifically, the Missouri Secretary of State reflects the incorporation of Critique Services, LLC, on August 9, 2002. (Exhibit B). The organizer and registered agent was "Beverly Holmes." On February 4, 2015, Larry Mass, counsel for Critique Services, LLC, also represented to this Court that Beverly Holmes-Diltz is the owner of Critique Services, LLC. (Exhibit C, Partial Transcript, February 4, 2015, p. 33). The agreement between Critique Services, LLC and Respondent James Robinson, which was apparently provided to Trustee Sosne on January 29, 2015, identifies Beverly Holmes Diltz as the owner of Critique Services, LLC. (Exhibit D).[2] And finally, the Settlement Agreement and Consent Order filed with Judge Kathy Surratt-States in *In re: David Hardge*, Case No. 05-43244, further identifies Beverly Holmes Diltz as the "sole member" of Critique Services, LLC. (Exhibit E). In contrast, Respondent Robinson registered the fictitious name of "Critique Services" on May 10, 2005, (Exhibit F), and filed each of the petitions before the Court as "James C. Robinson, d/b/a Critique Services."

[2] Critique Services, LLC's Response to the Turnover Directive Dated January 23, 2015, states that "Critique Services, LLC has only one contract that reflects or identifies an arrangement between it and Mr. Robinson from the date of the first payment of a fee by any of the above-named debtors to the present. It has no such contract with Mr. Briggs. … Critique Services, LLC has sent a copy of the one contract that it has to Trustee Sosne." (Doc. 57, p. 2, ¶5). Trustee Sosne acknowledged that he had a copy of this agreement. (Exhibit C, Transcript, February 4, 2015, p. 3). This agreement was filed with the Court by Critique Services, LLC, on July 13, 2015. (DOC. 82).

The relationship between Critique Services, LLC and Respondent James Robinson d/b/a Critique Services as it relates to these Chapter 7 debtors is set forth in greater detail in Exhibit D. Most important, however, the document reveals that Respondent Briggs was not a party to the agreement and had no formal relationship with either Critique Services, LLC or Attorney James Robinson in regard to these cases.

II.

Respondent's Compliance with the Court's Bench Directives of January 13, 2015

No one appeared on behalf of Respondent Critique Services, LLC on January 13, 2015. (Mr. Mass entered his appearance on January 29, 2015). At this hearing, Trustee Sosne, the spokesperson for the Chapter 7 Trustees, expressed his view, that Respondent Briggs, as Debtor's counsel, had the responsibility and obligation to obtain the information sought, including making inquiry with the co-respondents. (Exhibit A, Partial Transcript, 1/13/15, at p. 41). He stated, "[a]nd I would ask that each of them do it … in a collaborative fashion, and identify … what they know and what they don't know." (Id. at p. 42).

Later, the following colloquy occurred between Trustee Sosne and the Court:

> Trustee Sosne: What did you know and when did you know it? Who said that? But the issue is very, is very simple. I think we're overcomplicating it. He can make his reasonable due diligence. He can make his inquiry, and let him provide us with those answers. The same is true of Mr. Robinson.
>
> He can – he can—if he has that information, he should know that information since he was intimately involved, then he should also provide the information. That's what we're requesting.
>
> The Court: And he should go and get it if he doesn't know it. Is that what you saying?
>
> Trustee Sosne: Excuse me?

The Court: He should go get it if he doesn't have it. Is that what you saying?

Trustee Sosne: Unless for some reason somebody stonewalls him. [3]

(Exhibit A, Partial Transcript, 1/13/15, p. 48). At the conclusion of the January 13, 2015 hearing, the Court advised that it would issue an order in two days and require compliance with the Court's directives by noon on the following Tuesday. (Id. at 84).

Before the conclusion of the hearing of January 13, 2015, at this Court's insistence, Respondent informed and promised this Court that he would make additional inquiry with Critique Services, LLC regarding any outstanding documents. (Id. at 51). The record reflects:

> Respondent Briggs: I will ask for documents. I will ask for documents just as the Court has. If I receive them, I will produce them to the trustee. If I don't receive them, I will report to the trustee and the Court as to what response I have. … I have no special access to ledgers, client accounts. I don't have any access to it. If Critique wants to give it to me, I'm happy to produce it to the Court and to the trustee. I will make the same request Your Honor has. I will report back to as to what the nature of that response is.

(Id. at 51-2).

Accordingly, immediately upon the conclusion of the hearing of January 13, Respondent Briggs contacted Beverly Diltz, the owner of Critique Services, LLC – and the very person earlier identified by Respondent Briggs to the Court – to schedule a meeting to discuss the imminent court order and the short time period for production of the outstanding documents.[4] Consistent with the urgency conveyed by the Court at the

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[3] Indeed, in its subsequent order of January 23, 2015, the Court also stated that Respondent Briggs "must make a good faith effort to obtain those requested documents and information," and "[t]o do so, he may have to inquire of Critique Services, LLC." (Order, 1/23/15, DOC 52, p. 21).

[4] Respondent Briggs strongly objects to any inference that this meeting in a public place was clandestine or arranged for an improper purpose. Rather, the meeting was arranged because this Court instructed Respondent Briggs to carry out such an inquiry. It would

hearing, Respondent Briggs met with Ms. Diltz within hours of the conclusion of the hearing. At this meeting, Respondent Briggs encouraged Ms. Diltz, as owner of Critique Services, LLC, to produce any responsive documents that it might have in its possession.

Indeed it appears that his meeting with Ms. Diltz facilitated the production of information and documents. On January 29, 2015, Larry Mass appeared for Critique Services, LLC, and simultaneously provided the information and documents in his client's possession requested by the Trustees.

Respondent Briggs made other efforts to comply with the Court's oral directives. On January 24, 2015, (prior to the time that Mr. Mass entered his appearance for Critique Services, LLC), Respondent wrote to Critique Services, LLC, and Respondent James Robinson requesting that they produce documents requested by the Trustees by January 30, 2015. (DOC. 54). Once Critique Services, LLC was represented by counsel before the Court on January 29, 2015, any purported obligation that Respondent Briggs, as debtor's counsel, had to obtain information and documents from Critique Services, LLC was subordinate to Mr. Mass' obligation (which he has apparently fulfilled), to provide information and documents on behalf of his client, Critique Services, LLC. Moreover, as the Court is aware, Respondent Briggs contacted each of his clients and obtained additional information regarding the payment of fees. (See, Brief of Respondent Ross H. Briggs directed to the July 6, 2015 Order to Show Cause, DOC. 85, pp. 2-4). Respondent was encouraged to contact his clients for this information by Trustee Sosne and the Court. (Exh. A, Partial Transcript, 1/13/15, pp. 47-8).

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be most inequitable to sanction an attorney for acting in compliance with, and in reliance upon, the specific instructions of this Court.

III

Summary and Conclusion

The record does not support the proposed findings of the show cause order of this Court. Other than as recruited *pro bono* counsel, there was no evidence of a prior affiliation or relationship between Respondent Briggs and James Robinson and/or Critique Services, LLC as it relates to Debtors, Evette Nicole Reed, Pauline A. Brady, Lawanda Lanae Long, Marshall Beard, Jovon Neosha Stewart, or Angelique Renee Shields. And, as demonstrated, Respondent Briggs did not claim that he did not know the owner of Critique Services, LLC; Respondent instead informed the Court of the owner of said entity. Respondent has been entirely truthful to this Court.

Finally, the proposed suspension of Respondent implicates non-core matters that exceed the statutory and constitutional power of this Court to enter a final order. *In re Sheridan*, 362 F.3d 96 (1st Cir. 2014). Respondent Briggs does not consent to the authority of this Court to enter a final order on the Orders of July 6, 2015 and July 22, 2015. Pursuant to Article III of the United States Constitution, and the guidance provided by the United States Supreme Court in *Stern v. Marshall*, 564 U.S. __, 131 S. Ct. 2594 (2011) and *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. __, 134 S.Ct. 2165 (2014), Respondent requests a *de novo* hearing before the District Court on all matters raised by the Court's Orders of July 6, 2015 and July 22, 2015. Finally, Respondent requests that this Court refer the matter to the District Court for proceedings under Local Rule 83 of the United States District Court for the Eastern District of Missouri for consideration of discipline, if any, to be administered upon Respondent Briggs.

Respectfully submitted,

/s/Ross Briggs #2709 #31633
Ross Briggs
Attorney At Law
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St Louis MO 63108
314-652-8922 Fax: 314-652-8202
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CERTIFICATE OF SERVICE:

By my signature above it is certified that a copy of the above was electronically filed by using the CM/ECF system the Clerk of the Bankruptcy Court for the Eastern District of Missouri and Trustees Seth A. Albin, E. Rebecca Case, David A. Sosne, Robert J. Blackwell, Kristin J. Conwell and Tom K. O'Loughlin on this 31st day of July, 2015.

/s/ Ross H. Briggs

Attachment 213

Order Denying Briggs's Request for a "Transfer" to the District Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	
	§	
Evette Nicole Reed,	§	**Case No. 14-44818-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Pauline A. Brady,	§	**Case No. 14-44909-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Lawanda Lanae Long,	§	**Case No. 14-45773-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Jovon Neosha Stewart,	§	**Case No. 14-43912-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

ORDER DENYING BRIGGS'S REQUEST FOR TRANSFER OF THE SANCTIONS MATTERS TO THE U.S. DISTRICT COURT

In this Order, the Court disposes of the request of attorney Ross H. Briggs that the below-described sanctions matters pending against him be transferred to the U.S. District Court for the Eastern District of Missouri (the "U.S. District Court"). To provide context to the request and disposition, the Court will give background as necessary.

On July 31, 2015, Briggs, the respondent to the Court's July 22, 2015 Notice of Intent to Impose Sanctions (the "July 22 Notice") [Docket No. 102],[1] filed a response to said notice (the "Response to the July 22 Notice") [Docket No. 104], requesting that the Court transfer the matter to the U.S. District Court for a *de novo* hearing and determination.[2] For the reasons set forth below, and in addition to reasons set forth in previous orders of the Court, the Court orders that Briggs's request be denied. The remainder of the Response to the July 22 Notice will be considered in connection with the determination, to be made by separate order, of whether the imposition of sanctions against Briggs is warranted.

I. FACTS

A. Background

The July 22 Notice was issued in connection with Briggs's misleading representations to the Court regarding his relationship with a non-attorney named Beverly Holmes Diltz and her business, Critique Services L.L.C. Therefore, a

[1] The Cases are not jointly administered or substantively consolidated. Unless otherwise indicated, docket entry citations in this Order are to the indicated docket number of the first-captioned Case, *In re Reed*. The Court will not indicate the docket number where said order was entered in each of the remaining seven Cases. Unless otherwise indicated, each order was entered in each Case.

[2] Briggs also requested that the Court transfer to the U.S. District Court the separate sanctions matter pending against him, raised in a Notice issued on July 6, 2015 (the "July 6 Notice") [Docket No. 80]. This is now the second time that Briggs has requested a transfer of the sanctions matter raised in the July 6 Notice. The Court denied the first request on July 14, 2015 [Docket No. 89].

short background of Diltz and her businesses, and her relationship with Briggs and other attorneys, is appropriate.[3]

Overview of the Business. Over the past twenty years, Diltz has owned, organized and operated various businesses in this District bearing the "Critique" name. These businesses have provided bankruptcy-related services. The current permutation of Diltz's business is Critique Services L.L.C. According to its Articles of Organization filed with the Missouri Secretary of State, Critique Services L.L.C. operates for the business purpose of providing bankruptcy petition preparer services—although Diltz and her business are enjoined by federal court order from providing bankruptcy petition preparer services. As such, the (legitimate) business of Critique Services L.L.C. is murky, at best. Critique Services L.L.C. cannot (legitimately) be a law firm; Diltz is not a lawyer and has been enjoined from the unauthorized practice of law. Critique Services L.L.C. cannot (legitimately) be a bankruptcy petition preparer; Diltz has been enjoined from serving as a bankruptcy petition preparer. What is certain, however, is that, at any given time, one or more attorneys representing themselves to be affiliated with "Critique Services" do an all-cash business at the office of "Critique Services" on Washington Boulevard in St. Louis—and that a great deal of cash flows into that office. In 2013 alone, James C. Robinson, a "Critique Services" attorney (who is now suspended), represented that he was paid over three-quarters of a million dollars in attorney's fees—and that figure is just what was disclosed to the Court on Disclosure of Attorney Compensation statements.

In addition, it is also true that Diltz, her businesses, and its affiliated lawyers and non-lawyers have a long history in this District and across the river, in the Southern District of Illinois, of unprofessional business practices and the unauthorized practice of law. By way of example:

[3] Lengthier factual recitations have been set forth in other orders. In addition, the Court anticipates that there will be considerably more detailed factual recountings in coming orders to be entered in these Cases. However, for purposes here, this abbreviated factual recitation should be sufficient.

- Since 1999, Diltz and her businesses and affiliated persons have been repeatedly sued by the U.S. Trustee and have been repeatedly enjoined by the Court in this District from improper and unlawful activities.
- In 2003, Diltz and her businesses were permanently barred by the U.S. Bankruptcy Court for the Southern District of Illinois from conducting any bankruptcy-related business in that district.
- Over the years, at least one attorney—Leon Sutton—was permanently disbarred for his activities while associated with Diltz and her businesses, and two other attorneys—Briggs and Robinson—have been suspended for their activities while associated with Diltz and her businesses. In addition, attorney Elbert A. Walton was suspended for his activities while representing Critique Services L.L.C.
- In 2014, in the matter of *In re Latoya Steward* (Case No. 11-46399), it was established that Robinson and Critique Services L.L.C. participated in the unauthorized practice of law, failed to render legal services, encouraged the debtor to make false statements on her pleadings, knowingly filed false pleadings, and ran the office in a way that made communication by the client almost impossible.
- Critique Services L.L.C., Diltz and Robinson currently are the subject of yet-another action brought by the U.S. Trustee—this time, in the matters of *In re Williams, et al.* (Lead Case No. 14-44204), which are pending before another Judge of this Court. The *In re Williams, et al.* matters involved yet-more allegations of unlawful business practices and the unauthorized practice of law, as well as violations of a previous injunction.

Briggs and the Business. Briggs previously was employed as a "full-time staff attorney"[4] for one of Diltz's earlier versions of a "Critique"-named business, and had registered to himself the fictitious name "Critique Services." He left that formal employment relationship in December 2002. Shortly thereafter, in 2003, he was suspended from the practice of law for six months for his professional malfeasance while associated with the business. Since leaving

[4] *Briggs v. LaBarge (In re Phillips)*, 433 F.3d 1068, 1070 (8th Cir. 2006).

that formal employment, Briggs nevertheless has maintained ties with Diltz and her businesses. Today, Briggs has at least an informal, but significant, affiliation with Diltz, her business, and its contracted attorneys.

- With some regularity, Briggs appears at § 341 meetings for attorneys under contract with Critique Services L.L.C., although he does not file Disclosure of Attorney Compensation statements, as required when representing a debtor in a bankruptcy case.
- Briggs offices at the same address as Critique Services L.L.C.'s registered place of business with the Missouri Secretary of State.
- As recently as May 2015, Briggs filed documents in this Court in which he represented that he operates as "d/b/a Critique Services."
- Briggs was the go-to guy following Robinson's suspension, picking up the representation of many of Robinson's clients.
- Shortly after Robinson's suspension was ordered, Briggs attempted to help Robinson violate the terms of his suspension by filing false and misleading Disclosure of Attorney Compensation statements and notices of appearance in cases of Robinson's clients. In those notices and statements, Briggs stated that he would serve as "co-counsel" with Robinson and provide joint representation, and that he would fee-share with Robinson. However, an attorney in good standing cannot serve as co-counsel with an attorney who is suspended, and Briggs could not fee-share in Robinson's fees, since Robinson was incapable of earning them due to his suspension. That is, Briggs tried to use his notices of appearance and statements to help Robinson end-run his suspension and divert Robinson's unearned fees to himself. Briggs even tried to obtain "cover" for this scheme from another Judge presiding on this Court. In the matter of *In re Dorothy Galbreath* (Case No. 14-44814), Briggs filed a "Motion for Protective Order," seeking approval of his agreement to be "co-counsel" with the suspended Robinson. In that motion, Briggs mischaracterized the terms of Robinson's suspension by understating the scope of the suspension, stating the suspension meant that Robinson was

prohibited "from filing a bankruptcy or appearing in Bankruptcy Court." (In reality, Robinson had been prohibited, very broadly, from practicing law in any bankruptcy case, under any chapter, in any capacity, before the Court—which, of course, included serving as co-counsel or in joint representation.) To any degree, Briggs obtained no such "protection" from the *Galbreath* judge, who rejected his request, ordered him to file amended documents removing any "joint representation" references, and directed him to represent the debtor in the case without charge.

Robinson and the Business. In 2005, Robinson began filing cases in this Court in which he represented himself as affiliated with "Critique Services." In 2007, Critique Services L.L.C. and Robinson entered into a contract pursuant to which Critique Services L.L.C. licenses the name "Critique Services" to Robinson and provides to Robinson bookkeeping and administrative services. From 2007 until mid-2014 (when he was suspended), Robinson was the "face" of the Critique Services business in this Court, operating a high-volume/low cost bankruptcy mill practice that provides low-quality "legal" representation primarily to the working poor of St. Louis (that is, to people who generally lack the resources and time to be able to do anything about receiving poor services). However, in 2013, a former client of Robinson and Critique Services L.LC., the debtor in *In re Steward*, filed against Robinson and Critique Services L.L.C. a pro se motion to disgorge attorney's fees. Soon thereafter, she was able to obtain pro bono counsel. During the litigation of the motion, Robinson and Critique Services L.L.C.—who chose to be represented in the matter by the notoriously unethical attorney Elbert A. Walton[5]—refused to obey discovery orders that required the production of information related to the business. In the process, and along with and through Walton, they committed abuse of process and contempt of court, and made numerous false representations to the Court. Eventually, after enduring months of contempt, on June 10, 2014, the Court

[5] *See, e.g., Walton v. LaBarge (In re Clark)*, 223 F.3d 859, 863 (8th Cir. 2000)(affirming disgorgement of attorney's fees where Walton overcharged clients, misused the bankruptcy process for his personal gain, and had a non-attorney prepare and file documents and give legal advice).

entered an order granting in part the motion to disgorge. It also suspended Robinson and Walton from the privilege of practicing before the Court for refusal to obey orders, contempt, and making false and misleading statements. Today, Robinson and Walton remain suspended, having failed to even attempt to meet the requirements for reinstatement.

B. The Show Cause Orders

Prior to his suspension in June 2014, Robinson agreed to represent the Debtors in their Cases. At the time of his suspension, the Debtors had remitted payment for legal services; however, most of the Case had yet to be filed. In the two Cases that had been filed, Robinson had not yet rendered all legal services owed to the Debtors (for example, the § 341 meetings had not yet occurred).

In November 2014, upon review of the Cases in the course of docket management, the Court learned that Robinson had not returned any of the attorney's fees. This presented a significant issue to administration of the Cases, as unearned attorney's fees paid prior to the petition date become property of the estate when the debtor files for bankruptcy. As such, Robinson appeared to be in wrongful possession of property of the estate. Accordingly, between November 26 and December 10, 2014, the Court issued three Show Cause Orders [Docket No. 19, 21 & 27] against Robinson.

In the first two Show Cause Orders, the Court directed Robinson to show cause as to why he should not be ordered to disgorge his fees pursuant to 11 U.S.C. § 329, and be sanctioned for failing to timely return the fees. After the issuance of the first two Show Cause Orders, Robinson and Briggs (who had taken over representation of six of the eight Debtors) arranged for Robinson to transfer the fees to the Debtors directly. They did so despite the fact that the fees were property of the estate and should have been transferred to the chapter 7 trustees (the "Trustees")—a point that the Court had made clear in its Show Cause Orders, in which it welcomed the return of any unearned fees *to the Trustees*. Robinson and Briggs, both practitioners of bankruptcy law, would have been well-aware that these transfers violated bankruptcy law and the Court's directive regarding return of the fees to the Trustees. Oddly (or, perhaps not so

oddly, if Diltz controls the money coming into the Washington Boulevard office), the transfers were not made in cash (the form in which the Debtors had paid the fees), or by checks written from a client trust account (as one would expect from an attorney), or even by checks written from a bank account in Robinson's name. The funds were transferred via personal money orders that appear to have been filled-in and signed by Diltz, although Robinson is listed as the purchaser.

Following the return of all the Debtor's fees, the Court issued the third of the Show Cause Orders, directing Robinson to show cause as to why he should not be sanctioned for wrongfully failing to timely return property of the estate in the form of his unearned fees.

C. The Motion to Compel Turnover

On December 12, 2014, the Trustees jointly filed a Motion to Compel Turnover [Docket No. 30], seeking turnover of certain documents and information necessary to comply with the Court's directive to them to account for property of the estate in the form of any unearned attorney's fees collected by Robinson. On January 13, 2015, the Court held a hearing on the Motion to Compel Turnover. Briggs and Robinson were present at the hearing. Briggs began by insisting that he could not assist his clients by obtaining the documents and information for turnover; however, by the end of the hearing, he suddenly reversed course and stated that he would be "happy" to help obtain the turnover. From the bench, the Court granted the Motion to Compel Turnover and advised that it would issue a written order in a few days. (It ended up taking ten days to prepare the order, as the Court had the daunting task of memorializing the many misstatements of law and misrepresentations of fact made at the hearing). On January 23, 2015, the Court entered an Order Compelling Turnover [Docket No. 52], compelling Robinson, Briggs, and Critique Services L.L.C., to turn over the documents and information. On February 4, 2015, the Court held a status conference regarding the compliance with the Order Compelling Turnover. At the status conference, it was established that compliance had not been met.

At the January 13 and February 4 proceedings, Briggs insisted that there is great distance between himself and Critique Services L.L.C.—despite Briggs's

long history of formal or informal affiliation with Diltz's businesses. He claimed that he was outside the "inner sanctum" of power at the Critique Services business, and argued that he thus was impotent to do anything (despite the fact that it was in his clients' clear interest to obtain the turnover so that accounting could be completed and their Cases could be closed). He acted as though he had no personal knowledge of who owns Critique Services L.L.C., evading the Court's question, before eventually stammering out the response that it "may be" Diltz—as if he just isn't be sure about who Diltz is.

D. The July 6, 2015 Notice of Intent to Impose Sanctions

Between February and June 2015, the Court received no indication that further turnover had been performed. Accordingly, on July 6, 2015, the Court issued a Notice and Deadline (the "July 6 Notice") [Docket No. 80], in which it gave notice to Robinson, Critique Services L.L.C., and Briggs that it was considering sanctions and/or other actions against them for their non-compliance, and giving them seven days to comply with the Order Compelling Turnover. The Court also ordered that the Trustees file affidavits attesting to the nature and scope of additional turnover since February 4, and whether he or she has become aware of any additional facts that would bear on the issue of compliance with the Order Compelling Discovery or the representations made on January 13, 2015 or February 4, 2015.

E. The Responses and Affidavits Filed in Response to the July 6 Notice

On July 13, 2015, each of the Respondents filed a Response to the July 6 Notice [Docket Nos. 82, 83 & 85]. On July 16 and 17, 2015, the Trustees filed affidavits indicating that no further turnover had been made. In addition, in one of the affidavits, the attesting Trustee attached photographs and a receipt [Docket No. 96], and included the following attestation: very shortly after the January 13, 2015 hearing, the Trustee entered a restaurant and came upon Briggs and a woman, seated closely and conversing. The Trustee overheard remarks (including one of which was vulgar) that indicated that Briggs and his companion were discussing the hearing that had just ended. The Trustee took photographs of Briggs and his companion and made notes of what she witnessed. She

retained her time-stamped receipt. She later provided the photographs to another one of the Trustees, who identified the woman with Briggs as Diltz. The other Trustee filed an affidavit [Docket No. 95], attesting to her identification of Diltz.

F. The July 22, 2015 Notice of Intent to Impose Sanctions Against Briggs

In light of the Trustees' affidavits related to Briggs's post-hearing lunch meeting, on July 22, 2015, the Court issued its July 22 Notice, giving Briggs notice that the Court intended to impose sanctions for his misleading statements regarding his relationship with Critique Services L.L.C. and Diltz. The Court gave him an opportunity to respond and at least two options for responding. Briggs could (i) agree to: (a) a six-month voluntary suspension from the privilege of practicing before this Court; (b) ten hours of continuing legal education in ethics; and (c) a permanent injunction from ever again doing business with Diltz, her businesses, her employees and independent contractors, and Robinson, related to a case filed in or anticipated to be filed in this Court; or (ii) show cause that sanctions, directives, or referrals were not warranted.

G. Overview of Briggs's Response to the July 22 Notice

On July 31, 2015, Briggs filed his Response to the July 22 Notice. He did not request a hearing. In his Response, Briggs alleged factual contentions in support of a determination that no cause exists to impose sanctions, and offered legal argument in support of his concurrently made request that the Court transfer the matter to the U.S. District Court for hearing and determination.

In Part II.H below, the Court will outline the factual contentions made by Briggs. However, it will reserve its determination of whether Briggs has shown cause that sanctions are not warranted. That determination will be made by separate order. In Part III below, the Court will determine the merits of Briggs's request for a transfer to the U.S. District Court.

H. Briggs's Factual Contentions in his Response to the July 22 Notice

Briggs claims that he answered honestly when asked by the Court whether he knows who owns Critique Services L.L.C.[6] However, the transcript shows that when the Court asked Briggs who, to his knowledge, owns and controls "Critique," Briggs first responded by refusing to answer based on his personal knowledge. Instead, he evasively replied, "Missouri Secretary of State has a document—"—a response that had nothing to do with Briggs's personal knowledge. When the Court rejected that non-responsive answer, Briggs stated, "Mr. Robinson well may be. It may—may be Beverly Dil[t]z. It may—but—" That is, Briggs responded, first, by naming the wrong person, then—with conjured hesitation—by suggesting that it "may be" Diltz. Then, in his next comment, Briggs again suggested that he has no personal knowledge, remarking that, "That's what the Missouri Secretary of State says. I assume it's correct." Briggs's performance was a strained exercise in feigned uncertainty.

Briggs claims that his "honesty" is further shown because Diltz is, in fact, the owner of Critique Services L.L.C. However, the fact that Diltz is the owner of Critique Services L.L.C. is not determinative of whether Briggs made misleading statements about his personal knowledge of that fact. At the January 13 hearing, the Court wanted to establish a baseline before delving further into the issue of who might be able to obtain what turnover. The Court wanted to start, if possible, with an acknowledgment by the tap-dancing, name-parsing Briggs of his personal knowledge regarding Critique Services L.L.C. and who might control any documents and information held by that entity. Instead of answering honestly (something like, "Yes, to my personal knowledge, Diltz is the owner of

[6] Briggs also seems to suggest that there was a lack of clarity about which "Critique" entity was being discussed—whether it was the fictional name "Critique Services" or the artificial entity, "Critique Services L.L.C."[6] However, just moments before Briggs evaded answering as to his personal knowledge, the Court asked him if he understood what the Trustees were requesting by their turnover request, and he confirmed, "I do." And, even if Briggs was not sure of the "Critique" in question, his response still was dishonest. There was no basis for claiming that Robinson "may be" the owner. Briggs was just trying to look clueless, despite his years of affiliation with Diltz, her businesses and Robinson.

Critique, if you are referring to 'Critique Services L.L.C.'"), Instead, Briggs acted as if he couldn't answer the question about his own personal knowledge. The fact that Diltz is, in fact, the owner of Critique Services L.L.C. is not evidence that Briggs dealt honestly with the Court when he at last—finally and begrudgingly—stated that it was his personal knowledge that Diltz "may be" the owner.

Apparently expecting the Court to be as gullible as he is evasive, Briggs also claims that his post-hearing lunch meeting is not evidence that he mislead the Court about his relationship with Diltz and Critique Services L.L.C.—but instead is evidence of his efforts to comply with the Court's turnover directive. ***This is an openly laughable assertion with absolutely no credibility whatsoever.*** There is nothing—zero—in the record that suggests that Briggs is telling the truth about the circumstances and reason for his meeting with Diltz. At the hearing, Briggs did not suggest that he had any intent to attempt to immediately conference with Diltz. For example, he did not represent: "Your Honor, as soon as this hearing is over, I will contact Ms. Diltz personally and attempt to meet with her." Nothing about Briggs's presentation in court on January 13 suggested that he would attempt to get a quickly scheduled sit-down with Diltz. And, even more tellingly, in the six months after the January 13 hearing, Briggs never disclosed that he had met with Diltz, despite having had many opportunities to do so:

- Briggs did not represent in his January 20, 2015 affidavit [Docket No. 48] that he met with Diltz immediately after the January 13 hearing—despite the fact that the point of the affidavit was to disclose what efforts were undertaken to comply with the turnover directive issued from the bench.
- Briggs did not represent in his January 30, 2015 affidavit [Docket No. 59] that he met with Diltz immediately after the January 13 hearing —despite the fact that the point of the affidavit was to disclose what efforts were undertaken to comply with the Order Compelling Turnover.
- Briggs did not represent at the February 4 status conference that he met with Diltz immediately after the January 13 hearing—despite the fact that

this was another important opportunity for Briggs to establish the full scope of his efforts at compliance with the Order Compelling Turnover.

- Briggs did not represent in his July 13, 2015 affidavit [Docket No. 86] that he met with Diltz immediately after the January 13 hearing—despite the fact that this was yet-another chance to establish his efforts at compliance.
- Briggs did not represent in his Response to the July 6 Notice that he met with Diltz immediately after the January 13 hearing—despite the fact that, by this time, Briggs had been ordered to show cause why he should not be sanctioned for failure to comply with the Order Compelling Turnover. Given the gravity of the situation, it defies explanation why—if Briggs really had arranged for such a meeting in an effort to convince Diltz that Critique Services L.L.C. should turn over documents—he would not have mentioned this to the Court when he was under a directive to show cause as to why he should not be sanctioned for failing to comply with the Order Compelling Turnover.
- *In fact, it was not until <u>after</u> Briggs's post-hearing lunch with Diltz was exposed on the record that Briggs suddenly, for the first time, acknowledged his meeting to the Court.*

It is difficult to overstate the lack of credibility in Briggs's explanation of the circumstances of the lunch meeting. There is nothing believable about the contention that the meeting was an effort by Briggs to comply with the turnover directive. However, the fact that the meeting occurred, its timing, and its undisclosed nature is very revealing of Briggs's efforts to mislead the Court about the nature of his relationship with Diltz and Critique Services L.L.C.

Briggs claims that sanctions are not warranted because his lunch meeting "facilitated" Critique Services L.L.C.'s turnover of documents. This is ridiculous. To this day, Critique Services L.L.C. has failed to turn over required contracts and it claims that—despite being Robinson's contracted bookkeeper and administrative services provider—it has no documents related to bookkeeping, accounting, ledgers, and so forth. Whatever Briggs did at the lunch meeting, it did not help to garner compliance.

Briggs also takes umbrage with "any inference that this [lunch] meeting in a public place was clandestine or arranged for an improper purpose." Presumably, Briggs means "implication," not "inference" (or, on the other hand, maybe this was just a psychologically telling slip on his part). To any degree, implications and inferences are beside the point because *the meeting was, in fact, clandestine*. The meeting was clandestine because its occurrence was relevant but was kept secret by Briggs from the Court. (The fact that the meeting occurred at a public venue does not mean that it was any less clandestine; it just means that Briggs did not protect his meeting from revelation to the Court, apparently not having anticipated that a Trustee would happen to select that same place for lunch, in a metropolitan area with at least hundreds of restaurants.) And, Briggs offers no explanation as to why he kept the fact of the meeting a secret from the Court. If the lunch had really been an effort by Briggs to obtain the turnover, there was every reason for him *not* to keep the fact of the meeting a secret from the Court. In addition, the Court notes that it is not interested in Briggs's so-called "objection" to the implication that the lunch was "arranged for an improper purpose." If Briggs doesn't like that the facts imply that he acted with an improper purpose, he might consider, in the future, not acting in a way that implies he has an improper purpose.

III. ANALYSIS

In his Response to the July 22 Notice, Briggs insists that he is entitled to "a *de novo* hearing before the District Court on all matters raised by the Court's Orders of July 6, 2015 and July 22, 2015." In support of this request for transfer, he makes several arguments, which the Court now addresses.

A. *In re Sheridan*

Briggs argues that the issue of whether he should be sanctioned "implicates non-core matters that exceed the statutory and constitutional power of this Court to enter a final order." In support of this argument, Briggs relies on *Sheridan v. Michels* (*In re Sheridan)*, 362 F.3d 96 (1st Cir. 2014). However, *In re Sheridan* does not support Briggs's argument; to the contrary, it undermines it.

In *In re Sheridan*, an attorney appealed a sanctions determination against him, arguing that the bankruptcy court lacked the authority to enter a final judgment. He argued that the matter was non-core under 28 U.S.C. § 157(b) and, thus, that the bankruptcy court had no authority to enter a final judgment without his consent.

In *In re Sheridan*, the bankruptcy court had initiated an omnibus disciplinary proceeding against the attorney, predicated upon alleged ethical-rule violations proscribed by state law. The attorney's misconduct had occurred in multiple, closed bankruptcy cases, extending over a considerable period of time, and "either before multiple bankruptcy judges in a multi-judge district, or entirely or partially outside the presence of the bankruptcy judge who hears the disciplinary case," *id.* at 110, and "much of [the misconduct] allegedly [had] occurred outside the courtroom," *id.* Additionally, "the disciplinary action against Sheridan had no such purpose or effect [the purpose or effect of being with the view to recovering attorneys fees paid to him], since its remedial goal focused exclusively upon Sheridan's fitness to represent clients in *future* bankruptcy cases, rather than upon any recoupment of estate funds attributable to Sheridan's misconduct. Thus, no matter what the outcome of the disciplinary proceeding against Sheridan, no pending or closed bankruptcy case would be affected unless further independent proceedings were instituted in the future." *Id.* at 108 (emphasis in original). Considering these facts, the First Circuit reasoned that it "cannot be said [that the omnibus proceeding was] to have involved the sort of routine case 'administration' described in § 157(b)(2)." *Id.* at 107. Then, finding no ground upon which the proceeding otherwise could have been a core proceeding, and determining that the appellant had not consented to a final

disposition by the bankruptcy court, the First Circuit concluded that the bankruptcy court did not have the authority to enter a final disposition. The First Circuit also noted that "[w]here, as here, the attorney misconduct occurred neither in the context of an ongoing bankruptcy case, nor in the presence of the bankruptcy court, the bankruptcy court may have no better vantage from which to make final findings of fact than would the district court." *Id.* at 110.

However, the First Circuit also cautioned:

> We close with a final admonition: our opinion is not to be construed as holding that all attorney disciplinary proceedings before the bankruptcy court are to be presumptively considered non-core. Thus, had the Sheridan ethical violations occurred either during the course of a bankruptcy case or within the immediate presence of the bankruptcy judge, or otherwise directly affected the administration, liquidation, or reorganization efforts, a stronger demonstration might be made for characterizing the disciplinary proceeding as a core matter. *See, e.g., In re Hessinger,* 192 B.R. at 220 (noting that within an individual bankruptcy case a suspension or disbarment of counsel may more readily be regarded as "affecting" asset liquidation, inasmuch as disqualification of counsel normally affects entitlement to attorney fees recoverable from the bankrupt estate, or requires reimbursement of attorney fees previously received, hence increasing the assets available for distribution).

That is, the First Circuit went out of its way to make it clear that *In re Sheridan* does not stand for the proposition that a matter is non-core simply because it involves the imposition of sanctions—the proposition for which Briggs cites it. And it does not stand for the proposition that a party is entitled to a *de novo* evidentiary hearing on sanctions issues before the U.S. District Court.

Moreover, the facts in these Cases are importantly distinguishable from those in *In re Sheridan*. First, the Show Cause Orders were entered in open cases with the view to returning to the estates property that Robinson had wrongfully withheld and sanctioning him, if proper. And the July 6 and July 22 Notices were issued with a view to garnering compliance with the Order Compelling Turnover, and to hold the persons accountable for contempt and misleading statements. Second, the issuance of the Show Cause Orders and the July 6 and July 22 Notices were necessary to ensure proper accounting and

administration of those estates. The Cases cannot properly be closed under 11 U.S.C. § 350 until such time as the Trustees have accounted to the Court as to all property of the estate. Currently, the Trustees cannot explain where the unearned attorney's fees were held for nearly six months and cannot obtain the documents and information necessary to make that accounting. They also cannot advise the Court as to whether the withheld fees were earned, in part or in whole—a critical fact necessary for the Court to determine whether Robinson (who insists that the fees were earned in whole) should be sanctioned. Third, the sanctions here would not be imposed for the alleged violation of state law rules of ethics. (The Court has been clear: it is considering referring the matters to the Missouri Supreme Court's Office of Chief Disciplinary counsel—an authoritative body well-equipped to take up state law ethics violations by attorneys.[7]) Rather than raising the issue of state law ethics violations, the Show Cause Orders raised the issues of disgorgement under 11 U.S.C. § 329 and sanctions for violations of federal bankruptcy law related to concealing and improperly transferring property of the estate. And, the July 6 and the July 22 Notices involve the possibility of sanctions for the failure to comply with a federal court order and for the making of false and misleading statements that occurred both in pleadings as well as at hearings before the Court. Fourth, the sanctionable behavior has resulted in delays in administration as well as open contempt of court; as such, the effect of the sanctions is not remote or uncertain. Fifth, the sanctionable behavior occurred "during the course of a bankruptcy case or within the immediate presence of the bankruptcy judge, or otherwise directly affected the administration, liquidation, or reorganization efforts," for which "a stronger demonstration might be made for characterizing the disciplinary proceeding as a core matter," as the First Circuit described in *In re Sheridan*.

[7] The Court does not suggest that it cannot sanction for state law ethics violations that occur before it in open cases; it merely has chosen to address the sanctionable behavior that violates bankruptcy law and the authority of the court.

B. Consent

Briggs states that he "does not consent to the authority of this Court to enter a final order on the Orders of July 6, 2015 and July 22, 2015." However, the Court does not need Briggs's consent to sanction him. It is well-established law that the Court may sanction attorneys who appear before it in open matters and may enforce its own orders.

C. *Stern v. Marshall*

Briggs argues that *Stern v. Marshall*, 131 S.Ct. 2594 (2011), makes the imposition of sanctions by this Court improper. Briggs previously made this *Stern v. Marshall* argument to the Court, and it was rejected. Nevertheless, the Court will state again, as it did in its July 14, 2015 Order Denying Briggs's Request to "Withdraw" the July 6, 2015 Notice or to "Transfer" the Matter for a Hearing Before the District Court [Docket No. 89]:

> Briggs's reliance on *Stern v. Marshall* is misplaced. *Stern v. Marshal* holds that, as a matter of constitutional law, the bankruptcy court lacks the authority to enter a final judgment on a compulsory state law counterclaim that does not arise under Title 11 or in a case under Title 11, even though such authority is expressed codified at 28 U.S.C § 157(b)(2)(C). The issue of whether sanctions for the refusal to comply with bankruptcy court order is not a state counterclaim. It is a matter than arises under Title 11 and the inherent power of the Court to enforce its own orders. *Stern v. Marshall* does not strip the Court from its authority to sanction for refusal to comply with its orders, and the Court does not need Briggs's "consent" to exercise its jurisdiction over the issues set forth in the Notice and Deadline.

IV. CONCLUSION

Briggs has not established that he is entitled to an order from this Court directing the transfer to the U.S. District Court of the sanctions matters raised in July 6 and July 22 Notices. As the Court has already explained to Briggs on his prior, similar request for a *de novo* hearing before the U.S. District Court: this Court is an arm of the U.S. District Court and the automatic reference to this Court is a one-way street. The U.S. District Court refers matters here; this Court does not refer its matters upstream. And this Court certainly does not direct the U.S. District Court as what matters will be placed on its docket for an evidentiary

hearing. There are procedural mechanisms available to Briggs that he can pursue, if he believes that the July 6 and July 22 Notices should be before the U.S. District Court for determination. However, his request that this Court direct a "transfer back" of the July 6 and July 22 Notices is not an available mechanism. Accordingly, the Court **ORDERS** that that the request for a transfer be **DENIED**.

The Court also notes that Briggs requests that this Court refer the sanctions matters to the U.S. District Court for a determination of discipline by that forum. The Court will keep in mind Briggs's suggestion that the U.S. District Court may be interested in opening a disciplinary proceeding against him. If the Court determines that referring Briggs's actions to the U.S. District Court for a disciplinary proceeding may be proper, the Court will make such a referral at the appropriate time—in addition to whatever sanctions this Court may impose.

DATED: August 4, 2015
St. Louis, Missouri 63102
erk

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

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Attachment 214

Petition for Writ of Prohibition, filed by Briggs, in the District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: Ross H. Briggs, Ross H. Briggs, Petitioner. v. Charles E. Rendlen III, United States Bankrupty Judge, and Robert J. Blackwell, Chapter 7 Bankruptcy Trustee, Respondents.	)	Case No. _____

PETITION FOR WRIT OF PROHIBITION

COMES NOW Petitioner Ross H. Briggs, counsel for Debtor Marshall Beard in Chapter 7 bankruptcy proceeding, 14-43751, pursuant to 28 U.S.C. §1651(a), and petitions this Court for a writ prohibiting Judge Charles E. Rendlen, III from issuing a final order suspending Petitioner from practicing before the Bankruptcy Court for the period of six months. In support of his Petition for a Writ of Prohibition, Petitioner states:

The Issues Presented

1. Petitioner is *pro bono* counsel for Debtor Marshall Beard. Petitioner has represented Mr. Beard after the suspension of Attorney James C. Robinson, Mr. Marshall's prior attorney.

2. On July 22, 2015, Judge Rendlen entered an Order advising Petitioner that he intended to impose a sanction upon Petitioner in the form of a six (6) month

suspension from practicing before the Bankruptcy Court.[1] In the July 22, 2015 Order, the Court further advised that if Petitioner was unwilling to agree to a voluntary six (6) month suspension, the Court would consider imposing additional sanctions, including a referral to the Missouri Supreme Court's Office of Chief Disciplinary Counsel.

3. Petitioner filed a response to the July 22, 2015 order. In the response, Petitioner asserted his objection to the entry of any final order imposing sanctions in light of *Stern v. Marshall*, 564 U.S. __, 131 S. Ct. 2594 (2011) and *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. __, 134 S.Ct. 2165 (2014).

4. On August 4, 2015, Judge Rendlen entered an Order holding that *Stern* had no application to this matter, and holding that he has the authority to sanction Petitioner under Title 11 (the Bankruptcy Code) and the "inherent power of the Court to enforce its own orders." (Order, August 4, 2015, DOC. 112, p. 18).

5. Judge Rendlen lacks authority under Article III of the United States Constitution to enter a final order imposing sanctions upon Petitioner. Rather, if Judge Rendlen believes that sanctions are warranted, he has only the jurisdiction to enter proposed findings of fact and conclusions of law, for *de novo* review by this Court. *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. __, 134 S.Ct. 2165 (2014).

6. Judge Rendlen also lacks the authority to suspend Petitioner from practicing before the Bankruptcy Court under Rule 83 of the Local Rules of Court of this

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[1] Judge Rendlen entered an identical order in eight (8) cases: *In re Evette Nicole Reed*, Case No. 14-44818, *In re: Pauline A. Brady*, Case No. 14-44909, *In re Lawanda Lanae Long*, Case No. 14-45773, *In re: Marshall Beard*, Case No. 14-43751, *In re Darrell Moore*, Case No. 14-43444343, *In re Nina Lynne Logan*, Case No. 14-44329, *In re Jovon Neosha Steward*, Case No. 14-43912, and *Angelique Renee Shields*, Case No. 14-43914. Although these cases involve virtual identical issues, and the hearings on various matters have been consolidated, the Court has thus far, declined to consolidate the cases. The issues raised in this Writ of Prohibition are applicable to all eight cases.

Court and the Local Rules of the United States Bankruptcy Court for the Eastern District of Missouri. Judge Rendlen's proposed *sua sponte* suspension of Petitioner fails to afford Petitioner the due process rights inherent in this Court's disciplinary process, particularly here where the Court has acted as accuser, fact-finder, and sentencing judge. Judge Rendlen's proposed *sua sponte* suspension of Petitioner, in this proceeding, violates Petitioner's right to due process of law and equal protection of the law under the Fifth Amendment to the Constitution.

7. Petitioner is entitled to a writ of prohibition because Judge Rendlen has proposed to act outside of his jurisdiction by entering a final judgment suspending Petitioner from practicing before the bankruptcy court. *In re: State of Missour*i, 664 F.2d 178, 180 (8th Cir. 1981)(writ of prohibition lies to confine a lower court to the lawful exercise of its jurisdiction). The harm to Petitioner is immediate and he has no other adequate remedy. *Id*.

8. The harm to Petitioner's clients is immediate, irreparable and compelling. Petitioner is currently counsel of record in 727 cases filed under Chapter 13 and 209 cases filed under Chapter 7. Petitioner also represents individuals who are in need of bankruptcy protection whose cases have not yet been filed. Ninety percent (90%) of Petitioner's clients are African-American, two-thirds are female and many are single parents. As bankruptcy debtors, they have limited, or no means, to pay substitute counsel. Further, even for those who can obtain substitute counsel, adverse rulings may occur in their bankruptcies during the interim.

9. Petitioner requests an Order from this Court prohibiting Judge Rendlen from entering any final judgment suspending Petitioner from practice before the

Bankruptcy Court or imposing any similar sanction upon Petitioner, and directing him that if he believes such sanction is warranted, his action should be in the form of a recommendation to this Court.

10. Copies of the Orders of Judge Rendlen, as well as other relevant portions of the record below are included in the Appendix.

Facts Pertinent to the Petition for a Writ of Prohibition

1. Petitioner is a solo practitioner with a consumer bankruptcy law practice located at 4144 Lindell Boulevard, Ste, 202, St. Louis, Missouri 63108.

2. As of August 5, 2015, Petitioner is counsel of record in the United States Bankruptcy Court for the Eastern District of Missouri in 727 cases filed under Chapter 13 and 209 cases filed under Chapter 7. Included in Petitioner's caseload are many active cases that Petitioner took over, as *pro bono* counsel, in the wake of the suspension of James C. Robinson. (See Exhibit A).

3. On June 10, 2014, Judge Rendlen issued an order suspending Attorney James Robinson, Debtor's prior counsel, from practicing before the Bankruptcy Court. *In re LaToya Steward*, 11-46399 (hereinafter "Steward Order").

4. The Steward Order suspending Robinson was effective immediately and made no provision for Robinson's clients.[2]

[2] Rule 5 of the Rules Governing the Missouri Bar and the Judiciary provides a procedure to be utilized in Missouri state courts when an attorney is not able to comply with his duties to clients because of death, disability or suspension. Rule 5.26 provides for the appointment of a trustee to "protect the interests of the clients," including conducting an inventory of client files, review of active case files and assistance in helping the client obtain other counsel. ABA Model Disciplinary Rule 28 contains a similar provision. The Order suspending Mr. Robinson, who was counsel of record in approximately 400 cases, representing primarily low-income minority debtors, contained no such provision.

5. Robinson contacted Petitioner and requested Petitioner's assistance in representing his clients.

6. Petitioner believed that Robinson's suspension presented a risk that many of Robinson's clients were in danger of losing their homes in foreclosures, their automobiles through repossession, or their funds through creditor garnishments as a result of their lack of legal representation. Petitioner believed that it was his duty as an attorney to assist Robinson's clients to the extent possible.

7. Petitioner sought the guidance of Paul Randolph, Assistant United States Bankruptcy Trustee, disclosing the substance of his agreement to represent Robinson's Chapter 7 clients on a *pro bono* basis.

8. Randolph encouraged Petitioner to offer his *pro bono* services to Robinson's former clients and advised Petitioner to seek the guidance of the Court regarding the conditions of such representation.

9. Petitioner entered his appearance on behalf of 227 Chapter 7 debtors, who had formerly been represented by Robinson. (See, Exhibit A).

10. Petitioner filed a bankruptcy proceeding for Dorothy Galbreath. Robinson had previously represented Ms. Galbreath, who had signed the documents required for her bankruptcy filing, but Robinson was unable to file a bankruptcy petition due to his intervening suspension. Accordingly, on June 11, 2014, without the protection of the automatic stay protection afforded by the United States Bankruptcy Code, Ms. Galbreath's car was repossessed. Petitioner filed a bankruptcy petition to retrieve her vehicle.

11. On June 16, 2014, in that bankruptcy, Petitioner filed a Motion for a Protective Order, seeking the Court's guidance in representing Galbreath as *pro bono* counsel. On July 10, 2014, Judge Surratt-States heard Petitioner's motion and issued an Order terminating Robinson as counsel for Ms. Galbreath and adding Petitioner as counsel for Ms. Galbreath. (*In re Dorothy Galbreath*, 14-44814, DOC 16, 7/10/14).

12. Around the time of the filing of the bankruptcy petition for Ms. Galbreath, Petitioner began to enter his appearance on pending bankruptcies for other clients of Robinson.

13. Judge Kathy Surratt-States and Judge Barry Schermer, the other two bankruptcy judges in this district, entered show cause orders in thirty-two (32) of these cases directing Petitioner to demonstrate that his representation of Robinson's clients was not a violation of the Steward Order and that it did not run afoul of the fee-sharing provisions of the Missouri Rules of Professional Responsibility.

14. Petitioner appeared before Judge Kathy Surratt-States and Judge Schermer on these show cause orders, explained the basis for his representation and confirmed that his Chapter 7 representation would be afforded free-of-charge. In each instance, Judges Surratt-States and Schermer withdrew their show cause orders without the imposition of any discipline or sanctions upon Petitioner. In addition, at the conclusion of these show cause hearings, both Judge Surratt-States and Schermer allowed Petitioner to represent the debtors, after terminating Robinson as the Debtor's counsel. (Petitioner had identified his relationship with Robinson as "co-counsel," because, despite Robinson's suspension, Judge Rendlen had not terminated Robinson as attorney of record for debtors in any of

these cases, and Robinson remained an attorney licensed to practice law in the State of Missouri.)

15. Of these cases subject to the show cause orders, thirty-one (31) were filed under Chapter 7. In each of these cases, the debtor subsequently received a discharge of his or her debt. The remaining case, *In re Julie Monsita Chavis*, Case No. 14-44979, was filed under Chapter 13. Ms. Chavis' Chapter 13 Plan was approved and she is currently making payments to the Chapter 13 Trustee in accordance with that plan.

16. Petitioner also entered his appearance on behalf of Robinson's Chapter 13 clients. Judges Schermer and Surratt-States entered various orders which provided for the payment of attorneys fees to Petitioner and Robinson for the legal representation of these clients.

17. Petitioner's proposed suspension originates in a proceeding in which Judge Rendlen sought the return of "unearned fees" of Robinson to the bankruptcy estate under 11 U.S.C. §329 in eight Chapter 7 bankruptcies.. More particularly, on November 26, 2014 and December 2, 2014, Judge Rendlen issued Show Cause Orders, which directed Robinson to show cause why the Court should not order disgorgement of attorneys fees ranging from $299 to $349 in these cases. (DOC. 21, 23).

18. Because the cases had previously been closed, and the Chapter 7 trustees discharged, Judge Rendlen reopened each case. On December 3, 2015, he reappointed the Chapter 7 Trustees. The Court noted that the purpose of the proceeding was to determine "whether disgorgement of the fee is proper." (Order, December 3, 2014, Doc. 24, pp. 2-3). The show cause orders also directed the Trustees to address, *inter alia*, to whom Robinson's fees were paid, where the fees were held following the payment to

Robinson (including whether the fees were in a client trust account), and whether any of the fees had been disbursed to Robinson or any person or attorney affiliated with Critique Services, LLC. (DOC. 21, p. 3, DOC. 23, p.3).

19. Thereafter, Robinson provided each of the Debtors with a money order fully reimbursing the debtor for all of the attorneys' fees that the debtor had previously paid him. Although none of Petitioner's clients had sought a refund, they were willing to accept the attorneys' fees.

20. The refunded fees were property of the bankruptcy estate, and could only be released to the Debtors if the Chapter 7 Trustees abandoned their interest or the Court ordered the return of the fees to the debtors.

21. Accordingly, Petitioner contacted the Chapter 7 trustee for each of his clients to whom Robinson had tendered fees and inquired whether the Chapter 7 trustee would waive his or her interest in the fees. Trustee Blackwell responded that he would relinquish the estate's claim to the fee, but the other trustees simply ignored the inquiry.

22. Nothwithstanding the absence of any justiciable case or controversy, resulting from the refund of attorneys fees, the Chapter 7 Trustees, acting through Trustee David Sosne, continued to demand the turnover of checks, ledgers, or account statements related to the fees. (Letter of December 3, 2014, attached as Exhibit 3 to the Trustee's Motion to Compel, DOC. 33).

23. On December 12, 2014, the Trustees filed their Motion to Compel Turnover, requesting the Court to compel Robinson, Critique Services, LLC, and Petitioner, as Debtor's *pro bono* counsel, to provide information and documents relating to the matters addressed in the Court's Show Cause Orders. (DOC. 33).

24. The Trustee's Motion to Compel was called for hearing on January 13, 2015. At the January 13, 2015 hearing, Trustee David Sosne, the spokesperson for all of the Chapter 7 trustees, expressed his dissatisfaction with the information that had been provided. As the transcript demonstrates, the Trustees were interested in "following the money" and determining not only how Robinson handled his client trust account, but also to determine the inner workings of Robinson's law office and staffing of that office. Thus, Trustee Sosne wanted to know, "Who typed the debtor's bankruptcy schedules? Who prepared the schedules? Who met – who were the people who met with the debtors? Was it Mr. Robinson who did it all by himself and he kept the money? Or were there people there typing at Critique Legal Services LLC, Corporation proprietorship, partnership?" (Transcript, 1/13,15, p. 68). Trustee Albin wanted to know, "what happened to the attorneys fees? Did it get deposited in an operating account? Was it paid in cash?[3]

32. Trustee Sosne asserted that these inquiries were relevant to the turnover of unearned attorneys' fees.[4] (Transcript, 2/4/15, pp. 7-8).

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[3] At the hearings on January 13, 2015 and February 4, 2015, the Trustees spokespersons discussed the fact that Robinson's clients paid him in cash, apparently finding that to be evidence of some impropriety. (Transcript, 1/13/15, p. 65, 2/4/15, p. 6, 10, 15). According to the Federal Deposit Insurance Corporation, a significant number of African Americans in the St. Louis metropolitan are "unbanked," i.e., they do not have a bank account. It is disheartening to hear Chapter 7 bankruptcy trustees find it suspicious that an attorney who represents primarily low-income African Americans, receives attorneys' fees in cash, rather than by check or money order.

[4] Robinson's full refund of attorney's fees paid by his clients rendered moot the question of whether Robinson had retained "unearned fees," which the Court could order disgorged under 11 U.S.C. §329. *Firefighter's Local 1784 v. Stotts*, 467 U.S. 561, 571 (1984).

It appears that the Chapter 7 Trustees may also have been intent in determining whether Robinson and Critique Services, LLC were operating in compliance with the Settlement Agreement and Court Order in the case of *In re: David Hardge*, Case No. 05-43244-659,

33. At the subsequent status conference held on February, 4, 2015, Trustee Sosne went further, saying that he wanted to know, "Who gets paid? How is it done? …. [somebody] will have to do a subpoena and get the W2s of the people, get the tax returns, get the financial records…. Who's reporting this income? Who's reporting these expenses? Who's employed by whom? Who's doing what? Perhaps an inspection of the facility to see how it's laid out, who's officing where. They're all officing at the same place. What's happening? It's not that complicated." (Transcript, 2/4/15, p. 9).

34. The Trustees cited as authority for their motion 11 U.S.C. §542(e), the statute that provides that the bankruptcy court may order an attorney "that holds information, including books, documents, records and papers relating to the debtor's property or financial affairs, to turn over such *recorded* information to the trustee." (emphasis supplied). The statute applies only to existing records and only to records of the debtor. *In re: The Vaughan Company*, 2015 WL 4498746 (D. N.M. Bankruptcy Court, July 23, 2015). Thus, to the extent the Trustees were seeking information regarding the operation of Robinson's law office they were far beyond the permissible reach of the applicable statute.

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the "Hardge Order") entered by Kathy Surratt-States, U.S. Bankruptcy Judge on July 31, 2007. (See, Hardge Order, DOC 111-4). The Hardge Order sets forth parameters under which Critique Services, LLC, which had formerly operated as a bankruptcy petition preparer, could associate with attorneys. If so, the Trustees and Judge Rendlen clearly lacked jurisdiction to enforce compliance (and presumably to investigate compliance) with Judge Surratt-States' Order. In *Klett v. PIM*, 965 F.2d 587, 591 (8th Cir. 1992), the Eighth Circuit held that a federal court cannot impose sanctions, such as contempt, for violation of another court's order.

And finally, Judge Rendlen has made it clear that his inquiry into the financial affairs of Robinson and Critique Services, LLC was ***not*** motivated by a concern of a possible violation of the state ethical rules governing the conduct of attorneys. (Order, July 14, 2015, DOC. 99, p. 3).

35. Trustee Sosne further expressed his view that Petitioner, as Debtor's counsel, had the responsibility and obligation to obtain the information sought, including making inquiry with the co-respondents, i.e., Critique Services, LLC (at that time unrepresented and not present at the hearing), and James Robinson, who attended the hearing and represented himself. (1/13/15, at p. 41). [5] Sosne also expressed his view that Petitioner was a member of the "inner sanctum" of Critique, and for that reason, was in the position to obtain documents and information from Critique. (Transcript, 1/13/15, p. 24). At the conclusion of the January 13, 2015 hearing, the Court advised that it would issue an order in two days and require compliance with the Court's directives by noon on the following Tuesday. (*Id*. at 84).

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[5] Trustee Sosne stated, "[a]nd I would ask that each of them do it … in a collaborative fashion, and identify … what they know and what they don't know." (Transcript 1/13/15 at p. 42).

Later, the following colloquy occurred between Trustee Sosne and the Court:

> Trustee Sosne: What did you know and when did you know it? Who said that? But the issue is very, is very simple. I think we're overcomplicating it. He can make his reasonable due diligence. He can make his inquiry, and let him provide us with those answers. The same is true of Mr. Robinson.
>
> He can – he can—if he has that information, he should know that information since he was intimately involved, then he should also provide the information. That's what we're requesting.
>
> The Court: And he should go and get it if he doesn't know it. Is that what you saying?
>
> Trustee Sosne: Excuse me?
>
> The Court: He should go get it if he doesn't have it. Is that what you saying?
>
> Trustee Sosne: Unless for some reason somebody stonewalls him.

(Transcript, 1/13/15, p. 48).

36. Before the conclusion of the hearing on January 13, 2015, at the Court's insistence, Petitioner told the Court that he would make additional inquiry with Critique Services, LLC regarding any outstanding documents. (*Id*. at 51). The record reflects:

> Petitioner: I will ask for documents. I will ask for documents just as the Court has. If I receive them, I will produce them to the trustee. If I don't receive them, I will report to the trustee and the Court as to what response I have. … I have no special access to ledgers, client accounts. I don't have any access to it. If Critique wants to give it to me, I'm happy to produce it to the Court and to the trustee. I will make the same request Your Honor has. I will report back to as to what the nature of that response is.

(Id. at 51-2). (The Order subsequently entered by the Court advised Petitioner that he would have to make inquiry of Critique Services. Order, 1/23/15, DOC 54, p. 21).[6]

37. Accordingly, immediately upon the conclusion of the hearing of January 13, Petitioner contacted Beverly Diltz, the owner of Critique Services, LLC, to schedule a meeting to discuss the imminent court order and the short time period for production of the outstanding documents. Consistent with the urgency conveyed by the Court at the hearing, Petitioner met with Ms. Diltz soon after the conclusion of the hearing. At this meeting, Petitioner encouraged Ms. Diltz, as owner of Critique Services, LLC, to produce any responsive documents that it might have in its possession. Petitioner met with Ms. Diltz in order to comply with the instructions of Judge Rendlen.

38. Unknown to Petitioner, Trustee Kristin Conwell, one of the Chapter 7 Trustees, entered the restaurant where Petitioner and Ms. Diltz were meeting. Without announcing her presence, she proceeded to eavesdrop upon Petitioner's conversation with

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[6] Judge Rendlen also stated "[Petitioner] Briggs is not lawyer-eunuch merely because he may not currently be a formal employee or agent of Critique Legal Services, L.L.C. or Critique Services, L.L.C. To comply with the turn over directive, Briggs can politely ask any Critique entity or Robinson for the information, he can insist firmly, he can serve a subpoena, he can file a motion asking the Court to direct a person to respond." (Order, 1/23/15, DOC. 54, p. 12).

Ms. Diltz, and surreptitiously photographed them using her cellphone. She also provided a copy of her photographs to Trustee Case.

39. On July 6, 2015, Judge Rendlen issued an order stating that "[i]t was established that the Respondents had failed to comply with the Order Compelling Turnover," and giving notice that "the Court gives NOTICE that it is considering the imposition of monetary sanctions and/or other nonmonetary sanctions against Respondents." (Order, DOC. 91, p. 2). Notably, the Order fails to specify in which manner Petitioner failed to comply with the Order Compelling Turnover.

42. Petitioner filed a response to the Show Cause order, asserting his rights under *Stern v. Marshall*, to a *de novo* review of any sanctions order and detailing the manner in which he had complied with the Order. (DOC. 96, p. 8).

43. On July 16, 2015, Trustee Conwell filed her Affidavit with the Court, setting forth the fact that she had observed Petitioner and an "unknown African-American woman" (later identified by Trustee Case as Beverly Diltz), meeting and that she had overheard parts of their conversation.[7] (*In re Darrell Moore and Jocelyn Antoinette Moore*, Case No. 14-44434, DOC. 72).

44. Simultaneously, Trustee Rebecca Case filed an affidavit, stating that based on Conwell's Affidavit, "I attended the hearing on January 13, 2015 … [n]umerous representations were made on the record during the lengthy hearing, … [v]ery shortly after the hearing, I received a photograph from Chapter 7 Trustee Kristin Conwell which

[7] Although much was later made of the conversation reflected in the Conwell Affidavit, the only statement that she attributes to Petitioner is his statement to Ms. Diltz that "[debtors] would have to tell the truth," to which Diltz responded, "I know that." Conwell Affidavit, Paragraph 10.

appeared to contradict the representations made at the hearing." (*In re Pauline Brady*, 14-44909, DOC. 83).

45. On July 22, 215, the Court entered its order advising that it intended to impose sanctions upon Petitioner. The Order gave Petitioner a choice: 1) voluntarily accept a six (6) month suspension, with additional terms, or 2) refuse to be suspended, in which case the Court, after considering any response by Petitioner, might impose additional sanctions, including a referral to the Missouri Supreme Court's Office of Chief Disciplinary Counsel. (DOC. 109, pp. 6-7). Included among the terms of the "voluntary" six (6) month suspension are: 1) no bankruptcy practice, through a "back door" or "behind the scenes," 2) never again conducting "any business" with Beverly Diltz (the owner of Critique Services, LLC), with any current or former employee or independent contractor of Diltz, or any business that she owns or controls, 3) never appear at a creditors meeting on behalf of any client of any attorney associated with Diltz, and 4) never again accept any referrals from or "in any way" do business with Robinson. (DOC. 109, pp. 6-9).

46. The basis of the Order was the Judge's apparent conclusion that Petitioner had denied knowing that Beverly Diltz was the owner of Critique Services, LLC.

47. Petitioner had never denied knowing Beverly Diltz, and he made no representations to the Court to the contrary. Further, he never denied knowing the owner of Critique Legal Services, LLC at any hearing before the Court.

49. The transcript of the January 13, 2015 hearing contains the following colloquy between Judge Rendlen and Petitioner:

The Court: So who does have the information and access of Critique?

Respondent: Probably who owns and controls it. Not me.

The Court: Who is that to your knowledge on the record?

Respondent: Missouri Secretary of State has a document –

The Court: No, no, no. Who –

Respondent: I know –

The Court: Who is it –

Respondent: Mr. Robinson may well be. It may – it may be Beverly Dilz [sic]. It may --- but –

The Court: What do you mean maybe?

Respondent: That's what the Missouri Secretary of State says. I assume it's correct. (Transcript, 1/13/15, pp. 44-5).

50. Petitioner's statement to the Court was entirely accurate.

51. To the extent that the Court's question regarding "Critique" was directed at Critique Services, LLC, Petitioner accurately represented the owner as Beverly Diltz.

52. Public filings, which were submitted to the Court on July 31, 2015, demonstrate the accuracy of Petitioner's statement. More specifically, the Missouri Secretary of State reflects the incorporation of Critique Services, LLC, on August 9, 2002. The organizer and registered agent was "Beverly Holmes." On February 4, 2015, Larry Mass, counsel for Critique Services, LLC, also represented to this Court that Beverly Holmes-Diltz is the owner of Critique Services, LLC. (Transcript, 2/4/15). The agreement between Critique Services, LLC and Respondent James Robinson, which was apparently provided to Trustee Sosne on January 29, 2015, identifies Beverly Holmes

Diltz as the owner of Critique Services, LLC.[8] And finally, the Settlement Agreement and Consent Order filed with Judge Kathy Surratt-States in *In re: David Hardge*, Case No. 05-43244, further identifies Beverly Holmes Diltz as the "sole member" of Critique Services, LLC. (The Secretary of State records and Hardge Settlement were submitted to the Court on July 31, 2015, in response to Judge Rendlen's July 22 Order advising his intent to impose sanctions, DOC. 114-2, 114-4, 111-6).

53. To the extent that the Court's question pertained to the attorney doing business as "Critique Services," Petitioner accurately identified the owner as James Robinson. In contrast, Respondent Robinson registered the fictitious name of "Critique Services" on May 10, 2005, and filed each of the petitions before the Court as "James C. Robinson, d/b/a Critique Services."

54. To the extent that the Judge Rendlen's conclusion that Petitioner made misrepresentations before the Court is based on conclusions that the Court drew from Petitioner's meeting with Ms. Diltz, in a public place, immediately following the hearing, Petitioner was acting in accordance with the Judge Rendlen's directives.

55. On August 4, 2015, the Court entered an order once again rejecting Petitioner's position that he had a right to a *de novo* hearing under *Stern*, and indicating that he intended to enter a final order. In this Order, Judge Rendlen insinuated that

[8] The relationship between Critique Services, LLC and Respondent James Robinson d/b/a Critique Services as it relates to these Chapter 7 debtors is set forth in greater detail in Robinson' Agreement with Critique Services, DOC 111-5, pp. 7-10). Most important, however, the document reveals that Respondent Briggs was not a party to the agreement and had no formal relationship with either Critique Services, LLC or Attorney James Robinson in regard to these cases.

sanctions may be imposed upon Petitioner for failing to disclose the lunch meeting with Diltz. (DOC. 112).

56. On January 24, 2015, Petitioner disclosed to Judge Rendlen that Petitioner was engaged in direct communications with Robinson and Critique Services, LLC in an effort to secure the production of requested documents. (DOC. 57). Nothing in the record, in the transcript of proceedings or in any prior order the Court, informed Petitioner that the method of communication with co-respondents (i.e. correspondence versus personal conversation) or that the location of the communication (i.e., a restaurant), was material to the Court and required "disclosure."

57. Trustees Conwell and Case likewise appeared to believe that the details of the January 13 lunch meeting were not germane to any outstanding request of Judge Rendlen. At the February 4, 2015 status conference, which Trustee Conwell attended, she did not disclose to the Court or to Petitioner the fact of the January 13 lunch meeting or her surreptitiously-taken photographs. On March 26, 2015, Judge Rendlen directed the Trustees to file with the Court any documents produced by Petitioner in compliance with the Order of the Court. (DOC. 75). Again, Trustees Case and Conwell responses do not mention the January 13 lunch meeting. It was not until Judge Rendlen's July 6, 2015 Show Cause Order (entered over three months later), that the Court directed the Trustees to disclose whether "she or he has become aware of any additional facts that bear on the issue of compliance with the Order Compelling Discovery, *or the representations made at the January 13 or February 4 hearings*." (DOC. 91, p. 4)(emphasis supplied). Only at

this point did Trustees Conwell and Case reveal the information regarding the lunch meeting that had been withheld from the Court and the Petitioner for nearly six months.[9]

The Reasons Why the Writ Should Issue

Summary

The Bankruptcy Court is acting outside of its Article III jurisdiction by purporting to impose a final Order for sanctions upon Petitioner. The Court's jurisdiction is limited to 1) making proposed recommendations and conclusions of law for *de novo* review by this Court, or 2) initiating a disciplinary procedure against Petitioner by referring the matter to this Court for proceedings under Local Rule 83. The suspension of Petitioner from the Bankruptcy Court is an immediate and irreparable harm to Petitioner (and Petitioner's clients), for which there is no other adequate remedy.

I

The Bankruptcy Court has Acted Outside of its Constitutional Authority

The Bankruptcy Judge lacks jurisdiction to enter a final judgment imposing sanctions upon Petitioner. Bankruptcy Judges are Article I judges, not Article III judges. *Wellness International Network, Ltc., v. Sharif*, ____ U.S. ___, Slip Opinion, p. 1 (May 26, 2015). Any exercise of judicial power by the Bankruptcy Court must be within the confines of Article III. For over four decades the United States Supreme Court has

[9] Even today, Trustee Conwell has failed to provide to Petitioner and the Court her notes of the January 13, 2015 lunch meeting, or account for their absence. Conwell states that she "took notes" on January 13, 2015. If she still has the notes in her possession, it is troubling that they were not produced along with the Affidavit. Conwell signed the Affidavit, under oath, on July 15, 2015, over six (6) months after the lunch meeting. If she no longer has the notes, their absence certainly casts doubt on the accuracy of the statements contained in the Affidavit.

clearly and consistently identified the constitutional limitations on the Article I Bankruptcy Court.

In the Bankruptcy Court Act of 1978, Congress created the bankruptcy courts as adjuncts of the district courts. The 1978 Act created a broad scheme of bankruptcy jurisdiction that empowered bankruptcy courts to hear and determine civil cases that had any kind of relationship to a bankruptcy case, including state law contract actions by debtors against parties not otherwise a part of those proceedings. In 1982, in *Northern Pipeline Constr. Co. v. Marathon Pipeline Co*., 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed. 598 (1982), the Supreme Court struck down this broad jurisdictional grant as an unconstitutional delegation of the Article III powers. A plurality of the Supreme Court concluded that such claims could not be assigned to bankruptcy judges without violating Article III, because those judges lack tenure and salary guaranties. The Supreme Court concluded that state law contract actions were not matters of "public rights" that can be constitutionally be assigned to "legislative" courts. Nor were bankruptcy judges who exercised such broad jurisdiction "adjuncts" of the district courts.

Congress acted in 1984 by enacting amendments that changed how the bankruptcy judges were appointed and limited their ability to enter final judgments by confining their jurisdiction to "core" proceedings that are enumerated in 28 U.S.C. §157(b)(2). Bankruptcy Courts may hear and determine non-core proceedings, but only upon the parties' consent. If the parties do not consent, the Bankruptcy Court must submit findings of fact and conclusions of law to the district court for *de novo* review. 28 U.S.C. §157(c)(1). In conducting *de novo* review, the district court may receive further evidence, modify the proposed findings by the bankruptcy court, and/or remand to the

district court with instructions. Fed. R. Bankr. P. 9033(d). In addition, the Bankruptcy Code gives Bankruptcy Judges the power to hear any claim arising under Title 11. 28 U.S.C. §157(b)(1).

The Supreme Court has articulated the limited jurisdiction of the Bankruptcy Courts – even where claims that are expressly within the Bankruptcy Court's jurisdiction under the Bankruptcy Code are the subject of review.

Thus, in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed. 2d 26 (1989), the Court held that a bankruptcy trustee's action to recover a fraudulent transfer – a claim specifically commended to bankruptcy court jurisdiction by Title 11 – was a private right of action which could only be determined by an Article III judge. The Court reasoned that the 11 U.S.C. §548(a)(2) fraudulent conveyance suits brought by the bankruptcy trustees "more nearly resemble state-law contract claims brought by a bankrupt corporation to augment the bankruptcy estate than they do creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res. As a consequence [the Court] concluded that 'fraudulent conveyance actions were 'more accurately characterized as a private right rather than as public right as [the Court] has used these terms in [its] Article III decisions. " 492 U.S. at 55-56, 6U.S. at 56, 109 S.Ct. at 2782. "Because the [defendants] have not filed claims against the estate, [the trustee's] fraudulent transfer action does not arise 'as part of the process of allowance or disallowance of claims.'" The Court went on to state:

> [T]he restructuring of debtor-creditor relations, which is at the core of federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages. ... The former may well be a 'public right,' but the latter obviously is not." *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71, 102 S. Ct. 2858 (1982). In the bankruptcy context, a cause of action is a

> purely private right if it does not implicate, in any way, the claims allowance process or the restructuring of debtor creditor relations.

Granfinanciera, 492 U.S. at 56; *In re Palm Beach Finance Partners, L.P.*, 501 B.R. 792, 798 (Bktcy. S.D.Fla. 2013).[10]

More recently, the Supreme Court again reiterated the Article III limitations on the jurisdiction of the bankruptcy courts. In *Stern v. Marshall*, 564 U.S. __, 131 S. Ct. 2594 (2011), Vickie Marshall, a debtor in a bankruptcy proceeding, filed a counterclaim against her son-in-law for defamation. The Bankruptcy Code list of "core" proceedings specifically includes counterclaims by the estate against entities filing claims against the estate. (Ms. Marshall's son-in-law had filed a tort claim against Ms. Marshall in the bankruptcy proceeding.) The bankruptcy court conducted a trial and awarded Ms. Marshall $400 million in damages. After Ms. Marshall's death, her Executor, Howard Stern, was substituted as a party. The Supreme Court held that although Stern's counterclaim was expressly a core proceeding under the Bankruptcy Code, that section unconstitutionally delegated the power to hear a state law counterclaim, a "private" right, to a "legislative court." Because the bankruptcy court decided issues in Ms. Marshall's defamation claim that were not intrinsic to allowing or disallowing the defendant's

[10] That the Bankruptcy Court only has jurisdiction in light of Article III to enter proposed findings of fact and conclusions of law, subject to *de novo* review, is consistent with the historical development of bankruptcy court jurisdiction. *A Survey of Sanctions in Bankruptcy Courts: The Fifth Circuit and Beyond*, 55 S.Tex. L. Rev. 583, 599-601 (2014). Since 1898, the Bankruptcy Act allowed non-judicial referees to marshal a debtor's assets, liquidate, and distribute the proceeds among those filing valid claims against the estate. *Id*. Jurisdiction over the res, i.e., the estate, supported the referee's rights to invalidate a claim, enforce a security interest, or determine the ranking of competing claims. Plan confirmation, discharge, liquidation of estate assets, distribution and ranking of claims against estate assets, voting, and classification of claims are well within this traditional exercise of power. *Id*.

bankruptcy claim, it had exercised the Article III judicial power (a power that the bankruptcy court did not possess), in deciding the claim. Consequently, the judgment was reversed.

Justice Roberts, writing for the majority, explained the constitutional significance of the distinction between the Article III courts and the Article I courts:

Article III imposes some basic limitations that the other branches may not transgress. Those limitations serve two related purposes. "Separation of powers principles are intended, in part, to protect each branch of government from incursion from the others. Yet the dynamic between and among the branches is not the only object of the Constitution's concern. The structural principles secured by the separation of powers protect the individual as well." *Stern*, *supra*.

The restrictions of Article III on bankruptcy judges are similar to its restrictions on Article I magistrate judges. Federal magistrates are Article I judges – they derive their authority to exercise judicial functions through the Congressional grant of authority, not through Article III. *U.S. v. Torres*, 258 F.3d 791, 794 (8th Cir. 2001). Absent the consent of the parties, a magistrate cannot enter a final ruling on any dispositive motion. A sanctions motion, particularly one imposed on a third party for discovery violations, is a dispositive motion. *Wallace v. Kmart*, 687 F.3d 86 (3rd Cir. 2012); *Alpern v. Lieb*, 38 F.3d 933, 936 (7th Cir. 1994); *Bennett v. General Custer Service of N. Gordon Co*., 976 F.2d 995, 996 (6th Cir. 1992); *Kiobel v. Millson*, 592 F.3d 78 (2d Cir. 2010((J. Cabranes, concurring). In such an instance, the magistrate has only the authority to enter proposed findings and recommendation, subject to *de novo* review by the District Court. Likewise, the Bankruptcy Court can not enter a final order imposing sanctions; rather, the

Bankruptcy Court can only submit proposed findings of fact and conclusions of law to this Court for *de novo* review. *Executive Benefits Insurance Agency v. Arkison*, __ U.S. __, 134 S. Ct. 2165, 2172-3 (June 9, 2014).

In re Sheridan, 362 F. 3d 96 (1st Cir. 2004), a case decided prior to *Stern*, is instructive. In *Sheridan*, the bankruptcy court appointed a special master to investigate attorney Sheridan's conduct in closed bankruptcy files. Ultimately, the special master determined that Sheridan had violated the duty of competent representation during his representation of a number of clients, and entered an order suspending Sheridan from the bankruptcy bar. The First Circuit held that the omnibus disciplinary proceedings were non-core, and that, as such, the bankruptcy court could not enter a final order. In reaching its decision, the Court noted that the proceedings did not purport to adjust "debtor-creditor relations," but "consisted largely of the bankruptcy court's exercise of its supervisory authority to oversee and regulate its bar and to safeguard the public confidence in the integrity and functionality of the bankruptcy court." *Id*. at 107-8. Further, the Court held that the rights at issue arose from the state law rules of professional responsibility, and as such were non-core. *Id*. at 108-9. Finally, as a policy matter, the Court held that where the attorney misconduct occurred outside of the court room, the Bankruptcy Judge would have no greater expertise than the district court. *Id*. at 109-10.

Sheridan is instructive because it demonstrates that Judge Rendlen lacks the jurisdiction to enter a final sanction order in the underlying proceeding against Robinson. In each instance, Judge Rendlen re-opened a closed bankruptcy case and re-appointed the Chapter 7 trustees and directed them to provide information relating to Robinson's trust

account and other financial matters. In the first instance, the Court proceeded under 11 U.S.C. Section 329, the statute which permits the Court to order the return of unearned fees to the bankruptcy estate. This action is analogous to a state law claim by a client against an attorney for breach of contract. Even though the claim is specifically enumerated in the Bankruptcy Code, it is a non-core matter. *Granfinancieria*, *supra*. [11]

Moreover, even if Judge Rendlen had "core" jurisdiction over a claim for the refund of the attorneys fees, the full reimbursement of the attorneys' fees rendered the proceedings moot. Once the fees were returned to the debtors and the exemptions allowed, no order of the Bankruptcy Court could further effect debtor-creditor relations. Moreover, the Show Cause Orders and the Trustees' discussions before the Court amply demonstrate the proceedings were being used to investigate the operation of Robinson's law office and his compliance with the Missouri Rules of Professional Responsibility. These are state law matters which are outside the "core" jurisdiction of the bankruptcy court. *Sheridan*, *supra*.

Further, if the putative claim for an attorney fee refund from Robinson is non-core and implicates the full protection of Article III, then ancillary orders arising from such proceeding – such as an order on a motion to compel – must likewise be "non-core" and encompassed within the protection of Article III. The same conclusion applies if the collateral issue of "sanctions" arises from the alleged non-compliance with an underlying order. "[A] motion for sanctions, though it is in the context of an underlying action, is the functional equivalent of an independent claim." *Kiobel v. Millson*, *supra*, 592 F. 3d at

[11] In *Granfinancieria*, the Supreme Court held that a trustee's claim for fraudulent conveyance, a claim specifically found in the Bankruptcy Code, 11 U.S.C.§458(a)(2), was analogous to a state law claim and thus within the Article III jurisdiction.

86. In *Alpern v. Lieb*, 38 F.3d 933, 935 (7th Cir. 1994), the Seventh Circuit, using similar reasoning, commented on the limited sanction power of an Article I judge: "The power to award sanctions, like the power to award damages, belongs in the hands of the district court judge. …. A district judge may refer a dispute about sanctions to a magistrate judge for a recommendation … but the magistrate judge may not make a decision with independent effect." *Accord*, *Bennett v. General Custer Service*, 976 F.3d 995 (6th Cir. 1992).

Thus, just as Judge Rendlen lacks jurisdiction to enter a final order against Robinson, he lacks jurisdiction to enter the sanction of suspension upon Petitioner where such order does not implicate the administration of a creditor claim or the re-ordering of debtor-creditor relations. *Accord, Klett v. PIM*, 965 F.2d 587, 591 (8th Cir. 1992).[12]

Judge Rendlen's proposed *sua sponte* sanctions order imposing a six-month suspension involves neither the adjustment of debtor-creditor relations nor the claims allowance process. Consequently under the holdings of *Stern* and *Granfinancieria*, Judge Rendlen's proposed action is a usurpation of the Article III judicial power. While Judge Rendlen could enter proposed findings of fact and recommendations to the District Court, regarding sanctions or a matters involving contempt, such a judgment can only be entered by the District Court after a *de novo* review. *Accord*, *In re Ragar,* 3 F3d 117 (8th Cir. 1993)(*dicta*).

Judge Rendlen ruled that Petitioner had no right to a *de novo* review under *Stern* because, "[t]he issue of whether to award sanctions for the refusal to comply with a

[12] In *Klett*, the Eighth Circuit held that where a court lacked subject matter jurisdiction of the underlying claim, it lacked jurisdiction to enter sanctions for a violation of that claim. Similarly, because the claim before Judge Rendlen is "non-core" any sanctions relating to that claim are also "non-core."

bankruptcy court order…is a matter that arises under Title 11 and the inherent power of the Court to enforce its own orders." (Order, August 4, 2015, DOC. 112, p. 18). The Judge is incorrect. Even though 11 U.S.C. §329 is found in Title 11, *Granfinancieria* makes it clear that cases that are explicitly permitted under Title 11 may still encroach upon the Article III jurisdiction.[13] Under the rationale of *Granfinancieria*, an action for the return of attorney's fees is analogous to a state court contract action, and is precisely the type of action which is reserved for an Article III court.

Further, inasmuch as Robinson has returned all of the attorneys' fees, there is simply no basis for any further action by the Court under 11 U.S.C. §329. As the transcript makes clear, the Trustees are simply using the proceeding as an unbridled opportunity to investigate Robinson's law practice, including the handling of his trust account, the staffing of his office, and the payment of his employee's wages. These are outside of the scope of the jurisdiction of the Bankruptcy Court.

The Court is also incorrect that it can impose sanctions under its inherent power. Any inherent judicial power that the Court exercises is derivative from the Article III judicial power and must be exercised consistently with that power. *Hipp v. Griffith*, 895 F.2d 1503 (5th Cir. 1990). In *Hipp*, the United States Court of Appeals for the Fifth Circuit addressed the issue of whether a bankruptcy court could rely upon its "inherent" powers to issue a criminal contempt. Noting the "oft repeated phrase" that "the contempt power is inherent in all federal courts," 895 F.2d at 1512, the Court held that the bankruptcy court has no inherent power to enter a criminal contempt, because the

[13] In Granfinancieria, the Supreme Court held that a trustee's claim for a fraudulent conveyance – a claim that is explicitly permitted by 11 U.S.C.§458(a)(2) - could only be decided by an Article III court.

Bankruptcy Court is not an Article III court. *Id*. The Court held that the bankruptcy court, like the magistrate court, must look to the district court for the enforcement of its orders.[14] Here, the sanctions order is imposed to punish Petitioner or to force Petitioner to comply with the Court's order compelling turnover. In either case, the sanction is being used to enforce compliance with the Bankruptcy Court's order. Just as the Bankruptcy Court has no inherent power to enforce its orders via criminal contempt, it has no inherent power to enforce its orders via sanctions.

Finally, even if Judge Rendlen has the inherent power to suspend Petitioner, he cannot do so on this record. The sanction of suspension is quasi-criminal contempt. Assuming Judge Rendlen had such a power, he can only exercise it in this summary fashion, without a hearing, to punish a contempt that occurred in the presence of the Court. *In re Dowdy*, 960 F.2d 78 (8th Cir. 1992). Such "direct" contempt is committed in the eye and presence of the Judge, and does not rely on the testimony of third parties or the alleged contemnor. *In re: Heathcock*, 696 F.3d 1362, 1365 (11th Cir. 1992). Judge Rendlen bases his proposed sanction on the hearsay affidavits of Trustees Conwell and Case regarding matters that occurred outside of the court-room. Thus, any inherent contempt power will not support the proposed sanction judgment.

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[14] "'[T]he contempt power, like all powers of the federal courts, cannot be inherited from thin air, but must flow from the Constitution.'" *Hipp*, *supra*, 895 F.2d at 512. (citations omitted). "In short, today's bankruptcy courts are arguably at least as much like magistrates or administrative agencies as they are like other non-Article III courts. Magistrates, who with the consent of the parties may conduct jury trials and criminal misdemeanors may only certify facts showing contempt to the district courts. Similarly, administrative agencies may order persons to act or refrain from acting, but they must usually look to Article III courts to enforce those orders if they are disobeyed." *Id*.

II.

The Bankruptcy Court Lacks Jurisdiction to Suspend Petitioner; Only the District Court Can Suspend Petitioner Pursuant to the Rules of Disciplinary Enforcement

Local Rule 83 of the United States District Court provides a procedure for the disciplining of attorneys who are admitted to the United States District Court for the Eastern District of Missouri. The Local Rules of the Bankruptcy Court contain no procedure for disciplining attorneys. There can be no dispute that the regulation of attorneys is a judicial function, and as such, can only be exercised by an Article III judge. The district court has original jurisdiction of all cases arising under the Bankruptcy Code. The District Court, not the Bankruptcy Court, controls the admission of attorneys to the Bankruptcy Bar. Just as a Magistrate Judge in the Eastern District of Missouri lacks the authority to suspend an attorney, *sua sponte*, the Bankruptcy Court lacks that authority as well.

Judge Rendlen has acted as accuser, fact-finder and sentencing judge, all without the benefit of an evidentiary hearing of any kind. If the Rules of Disciplinary Enforcement of this Court had been followed, a special counsel would have been appointed to investigate and determine whether a formal disciplinary proceeding is appropriate. (Rules of Disciplinary Enforcement, Article V.B.). Where, as here, the accusing party is a judge, that judge cannot serve on the disciplinary panel. (*Id*. Article V.D.) The Rules of Disciplinary Enforcement protect Petitioner's due process rights and provide sufficient protections for the drastic remedy of attorney suspension. The lack of any due process in the bankruptcy court action violates Petitioner's Fifth Amendment Due Process Right.

III.

Petitioner has No Adequate Remedy

Petitioner has no adequate remedy at law. Petitioner anticipates that his suspension will be immediate.[15] The history of Mr. Robinson's suspension demonstrates that an appeal will not adequately protect Petitioner's interests. Robinson appealed his suspension to this Court and to the Eighth Circuit, where it is pending. Both Judge Rendlen and Judge Sippel denied Robinson's request for a stay. The one-year period of suspension expired on June 11, 2015. Thereafter, Judge Rendlen entered an order continuing the suspensions because, *inter alia*, a) the Missouri Supreme Court's Office of Chief Disciplinary Counsel had not completed its investigation of the referrals (based on their conduct before Rendlen), and b) this Court had entered "formal disciplinary proceedings" against Robinson and Walton. (*In re: LaToya Steward*, Case No. 11-46399, DOC 300, Order, 6/15/15, p. 6). Consequently, under Rendlen's Order, Robinson will remain suspended before the Bankruptcy Court until the completion of his appeal to the Eighth Circuit and the completion of the OCDC referral, a period far in excess of the original one-year period.

Petitioner's clients will also suffer immediate and irreparable harm in the absence of the writ. Most are low-income minority debtors without the financial means to obtain substitute counsel, who will no longer have representation in their bankruptcy proceedings. Their interests can be considered in determining the harm that will occur if this Writ is not granted. *Camacho v. Brandon*, 317 F.3d 153, 159 (2d. Cir. 2003). A little over a year ago, hundreds of African-American debtors were cast adrift to fend for

[15] Upon his suspension, the Local Rules of the Bankruptcy Court prohibit Petitioner from receiving fees on his pending Chapter 13 cases, absent a court order.

themselves as a result of the suspension Mr. Robinson. Judge Rendlen's impending sanctions order will repeat this for hundreds of African American debtors.

Petitioner was duty bound by his oath as an attorney to take the steps within his ability to respond to the plight of the unrepresented. Petitioner respectfully submits that this Court is likewise bound to ensure that the United States Constitution, and the protections of Article III, are observed and enforced within the United States Bankruptcy Court for the Eastern District of Missouri. Accordingly, this Writ of Prohibition should issue.

Relief Requested

Petitioner requests an Order from this Court prohibiting Judge Rendlen from entering any final judgment suspending Petitioner from practice before the Bankruptcy Court or imposing any similar sanction upon Petitioner, and directing him that if he believes such sanction is warranted, his action should be in the form of a recommendation to this Court.

Respectfully submitted,
/s/ Ross H. Briggs
Ross H. Briggs, #2709EDMo, #31633
4144 Lindell Boulevard, Ste. 202
St. Louis, MO 63108
(314) 652-8922
r-briggs@sbcglobal.net

Certificate of Service

By my signature, I certify that on August 6, 2015, I served the foregoing document, by hand-delivery upon:

Honorable Charles E. Rendlen III
United States Bankruptcy Court
c/o Dana C. McWay, Clerk, United States Bankruptcy Court
Thomas F. Eagleton U. S. Courthouse

111 South 10th Street, 4th Floor
St. Louis, MO 63102

And by electronic mail and First Class, United States Mail, postage pre-paid to:

Robert J. Blackwell
Blackwell and Associates
P.O. Box 310
O'Fallon, MO 63366-0310
rblackwell@blackwell-lawfirm.com
bvoss@blackwell-lawfirm.com

/s/Ross H. Briggs

Attachment 215

Dismissal by the District Court of the Petition for Writ of Prohibition,
filed by Briggs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROSS H. BRIGGS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 4:15-CV-1204-CEJ
	)	
HON. CHARLES E. RENDLEN, III, in his official capacity as Judge of the U.S. Bankruptcy Court for the Eastern District of Missouri, et al.,	)	
	)	
Respondents.	)	

MEMORANDUM AND ORDER OF DISMISSAL

On August 6, 2015, petitioner Ross H. Briggs filed a petition for a writ of prohibition. This matter is before the Court *sua sponte* for a determination of whether it has subject matter jurisdiction.

I. Background

According to the petition, Briggs is counsel of record for debtors in several bankruptcy cases pending in the United States Bankruptcy Court for the Eastern District of Missouri. On July 22, 2015, the bankruptcy court entered a "Notice Regarding the Court's Intent to Impose Sanctions, Issue Directives, and/or Make Disciplinary Referrals" based on Briggs's conduct in proceedings before the bankruptcy court. The Notice contains a number of terms, including a voluntary six-month suspension of the privilege to practice in the bankruptcy court, limitations on Briggs's representation of clients, and attending a continuing legal education program on ethics. The Notice further provides that Briggs is not obligated to agree to the proposed terms and that he could file a response explaining why he believed the terms or any proposed sanction would be improper.

Finally, the Notice states:

The Court will carefully consider whatever response he [Briggs] may file. However, if the Court determines that sanctions, directives and/or referrals are proper, the Court will not be limited to the terms outlined above.

In the instant petition, Briggs seeks writ of prohibition to prevent the bankruptcy court from issuing sanctions. For the reasons discussed below, the Court finds that it lacks subject matter jurisdiction.

II. Discussion

"It is a verity that federal courts are courts of limited jurisdiction. Parties may not enlarge that jurisdiction by waiver or consent." *Arkansas Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A.*, 551 F.3d 812, 816 (8th Cir. 2009). Moreover, because federal courts have limited subject matter jurisdiction, a federal court faced with a situation in which "jurisdiction may be lacking" is required to "consider the jurisdictional issue sua sponte." *Bilello v. Kum & Go, LLC*, 374 F.3d 656, 659 (8th Cir. 2004).

While a district court has jurisdiction to review certain orders of the bankruptcy court, that is not the relief sought in the instant petition. Here, the bankruptcy court has not issued sanctions and—after considering Briggs's response to the Notice—may decide not to do so. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1940 (2015) (describing the various mechanisms by which a District Court reviews proceedings of a Bankruptcy Court); *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165, 2172 (2014).

Briggs's request for a writ of prohibition does not in itself establish subject matter jurisdiction. A writ of prohibition is simply a writ of mandamus by another

name. *See In re Union Elec. Co.*, 787 F.3d 903, 908 & n.4 (8th Cir. 2015). But Federal Rule of Civil Procedure 81(b) explicitly abolishes the writ of mandamus, providing that "relief previously available through [the writ] may be obtained by appropriate action or motion under these rules." And the Eighth Circuit has held that, "[r]elief in the nature of mandamus is confined to situations where it is in necessary aid of the court's jurisdiction." *Booker v. State of Ark.*, 380 F.2d 240, 242 (8th Cir. 1967) *abrogated on other grounds by Braden v. 30th Judicial Circuit Court*, 410 U.S. 484 (1973). Consequently, the Court cannot adjudicate the petition unless Briggs establishes an independent foundation of subject matter jurisdiction for which issuing a writ of prohibition might then be a necessary form of relief in aid of that jurisdiction.

Further, Briggs has established no such independent basis for subject matter jurisdiction. "The burden of establishing that a cause of action lies within the limited jurisdiction of the federal courts is on the party asserting jurisdiction." *Arkansas Blue Cross & Blue Shield*, 551 F.3d at 816; *see Great Rivers Habitat Alliance v. Fed. Emergency Mgmt. Agency*, 615 F.3d 985, 988 (8th Cir. 2010) (same). Briggs invokes the All Writs Act, codified at 28 U.S.C. § 1651(a), as the sole basis for asserting that subject matter jurisdiction exists. But it is axiomatic that the All Writs Act "is not an independent source of subject matter jurisdiction." *Arkansas Blue Cross & Blue Shield*, 551 F.3d at 820–21 (citations omitted). Therefore, Briggs has not met his burden to establish that the Court has subject matter jurisdiction in this action.

Finally, subject matter jurisdiction here is not imputed by jurisdiction over the bankruptcy proceedings about which Briggs complains. That is so because the petition is a wholly separate case, an action distinct from the bankruptcy proceedings. *See, e.g.*, *Oetting v. Norton*, No. 14-2380, 2015 WL 4620306, at *5 (8th Cir. Aug. 4, 2015) (on the issue of a party's standing in two separate actions, a court's valid subject matter jurisdiction over one action does not obviate the constitutional requirement to establish independent subject matter jurisdiction in a different action). No subject matter jurisdiction is conferred by the fact that the prohibition petition implicates the bankruptcy proceedings.

Accordingly,

IT IS HEREBY ORDERED the petition for a writ of prohibition [Doc. #1] is **dismissed for lack of subject matter jurisdiction**.

CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 11th day of August, 2015.

Attachment 216

Petition for Writ of Prohibition, filed by Briggs, in the Eighth Circuit

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

In re: Ross H. Briggs,	)	
	)	
Ross H. Briggs, Petitioner.	)	
	)	
v.	)	Case No. 15-2780
	)	
Charles E. Rendlen III, United States Bankrupty Judge, and Robert J. Blackwell, Chapter 7 Bankruptcy Trustee, Respondents.	)	

PETITION FOR WRIT OF PROHIBITION

COMES NOW Petitioner Ross H. Briggs, counsel for Debtor Marshall Beard in Chapter 7 bankruptcy proceeding, 14-43751, pursuant to 28 U.S.C. §1651(a), and 28 U.S.C. §1331, and petitions this Court for a writ prohibiting Judge Charles E. Rendlen, III from issuing a final order suspending Petitioner from practicing before the Bankruptcy Court for the period of six months. In support of his Petition for a Writ of Prohibition, Petitioner states:

The Issues Presented

1. This Court has subject matter jurisdiction of this Petition pursuant to 28 U.S.C. §1331 inasmuch as this Petition raises federal questions under the laws and Constitution of the United States.

2. Petitioner is *pro bono* counsel for Debtor Marshall Beard. Petitioner has represented Mr. Beard after the suspension of Attorney James C. Robinson, Mr. Marshall's prior attorney.

3. On July 22, 2015, Judge Rendlen entered an Order advising Petitioner that he intended to impose a sanction upon Petitioner in the form of a six (6) month

suspension from practicing before the Bankruptcy Court.[1] In the July 22, 2015 Order, the Court further advised that if Petitioner was unwilling to agree to a voluntary six (6) month suspension, the Court would consider imposing additional sanctions, including a referral to the Missouri Supreme Court's Office of Chief Disciplinary Counsel.

4. Petitioner filed a response to the July 22, 2015 order. In the response, Petitioner asserted his objection to the entry of any final order imposing sanctions in light of *Stern v. Marshall*, 564 U.S. __, 131 S. Ct. 2594 (2011) and *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. __, 134 S.Ct. 2165 (2014).

5. On August 4, 2015, Judge Rendlen entered an Order holding that *Stern* had no application to this matter, and holding that he has the authority to sanction Petitioner under Title 11 (the Bankruptcy Code) and the "inherent power of the Court to enforce its own orders." (Order, August 4, 2015, DOC. 112, p. 18).

6. Judge Rendlen lacks authority under Article III of the United States Constitution to enter a final order imposing sanctions upon Petitioner. Rather, if Judge Rendlen believes that sanctions are warranted, he has only the jurisdiction to enter proposed findings of fact and conclusions of law, for *de novo* review by the District Court. *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. __, 134 S.Ct. 2165 (2014).

7. Judge Rendlen also lacks the authority to suspend Petitioner from practicing before the Bankruptcy Court under Rule 83 of the Local Rules of Court of the United States District Court for the Eastern District of Missouri and that Court's Rules of Disciplinary Enforcement, and the Local Rules of the United States Bankruptcy Court for the Eastern District of Missouri. Judge Rendlen's proposed *sua sponte* suspension of

[1] Judge Rendlen entered an identical order in eight (8) cases: *In re Evette Nicole Reed*, Case No. 14-44818, *In re: Pauline A. Brady*, Case No. 14-44909, *In re Lawanda Lanae*

Petitioner fails to afford Petitioner the due process rights inherent in the District Court's disciplinary process, particularly here where he has acted as accuser, fact-finder, and sentencing judge. Judge Rendlen's proposed *sua sponte* suspension of Petitioner, in this proceeding, violates Petitioner's right to due process of law and equal protection of the law under the Fifth Amendment to the Constitution.

8. Petitioner is entitled to a writ of prohibition because Judge Rendlen has proposed to act outside of his jurisdiction by entering a final judgment suspending Petitioner from practicing before the bankruptcy court. *In re: State of Missouri*, 664 F.2d 178, 180 (8th Cir. 1981)(writ of prohibition lies to confine a lower court to the lawful exercise of its jurisdiction). The harm to Petitioner is immediate and he has no other adequate remedy. *Id.* A miscarriage of justice will occur absent the issuance of the writ.

9. Although Judge Rendlen has not yet entered a final order, the issuance of a writ of prohibition is appropriate because the Order of Judge Rendlen provide a credible threat that an order suspending Petitioner is imminent. *See*, *Berry v. Schmidt*, 688 F.3d 290, 296-7 (6th Cir. 2012). *See, also*, *Keller v. City of Fremont*, 719 F.3d 391 (8th Cir. 2013)("a party facing prospective injury can sue where the threatened injury is real, immediate, and direct"). Moreover, Petitioner has already suffered an injury in fact. Judge Rendlen's actions in the bankruptcy court have deprived Petitioner of the procedural safeguards of the Attorney Disciplinary Proceedings of the District Court.

10. The harm to Petitioner's clients is immediate, irreparable and compelling. Petitioner is currently counsel of record in 727 cases filed under Chapter 13 and 209 cases filed under Chapter 7. Petitioner also represents individuals who are in need of bankruptcy protection whose cases have not yet been filed. Ninety percent (90%) of

Petitioner's clients are African-American, two-thirds are female and many are single parents. As bankruptcy debtors, they have limited, or no means, to pay substitute counsel. Further, even for those who can obtain substitute counsel, adverse rulings may occur in their bankruptcies during the interim.

11. Petitioner requests an Order from this Court prohibiting Judge Rendlen from entering any final judgment suspending Petitioner from practice before the Bankruptcy Court or imposing any similar sanction upon Petitioner, and directing him that if he believes such sanction is warranted, his action should be in the form of a recommendation to the District Court.

12. Petitioner filed a Writ of Prohibition with the United States District Court for the Eastern District of Missouri on August 6, 2015. On August 11, 2015, the District Court, the Honorable Carol E. Jackson denied the writ concluding that the district court lacked subject matter jurisdiction. *In re Ross H. Briggs*, Case No. 4:15-cv-1204-CEJ, Memorandum and Order of Dismissal, 8/11/15).

13. Copies of the Orders of Judge Rendlen and Judge Jackson, as well as other relevant portions of the record below are included in the Appendix.

Facts Pertinent to the Petition for a Writ of Prohibition

1. Petitioner is a solo practitioner with a consumer bankruptcy law practice located at 4144 Lindell Boulevard, Ste, 202, St. Louis, Missouri 63108.

2. As of August 5, 2015, Petitioner is counsel of record in the United States Bankruptcy Court for the Eastern District of Missouri in 727 cases filed under Chapter 13 and 209 cases filed under Chapter 7. Included in Petitioner's caseload are many active

cases that Petitioner took over, as *pro bono* counsel, in the wake of the suspension of James C. Robinson. (See Exhibit A).

3. On June 10, 2014, Judge Rendlen issued an order suspending Attorney James Robinson, Debtor's prior counsel, from practicing before the Bankruptcy Court. *In re LaToya Steward*, 11-46399 (hereinafter "Steward Order").

4. The Steward Order suspending Robinson was effective immediately and made no provision for Robinson's clients.[2]

5. Robinson contacted Petitioner and requested Petitioner's assistance in representing his clients.

6. Petitioner believed that Robinson's suspension presented a risk that many of Robinson's clients were in danger of losing their homes in foreclosures, their automobiles through repossession, or their funds through creditor garnishments as a result of their lack of legal representation. Petitioner believed that it was his duty as an attorney to assist Robinson's clients to the extent possible.

7. Petitioner sought the guidance of Paul Randolph, Assistant United States Bankruptcy Trustee, disclosing the substance of his agreement to represent Robinson's Chapter 7 clients on a *pro bono* basis.

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[2] Rule 5 of the Rules Governing the Missouri Bar and the Judiciary provides a procedure to be utilized in Missouri state courts when an attorney is not able to comply with his duties to clients because of death, disability or suspension. Rule 5.26 provides for the appointment of a trustee to "protect the interests of the clients," including conducting an inventory of client files, review of active case files and assistance in helping the client obtain other counsel. ABA Model Disciplinary Rule 28 contains a similar provision. The Order suspending Mr. Robinson, who was counsel of record in approximately 400 cases, representing primarily low-income minority debtors, contained no such provision.

8. Randolph encouraged Petitioner to offer his *pro bono* services to Robinson's former clients and advised Petitioner to seek the guidance of the Court regarding the conditions of such representation.

9. Petitioner entered his appearance on behalf of 227 Chapter 7 debtors, who had formerly been represented by Robinson. (See, Exhibit A).

10. Petitioner filed a bankruptcy proceeding for Dorothy Galbreath. Robinson had previously represented Ms. Galbreath, who had signed the documents required for her bankruptcy filing, but Robinson was unable to file a bankruptcy petition due to his intervening suspension. Accordingly, on June 11, 2014, without the protection of the automatic stay protection afforded by the United States Bankruptcy Code, Ms. Galbreath's car was repossessed. Petitioner filed a bankruptcy petition to retrieve her vehicle.

11. On June 16, 2014, in that bankruptcy, Petitioner filed a Motion for a Protective Order, seeking the Court's guidance in representing Galbreath as *pro bono* counsel. On July 10, 2014, Judge Surratt-States heard Petitioner's motion and issued an Order terminating Robinson as counsel for Ms. Galbreath and adding Petitioner as counsel for Ms. Galbreath. (*In re Dorothy Galbreath*, 14-44814, DOC 16, 7/10/14).

12. Around the time of the filing of the bankruptcy petition for Ms. Galbreath, Petitioner began to enter his appearance on pending bankruptcies for other clients of Robinson.

13. Judge Kathy Surratt-States and Judge Barry Schermer, the other two bankruptcy judges in this district, entered show cause orders in thirty-two (32) of these cases directing Petitioner to demonstrate that his representation of Robinson's clients was not a

violation of the Steward Order and that it did not run afoul of the fee-sharing provisions of the Missouri Rules of Professional Responsibility.

14. Petitioner appeared before Judge Kathy Surratt-States and Judge Schermer on these show cause orders, explained the basis for his representation and confirmed that his Chapter 7 representation would be afforded free-of-charge. In each instance, Judges Surratt-States and Schermer withdrew their show cause orders without the imposition of any discipline or sanctions upon Petitioner. In addition, at the conclusion of these show cause hearings, both Judge Surratt-States and Schermer allowed Petitioner to represent the debtors, after terminating Robinson as the Debtor's counsel. (Petitioner had identified his relationship with Robinson as "co-counsel," because, despite Robinson's suspension, Judge Rendlen had not terminated Robinson as attorney of record for debtors in any of these cases, and Robinson remained an attorney licensed to practice law in the State of Missouri.)

15. Of these cases subject to the show cause orders, thirty-one (31) were filed under Chapter 7. In each of these cases, the debtor subsequently received a discharge of his or her debt. The remaining case, *In re Julie Monsita Chavis*, Case No. 14-44979, was filed under Chapter 13. Ms. Chavis' Chapter 13 Plan was approved and she is currently making payments to the Chapter 13 Trustee in accordance with that plan.

16. Petitioner also entered his appearance on behalf of Robinson's Chapter 13 clients. Judges Schermer and Surratt-States entered various orders which provided for the payment of attorneys fees to Petitioner and Robinson for the legal representation of these clients.

17. Petitioner's proposed suspension originates in a proceeding in which Judge Rendlen sought the return of "unearned fees" of Robinson to the bankruptcy estate under 11 U.S.C. §329 in eight Chapter 7 bankruptcies.. More particularly, on November 26, 2014 and December 2, 2014, Judge Rendlen issued Show Cause Orders, which directed Robinson to show cause why the Court should not order disgorgement of attorneys fees ranging from $299 to $349 in these cases. (DOC. 21, 23).

18. Because the cases had previously been closed, and the Chapter 7 trustees discharged, Judge Rendlen reopened each case. On December 3, 2015, he reappointed the Chapter 7 Trustees. The Court noted that the purpose of the proceeding was to determine "whether disgorgement of the fee is proper." (Order, December 3, 2014, Doc. 24, pp. 2-3). The show cause orders also directed the Trustees to address, *inter alia*, to whom Robinson's fees were paid, where the fees were held following the payment to Robinson (including whether the fees were in a client trust account), and whether any of the fees had been disbursed to Robinson or any person or attorney affiliated with Critique Services, LLC. (DOC. 21, p. 3, DOC. 23, p.3).

19. Thereafter, Robinson provided each of the Debtors with a money order fully reimbursing the debtor for all of the attorneys' fees that the debtor had previously paid him. Although none of Petitioner's clients had sought a refund, they were willing to accept the attorneys' fees.

20. The refunded fees were property of the bankruptcy estate, and could only be released to the Debtors if the Chapter 7 Trustees abandoned their interest or the Court ordered the return of the fees to the debtors.

21. Accordingly, Petitioner contacted the Chapter 7 trustee for each of his clients to whom Robinson had tendered fees and inquired whether the Chapter 7 trustee would waive his or her interest in the fees. Trustee Blackwell responded that he would relinquish the estate's claim to the fee, but the other trustees simply ignored the inquiry.

22. Nothwithstanding the absence of any justiciable case or controversy, resulting from the refund of attorneys fees, the Chapter 7 Trustees, acting through Trustee David Sosne, continued to demand the turnover of checks, ledgers, or account statements related to the fees. (Letter of December 3, 2014, attached as Exhibit 3 to the Trustee's Motion to Compel, DOC. 33).

23. On December 12, 2014, the Trustees filed their Motion to Compel Turnover, requesting the Court to compel Robinson, Critique Services, LLC, and Petitioner, as Debtor's *pro bono* counsel, to provide information and documents relating to the matters addressed in the Court's Show Cause Orders. (DOC. 33).

24. The Trustee's Motion to Compel was called for hearing on January 13, 2015. At the January 13, 2015 hearing, Trustee David Sosne, the spokesperson for all of the Chapter 7 trustees, expressed his dissatisfaction with the information that had been provided. As the transcript demonstrates, the Trustees were interested in "following the money" and determining not only how Robinson handled his client trust account, but also to determine the inner workings of Robinson's law office and staffing of that office. Thus, Trustee Sosne wanted to know, "Who typed the debtor's bankruptcy schedules? Who prepared the schedules? Who met – who were the people who met with the debtors? Was it Mr. Robinson who did it all by himself and he kept the money? Or were there people there typing at Critique Legal Services LLC, Corporation proprietorship, partnership?"

(Transcript, 1/13,15, p. 68). Trustee Albin wanted to know, "what happened to the attorneys fees? Did it get deposited in an operating account? Was it paid in cash?[3]

25. Trustee Sosne asserted that these inquiries were relevant to the turnover of unearned attorneys' fees.[4] (Transcript, 2/4/15, pp. 7-8).

26. At the subsequent status conference held on February, 4, 2015, Trustee Sosne went further, saying that he wanted to know, "Who gets paid? How is it done? .... [somebody] will have to do a subpoena and get the W2s of the people, get the tax returns, get the financial records.... Who's reporting this income? Who's reporting these

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[3] At the hearings on January 13, 2015 and February 4, 2015, the Trustees spokespersons discussed the fact that Robinson's clients paid him in cash, apparently finding that to be evidence of some impropriety. (Transcript, 1/13/15, p. 65, 2/4/15, p. 6, 10, 15). According to the Federal Deposit Insurance Corporation, a significant number of African Americans in the St. Louis metropolitan are "unbanked," i.e., they do not have a bank account. It is disheartening to hear Chapter 7 bankruptcy trustees find it suspicious that an attorney who represents primarily low-income African Americans, receives attorneys' fees in cash, rather than by check or money order.

[4] Robinson's full refund of attorney's fees paid by his clients rendered moot the question of whether Robinson had retained "unearned fees," which the Court could order disgorged under 11 U.S.C. §329. *Firefighter's Local 1784 v. Stotts*, 467 U.S. 561, 571 (1984).

It appears that the Chapter 7 Trustees may also have been intent in determining whether Robinson and Critique Services, LLC were operating in compliance with the Settlement Agreement and Court Order in the case of *In re: David Hardge*, Case No. 05-43244-659, the "Hardge Order") entered by Kathy Surratt-States, U.S. Bankruptcy Judge on July 31, 2007. (See, Hardge Order, DOC 111-4). The Hardge Order sets forth parameters under which Critique Services, LLC, which had formerly operated as a bankruptcy petition preparer, could associate with attorneys. If so, the Trustees and Judge Rendlen clearly lacked jurisdiction to enforce compliance (and presumably to investigate compliance) with Judge Surratt-States' Order. In *Klett v. PIM*, 965 F.2d 587, 591 (8th Cir. 1992), the Eighth Circuit held that a federal court cannot impose sanctions, such as contempt, for violation of another court's order.

And finally, Judge Rendlen has made it clear that his inquiry into the financial affairs of Robinson and Critique Services, LLC was ***not*** motivated by a concern of a possible violation of the state ethical rules governing the conduct of attorneys. (Order, July 14, 2015, DOC. 99, p. 3).

expenses? Who's employed by whom? Who's doing what? Perhaps an inspection of the facility to see how it's laid out, who's officing where. They're all officing at the same place. What's happening? It's not that complicated." (Transcript, 2/4/15, p. 9).

27. The Trustees cited as authority for their motion 11 U.S.C. §542(e), the statute that provides that the bankruptcy court may order an attorney "that holds information, including books, documents, records and papers relating to the debtor's property or financial affairs, to turn over such *recorded* information to the trustee." (emphasis supplied). The statute applies only to existing records and only to records of the debtor. *In re: The Vaughan Company*, 2015 WL 4498746 (D. N.M. Bankruptcy Court, July 23, 2015). Thus, to the extent the Trustees were seeking information regarding the operation of Robinson's law office they were far beyond the permissible reach of the applicable statute.

28. Trustee Sosne further expressed his view that Petitioner, as Debtor's counsel, had the responsibility and obligation to obtain the information sought, including making inquiry with the co-respondents, i.e., Critique Services, LLC (at that time unrepresented and not present at the hearing), and James Robinson, who attended the hearing and represented himself. (1/13/15, at p. 41). [5] Sosne also expressed his view

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[5] Trustee Sosne stated, "[a]nd I would ask that each of them do it ... in a collaborative fashion, and identify ... what they know and what they don't know." (Transcript 1/13/15 at p. 42).

Later, the following colloquy occurred between Trustee Sosne and the Court:

> Trustee Sosne: What did you know and when did you know it? Who said that? But the issue is very, is very simple. I think we're overcomplicating it. He can make his reasonable due diligence. He can make his inquiry, and let him provide us with those answers. The same is true of Mr. Robinson.

that Petitioner was a member of the "inner sanctum" of Critique, and for that reason, was in the position to obtain documents and information from Critique. (Transcript, 1/13/15, p. 24). At the conclusion of the January 13, 2015 hearing, the Court advised that it would issue an order in two days and require compliance with the Court's directives by noon on the following Tuesday. (*Id.* at 84).

29. Before the conclusion of the hearing on January 13, 2015, at the Court's insistence, Petitioner told the Court that he would make additional inquiry with Critique Services, LLC regarding any outstanding documents. (*Id.* at 51). The record reflects:

> Petitioner: I will ask for documents. I will ask for documents just as the Court has. If I receive them, I will produce them to the trustee. If I don't receive them, I will report to the trustee and the Court as to what response I have. ... I have no special access to ledgers, client accounts. I don't have any access to it. If Critique wants to give it to me, I'm happy to produce it to the Court and to the trustee. I will make the same request Your Honor has. I will report back to as to what the nature of that response is.

(Id. at 51-2). (The Order subsequently entered by the Court advised Petitioner that he would have to make inquiry of Critique Services. Order, 1/23/15, DOC 54, p. 21).[6]

> He can – he can—if he has that information, he should know that information since he was intimately involved, then he should also provide the information. That's what we're requesting.
>
> The Court: And he should go and get it if he doesn't know it. Is that what you saying?
>
> Trustee Sosne: Excuse me?
>
> The Court: He should go get it if he doesn't have it. Is that what you saying?
>
> Trustee Sosne: Unless for some reason somebody stonewalls him.

(Transcript, 1/13/15, p. 48).

[6] Judge Rendlen also stated "[Petitioner] Briggs is not lawyer-eunuch merely because he may not currently be a formal employee or agent of Critique Legal Services, L.L.C. or Critique Services, L.L.C. To comply with the turn over directive, Briggs can politely ask

30. Accordingly, immediately upon the conclusion of the hearing of January 13, Petitioner contacted Beverly Diltz, the owner of Critique Services, LLC, to schedule a meeting to discuss the imminent court order and the short time period for production of the outstanding documents. Consistent with the urgency conveyed by the Court at the hearing, Petitioner met with Ms. Diltz soon after the conclusion of the hearing. At this meeting, Petitioner encouraged Ms. Diltz, as owner of Critique Services, LLC, to produce any responsive documents that it might have in its possession. Petitioner met with Ms. Diltz in order to comply with the instructions of Judge Rendlen.

31. Unknown to Petitioner, Trustee Kristin Conwell, one of the Chapter 7 Trustees, entered the restaurant where Petitioner and Ms. Diltz were meeting. Without announcing her presence, she proceeded to eavesdrop upon Petitioner's conversation with Ms. Diltz, and surreptitiously photographed them using her cellphone. She also provided a copy of her photographs to Trustee Case.

32. On July 6, 2015, Judge Rendlen issued an order stating that "[i]t was established that the Respondents had failed to comply with the Order Compelling Turnover," and giving notice that "the Court gives NOTICE that it is considering the imposition of monetary sanctions and/or other nonmonetary sanctions against Respondents." (Order, DOC. 91, p. 2). Notably, the Order fails to specify in which manner Petitioner failed to comply with the Order Compelling Turnover.

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any Critique entity or Robinson for the information, he can insist firmly, he can serve a subpoena, he can file a motion asking the Court to direct a person to respond." (Order, 1/23/15, DOC. 54, p. 12).

33. Petitioner filed a response to the Show Cause order, asserting his rights under *Stern v. Marshall*, to a *de novo* review of any sanctions order and detailing the manner in which he had complied with the Order. (DOC. 96, p. 8).

34. On July 16, 2015, Trustee Conwell filed her Affidavit with the Court, setting forth the fact that she had observed Petitioner and an "unknown African-American woman" (later identified by Trustee Case as Beverly Diltz), meeting and that she had overheard parts of their conversation.[7] (*In re Darrell Moore and Jocelyn Antoinette Moore*, Case No. 14-44434, DOC. 72).

35. Simultaneously, Trustee Rebecca Case filed an affidavit, stating that based on Conwell's Affidavit, "I attended the hearing on January 13, 2015 ... [n]umerous representations were made on the record during the lengthy hearing, ... [v]ery shortly after the hearing, I received a photograph from Chapter 7 Trustee Kristin Conwell which appeared to contradict the representations made at the hearing." (*In re Pauline Brady*, 14-44909, DOC. 83).

36. On July 22, 215, the Court entered its order advising that it intended to impose sanctions upon Petitioner. The Order gave Petitioner a choice: 1) voluntarily accept a six (6) month suspension, with additional terms, or 2) refuse to be suspended, in which case the Court, after considering any response by Petitioner, might impose additional sanctions, including a referral to the Missouri Supreme Court's Office of Chief Disciplinary Counsel. (DOC. 109, pp. 6-7). Included among the terms of the "voluntary" six (6) month suspension are: 1) no bankruptcy practice, through a "back

[7] Although much was later made of the conversation reflected in the Conwell Affidavit, the only statement that she attributes to Petitioner is his statement to Ms. Diltz that "[debtors] would have to tell the truth," to which Diltz responded, "I know that." Conwell Affidavit, Paragraph 10.

door" or "behind the scenes," 2) never again conducting "any business" with Beverly Diltz (the owner of Critique Services, LLC), with any current or former employee or independent contractor of Diltz, or any business that she owns or controls, 3) never appear at a creditors meeting on behalf of any client of any attorney associated with Diltz, and 4) never again accept any referrals from or "in any way" do business with Robinson. (DOC. 109, pp. 6-9).

37. The basis of the Order was the Judge's apparent conclusion that Petitioner had denied knowing that Beverly Diltz was the owner of Critique Services, LLC.

38. Petitioner had never denied knowing Beverly Diltz, and he made no representations to the Court to the contrary. Further, he never denied knowing the owner of Critique Legal Services, LLC at any hearing before the Court.

39. The transcript of the January 13, 2015 hearing contains the following colloquy between Judge Rendlen and Petitioner:

The Court: So who does have the information and access of Critique?

Respondent: Probably who owns and controls it. Not me.

The Court: Who is that to your knowledge on the record?

Respondent: Missouri Secretary of State has a document –

The Court: No, no, no. Who –

Respondent: I know –

The Court: Who is it –

Respondent: Mr. Robinson may well be. It may – it may be Beverly Dilz [sic]. It may --- but –

The Court: What do you mean maybe?

Respondent: That's what the Missouri Secretary of State says. I assume it's correct. (Transcript, 1/13/15, pp. 44-5).

40. Petitioner's statement to the Court was entirely accurate.

41. To the extent that the Court's question regarding "Critique" was directed at Critique Services, LLC, Petitioner accurately represented the owner as Beverly Diltz.

42. Public filings, which were submitted to the Court on July 31, 2015, demonstrate the accuracy of Petitioner's statement. More specifically, the Missouri Secretary of State reflects the incorporation of Critique Services, LLC, on August 9. 2002. The organizer and registered agent was "Beverly Holmes." On February 4, 2015, Larry Mass, counsel for Critique Services, LLC, also represented to this Court that Beverly Holmes-Diltz is the owner of Critique Services, LLC. (Transcript, 2/4/15). The agreement between Critique Services, LLC and Respondent James Robinson, which was apparently provided to Trustee Sosne on January 29, 2015, identifies Beverly Holmes Diltz as the owner of Critique Services, LLC.[8] And finally, the Settlement Agreement and Consent Order filed with Judge Kathy Surratt-States in *In re: David Hardge*, Case No. 05-43244, further identifies Beverly Holmes Diltz as the "sole member" of Critique Services, LLC. (The Secretary of State records and Hardge Settlement were submitted to the Court on July 31, 2015, in response to Judge Rendlen's July 22 Order advising his intent to impose sanctions, DOC. 114-2, 114-4, 111-6).

[8] The relationship between Critique Services, LLC and Respondent James Robinson d/b/a Critique Services as it relates to these Chapter 7 debtors is set forth in greater detail in Robinson' Agreement with Critique Services, DOC 111-5, pp. 7-10). Most important, however, the document reveals that Respondent Briggs was not a party to the agreement and had no formal relationship with either Critique Services, LLC or Attorney James Robinson in regard to these cases.

43. To the extent that the Court's question pertained to the attorney doing business as "Critique Services," Petitioner accurately identified the owner as James Robinson. In contrast, Respondent Robinson registered the fictitious name of "Critique Services" on May 10, 2005, and filed each of the petitions before the Court as "James C. Robinson, d/b/a Critique Services."

44. To the extent that the Judge Rendlen's conclusion that Petitioner made misrepresentations before the Court is based on conclusions that the Court drew from Petitioner's meeting with Ms. Diltz, in a public place, immediately following the hearing, Petitioner was acting in accordance with the Judge Rendlen's directives.

45. On August 4, 2015, the Court entered an order once again rejecting Petitioner's position that he had a right to a *de novo* hearing under *Stern*, and indicating that he intended to enter a final order. In this Order, Judge Rendlen insinuated that sanctions may be imposed upon Petitioner for failing to disclose the lunch meeting with Diltz. (DOC. 112).

46. On January 24, 2015, Petitioner disclosed to Judge Rendlen that Petitioner was engaged in direct communications with Robinson and Critique Services, LLC in an effort to secure the production of requested documents. (DOC. 57). Nothing in the record, in the transcript of proceedings or in any prior order the Court, informed Petitioner that the method of communication with co-respondents (i.e. correspondence versus personal conversation) or that the location of the communication (i.e., a restaurant), was material to the Court and required "disclosure."

47. Trustees Conwell and Case likewise appeared to believe that the details of the January 13 lunch meeting were not germane to any outstanding request of Judge Rendlen.

At the February 4, 2015 status conference, which Trustee Conwell attended, she did not disclose to the Court or to Petitioner the fact of the January 13 lunch meeting or her surreptitiously-taken photographs. On March 26, 2015, Judge Rendlen directed the Trustees to file with the Court any documents produced by Petitioner in compliance with the Order of the Court. (DOC. 75). Again, Trustees Case and Conwell responses do not mention the January 13 lunch meeting. It was not until Judge Rendlen's July 6, 2015 Show Cause Order (entered over three months later), that the Court directed the Trustees to disclose whether "she or he has become aware of any additional facts that bear on the issue of compliance with the Order Compelling Discovery, *or the representations made at the January 13 or February 4 hearings*." (DOC. 91, p. 4)(emphasis supplied). Only at this point did Trustees Conwell and Case reveal the information regarding the lunch meeting that had been withheld from the Court and the Petitioner for nearly six months.[9]

The Reasons Why the Writ Should Issue

Summary

The Bankruptcy Court is acting outside of its Article III jurisdiction by purporting to impose a final Order for sanctions upon Petitioner. The Court's jurisdiction is limited

[9] Even today, Trustee Conwell has failed to provide to Petitioner and the Court her notes of the January 13, 2015 lunch meeting, or account for their absence. Conwell states that she "took notes" on January 13, 2015. If she still has the notes in her possession, it is troubling that they were not produced along with the Affidavit. Conwell signed the Affidavit, under oath, on July 15, 2015, over six (6) months after the lunch meeting. If she no longer has the notes, their absence certainly casts doubt on the accuracy of the statements contained in the Affidavit.

to 1) making proposed recommendations and conclusions of law for *de novo* review by this Court, or 2) initiating a disciplinary procedure against Petitioner by referring the matter to this Court for proceedings under Local Rule 83. The suspension of Petitioner from the Bankruptcy Court is an immediate and irreparable harm to Petitioner (and Petitioner's clients), for which there is no other adequate remedy. A miscarriage of justice will occur absent the issuance of the writ.

I

This Case Presents a Judiciable Case or Controversy

To present a justiciable case or controversy, pursuant to Article III of the United States Constitution, Petitioner must show: 1) a sufficiently developed factual record to allow for the fair adjudication of the parties' respective claims; and 2) an injury in fact. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Petitioner has satisfied these requirements.

As demonstrated above, Petitioner has timely expressed his refusal to consent to the authority of Judge Rendlen to enter a final order of sanctions, under the rulings of *Stern v. Marshall, supra.* In response, Judge Rendlen has explicitly rejected the application of the *Stern* doctrine to Petitioner's circumstances, and has repeatedly announced his intention to enter a final order concerning the pending dispute. See, Order of July 1, 2015, DOC 99, p. 2 ("Briggs reliance on *Stern v. Marshall* is misplaced... *Stern v. Marshall* does not strip the Court from its authority to sanction for refusal to comply with its orders..."); Order of August 4, 2015, DOC 112, p. 18 ("Briggs previously made this Stern argument to the Court and it was rejected.")

This unqualified language of the Bankruptcy Court leaves no doubt regarding the respective positions of the parties and the nature of their dispute. As required by the Supreme Court in *Lujans*, and its progeny, this Petition presents a concrete and unambiguous dispute between the parties which squarely presents the threat of immediate and direct harm to Petitioner. "A party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct." *Davis v. Federal Election Commissioner*, 554 U.S. 724, 734, 128 S.Ct. 2759, 2769 (2008).

In *Berry v. Schmitt*, 688 F.3d 290 (6th Cir. 2012), the United States Court of Appeals for the Sixth Circuit found that the standing and ripeness requirements were met where an attorney challenged the issuance of a warning of possible sanctions from a state legislative ethics commission. In that case, the Court did not require the actual imposition of sanctions, but instead found a sufficient case or controversy, based on a "credible threat of enforcement." 688 F.3d at 291. *Accord*, Cooksey v. Futrell, 721 F.3d 226, 237 (4th Cir. 2013).

In addition, Petitioner has already been deprived of the process to which he is due. As this Court has ruled, "[i]n an attorney disciplinary proceeding, due process requires... that the district court follow its procedural rules governing attorney discipline." *In re Fletcher*, 424 F.3d 783, 792 (8th Cir. 2005)(citing *In re Bird*, 353 F.3d 636, 638 (8th Cir. 2003)). The record in this case demonstrates that Judge Rendlen has already circumvented Rule 83-12.02 and the Rules of Disciplinary Enforcement of the United States District Court for the Eastern District of Missouri by failing to appoint a special counsel, awaiting a finding of probable cause, and transferring the disciplinary

allegations for consideration of sanctions by a non-charging judge or judges. In short, Petitioner's injury is not hypothetical or speculative; the prejudice has been fully realized.

II.

The Bankruptcy Court has Acted Outside of its Constitutional Authority

The Bankruptcy Judge lacks jurisdiction to enter a final judgment imposing sanctions upon Petitioner. Bankruptcy Judges are Article I judges, not Article III judges. *Wellness International Network, Ltc., v. Sharif*, ____ U.S. ___, Slip Opinion, p. 1 (May 26, 2015). Any exercise of judicial power by the Bankruptcy Court must be within the confines of Article III. For over four decades the United States Supreme Court has clearly and consistently identified the constitutional limitations on the Article I Bankruptcy Court.

In the Bankruptcy Court Act of 1978, Congress created the bankruptcy courts as adjuncts of the district courts. The 1978 Act created a broad scheme of bankruptcy jurisdiction that empowered bankruptcy courts to hear and determine civil cases that had any kind of relationship to a bankruptcy case, including state law contract actions by debtors against parties not otherwise a part of those proceedings. In 1982, in *Northern Pipeline Constr. Co. v. Marathon Pipeline Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed. 598 (1982), the Supreme Court struck down this broad jurisdictional grant as an unconstitutional delegation of the Article III powers. A plurality of the Supreme Court concluded that such claims could not be assigned to bankruptcy judges without violating Article III, because those judges lack tenure and salary guaranties. The Supreme Court concluded that state law contract actions were not matters of "public rights" that can be

constitutionally be assigned to "legislative" courts. Nor were bankruptcy judges who exercised such broad jurisdiction "adjuncts" of the district courts.

Congress acted in 1984 by enacting amendments that changed how the bankruptcy judges were appointed and limited their ability to enter final judgments by confining their jurisdiction to "core" proceedings that are enumerated in 28 U.S.C. §157(b)(2). Bankruptcy Courts may hear and determine non-core proceedings, but only upon the parties' consent. If the parties do not consent, the Bankruptcy Court must submit findings of fact and conclusions of law to the district court for *de novo* review. 28 U.S.C. §157(c)(1). In conducting *de novo* review, the district court may receive further evidence, modify the proposed findings by the bankruptcy court, and/or remand to the district court with instructions. Fed. R. Bankr. P. 9033(d). In addition, the Bankruptcy Code gives Bankruptcy Judges the power to hear any claim arising under Title 11. 28 U.S.C. §157(b)(1).

The Supreme Court has articulated the limited jurisdiction of the Bankruptcy Courts – even where claims that are expressly within the Bankruptcy Court's jurisdiction under the Bankruptcy Code are the subject of review.

Thus, in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed. 2d 26 (1989), the Court held that a bankruptcy trustee's action to recover a fraudulent transfer – a claim specifically commended to bankruptcy court jurisdiction by Title 11 – was a private right of action which could only be determined by an Article III judge. The Court reasoned that the 11 U.S.C. §548(a)(2) fraudulent conveyance suits brought by the bankruptcy trustees "more nearly resemble state-law contract claims brought by a bankrupt corporation to augment the bankruptcy estate than they do

creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res. As a consequence [the Court] concluded that 'fraudulent conveyance actions were 'more accurately characterized as a private right rather than as public right as [the Court] has used these terms in [its] Article III decisions. " 492 U.S. at 55-56, 6U.S. at 56, 109 S.Ct. at 2782. "Because the [defendants] have not filed claims against the estate, [the trustee's] fraudulent transfer action does not arise 'as part of the process of allowance or disallowance of claims.'" The Court went on to state:

> [T]he restructuring of debtor-creditor relations, which is at the core of federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages. ... The former may well be a 'public right,' but the latter obviously is not." *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71, 102 S. Ct. 2858 (1982). In the bankruptcy context, a cause of action is a purely private right if it does not implicate, in any way, the claims allowance process or the restructuring of debtor creditor relations.

Granfinanciera, 492 U.S. at 56; *In re Palm Beach Finance Partners, L.P.*, 501 B.R. 792, 798 (Bktcy. S.D.Fla. 2013).[10]

More recently, the Supreme Court again reiterated the Article III limitations on the jurisdiction of the bankruptcy courts. In *Stern v. Marshall*, 564 U.S. __, 131 S. Ct. 2594 (2011), Vickie Marshall, a debtor in a bankruptcy proceeding, filed a counterclaim

[10] That the Bankruptcy Court only has jurisdiction in light of Article III to enter proposed findings of fact and conclusions of law, subject to *de novo* review, is consistent with the historical development of bankruptcy court jurisdiction. *A Survey of Sanctions in Bankruptcy Courts: The Fifth Circuit and Beyond*, 55 S.Tex. L. Rev. 583, 599-601 (2014). Since 1898, the Bankruptcy Act allowed non-judicial referees to marshal a debtor's assets, liquidate, and distribute the proceeds among those filing valid claims against the estate. *Id.* Jurisdiction over the res, i.e., the estate, supported the referee's rights to invalidate a claim, enforce a security interest, or determine the ranking of competing claims. Plan confirmation, discharge, liquidation of estate assets, distribution and ranking of claims against estate assets, voting, and classification of claims are well within this traditional exercise of power. *Id.*

against her son-in-law for defamation. The Bankruptcy Code list of "core" proceedings specifically includes counterclaims by the estate against entities filing claims against the estate. (Ms. Marshall's son-in-law had filed a tort claim against Ms. Marshall in the bankruptcy proceeding.) The bankruptcy court conducted a trial and awarded Ms. Marshall $400 million in damages. After Ms. Marshall's death, her Executor, Howard Stern, was substituted as a party. The Supreme Court held that although Stern's counterclaim was expressly a core proceeding under the Bankruptcy Code, that section unconstitutionally delegated the power to hear a state law counterclaim, a "private" right, to a "legislative court." Because the bankruptcy court decided issues in Ms. Marshall's defamation claim that were not intrinsic to allowing or disallowing the defendant's bankruptcy claim, it had exercised the Article III judicial power (a power that the bankruptcy court did not possess), in deciding the claim. Consequently, the judgment was reversed.

Justice Roberts, writing for the majority, explained the constitutional significance of the distinction between the Article III courts and the Article I courts:

Article III imposes some basic limitations that the other branches may not transgress. Those limitations serve two related purposes. "Separation of powers principles are intended, in part, to protect each branch of government from incursion from the others. Yet the dynamic between and among the branches is not the only object of the Constitution's concern. The structural principles secured by the separation of powers protect the individual as well." *Stern, supra.*

The restrictions of Article III on bankruptcy judges are similar to its restrictions on Article I magistrate judges. Federal magistrates are Article I judges – they derive their

authority to exercise judicial functions through the Congressional grant of authority, not through Article III. *U.S. v. Torres*, 258 F.3d 791, 794 (8th Cir. 2001). Absent the consent of the parties, a magistrate cannot enter a final ruling on any dispositive motion. A sanctions motion, particularly one imposed on a third party for discovery violations, is a dispositive motion. *Wallace v. Kmart*, 687 F.3d 86 (3rd Cir. 2012); *Alpern v. Lieb*, 38 F.3d 933, 936 (7th Cir. 1994); *Bennett v. General Custer Service of N. Gordon Co.*, 976 F.2d 995, 996 (6th Cir. 1992); *Kiobel v. Millson*, 592 F.3d 78 (2d Cir. 2010((J. Cabranes, concurring). In such an instance, the magistrate has only the authority to enter proposed findings and recommendation, subject to *de novo* review by the District Court. Likewise, the Bankruptcy Court can not enter a final order imposing sanctions; rather, the Bankruptcy Court can only submit proposed findings of fact and conclusions of law to this Court for *de novo* review. *Executive Benefits Insurance Agency v. Arkison*, __ U.S. __, 134 S. Ct. 2165, 2172-3 (June 9, 2014).

In re Sheridan, 362 F. 3d 96 (1st Cir. 2004), a case decided prior to *Stern*, is instructive. In *Sheridan*, the bankruptcy court appointed a special master to investigate attorney Sheridan's conduct in closed bankruptcy files. Ultimately, the special master determined that Sheridan had violated the duty of competent representation during his representation of a number of clients, and entered an order suspending Sheridan from the bankruptcy bar. The First Circuit held that the omnibus disciplinary proceedings were non-core, and that, as such, the bankruptcy court could not enter a final order. In reaching its decision, the Court noted that the proceedings did not purport to adjust "debtor-creditor relations," but "consisted largely of the bankruptcy court's exercise of its supervisory authority to oversee and regulate its bar and to safeguard the public

confidence in the integrity and functionality of the bankruptcy court." *Id.* at 107-8. Further, the Court held that the rights at issue arose from the state law rules of professional responsibility, and as such were non-core. *Id.* at 108-9. Finally, as a policy matter, the Court held that where the attorney misconduct occurred outside of the court room, the Bankruptcy Judge would have no greater expertise than the district court. *Id.* at 109-10.

Sheridan is instructive because it demonstrates that Judge Rendlen lacks the jurisdiction to enter a final sanction order in the underlying proceeding against Robinson. In each instance, Judge Rendlen re-opened a closed bankruptcy case and re-appointed the Chapter 7 trustees and directed them to provide information relating to Robinson's trust account and other financial matters. In the first instance, the Court proceeded under 11 U.S.C. Section 329, the statute which permits the Court to order the return of unearned fees to the bankruptcy estate. This action is analogous to a state law claim by a client against an attorney for breach of contract. Even though the claim is specifically enumerated in the Bankruptcy Code, it is a non-core matter. *Granfinancieria, supra.* [11]

Moreover, even if Judge Rendlen had "core" jurisdiction over a claim for the refund of the attorneys fees, the full reimbursement of the attorneys' fees rendered the proceedings moot. Once the fees were returned to the debtors and the exemptions allowed, no order of the Bankruptcy Court could further effect debtor-creditor relations. Moreover, the Show Cause Orders and the Trustees' discussions before the Court amply demonstrate the proceedings were being used to investigate the operation of Robinson's

[11] In *Granfinancieria*, the Supreme Court held that a trustee's claim for fraudulent conveyance, a claim specifically found in the Bankruptcy Code, 11 U.S.C.§458(a)(2), was analogous to a state law claim and thus within the Article III jurisdiction.

law office and his compliance with the Missouri Rules of Professional Responsibility. These are state law matters which are outside the "core" jurisdiction of the bankruptcy court. *Sheridan, supra.*

Further, if the putative claim for an attorney fee refund from Robinson is non-core and implicates the full protection of Article III, then ancillary orders arising from such proceeding – such as an order on a motion to compel – must likewise be "non-core" and encompassed within the protection of Article III. The same conclusion applies if the collateral issue of "sanctions" arises from the alleged non-compliance with an underlying order. "[A] motion for sanctions, though it is in the context of an underlying action, is the functional equivalent of an independent claim." *Kiobel v. Millson, supra,* 592 F. 3d at 86. In *Alpern v. Lieb*, 38 F.3d 933, 935 (7th Cir. 1994), the Seventh Circuit, using similar reasoning, commented on the limited sanction power of an Article I judge: "The power to award sanctions, like the power to award damages, belongs in the hands of the district court judge. .... A district judge may refer a dispute about sanctions to a magistrate judge for a recommendation ... but the magistrate judge may not make a decision with independent effect." *Accord, Bennett v. General Custer Service*, 976 F.3d 995 (6th Cir. 1992).

Thus, just as Judge Rendlen lacks jurisdiction to enter a final order against Robinson, he lacks jurisdiction to enter the sanction of suspension upon Petitioner where such order does not implicate the administration of a creditor claim or the re-ordering of debtor-creditor relations. *Accord, Klett v. PIM*, 965 F.2d 587, 591 (8th Cir. 1992).[12]

[12] In *Klett*, the Eighth Circuit held that where a court lacked subject matter jurisdiction of the underlying claim, it lacked jurisdiction to enter sanctions for a violation of that claim.

Judge Rendlen's proposed *sua sponte* sanctions order imposing a six-month suspension involves neither the adjustment of debtor-creditor relations nor the claims allowance process. Consequently under the holdings of *Stern* and *Granfinancieria*, Judge Rendlen's proposed action is a usurpation of the Article III judicial power. While Judge Rendlen could enter proposed findings of fact and recommendations to the District Court, regarding sanctions or a matters involving contempt, such a judgment can only be entered by the District Court after a *de novo* review. *Accord, In re Ragar,* 3 F3d 117 (8th Cir. 1993)(*dicta*).

Judge Rendlen ruled that Petitioner had no right to a *de novo* review under *Stern* because, "[t]he issue of whether to award sanctions for the refusal to comply with a bankruptcy court order...is a matter that arises under Title 11 and the inherent power of the Court to enforce its own orders." (Order, August 4, 2015, DOC. 112, p. 18). The Judge is incorrect. Even though 11 U.S.C. §329 is found in Title 11, *Granfinancieria* makes it clear that cases that are explicitly permitted under Title 11 may still encroach upon the Article III jurisdiction.[13] Under the rationale of *Granfinancieria*, an action for the return of attorney's fees is analogous to a state court contract action, and is precisely the type of action which is reserved for an Article III court.

Further, inasmuch as Robinson has returned all of the attorneys' fees, there is simply no basis for any further action by the Court under 11 U.S.C. §329. As the transcript makes clear, the Trustees are simply using the proceeding as an unbridled

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Similarly, because the claim before Judge Rendlen is "non-core" any sanctions relating to that claim are also "non-core."

[13] In Granfinancieria, the Supreme Court held that a trustee's claim for a fraudulent conveyance – a claim that is explicitly permitted by 11 U.S.C.§458(a)(2) - could only be decided by an Article III court.

opportunity to investigate Robinson's law practice, including the handling of his trust account, the staffing of his office, and the payment of his employee's wages. These are outside of the scope of the jurisdiction of the Bankruptcy Court.

The Court is also incorrect that it can impose sanctions under its inherent power. Any inherent judicial power that the Court exercises is derivative from the Article III judicial power and must be exercised consistently with that power. *Hipp v. Griffith*, 895 F.2d 1503 (5th Cir. 1990). In *Hipp*, the United States Court of Appeals for the Fifth Circuit addressed the issue of whether a bankruptcy court could rely upon its "inherent" powers to issue a criminal contempt. Noting the "oft repeated phrase" that "the contempt power is inherent in all federal courts," 895 F.2d at 1512, the Court held that the bankruptcy court has no inherent power to enter a criminal contempt, because the Bankruptcy Court is not an Article III court. *Id.* The Court held that the bankruptcy court, like the magistrate court, must look to the district court for the enforcement of its orders.[14] Here, the sanctions order is imposed to punish Petitioner or to force Petitioner to comply with the Court's order compelling turnover. In either case, the sanction is being used to enforce compliance with the Bankruptcy Court's order. Just as the Bankruptcy Court has no inherent power to enforce its orders via criminal contempt, it has no inherent power to enforce its orders via sanctions.

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[14] "'[T]he contempt power, like all powers of the federal courts, cannot be inherited from thin air, but must flow from the Constitution.'" *Hipp, supra*, 895 F.2d at 512. (citations omitted). "In short, today's bankruptcy courts are arguably at least as much like magistrates or administrative agencies as they are like other non-Article III courts. Magistrates, who with the consent of the parties may conduct jury trials and criminal misdemeanors may only certify facts showing contempt to the district courts. Similarly, administrative agencies may order persons to act or refrain from acting, but they must usually look to Article III courts to enforce those orders if they are disobeyed." *Id.*

Finally, even if Judge Rendlen has the inherent power to suspend Petitioner, he cannot do so on this record. The sanction of suspension is quasi-criminal contempt. Assuming Judge Rendlen had such a power, he can only exercise it in this summary fashion, without a hearing, to punish a contempt that occurred in the presence of the Court. *In re Dowdy*, 960 F.2d 78 (8th Cir. 1992). Such "direct" contempt is committed in the eye and presence of the Judge, and does not rely on the testimony of third parties or the alleged contemnor. *In re: Heathcock*, 696 F.3d 1362, 1365 (11th Cir. 1992). Judge Rendlen bases his proposed sanction on the hearsay affidavits of Trustees Conwell and Case regarding matters that occurred outside of the court-room. Thus, any inherent contempt power will not support the proposed sanction judgment.

III.

The Bankruptcy Court Lacks Jurisdiction to Suspend Petitioner; Only the District Court Can Suspend Petitioner Pursuant to Its Rules of Disciplinary Enforcement

Judge Rendlen has acted as investigator, fact-finder and sentencing judge, without benefit of any evidence, and, by refusing to invoke the disciplinary procedures of the United States District Court for the Eastern District of Missouri, has deprived Petitioner of his constitutional right to due process of law. Judge Rendlen has acted as both investigator, charging party, fact-finder, and sentencing judge, all in a manner which lacks any standards or procedure.

Lawyer disciplinary proceedings are quasi-criminal, and an attorney subject to such a proceeding is subject to constitutional due process guarantees. *In re Ruffalo*, 390 U.S. 544, 551 (1968). An attorney may not be disbarred, suspended, or assessed attorneys fees without fair notice and an opportunity to be heard on the record. *In re*

Hancock, 192 F.3d 1083, 1085 (7th Cir. 1999); *See also*, *In re Peters*, 642 F.3d 381, 385 (2d Cir. 2011)("the Due Process Clause entitles a charged attorney to, *inter alia*, adequate advance notice of the charges, and the opportunity to effectively respond to the charges and to cross-examine witnesses"). Further, the burden of proof is on the charging party to show a violation, and some courts have held that the burden is only met by "clear and convincing" evidence. *In re Bird*, 353 F.3d 636, 639 (8th Cir. 2003)(J. Bye, dissenting).

The Rules of Disciplinary Enforcement of the United States District Court for the Eastern District of Missouri, attached hereto as Exhibit B, provide an attorney with appropriate due process safeguards.[15] Thus, Rule V provides that upon notice that a disciplinary infraction may have occurred, a judge who learns of the infraction may, if further action is warranted, refer the matter to appointed counsel for investigation. In the event that the special counsel believes, after investigation, that there is probable cause to believe that an infraction has occurred, special counsel is to seek a show cause order from the Court. The attorney has thirty (30) days to respond to the show cause. If a material issue of fact is raised in the answer, the district court may set the matter for hearing before one or more judges of the district court. "If the disciplinary proceeding is predicated upon the complaint of a judge of this court, the hearing shall be conducted before a panel of three other judges of this court..." Thus, the Rule affords Petitioner due process. He is entitled to a probable cause determination by a neutral and independent prosecutorial officer and a final determination by a party other than the charging party.

---

[15] Local Rule 83-12.02 of the District Court, "Attorney Discipline," also states, "A member of the bar of this Court and any attorney appearing in any action in this Court, for, good cause shown and after having been given an opportunity to be heard, may be disbarred, or otherwise disciplined, as provided in this Court's Rules of Disciplinary Enforcement. (Exhibit C).

See, *In re Fletcher*, 424 F.3d 783, 793 (8th Cir. 2005)(noting that procedural protections had been met where the three judge panel that heard the matter did not include "any of the complaining judges").

Morever, the Bankruptcy Court had no authority to conduct or conclude a disciplinary proceeding against an attorney. Bankruptcy Local Rule of the 2094-C provides that "[n]othing in this Rule shall preclude the Court from *initiating* its own disciplinary proceedings regardless of whether the attorney has been disciplined by another court." (emphasis supplied). The Bankruptcy Court Local Rules contain no other procedure for attorney discipline. Fairly read, the rule, which permits the Bankruptcy Court only "to initiate" a proceeding and the lack of any process for the use of the Bankruptcy Court to use in conducting a disciplinary proceeding, demonstrates that the only recourse the Bankruptcy Court has is to refer the matter to the District Court for investigation under the District Court Rules.

Having established procedural rules governing attorney discipline, here, the Disciplinary Enforcement Rules of the District Court, the District Court, and the Bankruptcy Court, are obliged to follow them. *In re Bird*, 353 F.3d 636, 638 (8th Cir. 2003).

Moreover, there can be no dispute that the regulation of attorneys is a judicial function. *See*, *In re Hoare*, 155 F. 3d 937, 940 (8th Cir. 1998)(the authority to disbar an attorney is in inherent power derived from the attorneys' role as an office of the court that granted admission). The district court has original jurisdiction of all cases arising under the Bankruptcy Code. The District Court, not the Bankruptcy Court, controls the admission of attorneys to the Bankruptcy Bar. Consequently, only the district court,

acting consistently with the Article III judicial power, can suspend Petitioner from the bar.

IV.

Petitioner has No Adequate Remedy

Petitioner has no adequate remedy at law. Moreover, a miscarriage of justice will occur if the writ is not granted. Petitioner anticipates that his suspension will be immediate.[16] The history of Mr. Robinson's suspension demonstrates that an appeal will not adequately protect Petitioner's interests. Robinson appealed his suspension to this Court and to the Eighth Circuit, where it is pending. Both Judge Rendlen and Judge Sippel denied Robinson's request for a stay. The one-year period of suspension expired on June 11, 2015. Thereafter, Judge Rendlen entered an order continuing the suspensions because, *inter alia*, a) the Missouri Supreme Court's Office of Chief Disciplinary Counsel had not completed its investigation of the referrals (based on their conduct before Rendlen), and b) this Court had entered "formal disciplinary proceedings" against Robinson and Walton. (*In re: LaToya Steward*, Case No. 11-46399, DOC 300, Order, 6/15/15, p. 6). Consequently, under Rendlen's Order, Robinson will remain suspended before the Bankruptcy Court until the completion of his appeal to the Eighth Circuit and the completion of the OCDC referral, a period far in excess of the original one-year period. Further, Petitioner currently suffers an actual injury in fact -- the deprivation of his right to due process of law. A miscarriage of justice has occurred, and will continue, unless this Court enters the writ, because Judge Rendlen will continue his actions to investigate and adjudicate the issue of whether Petitioner has engaged in misconduct,

[16] Upon his suspension, the Local Rules of the Bankruptcy Court prohibit Petitioner from receiving fees on his pending Chapter 13 cases, absent a court order.

without affording Petitioner the procedural rights inherent in the rules of the District Court.

Petitioner's clients will also suffer immediate and irreparable harm in the absence of the writ. Most are low-income minority debtors without the financial means to obtain substitute counsel, who will no longer have representation in their bankruptcy proceedings. Their interests can be considered in determining the harm that will occur if this Writ is not granted. *Camacho v. Brandon*, 317 F.3d 153, 159 (2d. Cir. 2003). A little over a year ago, hundreds of African-American debtors were cast adrift to fend for themselves as a result of the suspension Mr. Robinson. Judge Rendlen's impending sanctions order will repeat this for hundreds of African American debtors.

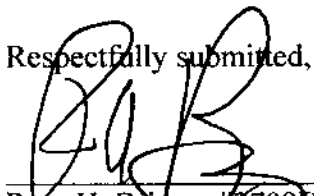
Petitioner was duty bound by his oath as an attorney to take the steps within his ability to respond to the plight of the unrepresented. Petitioner respectfully submits that this Court is likewise bound to ensure that the United States Constitution, and the protections of Article III, are observed and enforced within the United States Bankruptcy Court for the Eastern District of Missouri. Accordingly, this Writ of Prohibition should issue.

Relief Requested

Petitioner requests an Order from this Court prohibiting Judge Rendlen from entering any final judgment suspending Petitioner from practice before the Bankruptcy Court or imposing any similar sanction upon Petitioner, and directing him that if he believes such sanction is warranted, his action should be in the form of a recommendation to this Court.

believes such sanction is warranted, his action should be in the form of a recommendation to this Court.

Respectfully submitted,



Ross H. Briggs, #2709EDMo, #31633
4144 Lindell Boulevard, Ste. 202
St. Louis, MO 63108
(314) 652-8922
r-briggs@sbcglobal.net

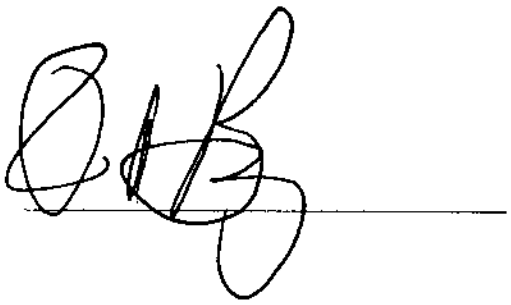
Certificate of Service

By my signature, I certify that on August 12, 2015, I served the foregoing Petition for Writ of Prohibition, Exhibits A, B, and C thereto, along with the Appendix, by hand-delivery upon:

Honorable Charles E. Rendlen III
United States Bankruptcy Court
c/o Dana C. McWay, Clerk, United States Bankruptcy Court
Thomas F. Eagleton U. S. Courthouse
111 South 10th Street, 4th Floor
St. Louis, MO 63102

And by First Class, United States Mail, postage pre-paid to:

Robert J. Blackwell
Blackwell and Associates
P.O. Box 310
O'Fallon, MO 63366-0310



Attachment 217

Dismissal by the Eighth Circuit of the Petition for Writ of Prohibition, filed by Briggs

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 15-2780

In re: Ross H. Briggs

Petitioner

Appeal from U.S. Bankruptcy Court for the Eastern District of Missouri - St. Louis
(14-43571)

JUDGMENT

Before BENTON, BOWMAN and KELLY, Circuit Judges.

Petition for writ of prohibition has been considered by the court and is denied.

Mandate shall issue forthwith.

August 18, 2015

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Attachment 218

Critique Services L.L.C.'s Motion to Dismiss or Transfer to the Docket of Chief Judge Surratt-States

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	)	
	)	
Evette Nicole Reed,	)	Case No. 14-44818-705
	)	
Debtor.	)	
	)	
In re:	)	
	)	
Pauline A. Brady,	)	Case No. 14-44909-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Lawanda Lanae Long,	)	Case No. 14-45773-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Marshall Beard,	)	Case No. 14-43751-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Darrell Moore,	)	Case No. 14-44434-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Nina Lynne Logan,	)	Case No. 14-44329-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Jovon Neosha Stewart,	)	Case No. 14-43912-705
	)	
Debtor	)	
	)	
In re:	)	
	)	
Angelique Renee Shields,	)	Case No. 14-43914-705
	)	
Debtor	)	
	)	

CRITIQUE SERVICES, LLC'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER THE PROCEEDINGS TO JUDGE KATHY SURRATT-STATES

COMES NOW Respondent Critique Services, LLC and moves this Court to dismiss all proceedings with regard to Critique Services, LLC in the above-captioned cases or, in the alternative, transfer the proceedings to Judge Surratt-States for the following reasons:

1. On or about July 31, 2007, Critique Services, LLC and Beverly Holmes-Diltz entered into a settlement with the U.S. Trustee. In re: Hardge, Case No. 05-43244-659, Adversary No. 05-04254-659.

2. As part of that settlement, Critique Services, LLC agreed that if it violated the terms of the settlement that the Bankruptcy Court, Judge Surratt-States, would retain jurisdiction to assess a penalty or to take such other action as it deems appropriate. (¶10.) A copy of the Settlement Agreement is attached hereto and incorporated herein as Exhibit 1.

3. In her Order approving the settlement, Judge Surratt-States ordered Critique Services, LLC to comply with the terms of the settlement and stated that any violation of those terms would subject the Critique Services, LLC to the Orders of her Court. That was the equivalent of entering an injunction against Critique Services, LLC not to act as it otherwise could act under the Bankruptcy Code as a bankruptcy petition preparer, but only to act in bankruptcy matters as outlined in that Agreement.

4. That agreement outlined the nature of the relationship Critique Services, LLC could have with an attorney providing legal services to debtors seeking protection under the Bankruptcy Code. Shortly after July 31, 2007, Critique Services, LLC entered into an agreement with attorney Robinson complying with the Settlement and Court Order of July 31, 2007, a copy

of which has previously been provided to this Court and the eight Debtors' Chapter 7 Trustees.

5. In an Order issued by Judge Rendlen in these eight above-captioned cases on July 6, 2015, the Court directed Critique Services, LLC to respond and to explain why the Court should not impose sanctions on Critique Services, LLC for failure to produce records pertaining to the operation of attorney Robinson's office and its participation, if any, in those operations. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Doc. 80).

6. In the above eight captioned proceedings, Judge Rendlen originally sought the return of "unearned fees" of attorney Robinson to the Bankruptcy estates of each of the above-names eight Debtors under 11 U.S.C. §329. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Docs. 19, 21). On November 26, 2014 and December 2, 2014, Judge Rendlen issued Show Cause Orders, which directed Robinson to explain why the Court should not order disgorgement of attorneys fees ranging from $299 to $349 in these cases.

7. In order to do that, Judge Rendlen reopened each case and reappointed the Trustees (all eight had previously been closed and the Chapter 7 Trustees discharged). Judge Rendlen sought to determine "whether disgorgement of the fee is proper." (Debtor Evette Nicole Reed, Case No. 14-44818-705, Order, December 3, 2014, Doc. 22, pp. 2-3).

8. The show cause orders in each of the eight cases also directed the Trustees to address, *inter alia,* to whom Robinson's fees were paid, where the fees were held following the payment to Robinson (including whether the fees were in a client trust account), and whether any of the fees had been disbursed to Robinson or to any other person or attorney affiliated with Critique Services, LLC.

9. Robinson then repaid each of the eight Debtors the amounts each had paid in fees

to him. None of the eight sought a refund. They each accepted the return of the amounts they had paid for attorney's fees.

10. Superficially it appeared that the refunded amounts were the property of the bankruptcy estates. The Chapter 7 Trustees supposedly had to abandon their interest in the returned fees or the Court had to order the return of the fees to the debtors.

11. Attorney Ross Briggs, who had represented the eight named Debtors when they were discharged, contacted the Chapter 7 trustee for each of the Debtors and inquired whether each of them would waive his or her interest in the fees. Trustee Blackwell responded that he would relinquish the estate's claim to the fee returned to "his" Debtor. The other trustees ignored attorney Briggs' inquiries. However, in each case the refunded fees were within the exemptions still available to each Debtor.

12. Notwithstanding the fact that there was nothing left to litigate, the Chapter 7 Trustees (Trustee David Sosne assuming the lead) continued to pursue the turnover of checks, ledgers, or account statements of attorney Robinson related to the fees he charged these eight Debtors. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Letter of December 3, 2014, attached as Exhibit 3 to the Trustee's Motion to Compel, Doc. 30).

13. On December 12, 2014, the Trustees filed a Motion to Compel production of the documents they sought, requesting the Court to compel attorneys Robinson and Briggs and Critique Services, LLC to provide the information and documents the Trustees sought related to the Court's Show Cause Orders. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Doc. 30).

14. A hearing on the Trustee's Motion to Compel was held on January 13, 2015. At that hearing, Trustee David Sosne, on behalf of all Trustees, stated that the information provided

did not satisfy their requests. The Trustees sought to understand how Robinson handled his client trust account and to gain knowledge of the workings and staffing of Robinson's law office. For example, Trustee Sosne wanted to know, who at that office met with debtors, prepared their schedules, counseled them, and handled the money they paid. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Transcript, 1/13/15 hearing is attached hereto and incorporated herein as Exhibit 2 at pg. 68.)

15. The Court and Trustees have relied upon 11 U.S.C. §542(e) to support their ability to get the requested documents concerning the operation of attorney Robinson's law office. That statute provides that the bankruptcy court may order an attorney "that holds information, including books, documents, records and papers relating to the debtor's property or financial affairs, to turn over *such recorded* information to the trustee," [emphasis added]. The statute applies only to existing records of the debtor [emphasis added]. In re: The Vaughan Company, 2015 WL 4498746, 2015 Bankr. LEXIS 2424 (D. N.M. Bankruptcy Court, July 23, 2015). Seeking information regarding the operation of Robinson's law office is far beyond the permissible reach of the cited statute.

16. At the conclusion of the January 13, 2015 hearing, the Court advised that it would issue an order in two days and require compliance with the Court's directives by noon on the following Tuesday. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Transcript, 1/13/15, pg. 84 - Exhibit 2).

17. At the next hearing on February 4, 2015, current counsel appeared for Critique Services, LLC even though Critique Services, LLC had not been served with the Motions to Disgorge. He moved this Court to dismiss the actions or transfer these cases to Judge Surratt-

States arguing then, as now, that this Court does not have jurisdiction to enforce Judge Surratt-States' Order of July 31, 2007 issued in the case of In re: Hardge. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Transcript of 2/04/15 hearing at pgs. 23-24 - attached hereto and incorporated herein as Exhibit 3.)

18. At the February 4, 2015 hearing, Trustee Sosne, on behalf of all Trustees, contended that inquiries into the operation of attorney Robinson's office were relevant to the turnover of unearned attorneys' fees even though all fees have been returned to Debtors. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Transcript of 2/4/15, Exhibit 3 at pgs. 1-10 & 16-18). Robinson's full refund of attorney's fees paid by his clients makes any inquiry into whether Robinson retained "unearned fees," unnecessary and invalid under 11 U.S.C. §329. Firefighter's Local 1784 v. Stotts, 467 U.S. 561, 571 (1984).

19. Trustee Sosne continued to demand additional information stating that he needed to know, "Who gets paid? How is it done? . . . [somebody] will have to do a subpoena and get the W2s of the people, get the tax returns, get the financial records . . . Who's reporting this income? Who's reporting these expenses? Who's employed by whom? Who's doing what? Perhaps an inspection of the facility to see how it's laid out, who's officing where. They're all officing at the same place. What's happening? It's not that complicated." (Debtor Evette Nicole Reed, Case No. 14-44818-705, Transcript, 2/4/15 - Exhibit 3 at pgs. 1-10 & 16-18). All are matters beyond the scope of the return of unearned fees.

20. On July 6, 2015, Judge Rendlen issued an order stating that "[i]t was established that the Respondents had failed to comply with the Order Compelling Turnover," and giving notice that he was considering imposing sanctions against Critique Services, LLC, Robinson and

Briggs. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Order, Doc. 80). The Order does not specify how Critique Services, LLC failed to comply with the Order Compelling Turnover.

21. Critique Services, LLC filed a response to the show cause Order of July 6, 2015 arguing that it cannot be compelled to produce documents it does not have and does not have control over. (Debtor Evette Nicole Reed, Case No. 14-44818-705, Doc. 82).

22. At this time in the proceedings in these eight cases, especially since attorney Robinson has returned and disgorged all fees paid by the eight named Debtors, this Court and the Trustees are seeking to determine how attorney Robinson operated his office, what role Critique Services, LLC played in the operation of that office, and other matters related thereto and not any matters relating to the disgorgement of the fees paid by attorney Robinson. Those are the very issues included in and covered by Judge Surratt-States' Order of July 31, 2007.

23. Since the only court that has authority to enforce an Order of an injunctive nature is the court that issued that Order, this Court's further proceeding on the matters now before it are not within the province and the authority of this Judge under precedent established by the Eighth Circuit Court of Appeals and other Federal Courts. Only the court which has issued an order of an injunctive nature has the authority to determine whether the order has been violated and to impose whatever sanctions it deems appropriate. Klett v. PIM, 965 F.2d 587 (8th Cir. 1992).

WHEREFORE, Defendant Critique Services, LLC prays that this Honorable Court, dismiss all proceedings now pending in the above-captioned matter with regard to Critique Services, LLC or, in the alternative, transfer these matters as they relate to Critique Services, LLC to Judge Surratt-States for her determination and ruling on them and grant such other and further relief as the Court deems just under the circumstances herein.

Respectfully submitted,

/s/ Laurence D. Mass
Laurence D. Mass #30977
Attorney for Critique Services, LLC
230 So. Bemiston Ave., Suite 1200
Clayton, Missouri 63105
Telephone: (314) 862-3333 ext. 20
Facsimile: (314) 862-0605
Email: laurencedmass@att.net

CERTIFICATE OF SERVICE

By signature above I hereby certify that I electronically filed the foregoing with the Clerk of the United States District Court, Eastern District of Missouri by using the CM/ECF system, and that a copy will be served by the CM/ECF system upon those parties indicated by the CM/ECF system.

By: /s/ Laurence D. Mass

Attachment 219

Order Denying Critique Services L.L.C.'s Motion to Dismiss to Transfer to the Docket of Chief Judge Surratt-States

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	
	§	
Evette Nicole Reed,	§	**Case No. 14-44818-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Pauline A. Brady,	§	**Case No. 14-44909-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Lawanda Lanae Long,	§	**Case No. 14-45773-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Marshall Beard,	§	**Case No. 14-43751-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Darrell Moore,	§	**Case No. 14-44434-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Nina Lynne Logan,	§	**Case No. 14-44329-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Jovon Neosha Stewart,	§	**Case No. 14-43912-705**
	§	
Debtor.	§	
	§	
In re:	§	
	§	
Angelique Renee Shields,	§	**Case No. 14-43914-705**
	§	
Debtor.	§	
	§	

ORDER DENYING MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER

On August 14, 2015, Critique Services L.L.C., one of the respondents to the July 6, 2015 Notice of the Court's intent to impose sanctions (the "July 6 Notice") [Docket No. 80], filed a "Motion to Dismiss or, in the Alternative, to Transfer the Proceedings to [Chief] Judge Kathy Surratt-States" (the "Motion") [Docket No. 107], and a Memorandum in Support [Docket No. 108]. For the reasons set forth herein, the Court orders that the Motion be denied.

I. BACKGROUND

A. The Suspension of James C. Robinson

Until his suspension in June 2014, James C. Robinson was an attorney practicing bankruptcy law[1] at the business located at 3919 Washington Blvd. in St. Louis (the "Critique Services business"). The Critique Services business peddles cut-rate bankruptcy services primarily to the work-poor of inner-city St. Louis. Since at least 2007, Robinson has been under contract with Critique Services L.L.C., and has held himself out to this Court as doing business as "Critique Services" and "Critique Services L.L.C."

Critique Services L.L.C. is not a law firm; it is owned by a non-attorney, Beverly Holmes Diltz, and is one of several "Critique"-named bankruptcy services operations that Diltz has operated and owned over the years. Critique Services L.L.C.'s sole stated business purpose in its Articles of Organization (Attachment A) is to provide "bankruptcy petition preparation service." However, since 2007, Critique Services L.L.C. has been enjoined by an order of this Court from providing bankruptcy petition preparation services. As such, it appears that, for the past eight years, Critique Services L.L.C. has not had a stated business purpose that it can lawfully undertake.

[1] The Court uses the phrase "practicing law" loosely. In *In re Steward*, it was established that Robinson rendered no legal services of any value to the debtor. He failed to meet with the debtor prior to agreeing to represent her, shunted work to non-attorney staff (who solicited false statements), and filed the debtor's petition papers, despite knowing that they contained false statements. The Court concluded that Robinson was, at best, a human rubberstamp who affixed his signature and bar number to documents prepared by non-attorney staff.

Diltz, her various "Critique"-named businesses, and attorneys and non-attorneys affiliated with her business have been repeatedly sued in the past fifteen years for unprofessional and unlawful business practices. Several attorneys affiliated with Diltz's businesses have been sanctioned, suspended or disbarred for their activities related to Diltz's businesses. Diltz and her businesses have been repeatedly enjoined by Court order from unprofessional and unlawful business practices.

On June 10, 2014, in the matter of *In re Latoya Steward* (Case No. 11-46399), Robinson was suspended from the privilege of practicing before this Court on behalf of any other person, for making false statements, willfully refusing to comply with discovery directives, and contempt of court. In addition, Robinson—along with Critique Services L.L.C., and their counsel, Elbert A. Walton, Jr.[2]—were held jointly and severally liable for $49,720.00 in sanctions for their refusal to make discovery about Robinson's business in connection with the litigation of a motion to disgorge fees that was filed by the *Steward* debtor.

B. The Debtors' Retention of Robinson

In the months before Robinson's suspension, the debtors (collectively, the "Debtors") in the above-captioned cases (collectively, the "Cases") paid fees at the Critique Services business for services to be performed by Robinson. At the time of his suspension, Robinson had already filed five of the eight Cases (*In re Moore*, *In re Logan*, *In re Stewart*, and *In re Shields,* and *In re Beard*). However, in four of those five Cases (*In re Moore*, *In re Logan*, *In re Stewart*, and *In re Shields*), the meeting of creditors required under 11 U.S.C. § 341 had not yet been held—meaning that, when those § 341 meeting were held following his suspension, Robinson could not have appeared on behalf of those Debtors. In the fifth of those five Cases (*In re Beard*), the § 341 meeting had been conducted by the time Robinson was suspended; however, the *Beard* Debtor had not yet

[2] Along with Robinson, Walton also was suspended from the privilege of practicing before this Court, for his role in facilitating and promoting his clients' contempt and other bad acts. Robinson and Walton remain suspended to this day, having made no efforts to comply with the terms for reinstatement.

received his discharge, there was a pending motion for relief from the automatic stay, and the *Beard* Debtor had not yet filed his certificate of financial management course—meaning that, as of his suspension, Robinson had not yet completed his representation of the *Beard* Debtor, either. And, of course, in the three Cases that had not been filed at the time of his suspension (*In re Reed*, *In re Brady*, and *In re Long*), Robinson had not even entered his appearance. Those Cases ultimately were filed by Ross H. Briggs, an attorney with a long-time formal and informal affiliation with Diltz and her businesses.[3]

C. The First Two Show Cause Orders

It appeared that, due to his suspension, Robinson could not to have earned all or part of his fees paid by the Debtors. However, according to the Court's records, as of mid-November 2014, Robinson had not returned to the Debtors any of his fees. On November 26, 2014, and December 2, 2014, the Court entered two Show Cause Orders [Docket Nos. 19 & 21], directing him to show cause why he should not be ordered under 11 U.S.C. § 329(b) to disgorge any unearned fees or be sanctioned for failing to timely return his unearned fees.[4] The Court also ordered the chapter 7 trustees assigned to the Cases (the "Trustees") to account for all property of the estates, including property in the form of unearned attorney's fees. The Court provided a directive that any fees returned at that point be provided to the Trustees:

---

[3] Shortly after Robinson's suspension, Briggs took over representation for six of the Debtors who had paid Robinson for services. Briggs now represents these Debtors on a pro bono basis. However, Briggs's current efforts to paint his pro bono representation as a noble exercise is undermined by the facts. Briggs is providing pro bono representation because he was ordered by the Court to do so on June 25, 2014—following his attempt to fee-share and provide "joint representation" with the suspended Robinson. [Docket No. 7 ("Order (1) Striking the Rule 2016 Statement Filed by Mr. Ross Briggs as to its Representation that Mr. Briggs and the Suspended Mr. James Robinson Will Provide Joint Representation, (2) Determining that Mr. Briggs Is the Sole Counsel of Record for the Debtor and Will Donate His Services to the Debtor, and (3) Directing that Mr. Briggs File a Corrected Rule 2016 Statement and an Affidavit.")].

[4] The professional rules of ethics make it clear that an attorney cannot keep unearned fees, and 11 U.S.C. § 329(b) provides that excessive fees paid to a debtor's attorney can be ordered returned.

> While the Court would welcome Mr. Robinson now voluntarily providing to ***the chapter 7 trustee*** any portion of any fees in any case that were paid to him but which he did not earn, doing so will not make this inquiry moot. The Court still would require the above-listed issues to be addressed. The fact that Mr. Robinson apparently has not returned any unearned fees raises the concern of whether there has been attempted impropriety in these Cases related to the attorney's fees paid by the debtor.

(emphasis added). The Court included this directive because any unearned fees would not have been property of the Debtors, but would have been property of the estates, subject to administration unless later abandoned by the Trustees.

D. The Return of the Fees

In response to the first two Show Cause Orders, Robinson and Briggs ignored the directive to return the money to the Trustees. Instead, Robinson provided the fees to Briggs, who accepted the fees for his six Debtor-clients. Robinson provided the fees by personal money orders—a peculiar choice of vehicle for returning unearned client fees. And, if that wasn't odd enough, the money orders appear to have been signed not by Robinson, but by Diltz. The signature for "James Robinson" on the money orders looks nothing like Robinson's signature as his signature appears on pleadings, although the signature on the money orders shows a striking similarity to Diltz's script as seen on documents filed by her companies with the Missouri Secretary of State and on the supersedeas bond document that she personally posted on behalf of Robinson, Critique Services L.L.C. and Walton in the appeal of *In re Steward*.

After returning the fees, Robinson claimed that the fees had been transferred in "settlement" of previously undisclosed (and unscheduled) disputes between himself and the Debtors. This was a ridiculous position to take for a number of reasons—not the least of which was the fact that any claims that the Debtors may have had against Robinson related to his fees would have been property of the estates, and only the Trustees had authority to settle such claims. Robinson and the Debtors were not free to strike their own deal. Robinson also insisted that the transfers made the Show Cause Orders moot, despite the fact that the long-delayed return of the fees did not explain (much less excuse)

Robinson's holding of those fees for five months. And, on top of all of this, Robinson insisted (and still insists today) that he actually earned all the fees.

E. The Third Show Cause Order

The untimely return of the fees resolved the issue of whether the Court needed to order disgorgement. However, it did not resolve the issue of whether Robinson should be sanctioned for failing to timely return the fees or for any mishandling of the funds while they were missing from the estates. A bad-acting party cannot disappear with estate assets on the hope that the assets will not be missed, return the assets only when called to account, then avoid any accountability by claiming, "No harm, no foul! All is returned!"—which is exactly what it appears that Robinson is trying to do here.

Determining whether it is proper to sanction Robinson begins with an accounting of the property of the estates, to allow the Court to determine whether any of the fees were unearned, and why any unearned fees were not timely returned, and whether there was any mishandling of the fees or malfeasance involving the fees while they were held. To make it clear that the sanctions issue was still under consideration, on December 10, 2014, the Court issued a third Show Cause Order [Docket No. 27], directing Robinson to show cause why he should not be sanctioned for having failed to timely return the fees.

F. The Trustees' Motion to Compel Turnover

While Robinson and Briggs were busy moving around money orders, the Trustees remained under the directive to account for property of the estates, including for any unearned fees. On December 3, 2014, the Trustees sent letters to Robinson, Briggs and "Critique Legal Services," requesting that each turn over certain documents and information that would aid the Trustees in making their accounting. Robinson and Briggs each responded with a letter in which each he contended that he had nothing to provide or otherwise refused to substantively respond. Critique Legal Services did not respond at all. On December 12, 2014, the Trustees filed a Motion to Compel Turnover [Docket No. 30], seeking to compel turnover of the documents and information that they had requested by letter. In response to the Motion to Compel, Robinson filed two motions to

dismiss [Docket Nos. 40 & 43], one of which baselessly accused the Court of violations of the Fourteenth Amendment of the U.S. Constitution. The motions to dismiss were denied [Docket Nos. 41 & 44].

On January 13, 2015, the Motion to Compel Turnover came for hearing. Robinson and Briggs appeared, each representing himself. Briggs tap-danced and avoided answering directly, in an attempt to give the impression that he has no association with Diltz and her business, while claiming that he is incapable of helping his clients obtain the documents and information. Robinson launched unsupported allegations against the Court and the Trustees, made incoherent arguments, interrupted others, and bellicosely argued with the Court. Robinson's contentions about what happened to the fees and his records of those fees made little sense. On one hand, the fees were paid in cash and, receipts were allegedly given to the Debtors for those cash payments; yet, Robinson claimed he had no documents related to those cash payments or the receipts. No ledger, no accounting, no carbon copies of receipts—nothing to verify who accepted the cash, where it went after being paid, where it was held while being earned, etc.

At the end of the hearing, the Court ruled from the bench, granting the Motion to Compel Turnover and advising that a written order would issue within a few days. (It ended up taking thirteen days to issue, as the Court faced the daunting task of memorializing all the false statements, misleading arguments, and non-credible representations made by Robinson and Briggs at the hearing.) On January 23, 2015, the Court entered its Order Compelling Turnover [Docket No. 52], directing Robinson, Briggs, and Critique Services L.L.C.[5] to turn over certain documents and information to the Trustees by January 30, 2015.

G. Determining Compliance with the Order Compelling Turnover

On February 4, 2015, the Court held a status conference on compliance with the Order Compelling Turnover, at which Briggs appeared on behalf of himself, and Critique Services L.L.C. appeared through its counsel, Laurence

[5] It became clear at the January 13 hearing that "Critique Services L.L.C." is the entity to which any turnover directive likely should have been made, rather than to "Critique Legal Services L.L.C." Therefore, the Court directed that turnover be made by both Critique Services L.L.C. and Critique Legal Services L.L.C.

Mass. Robinson did not appear. It was established that compliance had not been met. At the end of the proceeding, the Court took the matter under advisement and stated that it would issue an order. For the next four months, while the Court considered the terms of an order, no additional turnover was made. The only development was an attempt on May 12, 2015 by Mass to "clarify" the record of the February 4 proceeding [Docket No. 77]—an effort that required the Court to enter an order [Docket No. 78] striking Mass's "memorandum of clarification," to the degree that it sought to modify the record.

H. The July 6 Notice of Intent to Impose Sanctions for Failure to Comply with the Order Compelling Turnover

On July 6, 2015, the Court issued its July 6 Notice, giving notice to Critique Services L.L.C., Robinson, and Briggs that it was considering imposing sanctions or ordering the taking of other appropriate action for non-compliance with the Order Compelling Turnover, and giving each seven days to either comply with the Order Compelling Turnover or file a brief, addressing why sanctions or other actions should not be ordered. The Court also directed each of the Trustees to file an affidavit attesting to: (i) whether any turnover had occurred since the February 4, 2015 hearing and, if so, the nature and scope of such turnover, and (ii) whether he or she has become aware of any additional facts that bear on the issue of compliance with the Order Compelling Discovery or the representations made at the January 13 or February 4 proceedings.

I. The Responses to the July 6 Notice

On July 13, 2015, Critique Services L.L.C., Robinson, and Briggs each filed a response to the July 6 Notice [Docket Nos. 82, 83 & 85], contending that sanctions are not proper. On July 16 and 17, 2015, the Trustees filed affidavits attesting that no further turnover had been made. In one of the affidavits, the attesting Trustee attached photographs and a time-stamped meal receipt [Docket No. 96], and included the following attestation: very shortly after the January 13, 2015 hearing, the Trustee entered a restaurant and came upon Briggs and a woman conversing. The Trustee overheard remarks (including one of which was vulgar) that indicated that Briggs and his companion were discussing the hearing

that had just ended. The Trustee took photographs of Briggs and his companion and made notes of what she witnessed. She provided the photographs to another one of the Trustees, who identified the woman with Briggs as Diltz. The other Trustee filed an affidavit [Docket No. 95], attesting to identification of Diltz.

J. The July 22 Notice of Intent to Impose Sanctions for Briggs's Misleading Statements Regarding His Relationship with Diltz and Critique Services L.L.C.

On July 22, 2015, the Court issued a Notice to Briggs (the "July 22 Notice") [Docket No. 102], advising him that the Court was considering imposing sanctions upon him for his misleading statements regarding his relationship with Critique Services L.L.C. and Diltz. The Court gave Briggs an opportunity to respond, and advised that he could (i) agree to: (a) a six-month voluntary suspension from the privilege of practicing before this Court; (b) ten hours of continuing legal education in ethics; and (c) a permanent injunction from ever again doing business with Diltz, her businesses, her employees and independent contractors, and Robinson, related to a case filed in or anticipated to be filed in this Court; or (ii) show cause that sanctions or other actions were not warranted.

K. Briggs's Response to the July 22 Notice and Request for a Transfer of the Sanctions Determination to the U.S. District Court

On July 31, 2015, Briggs filed his Response to the July 22 Notice [Docket No. 104]. He did not request a hearing. Briggs included a request that the Court transfer the sanctions matter to the U.S. District Court for determination. On August 4, 2015, the Court entered an order denying a transfer [Docket No. 105]. In that order, the Court also noted that several contentions made by Briggs about the record were untrue, and observed that Briggs's claim that his post-hearing lunch with Diltz was evidence of his effort to comply with the turnover directive was "an openly laughable assertion with absolutely no credibility whatsoever."

L. Briggs's Petitions for Writ of Prohibition

In his Response, Briggs insisted that this Court—as an Article I court—lacks the power to sanction him. He argued that this Court thus must transfer the sanctions matter to the U.S. District Court—an Article III court—for determination. In its August 4 order, the Court rejected Briggs's position that it has no power to

sanction him. In addition, the Court observed that there is no mechanism by which it can "transfer" a matter to the U.S. District Court, as Briggs requested. As the Court explained, this Court receives its cases pursuant to the standing order of automatic reference of the U.S. District Court. The automatic reference is a one-way street: from the U.S. District Court to this Court. This Court has no authority to "reverse" the U.S. District Court's order of automatic reference. If Briggs believed that the sanctions issue must be determined by the U.S. District Court, he was free to make that argument in a motion to withdraw the automatic reference—a motion that would have been decided by the U.S. District Court. However, Briggs did not file a motion to withdraw the reference. Instead, on August 6, 2015, he filed a petition for writ of prohibition in the U.S. District Court, suing the undersigned judge in his official capacity. On August 11, 2015, the U.S. District Court dismissed the petition for writ for want of jurisdiction. On August 12, 2015, Briggs filed a similar petition for writ of prohibition with the U.S. Court of Appeals for the Eighth Circuit. On August 18, 2015, the U.S. Court of Appeals denied the petition without comment.

II. THE INSTANT MOTION

Meanwhile, on August 10, 2015, Mass filed the instant Motion, seeking dismissal of the sanctions proceeding or, in the alternative, a transfer of the sanctions matters to the docket of Chief Judge Surratt-States of this Court. The Court now determines the merits of the Motion.

A. The False and Misleading Statements in the Motion

Before addressing the merits of the Motion, the Court first will identify false and misleading statements made in the Motion.

1. The False Statements

Mass previously has been warned by this Court not to pass off the work of other lawyers as his own. On June 20, 2014, in *In re Steward*, Mass took over representation of Critique Services L.L.C. following Walton's suspension. The first documents that Mass presented for filing on behalf of Critique Services L.L.C. had obviously been prepared by Robinson or Walton, and not by Mass.

The Court entered an order [*In re Steward* (Case No. 11-46399) Docket No. 222] rejecting the documents for filing, describing the circumstances:

> Mr. Mass's documents presented for filing are copies of documents previously filed with, or previously presented for filing by, either Mr. Robinson or Mr. Walton—with only the signature block blanked out and with Mr. Mass's signature handwritten and inserted where the previous signature block had been. In one of the documents, Mr. Mass did not even bother to cover up Mr. Robinson's signature block—he simply crossed it out before adding his own, handwritten signature block. Moreover, the documents presented by Mr. Mass refer to being brought by the "Appellants" or "James C. Robinson, Critique Services L.L.C. and Elbert A. Walton"—even though Mr. Mass attests in his handwritten signature block that he represents only Critique Services L.L.C. These documents are a mess. There is no coherent representation as to who Mr. Mass represents or on whose behalf the documents are to be filed. They amount to a poorly executed cut-and-paste job that involved no lawyering effort whatsoever. And, there is not even the pretense that this is Mr. Mass's work. It is clearly the work of the suspended Mr. Walton and the suspended Mr. Robinson.

Yet despite this admonition, Mass apparently has not yet learned the importance of doing one's own lawyering and due diligence. In the instant Motion, Mass includes false statements made in Briggs's Petitions for Writ of Prohibition:[6]

- Briggs falsely stated in his Petition for Writ of Prohibition that prior to the issuance of the Show Cause Orders, all the Cases had been closed and that the undersigned judge reopened "each [C]ase"; Mass repeats this false statement in Paragraph 7 of his Motion.[7] In fact, however, five of the

[6] In addition to making these false statements before a higher court in his petitions for writ of prohibition, Briggs also made these same false statements to another judge presiding on this Court. On August 27, 2015, Briggs filed a "motion for protective order" in two cases (*In re Seanea Armstrong* and *In re Darrel Battle*) pending before Judge Schermer, asking for a declaration from him that any suspension sanctions that the undersigned Judge might impose in these Cases would be void and unenforceable. In his motion, Briggs repeated his false statements about the closed status of the cases and the reappointment of the Trustees. On September 1, 2015, the motion for protective order was denied.

[7] Mass falsely states: "In order to do that [issue the Show Cause Orders], Judge Rendlen reopened each case . . . all eight had previously been closed . . ."

eight Cases (*In re Reed, In re Brady, In re Beard, In re Stewart, and In re Shields*) were open at the time that the Show Cause Orders were issued and had never been closed. The Court had even pointed out this fact in its Order of December 3, 2014 [Docket No. 22], observing that "[m]ost of the Cases have not been closed pursuant to § 350(a)."

- Briggs falsely stated in his Petitions for Writ of Prohibition that the undersigned judge reappointed the Trustees in all the Cases; Mass repeats this false statement in Paragraph 7 of his Motion.[8] In fact, however, in only three Cases (*In re Long, In re Moore,* and *In re Logan*) were the Trustees reappointed; in the other Cases, the Trustees were under active appointment when the Show Cause Orders were issued.[9]

Mass incorporates these false statements into his Motion for the same reason that Briggs made the false statements in his Petitions for Writ of Prohibition—these false statements fit into the fairy tale they are trying to sell: that the sanctions issues are not the result of a failure to return unearned attorney's fees or the result of a failure to comply with the Order Compelling Turnover, but are the result of the Court dredging up "old news."

In addition, Mass makes other false statements, which appear to be the result of either sloppiness or wishful "mis-remembering" the record:

- Mass falsely states at Paragraph 11 of the Motion that Briggs represents all eight Debtors. In fact, Briggs represents six Debtors—a point that the

[8] Mass falsely states: "In order to do that [issue the Show Cause Orders], Judge Rendlen . . . reappointed the Trustees . . . the Chapter 7 Trustees had previously been] discharged . . ."

[9] Mass also falsely states that the Court reappointed the trustees—suggesting that the reappointments were official acts of the Court. However, in its December 3, 2014 Order, the Court recognized that it does not have the power to reappoint a trustee ("the appointment of chapter 7 trustees is an Executive Branch duty executed by the United States Trustee"). While welcoming the reappointment of the Trustees in the Cases where a Trustee was needed, the Court did not reappoint any Trustee; the United States Trustee did.

Court and Briggs have repeatedly noted, and a fact that Mass could have ascertained with only a minimal due diligence.

- Mass falsely states at Paragraph 17 of the Motion that, at the February 4th proceeding, he moved to dismiss the Show Cause Orders or to have the matters transferred to Chief Judge Surratt-States. In fact, as the transcript shows, Mass did not move for either form of relief on February 4. Instead, what Mass did was (i) erroneously and repeatedly insist that the issue here is whether a 2007 injunction enjoining Critique Services L.L.C., which had been signed by Chief Judge Surratt-States, had been violated, and then (ii) suggest that that the sanctions matters here should be before either Chief Judge Surratt-States or the Missouri Supreme Court's Office of Chief Disciplinary Counsel (the "OCDC").[10] However, Mass never actually motioned for dismissal or a transfer. He just complained.

2. The Misleading Statements

Mass also makes misleading statements in the Motion:

- Mass claims at Paragraph 10 of the Motion that, after the transfer of the fees on December 6, 2014, "[s]uperficially it appeared that the refunded amounts were property of the bankruptcy estates." The use of the adverb "superficially" is inexplicable, other than to mischaracterize the legal reality. Property either is, or is not, within the estate; there are no degrees of "appearance." Any unearned fees were, in actuality (and not in superficial appearance), property of the estate.
- Mass suggests that the fees were property of the estate only as a technicality, because "[t]he Chapter 7 Trustees supposedly had to abandon their interest in the returned fees . . ." However, the Trustees were *actually*—not supposedly—required to abandon their interests in the

[10] His argument regarding the OCDC appeared to be based on the belief that this Court does not have jurisdiction to deal with attorney misbehavior that occurs in cases before it, but that such issue is solely a matter for the OCDC. In addition to being wrong as a matter of law (contrary to Mass's contentions, an attorney can be subject both to the sanctions authority of a court and the disciplinary authority of the OCDC), it also is a cynically convenient position for Mass to take, since his client is not a lawyer and thus is not subject to discipline by the OCDC.

fees before the fees were removed from the estates. Abandonment is not a trifling technicality.

B. Analysis of the Request for Dismissal

Critique Services L.L.C.'s principal position in the Motion is that the Court must "dismiss all proceedings with regard to Critique Services L.L.C." Presumably, by referring to "all proceedings," Critique Services L.L.C. is referring to the determination of whether sanctions should be imposed, as set forth in the July 6 Notice. However, dismissal is not a form of relief available to Critique Services L.L.C. Even if the Court declines to impose sanctions, the July 6 Notice would not be dismissed. A Court notice is not a pleading; it does not request relief; it is not subject to dismissal. To interpret the Motion as generously as possible, the Court construes the request to be for a determination that sanctions are not proper and for withdrawal of the July 6 Notice.

1. Critique Services L.L.C.'s argument that sanctions are not proper because the fees now have been returned.

Critique Services L.L.C. argues that the Order Compelling Turnover, itself, was not proper—and thus, noncompliance with the Order Compelling Turnover should not result in sanctions. In support of this argument, Critique Services L.L.C. contends because all the fees have now been returned, all inquiries into the property of the estates are over and there is "nothing left to litigate"—and, therefore, the Trustees are not entitled to any documentation and information. However, as discussed previously herein, regardless of Robinson's Hail Mary return of the fees, there remain outstanding matters to address related to the fees and administration of the estate.

2. Critique Services L.L.C.'s argument that sanctions are not proper because the July 6 Notice did not sufficiently detail how Critique Services L.L.C. failed to comply with the Order Compelling Turnover.

Critique Services L.L.C. argues that sanctions are not proper because, it alleges, the July 6 Notice does not illuminate for it all the ways in which it has been established that compliance with the Order Compelling Turnover was not met. However, Critique Services L.L.C. has admitted that it did not comply in full

with the Order Compelling Turnover. It admits that it has copies of its contracts with Dedra Brock-Moore and Dean Meriwether (attorneys who have come under contract with Critique Services L.L.C. since Robinson's suspension), and acknowledges that these contracts are subject to the turnover directive. Nevertheless, Critique Services L.L.C. has announced that it will not turn over the contracts. In addition, the only document of any significance that Critique Services L.L.C. has turned over—a copy of its contract with Robinson—shows that Critique Services L.L.C. has been contractually obligated since 2007 to provide administrative services, including bookkeeping, to Robinson. As Robinson's contracted bookkeeper, Critique Services L.L.C. should have in its custody or control at least some bookkeeping-related documents and information subject to turnover. However, Critique Services L.L.C. has turned over no bookkeeping-related documents or information whatsoever. Instead, Mass claims that his client never provided any bookkeeping services to Robinson. Meanwhile, Robinson simultaneously claims that he also has no records of his own bookkeeping, although he does not claim that Critique Services L.L.C. was not his bookkeeper. This appears to be coordinated whack-a-mole game of "the other guy has it!"—being played on the hope that, if there is just enough finger-pointing and obfuscation, maybe no one will be held accountable. But merely making non-credible claims that there are no documents or information to turn over does not satisfy the Order Compelling Turnover.

3. Critique Services L.L.C.'s argument that sanctions are not proper because the Trustees are not entitled to turnover under § 542(e).

Critique Services L.L.C. claims that sanctions are not proper because the Trustees do not have a legal basis for obtaining the documents and information. The Trustees sought, and obtained, a directive for turnover of the requested documents and information pursuant to 11 U.S.C. § 542(e), which provides that:

> Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee.

Critique Services L.L.C. argues that the Trustees are not entitled to obtain the requested documents and information under § 542(e). In support of this position, it relies on *(Wagner v. Dreskin) In re The Vaughan Co.*, 2015 WL 4498748 (Bankr. D.N.M. Jul. 23, 2015). However, *In re The Vaughan Co.* does not stand for the proposition that there is "[no] authority under [§ 542(e)] to seek any records that are not the records of these eight Debtors."

In re The Vaughan Co. stands for two propositions related to § 542(e). First, it stands for the proposition that "[t]he plain language of § 542(e) limits turnover or disclosure to existing recorded information and does not require the creation of new information, such as compiling an accounting." *Id.* at *5. That proposition is not relevant here, as the Trustees have not requested the creation of new information. Second, *In re The Vaughan Co.* stands for the proposition that, while "the recorded information subject to turnover under § 542(e) need not itself constitute property of the bankruptcy estate . . . the recorded information must either 1) relate to the property of the estate; or 2) relate to the debtor's financial affairs." *Id.* However, the information at issue here (unlike the information at issue in *In re The Vaughan Co*.) is clearly related to the property of the estate and the debtor's financial affairs. The documents and information subject to turnover relate to determining whether the fees were unearned (and thus were property of the estate), where they were held and by whom and why for months, why they were not returned to the estate earlier, whether the fees were mishandled by Robinson, why the fees were not returned in the same form they were paid, and who actually returned the fees (and if it was not Robinson who purchased the money orders, who was it, and why that person was in control of the property of the estate).

4. Critique Services L.L.C.'s argument that sanctions are not proper because Critique Services L.L.C. has nothing to turn over.

Critique Services L.L.C. claims that sanctions are not proper because it cannot be compelled to turn over documents and information over which it has no control or which are not in its custody. The Court has no dispute with the premise that a party cannot be sanctioned for failing to turnover that which it

does not have or control. However, the Court does not believe Critique Services L.L.C.'s claim that it does not have the documents and information—a claim that flies in the face of other representations, including those in its own contract with Robinson. The issue here is not whether Critique Services L.L.C. can be compelled to turn over documents and information it does not have; the issue is whether it is proper to sanction Critique Services L.L.C. for not turning over documents and information when the Court does not believe Critique Services L.L.C.'s claim that it does not have the documents and information.

5. Critique Services L.L.C.'s argument that sanctions are not proper because Critique Services L.L.C. did not receive service.

At the February 4 proceeding, Mass alleged that "[m]y client was never served with these eight motions to disgorge." However, there has never been a motion to disgorge filed in these Cases—by anyone or served upon anybody. There has been the issuance of the Show Cause Orders, which raised the issue of whether disgorgement was proper. However, Critique Services L.L.C. was not entitled to service of the Show Cause Orders. The directives in the Show Cause Orders were not directed to Critique Services L.L.C.; they were directed to Robinson and the Trustees. And there has been the filing of the Motion to Compel Turnover—but that motion did not request disgorgement.

In the five months since February 4, Mass has not made an effort to become familiar with the operative documents in these Cases. At Paragraph 17 of his Motion, Critique Services L.L.C. again complains about a failure of service of a non-existent motion, stating that, "Critique Services, LLC had not been served with the Motions to Disgorge." To be as generous as possible, the Court assumes that Mass now refers to the Motion to Compel Turnover (even though the Motion to Compel Turnover does not request disgorgement).

Presumably, Critique Services L.L.C.' s complaint about a lack of service relates to the name-confusion in the Motion to Compel Turnover. The Motion to Compel Turnover was addressed to "Critique Legal Services" instead of "Critique Services L.L.C." Critique *Legal* Services L.L.C. is another of Diltz's "Critique"-named businesses. It was dissolved in 2003, following the entry of an injunction

prohibiting Diltz from representing that her business could provide legal services. However, the Trustees—led in part by Trustee Sosne, a much-experienced trustee who remembers the days when Critique *Legal* Services L.L.C. was Diltz's operating entity—inadvertently listed "Critique Legal Services," rather than Critique Services L.L.C. (no "Legal"), in the Motion to Compel Turnover. Critique Services L.L.C. now suggests that, because of this, an injustice is being worked upon it by the turnover directive. The Court is not persuaded.

First, Critique Legal Services L.L.C. was organized and owned by the same person, Diltz, who organized and owns Critique Services L.L.C. Anyone with a modicum of brainwave activity and a shred of intellectual honesty would have known that it was Diltz's almost-identically named, non-dissolved entity, Critique Services L.L.C., that was the intended respondent to the Motion to Compel Turnover, and not Diltz's long-dissolved Critique Legal Services L.L.C.

Second, following the issuance of the Order Compelling Turnover—which issued a directive to Critique Services L.L.C. specifically—Critique Services L.L.C. did not demand corrected service of the Motion to Compel Turnover. It did not request a new opportunity to be heard. To the degree that Critique Services L.L.C. had any ground upon which to complain based on the name-confusion, that ground was waived long ago.

Third, for Critique Services L.L.C. to complain, straight-facedly, about not receiving service of the Motion to Compel Turnover takes unmitigated nerve. As it turns out, Critique Services L.L.C. has made it nearly impossible for it to be served at any address where it is currently located. According to Critique Services L.L.C.'s Articles of Organization, its address is 4144 Lindell Blvd., St. Louis, Missouri. There has been no amendment to that address information. However—as the Office of the Clerk of the Bankruptcy Court recently learned, when it called 4144 Lindell Blvd. to confirm Critique Services L.L.C.'s mailing address for purposes of service[11]—Critique Services L.L.C. has not been at that

[11] Attachment B. The Clerk of Court's Office was directed to confirm the business address for Critique Services L.L.C., so that service of the Court's

address for five years. The only public information that the Clerk of Court's Office could obtain regarding a possible current location for Critique Services L.L.C. was on the website of the Better Business Bureau (which indicates that "Critique Services L.L.C." is located at 3919 Washington Blvd.). By Critique Services L.L.C.'s own design, the Trustees would have had to climb Mount Parnassus to consult the Oracle of Delphi to obtain the address at which Critique Services L.L.C. is currently located.

Fourth—in yet-another brick in the wall of operational opacity at the Critique Services business—"Critique Legal Services" is still advertising its services to the public, despite having been dissolved for more than a decade. As the Court discovered during its efforts to obtain a current address for Critique Services L.L.C., the 2015-2016 Greater St. Louis Yellow Pages shows a listing for "Critique Legal Services," under the "Tax Preparation Services" subsection[12] (giving its business address as 3919 Washington Blvd. and its phone number as that of the Critique Services business), and the 2015-2016 Greater St. Louis Business White Pages shows a listing for "Critique Legal Services" (again, at the 3919 Washington Blvd. address and with the Critique Services office telephone number.)[13] Whatever is going on at the Critique Services business at 3919 Washington Blvd., Diltz's Critique Legal Services holds itself out to the public as being a part of it and operates as an advertising alter ego. And, given that Critique Legal Services L.L.C. is owned by the same woman who owns Critique Services L.L.C., and both limited liability companies have connections to the Critique Services business at 3919 Washington Blvd., it seems fair to say that Critique Services L.L.C. has been on notice of the issues here for many months.

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orders could be made upon Critique Services L.L.C. at its business office, in addition to being made at its attorney's office.

[12] "Tax preparation" was never part of Critique Legal Services L.L.C.'s stated business purpose. Critique Legal Services L.L.C.'s only stated business purpose, set forth in its Articles of Organization (Attachment C), was "attorney representation." Whatever that vague phrase might mean, it does not mean "providing tax preparation services to the public."

[13] Attachment D.

Fifth, it is beyond dispute that Critique Services L.L.C. has known since January 2015 about the turnover efforts and its role in the request, and has had six months to be heard and respond.

6. Critique Services L.L.C.'s argument that the Court lacks authority to sanction under 28 U.S.C. § 157.

At footnote 3 of the Memorandum in Support, Critique Services L.L.C. appears to argue that because it has not consented to this Court issuing a final disposition on any non-core matter, the Court cannot issue a final disposition on the sanctions determination. However, this is a core proceeding. It involves a directive for turnover of property of the estate (making it a core matter under 28 U.S.C. § 157(b)(2)(A) & (E)). It also involves the exercise of the Court's inherent authority under 11 U.S.C. § 105(a) to enforce its own orders. The Court does not need Critique Services L.L.C.'s consent to determine sanctions against it for noncompliance with its Order Compelling Turnover.

7. Critique Services L.L.C.'s argument that the Court cannot sanction under *Stern v. Marshall*.

Critique Services L.L.C. argues that *Stern v. Marshall*, 131 S.Ct. 2594 (2011), makes the imposition of sanctions improper. Briggs previously made this *Stern v. Marshall* argument to the Court—twice. Nevertheless, the Court will state again here, as it has done before in its July 14 Order [Docket No. 89], and again in its August 4 Order [Docket No. 105]:

> reliance on *Stern v. Marshall* is misplaced. *Stern v. Marshall* holds that, as a matter of constitutional law, the bankruptcy court lacks the authority to enter a final judgment on a compulsory state law counterclaim that does not arise under Title 11 or in a case under Title 11, even though such authority is expressly codified at 28 U.S.C § 157(b)(2)(C). The issue of whether sanctions for the refusal to comply with bankruptcy court order is not a state counterclaim. It is a matter that arises under Title 11 and the inherent power of the Court to enforce its own orders. *Stern v. Marshall* does not strip the Court from its authority to sanction for refusal to comply with its orders, and the Court does not need Briggs's [or Critique Services L.L.C.'s] "consent" to exercise its jurisdiction over the issues set forth in the Notice and Deadline.

8. Critique Services L.L.C.'s argument that sanctions are not proper because this is an Article I Court.

Critique Services L.L.C. claims that sanctions are not proper because, it asserts (with no citation to authority), "Bankruptcy Courts, which are not Article III courts, do not have the inherent power as do Federal Courts at the District Court level and above to enforce its Orders through sanctions and/or criminal contempt." (Critique Services L.L.C.'s Memorandum in Support at 6 n.3.) In response to this argument, the Court first notes the sanctions contemplated here are of a civil nature. The Court has never suggested that it might impose criminal sanctions. The contention that the sanctions would be criminal in nature is a red herring. Second, it is well-established that the bankruptcy courts have the power to sanction. *See, e.g., Elbert A. Walton, Jr. v. John V. LaBarge (In re Clark),* 223 F.3d 859, 864 (8th Cir. 2000)("[Section 105 gives to bankruptcy courts the broad power to implement the provisions of the bankruptcy code and to prevent an abuse of the bankruptcy process . . ."); *Needler v. Cassmatta (In re Miller Automotive Group, Inc.),* 2015 WL 4746246, at *5 (8th B.A.P. Aug. 12, 2015)("Bankruptcy Code § 105(a) provides a bankruptcy court with authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, and allows the court to "tak[e] action or mak[e] any determination necessary or appropriate to . . . prevent an abuse of process." 11 U.S.C § 105(a) And, a bankruptcy court "may also possess 'inherent power . . . to sanction "abusive litigation practices." ' " *Law v. Siegel*, --- U.S. ---, ---, 134 S.Ct. 1188, 188 L.Ed.2d 146, 2014 WL 813702, at *5 (2014)(citing *Marrama v. Citizen Bank of Mass.,* 549 U.S. 365, 375-376, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007))(quotation marks omitted)."); *In re Young*, 507 B.R. 286, 291 (8th Cir. B.A.P. 2014)(same as *In re Needler*).

9. Critique Services L.L.C.'s argument that sanctions are not proper because the Court ordered the reopening of three of the Cases.

Despite Critique Services L.L.C.'s insinuations to the contrary, there was nothing improper about the Court's reopening of three of the Cases. Pursuant to 11 U.S.C. § 350, the Court may, for cause, reopen a case. The administration of

estate assets, including the administration of unearned attorney's fees, is cause for reopening a case. Cause to reopen three of the Cases existed because Robinson had not returned any of his fees, despite his apparent inability to have earned all or some of those fees. To any degree, nothing about the reopening of the three Cases suggests that Critique Services L.L.C. should not be, or cannot be, sanctioned for failure to comply with the Order Compelling Turnover.

C. Analysis of the Request that the Sanctions Issue Be Transferred to the Docket of Chief Judge Surratt-States for Determination

As an alternate form of relief, Critique Services L.L.C. requests that the determination of whether sanctions should be imposed in these Cases be transferred to the docket of Chief Judge Surratt-States. In support of this request, Critique Services L.L.C. claims that the sanctions issue raised in these Cases is not whether it should be sanctioned for violating the Order Compelling Turnover (as the Court has repeatedly identified the issue to be). Rather, Critique Services L.L.C. claims, the issue is whether Critique Services L.L.C. should be sanctioned for violating an injunction entered in 2007 (the "2007 Injunction") against Critique Services L.L.C. and Diltz in *In re David Hardge* (Case No. 05-43244)—an injunction that was signed by Chief Judge Surratt-States of this Court and which restricts the types of business Critique Services L.L.C. and Diltz may conduct. Currently before Chief Judge Surratt-States, in the matters of *In re Terry L. and Averil Williams, et al*. (Lead Case No. 14-44204), is the issue of whether Critique Services L.L.C. and Robinson violated the 2007 Injunction. Critique Services L.L.C. insists that the sanctions determination here should be made in connection with the determination of the issues raised in *In re Williams, et al*.

Critique Services L.L.C.'s framing of the sanctions issue in these Cases as one involving the 2007 Injunction is a false narrative—and the Court does not casually use the adjective "false." By insisting that the issue is whether the 2007 Injunction was violated, Critique Services L.L.C. is not merely mistaken or confused. It is deliberately presenting a false story. To review: the Show Cause Orders issued to Robinson do not raise the violation of the 2007 Injunction as an issue. No notice issued by the Court in these Cases advises that the Court

intends to impose sanctions for violation of the 2007 Injunction. There is no pending motion to enforce the 2007 Injunction. The Motion Compelling Turnover does not allege a violation of the 2007 Injunction. The Order Compelling Turnover does not refer to the 2007 Injunction. When Critique Services L.L.C. has misguidedly insisted that the issue here involves the 2007 Injunction, the Court has advised—both in writing and from the bench, and in unequivocal terms—that the issue of whether the 2007 Injunction has been violated has not been raised in these Cases. It is only Critique Services L.L.C. that raises the issue here—and it does so only to protest that the issue should not be determined in these Cases.

Critique Services L.L.C. has pushed this false narrative so often that the Court wrote the following in its May 15 Order [Docket No. 78]:

> Mass states that he "believes" that Critique Service that Critique Services L.L.C.'s "conduct complied with the structure established" in the 2007 injunction—as if Mass's belief is determinative of compliance. To any degree, it is unclear why Mass feels the need to share his belief on this point with the Court in these Cases, given that the issue of whether the 2007 injunction was violated is currently before another Judge of this Court on motions filed in other cases. It is not an issue in these Cases. This was previously explained to Mass by the Court at the February 4 hearing, after Mass incorrectly insisted that the Show Cause Orders raised the issue. Because Mass appears, once again, to need this pointed out, the Court will, once again, state: the issue of whether the 2007 injunction was violated is not an issue raised for determination in these Cases. The Show Cause Orders do not refer to the 2007 injunction. There has been no motion to enforce the 2007 injunction. No party is seeking relief under the 2007 injunction. The issue presented by the Show Cause Orders is whether Robinson should be sanctioned for failing to timely return unearned fees that were property of the estate—an issue that is separate from the issue of whether the 2007 injunction was violated.

Critique Services L.L.C.'s obsession with this false narrative makes sense when it is viewed in the context of Critique Services L.L.C.'s real goal. Critique Services L.L.C.'s goal is not to avoid sanctions being imposed in these Cases for a violation of the 2007 Injunction. It knows very well that the Court does not

intend to impose sanctions for a violation of the 2007 Injunction; the Court has repeatedly said so. Critique Services L.L.C.'s real goal is to avoid having the undersigned Judge determine whether Critique Services L.L.C. should be sanctioned for refusing to comply with the Order Compelling Turnover. So, instead of addressing its real problem (its lack of credibility about the documents and information subject to turnover), Critique Services L.L.C. has decided to create a false narrative about the reason for the sanctions determination—and to attempt to use that false narrative to insist that the sanctions issues raised here should be determined in conjunction with the *In re Williams, et al*.

While Critique Services L.L.C.'s dishonesty on this point cannot be condoned, the Court understands why a transfer must seem like a very appealing option to Critique Services L.L.C. at this point. In the *In re Willams, et al.* matters, the issue of whether the 2007 Injunction was violated was raised by motion of the United States Trustee (the "UST"). Critique Services L.L.C. likely would rather deal with the UST in the *In re Williams, et al.* matters, than answer to the Court in these Cases for refusing to comply with the Order Compelling Turnover. Over the past fifteen-plus years, the UST has repeatedly sued Diltz, her "Critique"-named businesses, and affiliated attorneys and non-attorneys, and the outcome has always been consent injunctions that have proven to be of little use in stopping the problematic behavior. Despite these injunctions, the issue of whether those affiliated with the Critique Services business are committing unprofessional and unlawful behaviors keeps coming up, again and again—only to be resolved by yet-another injunction in which future compliance is promised on paper. For Critique Services L.L.C., the prospect of possibly negotiating yet-another injunction with the UST in the *In re Williams, et al.* matters must seem comparatively palatable. When appreciated in that context, the desperate attempt to recharacterize the issue here as one involving the 2007 Injunction here is seen for what it is: a phony story told for the purpose of getting into a preferred litigation position of dealing only with the UST.

III. CONCLUSION

For the reasons set forth herein, the Court **ORDERS** that all requests for relief made in the Motion be **DENIED**.

CHARLES E. RENDLEN, III
U. S. Bankruptcy Judge

DATED: September 4, 2015
St. Louis, Missouri
sec

Attachment 220

Motion for Protective Order, filed by Briggs in *In re Armstrong* and *In re Battle*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	
	)	
Seanea Armstrong,	)	Case No. 15-46170-399
	)	
Debtor,	)	
	)	
In re:	)	
	)	
Darrel Battle,	)	Case No. 15-46028-399
	)	
Debtor.	)	

MOTION FOR A PROTECTIVE ORDER

COMES NOW Movant Ross H. Briggs, counsel for Debtors in the above captioned Chapter 13 bankruptcy proceedings, and moves this Court for a Protective Order and a Declaration that any final order of the Honorable Charles E. Rendlen III suspending Movant shall have no effect upon Movant's legal representation of debtors before this Court. In support of this Motion, Movant States:

1. This Motion pertains to six Chapter 7 cases in which the Honorable Charles E. Rendlen III has threatened Movant with sanctions, including a suspension from practicing before the United States Bankruptcy Court for the Eastern District of Missouri. *See, In re Evette Nicole Reed*, Case No. 14-44818, *In re: Pauline A. Brady*, Case No. 14-44909, *In re Lawanda Lanae Long*, Case No. 14-45773, *In re: Marshall Beard*, Case No. 14-43751, *In re Darrell Moore*, Case No. 14-43444343, *In re Nina Lynne Logan*, Case No. 14-44329, *In re Jovon Neosha Steward*, Case No. 14-43912, and *Angelique Renee Shields*, Case No. 14-43914 (hereinafter "the Chapter 7 Cases"). The

threatened sanctions of Judge Rendlen would appear to implicate Movant's ability to represent Debtors before this Honorable Court.

2. Movant was *pro bono* counsel in six of these cases after the suspension of James Robinson on June 10, 2014. These cases had been closed and the Chapter 7 trustees discharged. In December 2015, Judge Rendlen reopened these cases, reappointed the Chapter 7 Trustees, and initiated proceedings to determine "whether disgorgement of the [attorneys] fee is proper." (Order, December 3, 2014, Doc. 24, pp. 2-3).[1] Judge Rendlen also issued several show cause orders which directed the Trustees to address, *inter alia*, to whom Robinson's fees were paid, where the fees were held following the payment to Robinson (including whether the fees were in a client trust account), and whether any of the fees had been disbursed to Robinson or any person or attorney affiliated with Critique Services, LLC. (DOC. 21, p. 3, DOC. 23, p.3).

3. By letter, the Chapter 7 Trustees requested that Movant provide the information and documents described in the Show Cause Orders. Movant, who has a law firm separate and apart from Robinson, and who represented these debtors on a *pro bono* basis, responded that he had never had any of the records sought, other that the legal file of the debtors.

4. Thereafter, Robinson provided each of the debtors with a money order fully reimbursing the debtor for all of the attorneys' fees that the debtor had previously paid him. Although none of Movant's clients had sought a refund, they were willing to accept the attorneys' fees.

[1] All citations are to the record in the case of *In re: Marshall Beard*, Case No. 14-43751, unless otherwise noted.

5. Notwithstanding the absence of any justiciable case or controversy, resulting from the refund of attorneys fees, the Chapter 7 Trustees, acting through Trustee David Sosne, continued to demand the turnover of checks, ledgers, or account statements related to the fees. (Letter of December 3, 2014, attached as Exhibit 3 to the Trustee's Motion to Compel, DOC. 33).

6. On December 12, 2014, the Trustees filed their Motion to Compel Turnover, requesting the Court to compel Robinson, Critique Services, LLC, and Movant, as Debtor's *pro bono* counsel, to provide information and documents relating to the matters addressed in the Court's Show Cause Orders. (DOC. 33).

7. At the hearing on the Motion to Compel, held on January 13, 2015, Trustee David Sosne, spokesman for the Chapter 7 Trustees, expressed his view that Movant, as *pro bono* debtor's counsel, had the obligation to seek the requested documents from Critique Services, LLC and, if necessary, to engage in discovery to obtain the information. (At the time of the hearing, no attorney had entered his or her appearance on behalf of Critique Services, LLC.) Sosne also expressed his view that Movant was a member of the "inner sanctum" of Critique, and for that reason, was in the position to obtain documents and information from Critique. (Transcript, 1/13/15, p. 24).
At the conclusion of the January 13, 2015 hearing, the Court advised that it would issue an order in two days and require compliance with the Court's directives by noon on the following Tuesday. (*Id*. at 84).

8. Before the conclusion of the hearing on January 13, 2015, at the Court's insistence, Movant told the Court that he would make additional inquiry with Critique Services, LLC regarding any outstanding documents. (*Id*. at 51). The record reflects:

> Movant: I will ask for documents. I will ask for documents just as the Court has. If I receive them, I will produce them to the trustee. If I don't receive them, I will report to the trustee and the Court as to what response I have. … I have no special access to ledgers, client accounts. I don't have any access to it. If Critique wants to give it to me, I'm happy to produce it to the Court and to the trustee. I will make the same request Your Honor has. I will report back to as to what the nature of that response is.

(Id. at 51-2). (The Order subsequently entered by the Court advised Movant that he would have to make inquiry of Critique Services. Order, 1/23/15, DOC 54, p. 21).

9. Accordingly, immediately upon the conclusion of the hearing of January 13, Movant contacted Beverly Diltz, the owner of Critique Services, LLC, to schedule a meeting to discuss the imminent court order and the short time period for production of the outstanding documents. Consistent with the urgency conveyed by the Court at the hearing, Movant met with Ms. Diltz soon after the conclusion of the hearing. At this meeting, Movant encouraged Ms. Diltz, as owner of Critique Services, LLC, to produce any responsive documents that it might have in its possession. Movant met with Ms. Diltz in order to comply with the instructions of Judge Rendlen.

10. Unknown to Movant, Trustee Kristin Conwell, one of the Chapter 7 Trustees, entered the restaurant where Movant and Ms. Diltz were meeting. Without announcing her presence, she proceeded to eavesdrop upon Movant's conversation with Ms. Diltz, and surreptitiously photographed them using her cellphone. She also provided a copy of her photographs to Trustee Case.

11. On January 24, 2015, Movant sent a letter to Critique Services, LLC and Robinson requesting that they provide the information and documents sought. A copy of this letter was filed in the Court file. (DOC. 57).

12. On January 29, 2015, Larry Mass entered his appearance on behalf of Critique Services, LLC. Simultaneously with the entry of his appearance, Critique Services, LLC produced information and documents.

13. On February 4, 2015, the Court held a status conference. Mr. Mass appeared as attorney for Critique Services, LLC and Movant appeared. (Mr. Robinson did not appear). Neither Trustee Case nor Trustee Conwell mentioned the January 13 lunch meeting at the status conference, presumably because they did not deem it relevant to any issue before the Court.

14. On July 6, 2015, Judge Rendlen issued an order stating that "[i]t was established that the Respondents had failed to comply with the Order Compelling Turnover," and giving notice that "the Court gives NOTICE that it is considering the imposition of monetary sanctions and/or other nonmonetary sanctions against Respondents." (Order, DOC. 91, p. 2, Appendix, p. 2)(The July 6, 2015 Order and subsequent orders issued by the Court, along with Movant's responses thereto, are included in the Appendix.)

15. Movant filed a response to the Show Cause order, asserting his rights under *Stern v. Marshall*, to a *de novo* review of any sanctions order and detailing the manner in which he had complied with the Order. (DOC. 96, p. 8, Appendix, p. 12). More particularly, by January 20, 2015, Movant had met with each debtor and reviewed the information requested by the Chapter 7 Trustees. Thereafter, debtors provided Movant various documents such as retainer agreements, receipts of payments, notes and other documents generated in the course of James Robinson's representation of the debtors. Movant produced these documents to the Chapter 7 Trustees. Further, debtors,

through their signed statements or affidavits, and Movant, through statements to the Court, reported that all responsive documents within the custody and control of debtors and Movant had been produced. In addition, debtors and Movant reported to the Court that debtors and Movant did not have access, custody, or control in regard to Attorney Robinson's financial records, including his client trust account. Accordingly, debtors and Movant were unable to produce these documents to the Chapter 7 Trustees. (DOC 96, pp. 2-4, Appendix pp. 6-8).

16. On July 16, 2015, Trustee Conwell filed her Affidavit with the Court, setting forth the fact that she had observed Movant and an "unknown African-American woman" (later identified by Trustee Case as Beverly Diltz), meeting in a restaurant and that she had overheard parts of their conversation.[2] (*In re Darrell Moore and Jocelyn Antoinette Moore*, Case No. 14-44434, DOC. 72).

17. Simultaneously, Trustee Rebecca Case filed an affidavit, stating that based on Conwell's Affidavit, "I attended the hearing on January 13, 2015 … [n]umerous representations were made on the record during the lengthy hearing, … [v]ery shortly after the hearing, I received a photograph from Chapter 7 Trustee Kristin Conwell which appeared to contradict the representations made at the hearing." (*In re Pauline Brady*, 14-44909, DOC. 83).

18. On July 22, 215, the Court entered its order advising that it intended to impose sanctions upon Movant. The Order gave Movant a choice: 1) voluntarily accept a six (6) month suspension, with additional terms, or 2) refuse to be suspended, in which

[2] Although much was later made of the conversation reflected in the Conwell Affidavit, the only statement that she attributes to Movant is his statement to Ms. Diltz that "[debtors] would have to tell the truth," to which Diltz responded, "I know that." Conwell Affidavit, Paragraph 10.

case the Court, after considering any response by Movant, might impose additional sanctions, including a referral to the Missouri Supreme Court's Office of Chief Disciplinary Counsel. (DOC. 109, pp. 6-7, Appendix, pp. 37-8).

19. The basis of the Order was the Judge's apparent conclusion that Movant had denied knowing that Beverly Diltz was the owner of Critique Services, LLC.

20. Movant had never denied knowing Beverly Diltz, and he made no representations to the Court to the contrary. Further, he never denied knowing the owner of Critique Legal Services, LLC at any hearing before the Court.

21. In fact, when asked at the January 13, 2015, hearing to identify the owner of "Critique," Movant referred to the public records of the Missouri Secretary of State which identified either Beverly Diltz Holmes or James Robinson as the "owner" of a Critique entity. (Public filings of the Missouri Secretary of State, which were submitted to the Court in response to the July 22 Order demonstrate that Beverly Diltz Holmes is the owner of Critique Services, LLC, and James Robinson registered the fictitious name of "Critique Services.).

22. On August 4, 2015, the Court entered an order once again rejecting Movant's position that he had a right to a *de novo* hearing under *Stern*, and indicating that he intended to enter a final order. In this Order, Judge Rendlen insinuated that sanctions may be imposed upon Movant for failing to disclose the lunch meeting with Diltz. (DOC. 112, Appendix, p. 105).

23. Nothing in the record, in the transcript of proceedings or in any prior order the Court, informed Movant that the method of communication with co-respondents (i.e. correspondence versus personal conversation) or that the location of the communication

(i.e., a restaurant), was material to the Court and required "disclosure." On January 24, 2015, Movant informed the Court by correspondence that Movant was directly communicating with Critique Services, LLC regarding the production of documents.

24. Trustees Conwell and Case likewise appeared to believe that the details of the January 13 lunch meeting were not germane to any outstanding request of Judge Rendlen. At the February 4, 2015 status conference, which Trustee Conwell attended, she did not disclose to the Court or to Movant the fact of the January 13 lunch meeting or her surreptitiously-taken photographs. On March 26, 2015, Judge Rendlen directed the Trustees to file with the Court any documents produced by Movant in compliance with the Order of the Court. (DOC. 75). Again, Trustees Case and Conwell responses do not mention the January 13 lunch meeting. It was not until Judge Rendlen's July 6, 2015 Show Cause Order (entered over three months later), that the Court directed the Trustees to disclose whether "she or he has become aware of any additional facts that bear on the issue of compliance with the Order Compelling Discovery, *or the representations made at the January 13 or February 4 hearings*." (DOC. 91, p. 4, Appendix, p. 3)(emphasis supplied). Only at this point did Trustees Conwell and Case reveal the information regarding the lunch meeting that had been withheld from the Court and the Movant for nearly six months.

25. In response to the July 6 Show Cause Order and the July 22 Order, Movant asserted his right to *de novo* review of any order purporting to suspend Movant from the bankruptcy court. Movant also asserted his right to the disciplinary proceedings of the District Court before a suspension. Judge Rendlen held that, as a matter of law, *Stern v.*

Marshall, did not apply to the proceedings and that he had the authority to enter the suspension under his inherent power. (DOC, 99, 112, Appendix pp. 27, 105).

26. This matter presents justiciable case or controversy because any proposed sanction order has already deprived Movant of the due process protections of the Rules of Disciplinary Enforcement of the United States District Court for the Eastern District of Missouri and his right to *de novo* review by an Article III judge of any proposed suspension order.

27. Any proposed order suspending Movant from the Bankruptcy Court, without *de novo* review by the District Court, will be void, and is not binding on this Court.

28. Only the District Court has the authority to suspend Movant, and can only do so in accordance with the Rules of Disciplinary Enforcement of the District Court.

29. Only the District Court has the authority to enter a final order suspending Movant from the Bankruptcy Court, under the authority of *Stern v. Marshall*. Judge Rendlen may only issue recommendations to the District Court.

30. The grounds and reasons for this Motion are set forth in the accompanying Memorandum of Law.

WHEREFORE, Movant prays for a declaration of this Court that the proposed Order of Judge Rendlen suspending Movant from the representation of Debtors before this Court will not be enforced by this Court.

Respectfully submitted,
/s/ Ross H. Briggs
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St. Louis, MO 63108
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Certificate of Service

I certify that a copy of the foregoing was served electronically this 26th day of August, 2015, through the Court's ECF system to Chapter 13 Trustee John V. LaBarge, Jr., PO Box 430908, St. Louis, Missouri 63143.

/s/Ross H. Briggs