Attachment 61

TRO, issued in 2004 MOAG Action

IN THE CIRCUIT COURT OF ST. LOUIS CITY
STATE OF MISSOURI

STATE OF MISSOURI ex rel. JEREMIAH W. (JAY) NIXON, Attorney General,	)	
Plaintiff,	)	
vs.	)	**Cause No.** 044-00547
	)	**Division** 8
CRITIQUE LEGAL SERVICES LLC, and	)	
CRITIQUE SERVICES LLC, and	)	
BEVERLY J. HOLMES,	)	
Defendants.	)	

FEB 10 2004
MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
DEPUTY

TEMPORARY RESTRAINING ORDER OF DEFENDANT BEVERLY HOLMES, CRITIQUE LEGAL SERVICES LLC, AND CRITIQUE SERVICES LLC AND THEIR AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS

NOW on this 10th day of February, 2004, this cause comes to be heard from on Plaintiff's Application for Temporary Restraining Order.

FINDINGS

The Court having considered Plaintiff's Petition, Application for Temporary Restraining Order with Affidavits attached thereto, and Suggestions in Support and being fully advised in the premises finds as follows:

A. Plaintiff has given notice to Defendants Beverly J. Holmes, Critique Legal Services LLC, and Critique Services LLC, by personal service on Beverly J.Holmes's husband at 9:30 AM on February 9, 2004 at 4009 Westminster, St. Louis, Missouri; and faxed letter notice

to Defendants Holmes and Critique at 314- 551-9958 at 3:00PM on February 9, 2004. Further, on 2-9-2004, at approximately 3:00PM calls to defendants were made at 314-533-help, the registered phone number for the Critique business office. Finally, a complete set of pleadings was served at the office of Defendant Critique at 4144 Lindell, St. Louis, Missouri, at 10:00 AM on February 9, 2004. Based upon the foregoing, the Court specifically finds the notice provisions of Supreme Court Rule 92.02 (a) were complied with.

B. Plaintiff, in its Petition and Application for Restraining Order with attached affidavits contends that defendants Critique Legal Services LLC, Critique Services LLC, and Beverly J. Holmes, and the defendant employees named in the Petition, have made misrepresentations and omissions in connection with bankruptcy filings in violation of Sections 407.020 and 484.020 (RSMo. 2000), have engaged in the unauthorized practice of law and that such conduct has caused Missouri consumers to lose money, property, and suffer other economic harm.

C. Plaintiff in its Petition and Application for Temporary Restraining Order with attached affidavits contends that defendants have profited from their participation in the business of defendant Critique LLC and presently have client deposits and other client payments on deposit for bankruptcy filings.

D. Plaintiff's supporting Affidavits support Plaintiff's allegation that defendants Critique Services LLC, Critique Legal Service LLC, and Beverly J. Holmes made misrepresentations and omissions and engaged in the unauthorized practice of law in connection with bankruptcy filings and that such conduct has caused Missouri consumers to lose money, property, and suffer other economic harm.

E. Plaintiff's supporting affidavits support that defendants have profited from their participation and employment by Critique Legal Services LLC and Critique Services LLC and defendants presently have client deposits and other client payments on deposit for bankruptcy filings.

ORDERS

NOW, THEREFORE, THE COURT HEREBY enters its Temporary Restraining Order, pursuant to Sections 407.100 and 407.415 prohibiting and enjoining defendants Beverly J. Holmes, Critique Legal Services LLC and Critique Services LLC and their NON-ATTORNEY agents, servants, employees, and any other individuals or entities acting at their direction and control who receive actual notice of this Order from:

A. Filing bankruptcy petitions in the United State District Court from the time of this order until further order of Court; and BANKRUPTCY UNLESS THE DEBTOR HAS MET IN PERSON WITH THE ATTORNEY FILING THE PETITION

B. Advertising bankruptcies for $99 on radio or in print, or otherwise, from the time of this order until further order of Court; and

FURTHER, IT IS ORDERED that:

C. Defendant Holmes immediately notify, or cause to notify, all Critique Legal Service LLC and Critique Services LLC clients, in writing, the name, state bar number, address and phone number of the attorney assigned to their case; and

D. For those clients of Defendant Holmes, defendant Critique Legal Services LLC and defendant Critique Services LLC, who do not presently have attorneys assigned to their case Defendant Holmes shall immediately notify, or cause to notify such clients, in writing, that

the clients need to retain legal counsel immediately and further, notify the clients where to pick up their files

The Court sets the hearing on preliminary and permanent injunction for ~~February~~ March 3 2004 at 9:00 AM

SO ORDERED.

Feb. 17, 2004 at 2:30pm
Date / Time

42679
Honorable [redacted] Nannette A. Baker
Circuit Judge

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this 19 day February, 2004

MARIANO V. FAVAZZA
Circuit Clerk

by V. Carpenter
Deputy Circuit Clerk

Attachment 62

Request for Judicial Notice, in the 2004 MOAG Action

22044-00547 - STATE OF MISSOURI VS CRITIQUE LEGAL SERVICES LLC

Case Header | Parties & Attorneys | Docket Entries | Charges, Judgments & Sentences | Service Information | Filings Due | Scheduled Hearings & Trials | Civil Judgments | Garnishments/ Execution

Sort Date Entries: (•) Descending ( ) Ascending **Display Options:** All Entries

03/04/2005 **Judge/Clerk - Note**
Request for certified copies, processed and ATTORNEY GENERAL OFFICE .

12/13/2004 **Judge/Clerk - Note**
Cost equal deposit therefore bill or check not generated.

12/09/2004 **Judge/Clerk - Note**
Memorandum of Leonard Komen costs taxed in favor of defendants, Beverly Holmes and Critique Services, LLC filed.

12/06/2004 **Judge/Clerk - Note**
P001-STATE OF MISSOURI abstracted.

Judge/Clerk - Note
P001-STATE OF MISSOURI abstracted.

Judge/Clerk - Note
P001-STATE OF MISSOURI abstracted.

Judge/Clerk - Note
P001-STATE OF MISSOURI abstracted.

Judge/Clerk - Note
P001-STATE OF MISSOURI abstracted.

Judge/Clerk - Note
Case Electronically Disposed

12/03/2004 **Dismissed by Parties**
DISMISSED WITH PREJUDICE

Order
Cause dismissed by Plaintiff without prejudice and Court cost are waived. SO ORDERED: 42679-JUDGE NANNETTE BAKER

11/22/2004 **Motion Filed**
P001-STATE OF MISSOURI Motion to continue trial filed.

11/19/2004 **Entry of Appearance Filed**

Attorney 52871-MARTIN, DAPHNE N is substituted for Attorney Steven Goldblatt for P001-STATE OF MISSOURI filed.

11/05/2004 **Certificate of Service**

P001-STATE OF MISSOURI certificate of service of supplemental responses to defendant Critique services, LLC and interrogatories filed.

11/03/2004 **Filing:**

P001-STATE OF MISSOURI second Request for Production of documents Filed.

10/27/2004 **Hearing Rescheduled**

42679-JUDGE NANNETTE A BAKER continued cause from schedule U08 on hold to schedule 908 on 12/06/04 .

10/14/2004 **Order**

Plaintiff's objections to defendant's first request for production of documents heard and sustained. SO ORDERED: 42679-JUDGE NANNETTE BAKER

Suggestions in Opposition

The Attorney General's Opposition to Motion to Compel Production filed.

10/05/2004 **Notice to Take Deposition**

Amended Notice to Take Deposition of Ross Briggs, filed.

10/04/2004 **Order**

42679-JUDGE NANNETTE BAKER-Motion to Quash Deposition Notice of Attorney General, Nixon and enter Protective Order is hereby granted pursuant to rule 56.01 (c). SO ORDERED: 42679-JUDGE NANNETTE BAKER

Hearing Rescheduled

42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 09/21/04 to schedule U08 on hold .

09/29/2004 **Response Filed**

P001-STATE OF MISSOURI-Response to Defenant's First Request for Production of Documents, filed.

09/27/2004 **Notice of Hearing Filed**

Notice of hearing filed.

Motion Filed

P001-STATE OF MISSOURI-Motion for Protective Order, filed.

09/21/2004 **Notice to Take Deposition**

Notice to Take Deposition of Plaintiff, Jeremiah W. (Jay) Nixon, filed.

09/13/2004 **Notice to Take Deposition**

Amended notice to take deposition filed.

Notice to Take Deposition

Amended notice to take deposition filed.

09/09/2004 **Notice to Take Deposition**

Amended Notice to Take Deposition OF LEON SUTTON, FILED.

08/24/2004 **Notice to Take Deposition**

Amended Notice to Take Deposition of Beerly Holmes, filed.

Response Filed

D001-CRITIQUE LAW SERVICES LLC and Beverly Holmes' Response to Consent Order to Produce Tax Forms W-2, W-3 and 1099, filed.

08/19/2004 **Filing:**

Certificate of Service of Plaintiff's Responses to Defendant, Critique Services, LLC and Beverly Holmes' First Interrogatories to Plaintiff, filed.

08/12/2004 **Order**

42679-JUDGE NANNETTE BAKER-Plaintiff's Motion to Compel and For Sanctions called. Plaintiff and Defendants Crituque Services LLC and Beverly Holmes appear by counsel. Plaintiff's Motion is denied. The parties stipulate that within ten (10) days, the defendants will produce W-2, W-9 and 1099 forms on their possession or control for employees and independent contractors during the same period indicated in the June 1, 2004 order. Settlement conference set for Tuesday, September 21, 2004 at 9:00 a.m. Trial continued to December 6, 2004 at 9:00 a.m. SO ORDERED: 42679-JUDGE NANNETTE BAKER

Hearing Rescheduled

42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 10/18/04 to schedule 908 on 09/21/04 .

08/04/2004 **Notice of Hearing Filed**

Notice of hearing filed.

Motion Filed

P001-STATE OF MISSOURI-Motion for Sanctions Against Holmes and Critique, filed.

07/08/2004 **Filing:**

Certificate of Service of the Amended Reply of Defendants, Beverly Holmes and Critique Services, LLC, to Plaintiff's Amended First Requests for Production of Documents, filed.

Certificate of Service

D002-CRITIQUE SERVICES LLC and Beverly Holmes certificate of service of amended reply to plaintiff's amended request for production of documents filed.

06/09/2004 **Notice to Take Deposition**

Amended Notice to Take Deposition of Linda Ruffin-Hudson, filed.

06/07/2004 **Hearing Rescheduled**

42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 09/27/04 to schedule 908 on 10/18/04 .

Hearing Rescheduled

42679-JUDGE NANNETTE A BAKER continued cause from schedule U08 on hold to schedule 908 on 09/27/04 .

06/01/2004 **Suggestions in Support**

Consent Discovery Order, filed.

05/24/2004 **Response Filed**

D001-CRITIQUE LAW SERVICES LLC -Reply to Opposition of Plaintiff to Motion for Leave to File Responses One Day Late and Motion for Attorneys Fees, filed.

05/18/2004 **Notice to Take Deposition**

Notice to Take Deposition of Twila Fleming, filed.

Return Serv-Subpoena Non-Est

Non Est return of service for Defendant, Linda Ruffin-Hudson from St. Louis County filed.

Return Serv-Subpoena Non-Est

Non Est return of service for Defendant, Lucretia Williams (Subpoena Duces Tecum), from St. Louis County, filed.

05/14/2004 **Suggestions in Opposition**

Memorandum in Opposition to D001-CRITIQUE LAW SERVICES LLC, et al Motion for Leave to File Objections Out of Time, filed.

05/11/2004 **Return Serv-Subpoena Non-Est**

Non Est return of service for Defendant from St. Louis City filed.

05/10/2004 **Entry of Appearance Filed**

Attorney 20509-KOMEN, LEONARD entry of appearance for D003-HOLMES, BEVERLY J filed.

Entry of Appearance Filed

Attorney 20509-KOMEN, LEONARD entry of appearance for D002-CRITIQUE SERVICES LLC filed.

Entry of Appearance Filed

Attorney 20509-KOMEN, LEONARD entry of appearance for D001-CRITIQUE LAW SERVICES LLC filed.

Answer Filed

D001-CRITIQUE LAW SERVICES LLC , Beverly Holmes and Cirtique Services, LLC, -Amended Answer to Plaintiff's petition by Attorney 20509-KOMEN, LEONARD filed.

Motion Filed

D001-CRITIQUE LAW SERVICES LLC, et al- Motion for Leave to File Amended Answer to Petition, filed.

Hearing Rescheduled

42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 06/07/04 to schedule U08 on hold .

05/06/2004 **Order**

42679-JUDGE NANNETTE BAKER grants Defendants Beverly Holmes, Critique Services and Critique Legal Services, LLC's Request for Leave to File any Objections to Plaintiff's Interrogatories, Requests for Documents and Request for Admissions Out of Time. Defendant is also granted an additional twenty (20) days to May 26, 2004 within which to respond to Plaintiff's Interrogatories, etc., to which objections have not been made. By consent, Attorney General is granted until 5:00 p.m., May 14, 2004 to file its opposition to Defendants' Motions for Leave to File Objections and Responses Out of Time. by Consent, the parties agree that the matter is submitted at the time of Defendants' reply on or before May 18, 2004. The parties waive oral argument on the requests for leave. By consent, the trial date of June 7, 2004 at 9:00 a.m. is vacated to be reset upon application of either party. SO ORDERED: 42679-JUDGE NANNETTE BAKER

Notice of Hearing Filed

Notice of hearing filed.

Motion Filed

P001-STATE OF MISSOURI-Motion to Compel and for Sanctions and Continue Trial, filed.

05/05/2004 **Return Service - Other**

Return of service of subpoena for Ross Briggs, filed .

03/31/2004 **Motion for Extension of Time**

P001-STATE OF MISSOURI-Request for Additional Time to answer or file an appropriate Responsive Pleading or Motion, filed.

03/26/2004 **Filing:**

Certificate of Service of Discovery to Defendant, filed.

Motion Filed

P001-STATE OF MISSOURI-Motion to Have Multiple Summons Issued against Defendant Pamela Shuster-Pukke, filed.

Filing:

P001-STATE OF MISSOURI-Request for Entry of Default Judgment against Defendants Twila Fleming and Renee Mayweather, filed.

03/03/2004 **Order**

42679-JUDGE NANNETTE BAKER amends the preliminary injunction order entered this day (March 3, 2004) as follows: This Court makes a preliminary finding that Defendants have violated the provisions of 407.020 and 484.020. SO ORDERED: 42679-JUDGE NANNETTE BAKER

Order

42679-JUDGE NANNETTE BAKER-The Court makes a preliminary finding that Defendants have violated the provisions of 407.020 and 407.405 , and at this time, is subject to further order of Court and such other additional relief as the Court deems just, proper and necessary. SO ORDERED: 42679-JUDGE NANNETTE BAKER

Order

42679-JUDGE NANNETTE BAKER-Defendants objectso to the trial setting of this matter today. Defendants move to dissolve the temporary restraing order on the grounds it has expired by operation of law, Plaintiff has failed to make application for preliminary injunction and Plaintiff has failed to state a cause of action upon which relief may be granted for temporary restraining order, preliminary injunction or permanent injunction. Defendants further and again object to Plaintiff's claims as violative of Section I, Article IV of the U.S. Constitution, asd of the Missouri constitution, Article I, Section 10, Section 28. SO ORDERED: 42679-JUDGE NANNETTE BAKER

Hearing Rescheduled

42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 03/03/04 to schedule 908 on 06/07/04 .

03/01/2004 **Suggestions in Support**

Comes not, State of Missouri and requests the Court to take judicial notice of the order and opinion entered February 24, 2004 in re Phillips U.S. Bankruptcy Court, Eastern District of Missouri, Case 03-56289 by Judge Surratt-States, as per memorandum filed. (Order and Opinion attatched and filed)

Return Service - Other

Proof of service on D003-BEVERLY J HOLMES from St. Louis City filed.

Order

42679-JUDGE NANNETTE BAKER-Motion for Continuance denied contingent upon the State's agreement to present five (5) consumer witnesses and one expert witness. State to disclose the names of all witnesses to Defendant by 5:00 p.m. today, March 1, 2004. SO ORDERED: 42679-JUDGE NANNETTE BAKER

Motion Filed

D001-CRITIQUE LAW SERVICES LLC , et al -Motion to Continue Temporary Restraining Order and Motion to Continue Hearing on Preliminary Injunction, filed.

Order

42679-JUDGE NANNETTE BAKER -Witness subpoenas served on consumer witnesses are continued until the date of the hearing on pernmanant injunction provided written notices by mail be supplied to these witnesses at leaset ten (10) days in advance. SO ORDERED: 42679-JUDGE NANNETTE BAKER

02/27/2004 **Return Service - Other**

Proof of service on D005-TWILA FLEMING from St. Louis City filed.

Summons Returned Non-Est

Non Est return of service for D005-TWILA FLEMING from St. Louis County Sheriff filed.

02/26/2004 **Judge/Clerk - Note**

Cost bill returned and filed .

Return Service - Other

Proof of service on D001-CRITIQUE LAW SERVICES LLC from St. Louis City filed.

Return Service - Other

Proof of service on D002-CRITIQUE SERVICES LLC from St. Louis City filed.

02/19/2004 **Order**

Temporary restraining order issued for D005-TWILA FLEMING returnable March 3,2004 at 9:00 a.m. .

Order

Temporary restraining order issued for D004-RENEE MAYWEATHER returnable March 3,2004 at 9:00 a.m .

Order

Temporary restraining order issued for D003-BEVERLY J HOLMES returnable March 3,2004 at 9:00 a.m .

Order

Temporary restraining order issued for D002-CRITIQUE SERVICES LLC returnable March 3,2004 at 9:00 a.m. .

Order

Temporary restraining order issued for D001-CRITIQUE LAW SERVICES LLC returnable March 3,2004 at 9:00 a.m .

Summons Issued-Circuit

Summons to ST LOUIS COUNTY issued for D005-TWILA FLEMING .

Summons Issued-Circuit

Summons to ST. LOUIS CITY issued for D004-RENEE MAYWEATHER .

Summons Issued-Circuit

Summons to ST. LOUIS CITY issued for D003-BEVERLY J HOLMES .

Summons Issued-Circuit

Summons to ST. LOUIS CITY issued for D002-CRITIQUE SERVICES LLC .

Summons Issued-Circuit

Summons to ST. LOUIS CITY issued for D001-CRITIQUE LAW SERVICES LLC .

02/17/2004 **Response Filed**

D001-CRITIQUE LAW SERVICES LLC, Critique Services, L.L.C. and Beverly Holmes' Reply in Opposition to Plaintiff's Application for Temporary Restraining Order, filed.

Filing:

Temporary Restraining Order of Defendant, Beverly Holmes, Critique Legal Services LLC, Critque Services LL C and Their Agents, Servants, Employees and Contractors, filed.

Order

42679-JUDGE NANNETTE BAKER grants Plaintiff's Application for Temporary Restraining Order. The Court hereby sets the hearing on preliminary and Permanent injunction for March 3, 2004 at 9:00 a.m. in Division 8. SO ORDERED: 42679-JUDGE NANNETTE BAKER

Hearing Rescheduled

42679-JUDGE NANNETTE A BAKER continued cause from schedule 905 on 03/23/04 to schedule 908 on 03/03/04 .

02/13/2004 **Entry of Appearance Filed**

Attorney 20509-KOMEN, LEONARD entry of appearance for D003-BEVERLY J HOLMES filed.

Entry of Appearance Filed

Attorney 20509-KOMEN, LEONARD entry of appearance for D002-CRITIQUE SERVICES LLC filed.

Entry of Appearance Filed

Attorney 20509-KOMEN, LEONARD entry of appearance for D001-CRITIQUE LAW SERVICES LLC filed.

Order

32929-JUDGE DAVID DOWD hereby recuses himself in this cause and returns file to Division 1 for further proceedings. SO ORDERED: 32929-JUDGE DAVID DOWD

Suggestions in Opposition

Response in Opposition to P001-STATE OF MISSOURI'S Application for Temporary Restraining Order, filed.

02/12/2004 **Affidavit Filed**

Affidavit of Beverly Holmes in Opposition to Plaintiff's Application for Temporary Restraining Order, filed.

Affidavit Filed

Affidavit of Linda Ruffin-Hudson, filed.

02/10/2004 **Suggestions in Support**

Memorandum in support of Temporary Restraining Order, Preliminary Injunction of Defendants' filed.

Petition:

P001-STATE OF MISSOURI Petition for Permanent Injunction, Preliminary Injunction, Temporary Restraining order and other Relief Against Defendant Beverly Holmes, Renee Mayweather, CritiQue Lgal Services L.L.C. and CritiQue Services L. L. C. filed.

Notice of Hearing Filed

Notice of hearing filed.

Affidavit Filed
Affidavit's of Nancy L. Ripperger filed.

Affidavit Filed
Affidavit's of E. Rebecca Case filed.

Affidavit Filed
Affidavit's of Deborah Mason filed.

Affidavit Filed
Affidavit's of Elizabeth Blanton filed.

Affidavit Filed
Affidavit's of Donald R. Little filed.

Affidavit Filed
Affidavit's of Alyson Lamb and Ron Bockenkamp filed.

Attachment 63

Amendment of TRO, entered in the 2004 MOAG Action

22044-00547 - STATE OF MISSOURI VS CRITIQUE LEGAL SERVICES LLC

Sort Date Entries: (•) Descending ( ) Ascending **Display Options:** All Entries

03/04/2005	**Judge/Clerk - Note** Request for certified copies, processed and ATTORNEY GENERAL OFFICE .
12/13/2004	**Judge/Clerk - Note** Cost equal deposit therefore bill or check not generated.
12/09/2004	**Judge/Clerk - Note** Memorandum of Leonard Komen costs taxed in favor of defendants, Beverly Holmes and Critique Services, LLC filed.
12/06/2004	**Judge/Clerk - Note** P001-STATE OF MISSOURI abstracted.
	Judge/Clerk - Note P001-STATE OF MISSOURI abstracted.
	Judge/Clerk - Note P001-STATE OF MISSOURI abstracted.
	Judge/Clerk - Note P001-STATE OF MISSOURI abstracted.
	Judge/Clerk - Note P001-STATE OF MISSOURI abstracted.
	Judge/Clerk - Note Case Electronically Disposed
12/03/2004	**Dismissed by Parties** DISMISSED WITH PREJUDICE
	Order Cause dismissed by Plaintiff without prejudice and Court cost are waived. SO ORDERED: 42679-JUDGE NANNETTE BAKER
11/22/2004	**Motion Filed** P001-STATE OF MISSOURI Motion to continue trial filed.
11/19/2004	**Entry of Appearance Filed** Attorney 52871-MARTIN, DAPHNE N is substituted for Attorney Steven Goldblatt for P001-STATE OF MISSOURI filed.

11/05/2004	**Certificate of Service**
	P001-STATE OF MISSOURI certificate of service of supplemental responses to defendant Critique services, LLC and interrogatories filed.
11/03/2004	**Filing:**
	P001-STATE OF MISSOURI second Request for Production of documents Filed.
10/27/2004	**Hearing Rescheduled**
	42679-JUDGE NANNETTE A BAKER continued cause from schedule U08 on hold to schedule 908 on 12/06/04 .
10/14/2004	**Order**
	Plaintiff's objections to defendant's first request for production of documents heard and sustained. SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Suggestions in Opposition
	The Attorney General's Opposition to Motion to Compel Production filed.
10/05/2004	**Notice to Take Deposition**
	Amended Notice to Take Deposition of Ross Briggs, filed.
10/04/2004	**Order**
	42679-JUDGE NANNETTE BAKER-Motion to Quash Deposition Notice of Attorney General, Nixon and enter Protective Order is hereby granted pursuant to rule 56.01 (c). SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Hearing Rescheduled
	42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 09/21/04 to schedule U08 on hold .
09/29/2004	**Response Filed**
	P001-STATE OF MISSOURI-Response to Defenant's First Request for Production of Documents, filed.
09/27/2004	**Notice of Hearing Filed**
	Notice of hearing filed.
	Motion Filed
	P001-STATE OF MISSOURI-Motion for Protective Order, filed.
09/21/2004	**Notice to Take Deposition**
	Notice to Take Deposition of Plaintiff, Jeremiah W. (Jay) Nixon, filed.
09/13/2004	**Notice to Take Deposition**
	Amended notice to take deposition filed.
	Notice to Take Deposition
	Amended notice to take deposition filed.
09/09/2004	**Notice to Take Deposition**
	Amended Notice to Take Deposition OF LEON SUTTON, FILED.
08/24/2004	**Notice to Take Deposition**
	Amended Notice to Take Deposition of Beerly Holmes, filed.

	Response Filed D001-CRITIQUE LAW SERVICES LLC and Beverly Holmes' Response to Consent Order to Produce Tax Forms W-2, W-3 and 1099, filed.
08/19/2004	**Filing:** Certificate of Service of Plaintiff's Responses to Defendant, Critique Services, LLC and Beverly Holmes' First Interrogatories to Plaintiff, filed.
08/12/2004	**Order** 42679-JUDGE NANNETTE BAKER-Plaintiff's Motion to Compel and For Sanctions called. Plaintiff and Defendants Crituque Services LLC and Beverly Holmes appear by counsel. Plaintiff's Motion is denied. The parties stipulate that within ten (10) days, the defendants will produce W-2, W-9 and 1099 forms on their possession or control for employees and independent contractors during the same period indicated in the June 1, 2004 order. Settlement conference set for Tuesday, September 21, 2004 at 9:00 a.m. Trial continued to December 6, 2004 at 9:00 a.m. SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Hearing Rescheduled 42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 10/18/04 to schedule 908 on 09/21/04 .
08/04/2004	**Notice of Hearing Filed** Notice of hearing filed.
	Motion Filed P001-STATE OF MISSOURI-Motion for Sanctions Against Holmes and Critique, filed.
07/08/2004	**Filing:** Certificate of Service of the Amended Reply of Defendants, Beverly Holmes and Critique Services, LLC, to Plaintiff's Amended First Requests for Production of Documents, filed.
	Certificate of Service D002-CRITIQUE SERVICES LLC and Beverly Holmes certificate of service of amended reply to plaintiff's amended request for production of documents filed.
06/09/2004	**Notice to Take Deposition** Amended Notice to Take Deposition of Linda Ruffin-Hudson, filed.
06/07/2004	**Hearing Rescheduled** 42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 09/27/04 to schedule 908 on 10/18/04 .
	Hearing Rescheduled 42679-JUDGE NANNETTE A BAKER continued cause from schedule U08 on hold to schedule 908 on 09/27/04 .
06/01/2004	**Suggestions in Support** Consent Discovery Order, filed.
05/24/2004	**Response Filed** D001-CRITIQUE LAW SERVICES LLC -Reply to Opposition of Plaintiff to Motion for Leave to File Responses One Day Late and Motion for Attorneys Fees, filed.
05/18/2004	**Notice to Take Deposition** Notice to Take Deposition of Twila Fleming, filed.

	Return Serv-Subpoena Non-Est Non Est return of service for Defendant, Linda Ruffin-Hudson from St. Louis County filed.
	Return Serv-Subpoena Non-Est Non Est return of service for Defendant, Lucretia Williams (Subpoena Duces Tecum), from St. Louis County, filed.
05/14/2004	**Suggestions in Opposition** Memorandum in Opposition to D001-CRITIQUE LAW SERVICES LLC, et al Motion for Leave to File Objections Out of Time, filed.
05/11/2004	**Return Serv-Subpoena Non-Est** Non Est return of service for Defendant from St. Louis City filed.
05/10/2004	**Entry of Appearance Filed** Attorney 20509-KOMEN, LEONARD entry of appearance for D003-HOLMES, BEVERLY J filed.
	Entry of Appearance Filed Attorney 20509-KOMEN, LEONARD entry of appearance for D002-CRITIQUE SERVICES LLC filed.
	Entry of Appearance Filed Attorney 20509-KOMEN, LEONARD entry of appearance for D001-CRITIQUE LAW SERVICES LLC filed.
	Answer Filed D001-CRITIQUE LAW SERVICES LLC , Beverly Holmes and Cirtique Services, LLC, -Amended Answer to Plaintiff's petition by Attorney 20509-KOMEN, LEONARD filed.
	Motion Filed D001-CRITIQUE LAW SERVICES LLC, et al- Motion for Leave to File Amended Answer to Petition, filed.
	Hearing Rescheduled 42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 06/07/04 to schedule U08 on hold .
05/06/2004	**Order** 42679-JUDGE NANNETTE BAKER grants Defendants Beverly Holmes, Critique Services and Critique Legal Services, LLC's Request for Leave to File any Objections to Plaintiff's Interrogatories, Requests for Documents and Request for Admissions Out of Time. Defendant is also granted an additional twenty (20) days to May 26, 2004 within which to respond to Plaintiff's Interrogatories, etc., to which objections have not been made. By consent, Attorney General is granted until 5:00 p.m., May 14, 2004 to file its opposition to Defendants' Motions for Leave to File Objections and Responses Out of Time. by Consent, the parties agree that the matter is submitted at the time of Defendants' reply on or before May 18, 2004. The parties waive oral argument on the requests for leave. By consent, the trial date of June 7, 2004 at 9:00 a.m. is vacated to be reset upon application of either party. SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Notice of Hearing Filed Notice of hearing filed.
	Motion Filed P001-STATE OF MISSOURI-Motion to Compel and for Sanctions and Continue Trial, filed.
05/05/2004	**Return Service - Other** Return of service of subpoena for Ross Briggs, filed .
03/31/2004	**Motion for Extension of Time** P001-STATE OF MISSOURI-Request for Additional Time to answer or file an appropriate Responsive Pleading or Motion, filed.

03/26/2004	**Filing:**	Certificate of Service of Discovery to Defendant, filed.
	Motion Filed	P001-STATE OF MISSOURI-Motion to Have Multiple Summons Issued against Defendant Pamela Shuster-Pukke, filed.
	Filing:	P001-STATE OF MISSOURI-Request for Entry of Default Judgment against Defendants Twila Fleming and Renee Mayweather, filed.
03/03/2004	**Order**	42679-JUDGE NANNETTE BAKER amends the preliminary injunction order entered this day (March 3, 2004) as follows: This Court makes a preliminary finding that Defendants have violated the provisions of 407.020 and 484.020. SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Order	42679-JUDGE NANNETTE BAKER-The Court makes a preliminary finding that Defendants have violated the provisions of 407.020 and 407.405 , and at this time, is subject to further order of Court and such other additional relief as the Court deems just, proper and necessary. SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Order	42679-JUDGE NANNETTE BAKER-Defendants objectso to the trial setting of this matter today. Defendants move to dissolve the temporary restraing order on the grounds it has expired by operation of law, Plaintiff has failed to make application for preliminary injunction and Plaintiff has failed to state a cause of action upon which relief may be granted for temporary restraining order, preliminary injunction or permanent injunction. Defendants further and again object to Plaintiff's claims as violative of Section I, Article IV of the U.S. Constitution, asd of the Missouri constitution, Article I, Section 10, Section 28. SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Hearing Rescheduled	42679-JUDGE NANNETTE A BAKER continued cause from schedule 908 on 03/03/04 to schedule 908 on 06/07/04 .
03/01/2004	**Suggestions in Support**	Comes not, State of Missouri and requests the Court to take judicial notice of the order and opinion entered February 24, 2004 in re Phillips U.S. Bankruptcy Court, Eastern District of Missouri, Case 03-56289 by Judge Surratt-States, as per memorandum filed. (Order and Opinion attatched and filed)
	Return Service - Other	Proof of service on D003-BEVERLY J HOLMES from St. Louis City filed.
	Order	42679-JUDGE NANNETTE BAKER-Motion for Continuance denied contingent upon the State's agreement to present five (5) consumer witnesses and one expert witness. State to disclose the names of all witnesses to Defendant by 5:00 p.m. today, March 1, 2004. SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Motion Filed	D001-CRITIQUE LAW SERVICES LLC , et al -Motion to Continue Temporary Restraining Order and Motion to Continue Hearing on Preliminary Injunction, filed.
	Order	42679-JUDGE NANNETTE BAKER -Witness subpoenas served on consumer witnesses are continued until the date of the hearing on pernmanant injunction provided written notices by mail be supplied to these witnesses at leaset ten (10) days in advance. SO ORDERED: 42679-JUDGE NANNETTE BAKER
02/27/2004	**Return Service - Other**	Proof of service on D005-TWILA FLEMING from St. Louis City filed.

	Summons Returned Non-Est Non Est return of service for D005-TWILA FLEMING from St. Louis County Sheriff filed.
02/26/2004	**Judge/Clerk - Note** Cost bill returned and filed .
	Return Service - Other Proof of service on D001-CRITIQUE LAW SERVICES LLC from St. Louis City filed.
	Return Service - Other Proof of service on D002-CRITIQUE SERVICES LLC from St. Louis City filed.
02/19/2004	**Order** Temporary restraining order issued for D005-TWILA FLEMING returnable March 3,2004 at 9:00 a.m. .
	Order Temporary restraining order issued for D004-RENEE MAYWEATHER returnable March 3,2004 at 9:00 a.m .
	Order Temporary restraining order issued for D003-BEVERLY J HOLMES returnable March 3,2004 at 9:00 a.m .
	Order Temporary restraining order issued for D002-CRITIQUE SERVICES LLC returnable March 3,2004 at 9:00 a.m. .
	Order Temporary restraining order issued for D001-CRITIQUE LAW SERVICES LLC returnable March 3,2004 at 9:00 a.m .
	Summons Issued-Circuit Summons to ST LOUIS COUNTY issued for D005-TWILA FLEMING .
	Summons Issued-Circuit Summons to ST. LOUIS CITY issued for D004-RENEE MAYWEATHER .
	Summons Issued-Circuit Summons to ST. LOUIS CITY issued for D003-BEVERLY J HOLMES .
	Summons Issued-Circuit Summons to ST. LOUIS CITY issued for D002-CRITIQUE SERVICES LLC .
	Summons Issued-Circuit Summons to ST. LOUIS CITY issued for D001-CRITIQUE LAW SERVICES LLC .
02/17/2004	**Response Filed** D001-CRITIQUE LAW SERVICES LLC, Critique Services, L.L.C. and Beverly Holmes' Reply in Opposition to Plaintiff's Application for Temporary Restraining Order, filed.
	Filing: Temporary Restraining Order of Defendant, Beverly Holmes, Critique Legal Services LLC, Critque Services LL C and Their Agents, Servants, Employees and Contractors, filed.
	Order 42679-JUDGE NANNETTE BAKER grants Plaintiff's Application for Temporary Restraining Order. The Court hereby sets the hearing on preliminary and Permanent injunction for March 3, 2004 at 9:00 a.m. in Division 8. SO ORDERED: 42679-JUDGE NANNETTE BAKER
	Hearing Rescheduled 42679-JUDGE NANNETTE A BAKER continued cause from schedule 905 on 03/23/04 to schedule 908 on 03/03/04 .

02/13/2004	**Entry of Appearance Filed** Attorney 20509-KOMEN, LEONARD entry of appearance for D003-BEVERLY J HOLMES filed.
	Entry of Appearance Filed Attorney 20509-KOMEN, LEONARD entry of appearance for D002-CRITIQUE SERVICES LLC filed.
	Entry of Appearance Filed Attorney 20509-KOMEN, LEONARD entry of appearance for D001-CRITIQUE LAW SERVICES LLC filed.
	Order 32929-JUDGE DAVID DOWD hereby recuses himself in this cause and returns file to Division 1 for further proceedings. SO ORDERED: 32929-JUDGE DAVID DOWD
	Suggestions in Opposition Response in Opposition to P001-STATE OF MISSOURI'S Application for Temporary Restraining Order, filed.
02/12/2004	**Affidavit Filed** Affidavit of Beverly Holmes in Opposition to Plaintiff's Application for Temporary Restraining Order, filed.
	Affidavit Filed Affidavit of Linda Ruffin-Hudson, filed.
02/10/2004	**Suggestions in Support** Memorandum in support of Temporary Restraining Order, Preliminary Injunction of Defendants' filed.
	Petition: P001-STATE OF MISSOURI Petition for Permanent Injunction, Preliminary Injunction, Temporary Restraining order and other Relief Against Defendant Beverly Holmes, Renee Mayweather, CritiQue Lgal Services L.L.C. and CritiQue Services L. L. C. filed.
	Notice of Hearing Filed Notice of hearing filed.
	Affidavit Filed Affidavit's of Nancy L. Ripperger filed.
	Affidavit Filed Affidavit's of E. Rebecca Case filed.
	Affidavit Filed Affidavit's of Deborah Mason filed.
	Affidavit Filed Affidavit's of Elizabeth Blanton filed.
	Affidavit Filed Affidavit's of Donald R. Little filed.
	Affidavit Filed Affidavit's of Alyson Lamb and Ron Bockenkamp filed.

Attachment 64

Memorandum of the Clerk's Office regarding Ruffin-Hudson

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

OFFICIAL
MEMORANDUM

TO: Judge Rendlen's Chambers

FROM: Dana C. McWay, Clerk of Court

RE: Linda Ruffin-Hudson

DATE: March 30, 2016

According to court records, a CM/ECF login and password was provided to Linda Ruffin-Hudson on 12/17/2003. The first case filed by Ms. Ruffin-Hudson using her ECF login and password was filed on January 7, 2004. The case filed on December 17th was number 04-40258, for John Moore. Ms. Linda Ruffin-Hudson admission to practice in the Eastern District of Missouri was on March 20, 2000.

Donna E. Bard

Dana C. McWay
Clerk of Court
by
Donna E. Bard
Operations Manager

Attachment 65

Ruffin-Hudson's Credit/Debit Card Authorization

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

OFFICIAL
MEMORANDUM

TO: Judge Rendlen's Chambers

FROM: Dana C. McWay, Clerk of Court

RE: Linda Ruffin-Hudson

DATE: April 13, 2016

According to court records, a Credit/Debit Card Authorization Form from Critique Services/Linda Ruffin-Hudson was received on December 17, 2003. Said form lists the following individuals as having authorization to use the account number listed on the form: Linda Ruffin-Hudson and Paula Hernandez-Johnson.

Dana LaRosa

Dana C. McWay
Clerk of Court
by
Dana LaRosa
Financial Specialist

United States Bankruptcy Court
Eastern District of Missouri
www.moeb.uscourts.gov
(314) 244-4500

CREDIT/DEBIT CARD AUTHORIZATION FORM

I hereby authorize the U.S. Bankruptcy Court for the Eastern District of Missouri to charge the card listed below for payment of fees, costs, and expenses which are incurred by the authorized users. I certify that I am authorized to sign this form on behalf of my law firm and/or that I am the person authorized to use this card. I understand that this information will be securely maintained in the Court's safe. I also understand that when a pleading requiring a fee is received without the fee, the Court will automatically charge the account number listed on the form.

☑ **New Applicant** ☐ **Renewal Applicant**

If you choose to complete this form by hand, please print legibly and use only blue or black ballpoint ink.

Cardholder name *as it appears on the card*: Critique Services Linda Ruffin-Hudson

Card number: [redacted] 4437 Expiration date: 12/07

Signature of Cardholder: Linda Ruffin Hudson Date: 12-17-03

Type: ☐ **American Express** ☐ **Diners Club International** ☐ **Discover Card** ☐ **Mastercard** ☑ **Visa**

Names of individuals authorized to use account number listed above for payment of fees, costs and expenses:
(Include cardholder name, if authorized user)

Linda Ruffin-Hudson
Paula Hernandez-Johnson

Law Firm Name: Hudson & Associates Law Firm, LLC d/b/a Critique Services
(If sole practitioner , type in your name)

Address: 4144 Lindell Blvd, Ste 100, St. Louis, MO 63108

Immediate Contact Number: 314-368-2264 Alternate Contact Number: 314-436-1406

This form will remain in effect until the expiration date is met or specifically revoked in writing. It is the cardholder's responsibility to submit a new form and notify the court of: (1) any changes to the registered attorney, (2) a new expiration date when a credit card has been renewed, or (3) a card has been revoked, canceled, or stolen.

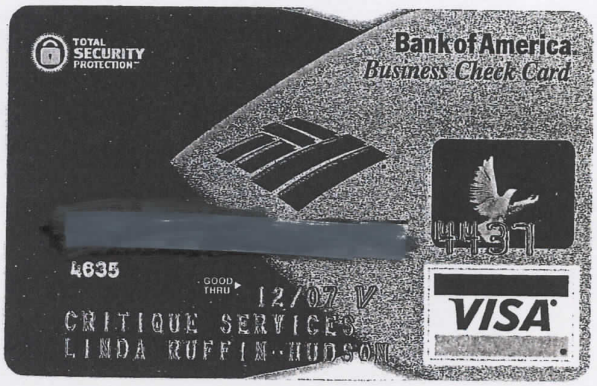
In the event the charge against the account is denied, you will be notified immediately to make payment in cash, money order or certified check. Any abuse of this privilege may result in your removal from the credit card program.

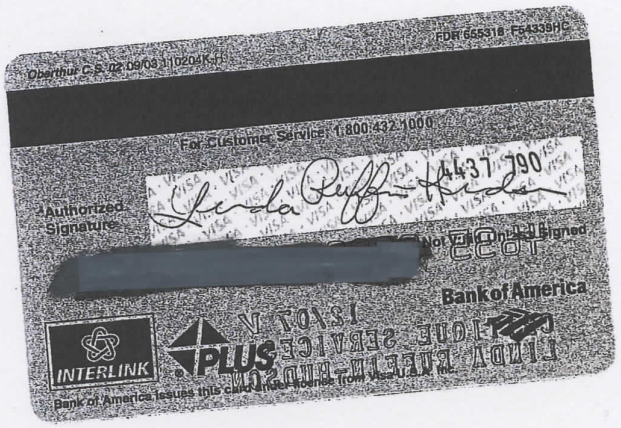
Submit this form, **with a photocopy of the front and back of the card**, to:

Dana LaRosa, Financial Specialist
U.S. Bankruptcy Court
Thomas F. Eagleton Courthouse
111 S. Tenth St., 4th Floor
St. Louis, MO 63102

RECEIVED
DEC 17 2003
EASTERN DISTRICT OF MISSOURI

FOR COURT USE ONLY
Recv'd 12/17/03 Entered By DL Date Entered 12/18/03


TOTAL SECURITY PROTECTION
Bank of America
Business Check Card
4635
GOOD THRU
12/07
CRITIQUE SERVICES
LINDA RUFFIN-HUDSON
VISA


FDR 655318 Fe4339HC
For Customer Service: 1-800-432-1000
Authorized Signature
4437 790
Not Valid Unless Signed
Bank of America
INTERLINK
PLUS

Attachment 66

Ruffin-Hudson's Motion to Withdraw and Counsel, filed in *In re Kisart*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
Voluntary Petition Case

In Re:	)	
	)	
_____Katherine Kisart	)	Case No. 04-42918-399
	)	Chapter 7
Debtor(s)	)	

MOTION TO WITHDRAW AS COUNSEL OF RECORD

Comes now, Attorney Linda Ruffin-Hudson and hereby respectfully request this Honorable Court to enter an Order to allow Attorney Ruffin-Hudson to withdraw as counsel of record for the Debtor(s) in this case and states to the Court:

1. That Attorney Ruffin-Hudson is no longer affiliated with Critique Services.
2. That Debtor(s) are being notified that Attorney Ruffin-Hudson is no longer affiliated with Critique Services, that any questions Debtor(s) may have concerning their files should be directed to Critique services since Debtor(s) files remained with Critique Services that Attorney Ruffin-Hudson is petitioning this Honorable Court to be allowed to withdraw as Debtor(s) counsel.
3. That Debtors paid Critique Services for processing their Bankruptcy Case.
4. That no funds were paid by Debtor(s) as Attorney Fees.
5. That due to Attorney Ruffin-Hudson's severance from Critique Services threats of bodily harm have been made against Attorney Ruffin-Hudson including possible harm to Attorney Ruffin-Hudson's elderly and handicapped mother.
6. That as of Attorney Ruffin-Hudson's severance from Critique Services, Attorney Ruffin-Hudson has no right to enter Critique Services premises and due to the aforementioned threats Attorney Ruffin-Hudson will not enter Critique Services

premises for any reason, not even to retrieve personal belongings.

7. That due to health concerns, Attorney Ruffin-Hudson is not taking on any new clients at this time.

Respectfully submitted,

Hudson & Associates Law Firm, L.L.C.

BY: /s/ Linda Ruffin-Hudson
Linda Ruffin-Hudson, #19090
P.O. Box 775331
St. Louis, MO 63177-5331
Telephone (314) 436-1406
Facsimile (314) 436-3503

CERTIFICATE OF SERVICE

Comes now Attorney Linda Ruffin-Hudson and hereby states that a true and correct copy of the foregoing Motion to Withdraw As Counsel was electronically transmitted and/or mailed first class, postage prepaid, this 26th day of March, 2004 to:

Katherine Kisart
Debtor(s)
6325 Waterways Apt.215
St. Louis, Missouri 63133

Stuart Jay Radloff, Trustee
Radloff & Riske
7733 Forsyth Blvd., Suite 2000
St. Louis, MO 63105

/s/ Linda Ruffin-Hudson

Attachment 67

Memorandum of the Clerk's Office regarding Hernandez-Johnson

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

OFFICIAL
MEMORANDUM

TO: Judge Rendlen's Chambers

FROM: Dana C. McWay, Clerk of Court

RE: Paula Hernandez-Johnson

DATE: March 30, 2016

According to court records, a CM/ECF login and password was provided to Paula Hernandez-Johnson on 11/13/2003. The first case filed by Ms. Hernandez-Johnson using her ECF login and password was filed on November 13, 2003. The case filed on November 13th was number 03-55439, for Stacy Williams. Ms. Hernandez-Johnson's admission to practice in the Eastern District of Missouri was on October 29, 2003.

Donna E. Bard

Dana C. McWay
Clerk of Court
by
Donna E. Bard
Operations Manager

Attachment 68

Complaint against Hernandez-Johnson, filed in *Rendlen, UST v. Hernandez-Johnson (In re Lashanda Rasalla Thomas)*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

In re:	)	Case No. 03-56021-659
	)	Adversary No.
Lashanda Rasalla Thomas	)	Chapter 7
Debtor.	)	
	)	
C.E. "Sketch" Rendlen III	)	Honorable Kathy A. Surratt-States
United States Trustee,	)	U.S. Bankruptcy Judge
Eastern District of Missouri	)	
Plaintiff	)	
v.	)	
	)	
	)	
Ms. Paula Villia Hernandez-Johnson, Esq.	)	
Defendant	)	
	)	

UNITED STATES TRUSTEE'S COMPLAINT TO SUSPEND DEFENDANT PAULA HERNANDEZ-JOHNSON, ESQ FROM THE PRACTICE OF LAW IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI FOR A PERIOD OF TWO YEARS OR LONGER AND FOR OTHER RELIEF AS PRAYED

Now Comes C.E. "Sketch" Rendlen III, the United States Trustee for the Eastern District of Missouri (hereinafter referred to as the "U.S. Trustee"), by his attorney Martha M. Dahm, and pursuant to 28 U.S.C. Section 586(a)(3) and 11 U.S.C. Sections 105 of the Bankruptcy Code and Fed. R. Bankr. P. 9011 of the Bankruptcy Rules, 11 U.S.C. Section 101 et seq. (hereinafter referred to as the "Code") moves this Honorable Court for an Order: (1) for suspension of Ms. Paula Hernandez-Johnson, Esq., (hereinafter referred to as the "Defendant Johnson") from the practice of law in the United States Bankruptcy Court for the Eastern District of Missouri for a period of two years or longer; (2) for monetary sanctions against Defendant Johnson in the

amount of $500.00 for each violation of Fed. R. Bankr. P. 9011; (3) Restitution from Defendant Johnson of all monies paid by the Debtor for this bankruptcy filing; (4) for Defendant Johnson to attend ten hours of ethical or bankruptcy training within the next year; (5) and for other and further relief as this Court deems just.

JURISDICTION

This is a core proceeding concerning the administration of the estate pursuant to 28 U.S.C. Section 157(b)(2)(A) which this Court may be hear and determine pursuant to Rule 9.01(B)(1) of the United States District Court for the Eastern District of Missouri. The U.S. Trustee has standing pursuant to 28 U.S.C. Section 586 and 11 U.S.C. Section 307 to bring this Complaint before this Court.

COUNT I

1. On or about November 28, 2003, Lashanda Rasalla Thomas (hereinafter referred to as the "Debtor") filed a voluntary petition under chapter 7 of the code. An order of relief was entered by the Court and Case Number 03-56021-659 was assigned by the Bankruptcy Clerk's Office.

2. The Petition and other documents filed in this case reflect the signature of Defendant Johnson, Critique Services, as the attorney for the Debtor.

3. The docket sheet in this matter reflects that the attorney for the Debtor is Mr. Ross Briggs, Briggs Law Center.

4. On November 28, 2003, Debtor had a pending chapter 13 filing, Case No. 03-47898.

5. An order to show cause why two cases were pending at the same time was entered on December 9, 2003, and the show cause hearing was set for December 22, 2003.

6. On December 12, 2003, a motion to dismiss the chapter 13 case was filed by the Debtor.

7. The chapter 13 case of the Debtor was dismissed on December 14, 2003.

8. Defendant Johnson, by filing the petition certified to the Court that to the best of her knowledge, information and belief, formed after an inquiry reasonable under the circumstances that the petition; (1) is not being presented for any improper purpose,...(2) the claims, defenses, and other legal contentions have evidentiary support,...(3) the allegations and other factual contentions have evidentiary support,...and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. *Fed. R. Bankr. P. 9011(b).* Counsel failed to make a reasonable inquiry about the accuracy of the schedules prior to filing same.

9. Counsel has a duty to meet with the Debtor prior to the bankruptcy filing to discuss the bankruptcy process and relief requested. *Fed. R. Bankr. P. 9011*; In re Clark, 223 F.3d 859 (8th Cir. 2000); In re Matter of Dalton, 101 B.R. 820 (M.D. Ga. 1989); In Matter of Wilson, 11 B.R. 986 (Bankr. S.D. N.Y. 1981).

10. This Court has the broad power under Section 105 of the Code to implement the provisions of the Bankruptcy Code and to prevent an abuse of the bankruptcy process, which includes the power to sanction an attorney. *11 U.S.C. Section 105*; In re Clark, 223 F.3d 859, 864 (8th Cir. 2000); In re Volpert, 110 F.3d 494, 500 (7th Cir. 1997); In re Rainbow Magazine, Inc., 77 F.3d 278, 284 (9th Cir. 1996).

11. Based on the foregoing, the U.S. Trustee submits that due cause exist: (1) for an order suspending Defendant Johnson from the practice of law in the United States Bankruptcy Court for the Eastern District of Missouri for a period of six months or longer; (2) for the imposition of sanctions in the amount of $500.00 for each violation of Fed. R. Bankr. P. 9011 by Defendant

Johnson; (3) Restitution to Debtor for all monies paid for this bankruptcy; (4) for an order requiring Defendant Johnson to attend ethical training; and (5) for such other and further relief as this Court deems just.

CONCLUSION

Wherefore, the United States Trustee respectfully request an order 1) suspending Defendant Johnson from the practice of law in the United States Bankruptcy Court for the Eastern District of Missouri for a period of six months or longer; (2) for the imposition of sanctions in the amount of $500.00 for each violation of Fed. R. Bankr. P. 9011 by Defendant Johnson; (3) Restitution to Debtor for all monies paid for this bankruptcy; (4) for an order requiring Defendant Johnson to attend ethical training; and (5) for such other and further relief as this Court deems just.

Respectfully Submitted,

C.E. "Sketch" Rendlen III
United States Trustee

_/s/ Martha Dahm_____
By: Martha M. Dahm, Trial Attorney
Missouri Bar # 35410, Federal Bar # 32791
Office of the United States Trustee
111 S. 10th Street, Suite 6353
St. Louis, MO 63102
(314) 539-2982/Fax (314) 539-2990
Email Address: martha.m.dahm@usdoj.gov

copy mailed to:

Paula Villia Hernandez-Johnson
Critique Services
4144 Lindell
Suite 100
St. Louis, MO 63108

Law Offices of David R. Swimmer
4900 Laclede Ave., Suite A
St. Louis, MO 63108

A. Thomas DeWoskin
Dana McKitrick, P.C.
150 N. Meramec Avenue, 4th Floor
St. Louis, MO 63105

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

Attachment 69

Order, entered in *Rendlen, UST v. Hernandez-Johnson (In re Lashanda Rasalla Thomas)*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

In re:	)	Case No. 03-56021-659
	)	
Lashanda Rasalla Thomas	)	Chapter 7
Debtor.	)	ADV. No. 04-04099-659
	)	
	)	Honorable Kathy A. Surratt-States
	)	U.S. Bankruptcy Judge

AGREED ORDER BETWEEN UNITED STATES TRUSTEE AND MS. PAULA HERNANDEZ-JOHNSON, ESQ.

At Saint Louis, in this district, this ____ day of April 2004.

Comes Now C.E. "Sketch" Rendlen III, the United States Trustee for the Eastern District of Missouri (hereinafter referred to as the "U.S. Trustee"), by his attorney Martha M. Dahm, having filed a Motion Requesting an Extension of Time in which to File a Complaint for Sanctions Against Mr. Ross Briggs, Esq. and/or Ms. Paula Hernandez- Johnson, Esq. The U.S. Trustee and Ms. Paula Hernandez-Johnson (hereinafter referred to as the "Defendant Johnson") have entered into the following agreement. Based upon the consent of the parties, the U.S. Trustee and Defendant Johnson, to this Agreed Order as indicated by their signatures below, the Court enters the following relief:

IT IS ORDERED:

1. Defendant Johnson waives the requirements of an adversary proceeding in this matter pursuant to the Bankruptcy Code and Rules including Fed. R. Bankr. P. 7001. Defendant Johnson waives the right to a trial and waives the right to appear and present evidence in this

matter.

2. Defendant Johnson shall make restitution to Debtor for all fees received in this case by Defendant Johnson including the $99.00 listed as payment to Critique Services on paragraph nine of the filed statement of financial affairs. Defendant Johnson shall also pay to the following debtors all fees received by Defendant Johnson including the $99.00 listed as payment to Critique Services on paragraph nine of the filed statement of financial affairs: Deanita J. Lang-Young, Case No. 03-56766; Terry Williams, Case No. 03-56765; Ann Strong, Case No. 03-56921; and Diane Bolden, Case No. 03-56767. Defendant Johnson shall also reimburse the debtors' their filing fees in the following cases: Lashanda Thomas, Case No. 03-56021, and Diane Bolden, Case No. 03-56767. These fees shall be paid to the debtors within ninety days of the entry of this order. Defendant Johnson shall file verification with the U.S. Trustee's Office of such payment within fifteen days from the date the payments are due.

2. Defendant Johnson shall attend 10 hours of ethical or bankruptcy training within the next year from the entry of this order as provided by the Missouri Bar, the Bankruptcy Court in the Eastern District of Missouri, the Chapter 13 Standing Trustee from the Eastern District of Missouri, or other approved Missouri Bar CLE presenters. Defendant Johnson shall provide the U.S. Trustee's Office with a copy of her annual report of compliance to the Missouri Bar for Continuing Legal Education.

3. Defendant Johnson agrees not to file any pleadings before the United States Bankruptcy Court Eastern District of Missouri for a period of six months from the entry of this order with the following exception: during this time Defendant-Johnson shall only appear in Court or Section 341 meetings in any bankruptcy case in which Defendant Johnson is debtor's attorney of record

as of the date of the entry of the order. Defendant Johnson shall not file any new bankruptcy cases or any bankruptcy documents in new cases, directly or indirectly through others, in the United States Bankruptcy Court for the Eastern District of Missouri for six months from the entry of this order. Defendant Johnson shall continue as debtor's counsel in cases that have been previously filed unless Defendant Johnson complies with Missouri Supreme Court Rules of Prof. Conduct 4-1.16, which requires certain steps that must be taken by an attorney before she is allowed to withdraw as the attorney of record.

4. Defendant Johnson, after the above-mentioned six-month period, shall only file bankruptcy petitions which are accompanied by complete schedules, statement of financial affairs, matrixes, verification of matrixes, 2016(b) disclosures and all other such documents as required by the Code or Rules, unless exigent circumstances exist for the filing of emergency petitions. Said papers shall be filed after reasonable inquiry by Defendant Johnson as to the veracity of the information provided and after consultation with each client. All necessary bankruptcy documents and any amendments thereto shall be filed in a timely fashion as required by Fed. R. Bankr. P. 9011.

5. Defendant Johnson shall comply with the bankruptcy code, bankruptcy rules and all local rules in her future representation of debtors. This includes the following:

(A) Defendant Johnson or an associate or partner in the same firm shall attend Section 341 meetings of creditors.

(B) Defendant Johnson or an associate or partner in the same firm shall meet and consult with each client prior to filing a bankruptcy petition. At that meeting, counsel shall make a detailed inquiry as to the financial condition of the client, including the client's assets and liabilities, and

all other information reasonable necessary to prepare complete and accurate schedules. Said meeting shall also include an explanation by the attorney of the effects of bankruptcy filing on the client.

(C) Defendant Johnson shall comply with the provisions of Section 329 of the Code and Bankruptcy Rule 2016, relating to the employment and fee payment by counsel in bankruptcy cases.

(D) Defendant Johnson shall comply with the Missouri Supreme Court Rules of Professional Conduct, including Rule 4-5.3, which requires a lawyer to supervise her non-lawyer assistants.

Approved as to form and content:

Paula Hernandez Johnson

Ms. Paula Villia Hernandez-Johnson, Esq.
Defendant

Date:

Martha M. Dahm
Trial Attorney
United States Trustee's Office

Date: 4.29.04

Kathy A. Surratt-States

Kathy A. Surratt-States
United States Bankruptcy Judge 5/3/04

copy mailed to:

Paula Villia Hernandez-Johnson
Critique Services
4144 Lindell
Suite 100
St. Louis, MO 63108

Law Offices of David R. Swimmer
4900 Laclede Ave., Suite A
St. Louis, MO 63108

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

Martha M. Dahm
United States Trustee's Office
The Thomas Eagleton Courthouse
111 South 10th Street, Rm. 6353
St. Louis, MO 63102

Attachment 70

OCDC’s Information, against Ruffin-Hudson

COUNT I

Rule 4-8.1(b) Failure to Cooperate with Disciplinary Authorities

11. Rule 6.01(b) of the Missouri Supreme Court requires that all lawyers provide, among other things, the following information to the Court as their official contact information:

(1) The lawyer's name;

(2) The lawyer's current mailing address and e-mail address.

Sub section (b) also provides that in addition to this information to be supplied on the annual enrollment statement, the lawyer "shall notify the clerk of this Court of every change in the lawyer's current mailing or e-mail address."

12. The address Respondent has designated with the Missouri Bar and the Clerk of Court on her most recent registration with the Missouri Bar is PO Box 775331, St. Louis, MO 63177-5331.

13. Informant sent correspondence to this address on several occasions from February, 2004 through the Fall of 2004. None of these letters were returned as undeliverable. In March and April, 2004, Respondent was in contact with a Special Representative and a Staff Counsel for OCDC regarding the responses due on various disciplinary investigations. Respondent asked for extensions of time which were granted through mid-April, 2004. However, Respondent never provided any response.

14. In 2005, a representative of OCDC was told by a complainant that she had heard from a third party that Respondent was ill and had suffered a serious health

IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN RE:	)	
	)	
LINDA C. RUFFIN-HUDSON	)	
PO Box 775331	)	SUPREME COURT NO.
St. Louis, MO 63177-5331	)	
	)	
MO BAR NO. 36650	)	
	)	
RESPONDENT.	)	

INFORMATION WITH NOTICE OF DEFAULT

COMES NOW Maridee F. Edwards, Chief Disciplinary Counsel, and files this Information with notice of default in connection with Linda C. Ruffin-Hudson, Respondent, and states:

1. Respondent is and has been an attorney licensed to practice in Missouri since April 19, 1991. Respondent is not in good standing in terms of payment of enrollment fees, and is on the list of MCLE non-compliant attorneys.

2. The address Respondent designated in her most recent registration with The Missouri Bar is PO Box 775331, St. Louis, Missouri 63177-5331.

3. On March 22, 2006, Informant mailed an Information commencing this cause, along with the Notice Pursuant to Missouri Supreme Court Rules 5.11, 5.13, and 5.14, to Respondent by certified mail, restricted delivery, and by regular mail at the above-referenced address. Both copies were returned marked "Box Closed; No Forwarding Order On File."

4. Also on March 22, 2006, Informant mailed a copy of the Information to another address which was indicated by a third party as a location where Respondent may

have resided at some time in 2005. The document was sent to this address by certified mail, restricted delivery, and by regular mail to Respondent in care of the Bellefontaine Gardens Nursing Center, 9500 Bellefontaine Road, St. Louis, Missouri 63137. The copy sent by certified mail was returned marked "Attempted, Not Known". The copy sent by regular mail has not been returned.

5. During the course of investigation requests were made to two other addresses in St. Louis (as described in the Information, Count 1) where Informant had reason to believe Respondent may be located. Mail was returned from those addresses. Therefore the Information was not sent to those addresses in addition to service as stated herein because it would be a futile act.

6. The misconduct charged is set forth in the Information which is attached as an exhibit and incorporated by this reference.

7. Respondent has filed no Answer to the Information and has filed no request for extension to file an Answer or Request for Hearing with the Chair of Advisory Committee as required by Rules 5.13 and 5.14 or any other response.

8. Respondent is in default. Her answer was due on April 24, 2006. (30 days plus 3 days from mailing)

WHEREFORE, the Chief Disciplinary Counsel prays that Respondent's failure to file an Answer or other response to the Information be deemed consent by Respondent for this Court to enter an order imposing discipline on Respondent by default without further hearing or proceeding and that costs be assessed against Respondent, and that all charges be deemed admitted. Due to the nature of the conduct, Informant recommends

that the discipline to be imposed be an indefinite suspension rather than disbarment. A disciplinary suspension is necessary to address the harm to clients, allow them access to the Client Security Fund if appropriate, and to place Respondent in an appropriate status with respect to her license. If Respondent desires to return to practice, she should answer for her abandonment of her practice and show that the cause for suspension has abated. She should further show that she is currently fit to practice law in all respects, as required by Rule 5.28 (reinstatement procedure). Disbarment is not recommended because of the relatively low level of the misconduct.

Respectfully submitted,

5-10-06

Maridee F. Edwards
Chief Disciplinary Counsel
MO Bar No: 53481
3335 American Avenue
Jefferson City, MO 65109-1079

(573) 635-7400 Phone
(573) 635-2240 Fax

IN THE SUPREME COURT OF MISSOURI
EN BANC

IN RE:	)	
	)	
RUFFIN-HUDSON, LINDA	)	
	)	
P.O. Box 775331	)	
ST. LOUIS, MO 63177-5331	)	
	)	File Nos. 04-0571; 04-0464;
MO Bar # 36650	)	04-0446; 04-0096-X
DOB: 02/07/1963	)	
	)	
Respondent.	)	

INFORMATION

COMES NOW the Informant and states as follows:

Allegations Common to All Counts

1. Informant is the Chief Disciplinary Counsel appointed by this Court pursuant to Rule 5.06.

2. Informant has determined pursuant to Rule 5.11 that probable cause exists to believe that Respondent is guilty of professional misconduct.

3. Respondent was licensed as an attorney in Missouri on April 19, 1991. Her bar number is 36650. Her date of birth is February 2, 1963.

4. Respondent has not paid her 2005 and 2006 dues and is not current in her continuing legal education requirements. She is on the MCLE Delinquent List dated March 1, 2006.

5. The address Respondent designated in her most recent registration with the Missouri Bar is: PO Box 775331, St. Louis, MO 63177-5331.

EXHIBIT

6. Respondent worked under the name of Hudson & Associates Law Firm, L.L.C. and also worked for Critique Services, L.L.C. ("CS"), a bankruptcy preparation service, during 2003 and 2004.

7. Hudson & Associates Law Firm, L.L.C. is a Missouri limited liability corporation created in 2003 with Linda Ruffin-Hudson as its Registered Agent.

8. CS is a Missouri limited liability corporation and had Hudson & Associates, L.L.C. as its Registered Agent from December 2003 until March 2004. Hudson filed motions to withdraw in the CS bankruptcy matters on which she was attorney of record on or about March 29, 2004, averring that she was threatened with bodily harm by CS staff. (See attached Exhibit 1)

9. Critique Services has the same principal place of business as Critique Legal Services, L.L.C. ("CLS") which is a Missouri limited liability corporation.

10. CLS and/or CS are owned and managed by Ms. Beverly Holmes. Ms. Holmes is not a licensed attorney. On November 20, 2001, Ms. Holmes entered into a Permanent Consent Injunction with the United States Bankruptcy Trustee which permanently prohibited Ms. Holmes from engaging in or assisting others in the preparation of bankruptcy documents as a bankruptcy petition preparer. The injunction, however, provided that Ms. Holmes could assist in the preparation of bankruptcy documents provided that she was supervised by an attorney.

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problem. In consideration of the obligations under Supreme Court Rule 5.23 ; OCDC made additional attempts to uncover the truth of this information before proceeding with a disciplinary action.

15. During the year of 2005, a representative of OCDC attempted to contact Respondent on more than one occasion at the Post Office Box which was the official address of record and by pursuing other contact information she uncovered. The correspondence to the official address of record was not returned during 2005. Other attempts at contact were unsuccessful because either Respondent did not return calls; did not respond to correspondence; or phone numbers were disconnected. However, no mail was returned.

16. A search was conducted using Accurint, a person locator service available for a fee, in 2005 and again in 2006. No additional current information was uncovered.

17. In January-March, 2006, OCDC again tried to contact Respondent through all known contact information, including the official address of record with the Court Clerk and the Missouri Bar and others believed to have been associated with Respondent in recent years. A copy of a draft information and a letter requesting immediate response and warning of the possibility of imminent disciplinary action was sent to the following addresses and fax numbers and email addresses. In 2006, correspondence was returned; the fax numbers did not go through successfully, and the email bounced back. Mail to the official address of record (P.O. Box 775331) was returned in 2006 as "No forwarding order on file, box closed".

The contacts attempted were:

Addresses: a) The Shell Building
1221 Locust Ave. 8th Floor
St. Louis, MO 63101

b) P.O. Box 78312
St. Louis MO. 63178

c) P.O. Box 775331
St. Louis MO. 63177-5331

Phone & Fax numbers:

a) 314-906-1797
b) 314-436-1406
c) 314-495-0722
d) 314-436-3505 & 3503

E-Mail address:

a) hudsonlc@yahoo.com
b) hudsonlc@ureach.com

18. OCDC contacted two relatives of Respondent, her mother-in- law and sister-in-law. These contacts were made in January, 2006. Neither of these relatives knew the whereabouts of Respondent and both indicated that they did not have a way of contacting her and did not keep in touch with Respondent or their son/brother, Ms. Hudson's husband.

19. A third party indicated to OCDC that Respondent may have been at the Bellefontaine Nursing Home or Rehabilitation Center in St. Louis at some point in 2004 or 2005. Based on this unconfirmed report, OCDC sent a letter to the nursing home addressed to Respondent on March 1, 2006. As of this date, that letter has not been

returned to OCDC. A phone call was placed to this facility and the staff person who answered indicated Ms. Ruffin-Hudson had gone home "a good while ago".

20. Similar to the experience of OCDC, the clients in all the investigation matters addressed herein were not provided with current contact information by Respondent and were unable to locate her.

Specific Contacts Re: Investigation Matters:

Whitfield File # 04-0571:

21. On August 11, 2004, the Office of Chief Disciplinary Counsel sent Respondent a letter notifying her that a complaint had been received from Mr. Willie Whitfield, Jr. and that a file had been opened and assigned File #04-0571.

22. The Office of Chief Disciplinary Counsel asked Respondent to respond to the complaint within ten (10) days.

23. Respondent has made no response to the August 11, 2004 request for a response to the Whitfield complaint. The letter was not returned.

Reed File # 04-0464:

24. On June 22, 2004, the Office of Chief Disciplinary Counsel sent Respondent a letter to her address of record with the Missouri Bar, notifying her that a complaint had been received from Ms. Adrienne Reed and that a file had been opened and assigned File #04-0464. The Office of Chief Disciplinary Counsel asked Respondent to respond to the complaint within ten (10) days. Respondent has made no response to

the June 22, 2004 request for a response to the Reed complaint. The letter was not returned to OCDC.

Jackson File # 04-0446:

25. On June 10, 2004, the Office of Chief Disciplinary Counsel sent Respondent a letter notifying her that a complaint had been received from Ms. Shannon Jackson and that a file had been opened and assigned File #04-0446.

26. The Office of Chief Disciplinary Counsel asked Respondent to respond to the complaint within ten (10) days. The letter was not returned.

27. Respondent has made no response to the June 10, 2004 request for a response to the Jackson complaint.

Roberts File # 04-0096-X:

28. On February 11, 2004, the Region X Disciplinary Committee under the authority of the Missouri Supreme Court Office of Chief Disciplinary Counsel sent Respondent a letter notifying her that a complaint had been received from Ms. Verdella Roberts and that a file had been opened and assigned File #04-0096-X.

29. On February 11, 2004, the Region X Disciplinary Committee requested that Respondent provide a detailed response to the complaint by March 17, 2004. Respondent was advised in the letter that failure to respond allows the Committee to deem the allegations as admitted if they wish, and may itself subject Respondent to discipline. The letter was sent by regular mail to Post Office Box 775331, St. Louis, MO 63177-5331. The letter was not returned.

30. Respondent did not reply to the letter. However, she did call the special representative for the committee during the week prior to March 18, 2004, asking for an eight week extension of time.

31. A further letter was sent on March 18, 2004 to Respondent from the special representative notifying her that the file was being transferred to the Jefferson City office, and advising the response was due on March 17th and any extension should be directed to a named individual at OCDC and providing a phone number and extension.

32. On March 25, 2004, Staff Counsel Nancy Ripperger sent a letter to Respondent at the above post office box, which was her address of record with the Missouri bar at that time, again asking for a response within two weeks.

33. Respondent requested additional time to respond and was granted an extension to about April 10, 2004 by the Office of Chief Disciplinary Counsel.

34. Respondent made no further response to the complaint after requesting the extension.

Rule Violations

35. Respondent has committed professional misconduct in violation of Rule 4-8.1(b) by failing to cooperate with disciplinary authorities in four separate matters by not responding to a lawful demand for information and by failing to maintain a current address and contact information with the Clerk of the Missouri Supreme Court and the Missouri Bar as required by Rule 6.01.

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COUNT II

Complaint of Adrienne Reed.

36. Informant adopts, restates, realleges, and incorporates by reference herein the allegations set forth in the foregoing paragraphs 1-35

37. On May 2, 2003 Ms. Reed engaged Respondent to represent her in a custody matter involving her minor son.

38. Ms. Reed paid Respondent $3,500.00 as an advance fee for this service.

39. A court hearing was scheduled on May 14, 2004, but Respondent had her sister call the court and request a continuance due to Respondent being hospitalized in ICU.

40. Respondent's sister indicated to Ms. Reed that she would inform her of the new date and time for the hearing.

41. A second court date was scheduled and notice was sent to Respondent. However, she never informed Reed of this court date or had any further communication with her after the May court date was postponed.

42. Between May and June, 2004, Ms. Reed made numerous calls to Respondent's office, but was never able to reach her nor received any communication from Respondent.

43. The previous hearing had been continued to June 14, 2004, however, Respondent did not appear and did not inform Ms. Reed of this date. Ms. Reed learned

of the hearing as a result of her son's caseworker contacting her on that date to inquire about the reason neither she nor her attorney appeared at the hearing.

44. Because of her non-appearance, the judge entered an order detrimental to Reed on that date.

45. On June 14, 2004, after learning of the hearing, Ms. Reed immediately tried to contact Respondent's office phone number only to receive a message that Respondent's telephone had been disconnected. Ms. Reed then tried Respondent's cell phone number, but received no response to her calls. Reed then paid a visit to Respondent's office in St. Louis to find that it had been closed.

46. Ms. Reed submitted a letter to the judge in her son's case explaining why she did not appear and requesting that his June 14, 2004 Order be rescinded until she could obtain new counsel.

47. Reed then obtained new counsel and had to pay additional attorney fees for representation. The case was continued until September 2004.

Rule Violations

48. Respondent has committed professional misconduct under Rule 4-8.4(a) as a result of violating:

a. Rule 4-1.3 in that she failed to act with diligence in representing her client by neglecting the matter entrusted to her; and

b. Rule 4-1.4 in that she failed to communicate to her client the hearing date and time. Respondent also failed to keep her client informed of her telephone numbers and addresses where she could be reached; and

c. Rule 4-1.16 in that she failed to take reasonable steps to protect her client's interests by taking the appropriate actions to withdraw as counsel of record with the Court so that the client could obtain substitute representation. Respondent further failed to give the client reasonable notice of termination of representation, failed to surrender papers and property belonging to the client, and failed to refund any advanced payment fee that had not been earned; and

COUNT III

Complaint of Willie Whitfield, Jr.

49. Informant adopts, restates, realleges, and incorporates by reference herein the allegations set forth in the foregoing Paragraphs 1 through 35 above.

50. On October 23, 2003, Willie Whitfield, Jr., engaged Respondent to represent him in two traffic tickets.

51. Whitfield paid Respondent $75 to take care of the tickets. (No. 328836-speeding; & 328837 - no insurance).

52. Respondent informed Mr. Whitfield that he did not have to appear in court and that she would let him know what court costs and fines he would have to pay once she received the information back from the prosecutor.

53. Respondent entered her appearance in both matters.

54. Court records show that a plea and sentence was entered on January 8, 2004, ordering payment of $500 and $24.50 in court costs, with the special condition that the charge of violating the proof of financial responsibility ordinance would be dismissed upon Whitfield providing proof of insurance. Mr. Whitfield's case was continued to January 28, 2004 for payment of court costs and fines.

55. Respondent never informed Mr. Whitfield of the court costs and fines that needed to be paid by the January 28, 2004 date. She never informed Whitfield of any actions taken on his behalf. Mr. Whitfield never heard anything further from Respondent regarding the tickets. However, she remained attorney of record according to court records.

56. On March 16, 2004, the court records show a notice to Whitfield was sent regarding the possible license suspension for failure to appear or pay fine on the proof of insurance matter - (Ticket No. 328837).Sometime after this date, Whitfield contacted another attorney to assist him but was told that Respondent was still attorney of record and therefore he needed to contact her.

57. Court records show a court date was set for April 28, 2004 for Case No. 328836 (speeding), for his prior failure to appear to pay fines in January. It is not clear if Whitfield had notice of the hearing on April 28th.

58. On or about June 8, 2004 Whitfield received notification from the Missouri Department of Revenue indicating that his driver's license was suspended due to failure to pay or appear on ticket No. 328837 (insurance).

59. On June 14, 2004, the court issued a citation and warrant for Mr. Whitfield's failure to appear on two matters.

60. On June 16, 2004, Mr. Whitfield turned himself in to Webster Grove authorities and was required to post a $900.00 bond on the failure to appear matter. Mr. Whitfield repeatedly attempted to contact Respondent via telephone and fax to request that she withdraw from his cases because the clerk informed him this was necessary before the court would recognize substitute counsel. He was unable to reach Respondent at the numbers he had or at the contact numbers he received from the court.

61. Eventually Whitfield was able to resolve his matters without Respondent by paying the fines on August 25, 2004. However, he had two "Failure to Appear" matters on his record in addition to the traffic tickets, in some part, as a result of Respondent's lack of communication with him.

Rule Violations

62. Respondent has committed professional misconduct under Rule 4-8.4(a) as a result of violating:

a. Rule 4-1.4 in that she failed to communicate to her client the court costs and fines that her client needed to pay to the court and the date

for payment. Respondent also failed to keep her client informed of her telephone numbers and addresses where she could be reached; and

b. Rule 4-1.16 in that she failed to take reasonable steps to protect her client's interests by taking the appropriate actions to withdraw as counsel of record with the Court so that the client could obtain substitute representation. Respondent further failed to give the client reasonable notice of termination of representation, failed to surrender papers and property belonging to the client.

COUNT IV

Complaint of Shannon Jackson

63. Informant adopts, restates, realleges, and incorporates by reference herein the allegations set forth in the foregoing Paragraphs 1 through 35.

64. On January 23, 2004, Ms. Jackson employed Respondent Critique Services (CS) at which time, she completed an application and paid a $99.00 application fee to file bankruptcy.

65. On February 11, 2004, Jackson met with Respondent. Ms. Jackson also paid her bankruptcy filing fee at this time, and submitted payment of $208.

66. Jackson met with Respondent on February 11, 2004. Jackson was led to believe that her bankruptcy case would be filed soon after that conference.

67. On February 18, 2004, Ms. Jackson made a follow-up call to CS to inquire as to the status of her case. She was told that her case had not been filed and they were not sure when it would be filed.

68. On February 20, 2004, Ms. Jackson called CS again to follow-up on her case and was told that they could not locate her file and she should call back.

69. Ms. Jackson called CS again on February 27, 2004 and was told that they were running two weeks behind.

70. On March 4, 2004, Ms. Jackson contacted CS and was again told that her case had not been filed. Ms. Jackson advised CS that she was very unhappy with their service and requested a refund. Ms. Jackson was told that she would have to make an appointment to meet with the office manager to obtain a refund.

71. Ms. Jackson scheduled an appointment to meet with CS's office manager on March 11, 2004.

72. On March 11, 2004 Ms. Jackson met with CS's office manager and was told that she could not refund her money and that she needed to speak with Respondent. The office manager gave Ms. Jackson Respondent's direct telephone numbers and instructed her to call Respondent on March 16, 2004.

73. Ms. Jackson attempted to reach Respondent on the telephone numbers the office manager provided, but they were all incorrect.

74. Ms. Jackson then contacted CS's office manager again and was given another telephone number for Respondent which also proved to be invalid.

75. Ms. Jackson continued for several weeks after that to get CS to either refund her money or file her bankruptcy case to no avail.

76. Jackson received no communication from Respondent after her February 11th meeting to prepare for filing her bankruptcy petition. Her petition was never filed by Respondent or by CS.

77. Ms. Jackson finally obtained another attorney to file her case.

Rule Violations

78. Respondent has committed professional misconduct under Rule 4-8.4(a) as a result of violating:

a. Rule 4-1.3 in that she failed to act with diligence in representing her client by neglecting the matter entrusted to her; and

b. Rule 4-1.4 in that she failed to communicate with her client by keeping her client informed of her telephone numbers and addresses where she could be reached; and

c. Rule 4-1.16 in that she failed to give the client reasonable notice of termination of representation, failed to surrender papers and property belonging to the client, and failed to refund any advanced payment fee that had not been earned.

COUNT V

Complaint of Verdella Roberts

79. Informant adopts, restates, realleges, and incorporates by reference herein the allegations set forth in the foregoing paragraphs 1-35.

80. In June 2003, Ms. Roberts retained and paid Respondent to assist her in correcting a problem on her criminal record.

81. Ms. Roberts' identity had been used without her consent several years prior, and during that time a felony charge was filed in her name for matters on which she had no knowledge or involvement. This was causing a problem for her employment status as a child care worker.

82. Ms. Roberts informed Respondent that she needed timely action to correct the situation because her employer had given her a deadline to have her records corrected or that it would affect her ability to continue her employment.

83. Roberts met with Respondent at her office at 1221 Locust, in St. Louis and paid Respondent $200 for her legal representation sometime in June, 2003.

84. Respondent further advised Ms. Roberts that it should take approximately three (3) months to complete the research and required work on her case.

85. Respondent told Roberts to go to the St. Louis County Police headquarters to get her fingerprints. Roberts indicated that the police would not give her a copy of the fingerprints of the charged individual, but she was able to have her own prints taken.

86. Ms. Roberts immediately gave Respondent her fingerprints and other paperwork she had related to her record.

87. Ms. Roberts started contacting Respondent to get the matter started within days, because she was anxious to have the matter completed, given the fact that she could lose her job if it was not corrected within the time allowed by her employer.

88. For several months thereafter, Ms. Roberts attempted to contact Respondent on a regular basis at phone number, 314-436-1406, to find out the status of her case. She would leave messages on the answering machine, when she was able to do so. These messages were unanswered by Respondent. At other times, the answering machine was full and she could not leave a message. On one or more occasions, during the Summer, Fall and Winter of 2003, she went to the office where she had first met Respondent hoping that she would be there and she would be able to speak to her in person, since she could not reach her by phone. On those occasions, she left messages with the receptionist on the floor who served all the lawyers who had offices on the floor.

89. In December 2003, after Ms. Roberts continued, to no avail, to make telephone calls to reach Respondent, Ms. Roberts wrote to Respondent and requested that she refund her money and return all documents to her because she no longer wanted Respondent to represent her.

90. Respondent did not respond to Ms. Robert's request and did not complete work on her case. Roberts went by Respondent's office in the winter of 2003-2004 and discovered that Respondent had vacated the premises and there was no forwarding information.

Rule Violations

91. Respondent has committed professional misconduct under Rule 4-8.4(a) as a result of violating:

a. Rule 4-1.3 in that she failed to act with diligence in representing her client by neglecting the matter entrusted to her; and

b. Rule 4-1.4 in that she failed to communicate with her client by keeping her client informed of her telephone numbers and addresses where she could be reached; and

c. Rule 4-1.16 in that she failed to give the client reasonable notice of termination of representation, failed to surrender papers and property belonging to the client, and failed to refund any advanced payment fee that had not been earned; and

d. Rule 4-8.1(b) in that she knowingly failed to respond to lawful demands for information from a disciplinary authority.

WHEREFORE, Informant prays that a decision be issued finding that Respondent has committed professional misconduct as alleged in this Information, that

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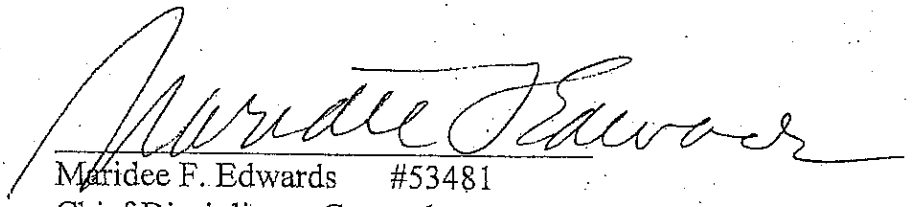
Respondent be disciplined in accordance with Rule 5, and that costs be assessed against Respondent.

Respectfully submitted,



Maridee F. Edwards #53481
Chief Disciplinary Counsel
Office of Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 (fax)
Maridee.Edwards@courts.mo.gov
ATTORNEY FOR INFORMANT

Attachment 71

Missouri Supreme Court's Order Disbarring Ruffin-Hudson

Supreme Court of Missouri

en banc

May 12, 2006

In re: Linda C. Ruffin-Hudson,	)	
	)	
Respondent.	)	Supreme Court No. SC87674
	)	MBE #36650

ORDER

The Chief Disciplinary Counsel having filed an Information advising this Court of its findings, after investigation, that there is probable cause to believe Respondent, Linda C. Ruffin-Hudson, is guilty of professional misconduct and having filed with said Information, pursuant to Rule 5.13, a Notice of Default, notifying the Court that Respondent, Linda C. Ruffin-Hudson, failed to timely file an answer within the time required although Respondent was served pursuant to the provisions of Rule 5.18 and Rule 5.11 and, therefore, pursuant to Rule 5.13, Respondent is in default; and

It appearing Respondent is guilty of professional misconduct and should be disciplined;

Now, therefore, it is ordered by the Court that the said Linda C. Ruffin-Hudson, be, and she is hereby disbarred, that her right and license to practice law in the State of Missouri is canceled and that her name be stricken from the roll of attorneys in this State.

It is further ordered that the said Linda C. Ruffin-Hudson, comply in all respects with 5.27 - Notification of Clients and Counsel.

Costs taxed to Respondent.

Day - to - Day

William R. Price, Jr.
Acting Chief Justice

STATE OF MISSOURI – SCT.:

I, THOMAS F. SIMON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 12th day of May, 2006, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, *I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 12th day of May, 2006.*

_____, Clerk

_____, D.C.

Attachment 72

Missouri Supreme Court's Order Suspending Sutton on a interim basis

In the

SUPREME COURT OF MISSOURI

En Banc

May Session, 2005

_____

Report of the Office of the Chief Disciplinary Counsel for the year 2004 together with the Financial Report of the Treasurer of the Advisory Committee Fund for 2004

MARIDEE F. EDWARDS
Chief Disciplinary Counsel

IN THE

SUPREME COURT OF MISSOURI

EN BANC

MAY SESSION, 2005

REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR THE YEAR 2004 TOGETHER WITH THE FINANCIAL REPORT OF THE TREASURER OF THE ADVISORY COMMITTEE FUND FOR 2004.

To the Honorable Judges of The Court:

Comes now the Chief Disciplinary Counsel, and respectfully reports to the Court on matters concluded during calendar year 2004 or pending on December 31, 2004.

NAME	DISCIPLINE
RICHEY, MICHAEL L. #24044 Cape Girardeau, MO	Surrendered License Disbarred 10/26/04
Voluntary surrender of license filed on September 1, 2004. Surrender of license accepted and Respondent disbarred by order of the Court on October 26, 2004.	

SAYRE, JEFFREY DON #39327 Milan, MO	Surrendered License Disbarred 1/28/04
Voluntary Surrender of license filed in Supreme Court on December 9, 2003. Surrender of license accepted by the Court and Respondent disbarred by order of the Court on January 28, 2004.)	

SHELHORSE, JOHN C., IV #46744 St. Louis, MO	Public Reprimand on 11/15/04
DHP Decision and Record filed on May 10, 2004. Matter was briefed and set for oral argument on October 7, 2004. Public Reprimand by order of the Court on November 15, 2004.	

SIMMONS, CHRISTIAN W., #50490 Kent, WA	Default Disbarment on 8/11/04
Information with Notice of Default filed on August 11, 2004. Default disbarment by order of the Court on August 11, 2004.	

SUTTON, LEON M. #50525 St. Louis, MO.	Suspended on 5/21/04
Rule 5.24-Information for Interim Suspension for threat of harm filed on May 17, 2004. Interim suspension by order of the Court on May 21, 2004, pending the final disposition of disciplinary proceedings. Informant filed Motion for appointment of co-trustees on May 28, 2004. By order of the Court on June 8, 2004, co-trustees were appointed to perform the functions set forth in Informant's Motion for appointment of co-trustees.	

Attachment 73

Missouri Supreme Court's Order Disbarring Sutton

May 30, 2006

Supreme Court Case No. SC87525

In Re: Leon M. Sutton, Sr., MBE #50525

ORDER

Now at this day, the Court being sufficiently advised of and concerning the premises, and this cause having been fully briefed by Informant and Respondent having failed to file a brief and said cause having been submitted on the brief of Informant on May 10, 2006;

The Court does find that Respondent violated Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15(a), 4-3.3(a)(1), 4-3.4(c), 4-5.5(b), 4-8.1(b), 4-8.4(c), 4-8.4(d), and 4-8.4(a) of the Rules of Professional Conduct and should be disciplined;

Now, therefore, it is ordered by the Court that the said Leon M. Sutton, Sr., be, and he is hereby disbarred, that his right and license to practice law in the State of Missouri is canceled and that his name be stricken from the roll of attorneys in this State.

It is further ordered that the said Leon M. Sutton, Sr., comply in all respects with 5.27 - Notification of Clients and Counsel.

Costs taxed to Respondent.

Day - to - Day

_____

Michael A. Wolff

Chief Justice

Attachment 74

Missouri Supreme Court's Order Disbarring Hudspeth

August 1, 2006

Supreme Court Case No. SC87881

In re: George E. Hudspeth, Jr., MBE # 44524

ORDER

The Chief Disciplinary Counsel having filed an Information advising this Court of its findings, after investigation, that there is probable cause to believe Respondent, George E. Hudspeth, Jr., is guilty of professional misconduct and having filed with said Information, pursuant to Rule 5.13, a Notice of Default, notifying the Court that Respondent, George E. Hudspeth, Jr., failed to timely file an answer or other response within the time required although Respondent was served pursuant to the provisions of Rule 5.18 and Rule 5.11 and, therefore, pursuant to Rule 5.13, Respondent is in default; and

It appearing Respondent is guilty of professional misconduct and should be disciplined;

Now, therefore, it is ordered by the Court that the said George E. Hudspeth, Jr., be, and he is hereby disbarred, that his right and license to practice law in the State of Missouri is canceled and that his name be stricken from the roll of attorneys in this State.

It is further ordered that the said George E. Hudspeth comply in all respects with Rule 5.27 - Notification of Clients and Counsel.

Costs taxed to Respondent.

Day - to - Day

_____

William Ray Price, Jr.

Acting Chief Justice

Attachment 75

Complaint, filed in *Gargula v. Diltz, et al. (In re Hardge*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	
Hardge, David	)	Case No. 05-43244-659
	)	
Debtor.	)	Chapter 7
	)	
CHARLES E. RENDLEN	)	Judge Kathy A. Surratt-States
UNITED STATES TRUSTEE,	)	
Plaintiff.	)	Adversary No._____
	)	
	)	**UNITED STATES TRUSTEE'S**
v.	)	**COMPLAINT FOR INJUNCTION**
	)	**FEE DISGORGEMENT AND**
Beverly Holmes Diltz, Individually and	)	
as a Member of Critique Services L.L.C.,	)	
a Missouri limited liability company,	)	
d/b/a Critique Services,	)	Peter Lumaghi MoBar#24160 DCt#14577
Defendant,	)	Office of United States Trustee
	)	111 S. 10th St., Ste. 6.353
and	)	St. Louis, Missouri 63102
	)	314 539-2977
Critique Services L.L.C.,	)	314 539-2990 facsimile
a Missouri limited liability company	)	peter.lumaghi@usdoj.gov
d/b/a Critique Services,	)	
Defendant,	)	
	)	
and	)	
	)	
Renee Mayweather,	)	
Defendant.	)	

UNITED STATES TRUSTEE'S COMPLAINT FOR INJUNCTION, SANCTIONS AND FEE DISGORGEMENT

COMES NOW, the United States Trustee for the Eastern District of Missouri, Charles E. Rendlen III, Plaintiff, by his attorney, Peter Lumaghi, and states in support of this Complaint as follows:

PARTIES

1. Plaintiff, Charles E. Rendlen III, hereinafter referred to as the "Plaintiff", is the United States Trustee for the Eastern District of Missouri whose office is located at the Thomas Eagleton Courthouse, 111 South 10th St., Ste. 6.353, St. Louis, Missouri 63102.

2. Defendant Beverly Holmes Diltz, hereinafter referred to as Defendant Holmes, is an individual residing at 4009 Westminster Place, St. Louis, Missouri. Defendant Holmes has operated a business of bankruptcy document preparation services under the fictitious name of Critique Services to the public for over eight years in and from the Eastern District of Missouri from its place of business, 4144 Lindell Blvd., St. Louis, Missouri. Defendant Holmes filed on May 25, 2001 a fictitious name registration of Critique Services with the Secretary of State, State of Missouri, on behalf of herself as owner of the fictitious name registration. The registration remains in an active status.

3.Defendant Critique Services L.L.C., hereinafter referred to as "Defendant Critique LLC", is an active Missouri Limited Liability Company, Charter Number LC0068981, whose charter was granted by the Secretary of State, State of Missouri, on August 9, 2002. Defendant Holmes is the organizer, registered agent and only member of Defendant Critique LLC.

4. Defendant Renee Mayweather, hereinafter referred to as "Defendant Mayweather", is an individual residing at 2025 North 46th St., East St. Louis, Illinois. Defendant Mayweather has carried out various duties as a Critique Services employee, beginning as a data enterer in 1997 and presently as office manager and bankruptcy customer consultant. Throughout her career with Critique Services Defendant Mayweather has carried out her responsibilities under the supervision, direction and control of Defendant Holmes.

JURISDICTION

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. 11 U.S.C. § 1334(a), 11 U.S.C. § 157, 11 U.S.C. § 105 and 11 U.S.C. § 110. This matter is a core proceeding under 28 U.S.C. Sec. 157 (b) (A) and (O) . Venue is proper in this Court. 28 U.S.C. Sec. 1409 (a).

FACTS

6. Defendant Holmes has subjected herself to the jurisdiction of this Court by consenting to the entry of three consent decrees filed in this Court in settlement of enforcement actions brought against her by the Plaintiff, to wit:

a.. A court order of March 9, 1999 in settlement of Pelofsky v. Beverly Homes, d/b/a Critique Services Adv. Proc. 99-04065-172 (In re Hamilton Case No. 99-40898-172) permanently enjoining Defendant Holmes from engaging herself or in directing others in the unauthorized practice of law as described therein and failing to carry out the requirements of 11 U.S.C. 11 U.S.C. § 110;

b. A court order of November 20, 2001 in settlement of Pelofsky v. Beverly Holmes, d/b/a Critique Services, Adv. Proc. 01-04333-293(In re Bass Case No. 00-48404-293) permanently enjoining Defendant Holmes from acting as a bankruptcy petition preparer and from engaging directly or assisting others in the unauthorized practice of law as described therein;

c. A court order of December 29,2003 in settlement of Rendlen v. Beverly Holmes, d/b/a Critique Services and Critique Legal Services, and Critique Legal Services LLC Adv. Proc. 03-04003-172(In re Thompson Case No. 02-53575-172) requiring Defendant Holmes to comply with the orders set out in paragraph 6 (a) and (b) above as well as be permanently enjoining her from providing enumerated services to debtors and from acting as a bankruptcy petition preparer in any District for

two years. The Defendants were further authorized and limited to the typing or transcribing of written information provided by debtors at the direction of their supervising attorney.

7. Since the entry of the permanent injunction in November of 2001 prohibiting Defendant Holmes from acting as a bankruptcy petitioner, Defendant Holmes by agreements has associated herself and her Critique Services bankruptcy petition preparation business with a series of attorneys to provide client interviews on the signing of bankruptcy documents, 11 U.S.C. § 341 creditor meeting representation and post-filing litigation. These attorneys have included in the period from November, 2001 to present: Ross H. Briggs, Esq., Leon M. Sutton, Sr. Esq., George E. Hudspeth, Jr. and James C. Robinson, Esq.

8. Defendant Holmes, as an independent contractor and owner of Defendant Critique Services LLC, agreed under a licensing agreement to provide each attorney in turn with the use of the name Critique Services, a client base, marketing, advertising, and a bankruptcy preparation business complete with offices, business equipment and personnel working under Defendant Holmes' direction, supervision and control.

9. On the departure of an attorney associated with Critique Services, Defendants Holmes and Critique LLC retained the Critique Services' name and the entire Critique Services' bankruptcy document preparation business, including those Critique Services clients whose bankruptcies were not yet filed.

10. By April 1, 2004, Defendants Holmes, as an independent contractor and owner of Critique LLC, had entered into an agreement with George E. Hudspeth, Jr., hereinafter referred to as "Mr. Hudspeth", to provide the Critique Services bankruptcy clients the legal services outlined in paragraph 7 above. On occasion, Defendant Holmes would utilize another attorney to provide Mr.

Hudspeth's services.

11. The Defendants, directly and through their employees, followed the following procedures in regard to their bankruptcy clients:

a. On arrival at Critique Services' place of business at 4144 Lindell Boulevard, St. Louis, Missouri, a potential client was interviewed by a non-attorney Critique Services employee. These interviews included the client's personal and financial situation, knowledge of the difference between Chapter 7 and 13, and the client's ability to pay the Critique Services $149.00 fee and the court filing fee. The Critique Services employee handling client intake discussed with the client in many cases the effect of a bankruptcy filing on threatened or actual vehicle repossessions, garnishment of wages, other legal proceedings and/or the client' personal and financial matters;

b. An individual seeking Critique Services bankruptcy services became a Critique Services client and was entered into the Critique Services computer system as a client upon the payment of the Critique Services fee;

c. Critique Services bankruptcy clients, upon turning in the completed questionnaire and completing the required payments, reviewed the questionnaire with a non-attorney Critique Services employee to correct errors and omissions. The employee then completed a missing information form for the client to follow in providing additional information and/or documents. Lastly, the client was given a date on which the client's bankruptcy documents would be completed and an attorney would review and sign these documents with the client. Chapter 7 clients often were required to wait a month or longer to meet with an attorney. Typically, no

attorney provided either supervision or oversight at the meetings of a client with Critique Services employees;

d. The Critique Services attorney told Critique Services bankruptcy clients on reviewing and signing bankruptcy documents with them that they should expect to receive a notice or letter of a Court hearing in a number of weeks. As a general rule, clients were not told by the Defendants, the attorney or anyone else working at Critique Services when their case would be filed;

e. As a rule, none of the Defendants directly or through their employees took any steps to inform their bankruptcy clients that after reviewing and signing their bankruptcy documents with an attorney that there would be weeks or months of delay until their bankruptcy case would be filed with the Court;

f. Many clients, after waiting in vain for a court date, began calling and visiting the Critique Services office to inquire about the status of their bankruptcy case. The Defendants as well as the personnel under their supervision, direction and control forestalled these clients by making fraudulent, unfair, or deceptive statements, including:

i. The computer at Critique Services with all the debtor's information was down, data had been lost and had to be entered by hand when, in fact, Critique Services had sufficient back-up computer capability to retrieve necessary data and file bankruptcy documents timely;

ii. The attempt to file the case with the court was refused by the Court when, in fact, no attempt to file bankruptcy documents had been made;

iii. The case had been filed by a given date when, in fact, the case had not been filed on the given date;

iv. The case had been filed when, in fact, the case had not been filed;

v. The client's inquiry as to case status could only be handled by Renee Mayweather when, in fact, such information could have been given by other Critique Services employees;

vi. The client's bankruptcy case was past the filing date and the client had to come in and sign new documents when, in fact, there is no filing date deadline mandated by the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or Local Bankruptcy Rules;

vii. The client's case file was missing information and, therefore, could not be filed when, in fact, the information was not missing;

viii. Critique Services needed a filing paper which the client had to come in and sign when, in fact, the client had signed all papers necessary to have his or her case filed;

xi. The client needed to come in and sign new bankruptcy documents because Critique Services had prepared a new copies of the documents when, in fact, the documents previously signed by the client were complete and ready for filing; and/or

xii. Due to Trustees requiring amendments to Schedule F for debtors not providing all creditor information, the client had to review and sign new documents when, in fact, the documents previously signed by the client provided the required information.

g. Critique Services clients who came in for a second signing of bankruptcy documents as required by the Defendants reviewed these documents with Defendant Mayweather without the presence or oversight of any attorney. Defendant Mayweather made corrections to the bankruptcy documents with the client as needed,. printed out a new set of bankruptcy documents and caused these documents to be electronically filed with the Court under the electronic signature of an attorney;

h. Critique Services clients experienced delays from two weeks to eight months between the first signing of their bankruptcy documents to the actual document filing date;

i. Critique Services clients who sought a refund of the Critique Services fee after the failure of the Defendants to file their case within a reasonable period of time were refused by the Defendants who stated that the fee is not refundable if the client ever met with an attorney; and

j. Defendants failed to modify their business practices from April 1, 2004 to April 1, 2005 to ensure that all their clients bankruptcy cases were filed on a timely basis, despite repeated communications from the Plaintiff and Chapter 7 Panel Trustees concerning the issues raised by such delayed filings.

12. In the period of April 1, 2004 through April 1, 2005 , all Critique Services fees and court filing fees were paid to Mr. Hudspeth who then paid Defendant Holmes weekly from his own account and/or with cash or checks received from Critique Services clients. This payment covered the expenses of Defendant Holmes' Critique Services bankruptcy document preparation services. From this sum, Defendant Holmes paid the Critique Service operating expenses as well as her and her employees' compensation. Mr. Hudspeth for an applicable tax year provided Ms. Holmes with a Form 1099.

13. The undersigned elicited sworn statements at the 11 U.S.C. § 341 meetings of a number of

debtors, including the debtor in this case, with their counsel present. Three of these debtors testified to the following:

a. Hardge, David 04-43244: In the fall of 2004, Mr. Hardge's wages were being garnished biweekly on a judgement taken against him. To stop the garnishment by filing a bankruptcy, he met with a Critique Services employee on November 20, 2004 and returned the completed questionnaire. At a subsequent meeting with Mr. Hudspeth in December of 2004, he signed the completed bankruptcy documents and was told by Mr. Hudspeth to expect a letter about his case in six to eight weeks. Mr. Hardge did not receive such a letter, but was told in a late February of 2005 telephone call from Critique Services to come in and sign new bankruptcy documents. On March 11, 2005 he met with Defendant Mayweather whom he took to be an attorney at Critique Services. She told him that he had to sign new documents because there was a mistake on the earlier documents he signed. Mr. Hardge testified that he had no knowledge of a mistake on the first signed set of bankruptcy documents. Defendant Mayweather reviewed the documents with him and Mr. Hardge signed them. No attorney was present at this meeting;

b. Pearson, Willie 05-43003: Mr. Pearson met with Defendant Holmes on his first visit to Critique Services on April 27, 2004. Defendant Holmes interviewed Mr. Pearson, gave him a questionnaire to fill out, received the $149.00 Critique Services fee and told him that his case would be filed within four to six weeks from meeting with an attorney. Mr. Pearson returned on April 30, 2004 with the completed questionnaire and paid Defendant Holmes the $209 filing fee. Defendant Holmes turned over the questionnaire to Defendant Mayweather who reviewed the questionnaire with Mr. Pearson. On the same day he met with Mr. Hudspeth who reviewed the prepared bankruptcy

documents with him. After the documents were signed, Mr. Hudspeth told Mr. Pearson he would be getting something in the mail in four to six weeks. After that period had expired without receiving a letter, Mr. Pearson began calling Critique Services once a month on the issue of his case filing. Each time he was told by a receptionist that the person he was calling, either Defendant Holmes or the attorney, was not available. In January or February, 2005, Mr. Pearson was told at Critique by a receptionist that the delay in his case filing was due to Critique not having the dates of certain loans. Mr. Pearson stated at his 341 meeting that Critique Services had that information back in April, 2004. He reviewed and signed two bankruptcy forms on February 11, 2005 without an attorney present. The Critique Services representative assisting him with the paperwork told him that the forms he was signing had changed since his earlier signing in April of 2004;

c. Stephenson, Vinnie Ann 05-40492: At her first Critique Services meeting in July of 2004, Ms. Stephenson met with Defendant Holmes. She paid the $149.00 Critique Services fee to a receptionist and received a questionnaire to fill out. On August 28, 2004 , Ms. Stephenson paid the filing fee to Critique Services. In September of 2004, she delivered her completed questionnaire to either Defendant Mayweather or Defendant Holmes. She reviewed and signed her completed bankruptcy petition and other documents with Mr. Hudspeth in September of 2004. She testified that he said her case would be filed within thirty days. After the thirty day period, Ms. Stephenson started calling Critique Services because her case had not been filed. Up to late December of 2004, she was told on these calls to Critique Services that someone at Critique Services would be calling her, but she stated she did not receive a return call. On December 23, 2004, she met with Defendant Holmes at Critique Services. Ms. Stephenson stated that Defendant Holmes told her that by January 1, 2005 Ms.

Stephenson would have a case filing number. Ms. Stephenson's case was not filed as Defendant Holmes represented. Ms. Stephenson further testified that in a subsequent call in January of 2005, Defendant Mayweather told her that she had to come in to sign documents. Ms. Stephenson said that she had already done that. Defendant Mayweather responded that Ms. Stephenson needed a "filing paper and filing number". On January 11, 2005 Defendant Mayweather had Ms. Stephenson sign a new petition, stating that it was not necessary for Ms. Stephenson to review any other documents. The reason given by Defendant Mayweather for the delay in filing of the case was that Critique Services had experienced computer failure. No attorney was present at the January 11, 2005 meeting. The electronic signatures of Ms. Stephenson on her Verification of Matrix, Declaration Concerning Debtor's Schedules, Statement of Financial Affairs Declaration and Chapter 7 Individual Debtor's Statement of Intention reflect a January 11, 2005 date of signing.

14. Other Debtors experiencing delayed filings through the fraudulent, unfair, or deceptive acts of the Defendants suffered additional injuries, including having to amend filed documents due to erroneous information thereon, being sued when a timely filing would have stayed the filing of the suit; owing increased amounts of tax refunds to their bankruptcy estate, defending litigation over dissipated estate assets which would have been available on a timely filing, and having their discharge threatened.

15. Case administration of those Critique Services cases prepared by the Defendants and those under their employ as outlined above was adversely affected in that:

a. Debtor information contained in bankruptcy documents filed weeks or months after debtor's signature was false as of the date of document filing;

b. Case administration was delayed due to extended and continued 341 meetings to

correct or explain the false information set out on filed bankruptcy documents; and

c. Trustees expended time and money in attempting to recover assets expended by Debtors during the delay in filing caused by the Defendants.

16. Defendants Holmes, Critique LLC and Mayweather and those under their direction, supervision and control continue to provide bankruptcy petition preparation and filing services in and from this District.

COUNT I

DEFENDANT HOLMES
VIOLATION OF PRIOR COURT ORDERS
PROHIBITING HER ACTING AS A
BANKRUPTCY PETITION PREPARER

17. The Plaintiff incorporates herein the allegations contained in paragraphs 1 through 16.

18. Defendant Holmes has agreed to and signed two permanent injunctions described in paragraph 6 (a) and (b) above whereby she was barred from engaging by herself or assisting others in the preparation of bankruptcy documents as a bankruptcy petition preparer as defined by 11 U.S.C. § 110. In the second order entered in the Thompson case, the prohibition includes:

a. Not engaging in or advising debtors as to the preparation or filing of bankruptcy documents;

b. Not soliciting financial or personal information from debtors to enable Defendant or others at or under Defendant's direction to insert information into bankruptcy documents to be filed;

c. Only typing or transcribing written information provided to Defendant and others under Defendant's control from the debtors at the direction of the supervising attorney in the office of Critique Services.

19. 11 U.S.C. § 110 (a) (1) defines a bankruptcy petition preparer as:

> "... a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing;"

20. Defendant Holmes is not and has never been a duly licensed attorney able to practice law before the Bankruptcy Court of the Eastern District of Missouri. Nor has she held the position of an employee with any of the attorneys associating with her at Critique Services since the entry of the Bass court order in November of 2001. In fact, Defendant Holmes has held herself out as an independent contractor under the licensing agreements with each attorney she has associated with. As an independent contractor and sole owner of Defendant Critique LLC, Defendant Holmes has retained the ownership of the Critique Services name and control over her bankruptcy document preparation business and the personnel who work there. And, as described above, Defendant Holmes received her compensation providing bankruptcy document preparation services to the general public.

21. Each attorney with whom Defendant Holmes associated was relegated to provide her Critique Services clients legal services after the Defendant and her employees had interviewed and accepted the clients, reviewed and corrected client information and prepared bankruptcy documents from that information. Consequently, Defendant Holmes has failed to meet the requirement of both the Bass and Thompson Court orders that she and those she has control over be supervised by an attorney.

22. Defendant Holmes, in falling under the statutory requirements of 11 U.S.C. § 110 (a) (1) as a bankruptcy petition preparer and not having been supervised by an attorney as required by the permanent injunctions she agreed, has acted as a bankruptcy petition preparer for all times pertinent to this Complaint and, therefore, has repeatedly violated the terms of the Court Orders by providing

bankruptcy document preparation services herself and through others under her direction, control and supervision.

RELIEF

WHEREFORE, The United States Trustee requests this Court to grant the following relief:

A. Permanently enjoin Defendant Holmes from assisting or participating in any manner, whether as a bankruptcy petition preparer or otherwise, in any contemplated or filed bankruptcy case in or from the Eastern District of Missouri other than a bankruptcy case filed on her own behalf;

B. Order Defendant Holmes to disgorge all monies received from debtors injured as a result of Defendant Holmes acting as a bankruptcy petition preparer herself or through others in contravention of those Court Orders permanently prohibiting her to so act;

C. Order Defendant Holmes to pay sanctions in an amount to be determined by the Court to deter the aforesaid conduct by Defendant Holmes or comparable conduct of others similarly situated;

D. Order Defendant Holmes to pay the United States Trustee's Office attorney fees and expenses in bringing and prosecuting this Complaint; and

E. Order other such relief as the Court deems just in the circumstances.

COUNT II

DEFENDANTS HOLMES, CRITIQUE SERVICES LLC AND MAYWEATHER FRAUDULENT, UNFAIR, OR DECEPTIVE CONDUCT

23. The Plaintiff incorporates herein the allegations contained in paragraphs 1 through 16.

24. In the period of April 1, 2004 through April 1, 2005, Defendants Holmes, Critique LLC and

Mayweather, hereinafter referred to as "Defendants", engaged directly or through others in fraud and unfair and deceptive conduct with their bankruptcy clients, including the following:

a. Fraudulently stating or misrepresenting to clients the reasons why Defendants could not timely file bankruptcy petitions and related documents for their bankruptcy clients;

b. Deceiving clients into the belief that their bankruptcy case had been filed or would be filed on or before a certain date;

c. Fraudulently requiring clients to sign new bankruptcy documents in order to conceal from the Court, the assigned case Trustee, the United States Trustee and/or other parties in interest that the Defendants had failed and refused to file bankruptcy cases in a timely manner;

d. Engaging in fraudulent, unfair, or deceptive acts by giving legal advice to clients on the effect a bankruptcy filing would have on a clients' financial and personal circumstances;

e. Engaging in fraudulent, unfair, or deceptive acts by assisting or confirming a client's decision to file a bankruptcy case, reviewing with the client financial and personal information for bankruptcy document preparation and generating bankruptcy documents from that information, all without the presence or supervision of an attorney; and

f. Fraudulently filing electronic copies of bankruptcy documents reflecting the electronic signature of a Debtor when the Debtor had not reviewed nor signed originals of those documents.

25. Defendants Holmes, Critique LLC and Mayweather engaged directly or with others in these fraudulent, unfair and deceptive acts as bankruptcy petition preparers as defined by 11 U.S.C. § 110 (a) (1).

26. 11 U.S.C. § 110 (2) (B) permits this Court, upon a finding that an injunction prohibiting fraudulent,

unfair, or deceptive conduct would not be sufficient to prevent a person from interfering with the proper administration of Title 11, may enter an injunction enjoining that person from acting as a bankruptcy petition preparer.

27. 11 U.S.C. § 110 (3) permits this Court to award Plaintiff his attorney's fees and costs upon a successful prosecution of this civil action, which fees and costs are to be paid by the bankruptcy petition preparer.

28. 11 U.S.C. § 110 (i) (1) requires this Court, on finding a bankruptcy petition preparer to have violated 11 U.S.C. § 110 or committed any fraudulent, unfair, or deceptive act, to certify the Court's findings to the District Court for further hearing on damages and attorney fees as set out in 11 U.S.C. § 110 (i) (1) and (2).

RELIEF

WHEREFORE, the United States Trustee requests this Court to grant the following relief:

A. Permanently enjoin Defendants Holmes, Critique LLC and Mayweather from assisting or participating in any manner, whether as a bankruptcy petition preparer or otherwise, in any contemplated or filed bankruptcy case in or from the Eastern District of Missouri other than a bankruptcy case filed on a Defendant's own behalf

B. Award Plaintiff his attorney fees and cost on the successful prosecution of this civil action, to be paid by Defendants Holmes, Critique LLC and Mayweather jointly and severally;

C. Certify Court findings that Defendants Holmes, Critique LLC and Mayweather violated 11 U.S.C. § 110 and/or committed fraudulent, unfair, or deceptive acts to the District Court for further hearing on damages and attorney fees; and

D. Other such relief as the Court deems just in the circumstances.

COUNT THREE
DEFENDANTS HOLMES AND MAYWEATHER
UNAUTHORIZED PRACTICE OF LAW

29. The United States Trustee incorporates herein the allegations contained in paragraphs 1 through 16.

30. The District Court for the Eastern District of Missouri's Local Rule 83-12.01, made applicable to the Bankruptcy Court of the Eastern District of Missouri by Local Rule 81-9.01 (B), restricts the attorneys permitted to engage in the practice of law by filing pleadings, appear, or practice in the Eastern District of Missouri Bankruptcy Court, to only those attorneys who have meet the requirement for admission to practice before the Eastern District of Missouri District Court.

31. 11 U.S.C. § 110 (k) underlines the ability of non-attorneys to practice before bankruptcy courts in a given jurisdiction is governed by relevant state law, including rules and laws which prohibit the unlawful practice of law, and by 11 U.S.C. § 110 itself. 2 Collier on Bankruptcy, para. 110.12 (15th ed. 1997), cited in In re Kaitangian, 218 B.R. 102, 108 (Bankr. S.D. Cal. 1998).

32. The Missouri Legislature has defined by statute the "practice of law" as the "drawing of papers, pleadings, or documents... in connection with proceedings pending or prospective before any court of record" (RSMO 484.010 (1)) and the "law business" as "the advising or counseling for a valuable consideration of any person... as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights..." (RSMO 484.020 (1)).

33. The Missouri Supreme Court has found that the preparation by a non-attorney of non-standard or

specialized documents which requires the exercise of judgement is prohibited by 484.010(1) as the unauthorized practice of law . The Court also specifically prohibited the defendant from drafting legal documents, selecting the form of the document or from giving

legal advice about the effect of the document. In re First Escrow, Inc. 840 S.W. 839, 848-849 (Mo. 1992).

34. Defendant Mayweather herself and through others under her supervision and control has engaged in the unauthorized practice of law by:

a. Meeting and discussing with potential bankruptcy clients without attorney oversight their financial and personal information for the purpose of reaching agreement that Critique Services will prepare and file a bankruptcy case on their behalf;

b. Reviewing and correcting with bankruptcy clients without attorney oversight financial and personal information set out in a questionnaire format in anticipation of bankruptcy document preparation;

c. Advising clients without attorney oversight as to the effect of a bankruptcy filing on pending or threatened financial, personal, or legal matters;

d. Entering a client's personal and financial information into a computer to generate by computer software completed bankruptcy documents without the review or oversight of an attorney;

e. Reviewing and correcting bankruptcy documents for their signature prior to case filing without attorney oversight.

35. Defendant Mayweather and those under her supervision and control have engaged in the

unauthorized practice of law under the direct supervision, direction and control by Defendant Holmes, individually and as the owner of Defendant Critique LLC. Therefore, Defendants Holmes and Critique LLC are directly responsible and accountable for the acts of unlawful practice of law engaged in by Defendant Mayweather and the other Critique Services personnel.

36. Defendant Holmes, directly responsible and accountable for the acts of unlawful practice of law as engaged in by the Critique Services personnel, has violated the three permanent injunctions described in paragraph 6 above in engaging in through others the unauthorized practice of law.

RELIEF

Wherefore, the United States Trustee requests this Court to grant the following relief:

A. Permanently enjoin Defendants Holmes, Critique LLC and Mayweather from assisting or participating in any manner , whether as a bankruptcy petition preparer or otherwise, in any contemplated or filed bankruptcy case in or from the Eastern District of Missouri other than a bankruptcy case filed on a Defendant's own behalf;

B. Order Defendants Holmes, Critique LLC and Mayweather to disgorge all fees paid to them by debtors who have suffered as a direct consequence of the unlawful practice of law engaged in by the Defendants;

C. Order Defendants Holmes, Critique LLC and Mayweather to pay sanctions in an amount to be determined by the Court to deter the aforesaid conduct by the Defendants or comparable conduct of others similarly situated;

D. Order Defendants Holmes, Critique LLC and Mayweather to pay the United States Trustee's Office its attorney's fees and expenses in bringing and prosecuting this Complaint; and

E. Other such relief as the Court deems just in the circumstances.

Respectfully Submitted,

CHARLES E. RENDLEN III
UNITED STATES TRUSTEE

PAUL A. RANDOLPH
ASSISTANT UNITED STATES TRUSTEE

Dated: August 11, 2005

/s/ Peter Lumaghi

Peter Lumaghi MOBAR#24160/DCT#14577
Attorney for Plaintiff
Office of United States Trustee
111 South 10th St. Ste. 6.353
St. Louis, Missouri 63102
(314) 539-2977
(314)539-2990 (fax)
peter.lumaghi@usdoj.gov

Attachment 76

Order, entered in *Gargula v. Diltz, et al. (In re Hardge)*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

In re: Hardge, David, Debtor.	)	Case No. 05-43244-659 Chapter 7
NANCY J. GARGULA UNITED STATES TRUSTEE, Plaintiff, v.	)	Judge Kathy A. Surratt-States Adversary No.05-04254-659
BEVERLY HOLMES DILTZ, Individually and as a Member of Critique Services L.LC., d.b.a Critique Services, Defendant, and CRITIQUE SERVICES, L.L.C., a Missouri Limited Liability Company, d/b/a Critique Services, Defendant, and RENEE MAYWEATHER, Defendant.	)	**SETTLEMENT AGREEMENT AND COURT ORDER**

SETTLEMENT AGREEMENT AND COURT ORDER

COMES NOW the United States Trustee for Region 13, Nancy J. Gargula, by her attorney, Peter Lumaghi, and the Defendants Beverly Holmes Diltz, Critique Services, L.L.C. and Renee Mayweather, by their counsel, Laurence D. Mass, Esq. and agree by their signatures hereto to the following terms in full settlement of the allegations set out in the complaint filed by the United States Trustee in this adversary action and to the entry of this Settlement Agreement

and Court Order by the Court.

SETTLEMENT AGREEMENT

1. Defendant Diltz, on behalf of herself, any entity, or person which she now or in the future controls, including but not limited to Critique Services, LLC d/b/a Critique Services (hereafter collectively referred to as "Defendant Diltz and Her Interests"), agree that they shall remain in compliance with and subject to any and all bankruptcy court orders entered against them, and that in the event of a conflict with the terms of this Settlement Agreement and Court Order and any prior order issued by a Court, the terms and provisions of the present Court Order shall control.

2. Defendant Diltz and Her Interests agree that she will not directly or indirectly through others meet with bankruptcy prospective clients/clients or create bankruptcy documents for consideration other than to file a bankruptcy petition for herself or for the bankruptcy case of any of Her Interests.

3. Defendant Diltz and Her Interests agree that the only services they shall provide to any attorney or business organization whose primary business is the practice of law in connection with bankruptcy case preparation are:

A. Office facilities and equipment;

B. Advertising and marketing;

C. Equipment and software training to the attorney, attorney's employees or the attorneys and employees of the business organization whose primary business is the practice of law;

D. License of use of the proprietary name, trade and service mark "Critique Services";

E. Software. Bankruptcy document preparation software shall be licensed

from a nationally recognized software provider;

F. Telephone number; and

G. Bookkeeping related to payroll, receivables, payables and required government forms, excepting bankruptcy-related documents.

4. Defendant Diltz and Her Interests agree that neither she nor any employee or contractor under her or Her Interests shall provide bankruptcy document preparation services to the general public.

5. Defendant Diltz and Her Interests agree that any business relationship with an attorney or business organization whose primary business is the practice of law shall only be by and pursuant to a written contract or license whose terms shall state, at a minimum, the following:

A. Defendant Diltz and Her Interests shall not provide any bankruptcy document preparation services directly or through others to the general public;

B. The attorney or business organization whose primary business is the practice of law business agrees that he/she will meet with all prospective bankruptcy clients before any non-attorney meets with a prospective bankruptcy client to discuss the prospective's financial and personal history and suitability for filing a bankruptcy case under a particular chapter of the United States Bankruptcy Code;

C. The attorney agrees to preserve all notes and records relating to each attorney-prospective client/client meeting as well as memorialize the date of each meeting;

D. The attorney or business organization whose primary business is the practice of law agrees to have each prospective client/client sign and date

an attorney meeting form for each attorney-prospective client/client meeting, a copy of which shall be given to the prospective client/client. These documents shall be retained by the attorney or business organization whose primary business is the practice of law and continue to be protected by any applicable attorney-client privilege;

E. The attorney or business organization whose primary business is the practice of law agrees that no prospective client/client will be permitted to sign any bankruptcy petition created for the purpose of being filed with any United States Bankruptcy Court unless and until the prospective client/client has personally reviewed for accuracy that document with the attorney;

F. The attorney or business organization whose primary business is the practice of law agrees to keep all bankruptcy documents which contain an original signature of each prospective client/client in accordance with applicable Bankruptcy Court Rules or Orders;

G. Defendant Diltz and Her Interests agree to make and preserve a record of the date, attendees and subject matter of each training session provided to the employees of an attorney or business organization whose primary business is the practice of law;

H. Defendant Diltz and Her Interests agree to accept payment of monies under the agreement or license with an attorney or business organization whose primary business is the practice of law only from the attorney or business organization and only upon presenting the attorney or business organization whose primary business is the practice of law with a billing

statement setting forth the particular service provided under the permissible services set out above. Defendant Diltz and the attorney or business organization whose primary business is the practice of law shall each agree to preserve and maintain these billing and payment records for a period of seven years from the date of the creation of the record;

I. The attorney or business organization whose primary business is the practice of law agree to preserve and maintain all records of all communications with a bankruptcy client, which records must state the date and substance of the communication. Such records will be made available to the U.S. Trustee upon request and the written waiver by the client of any applicable attorney-client privilege;

J. Defendant Diltz and Her Interests agree that Defendant Diltz shall not request nor accept on behalf of herself or any of Her Interests any attorney password to access any United States Bankruptcy Court's electronic document filing system for filing bankruptcy documents;

K. The attorney or business organization whose primary business is the practice of law agrees to file a bankruptcy petition for each client no later than fourteen days after the client signs the petition, unless the delay in filing after the fourteen day period is for the benefit of the client. But in no case shall the attorney or business organization whose primary business is the practice of law file a bankruptcy petition more than thirty days after the client has signed the petition; and

L. Defendant Diltz and Her Interests agree that a true copy of an agreement entered into pursuant to this Settlement Agreement by Defendant Diltz

and/or one or more of Her Interests with an attorney or business organization whose primary business is the practice of law shall be provided to the U.S. Trustee within ten (10) days of the date of a written request of the U.S. Trustee.

6. Defendant Mayweather agrees that she is permanently enjoined from the unauthorized practice of law and law business in and from the State of Missouri. She agrees that she may only engage in providing bankruptcy services to the public as an employee under written contract with an attorney or business organization whose primary business is the practice of law. She agrees that she is permanently enjoined from engaging in bankruptcy document preparation services on behalf of Defendant Diltz and Her Interests.

7. Defendants Diltz and Critique Services, LLC shall refund all fees paid for legal services by those bankruptcy clients deposed by the U.S. Trustee in the present litigation within one month from the date of the entry of this Settlement Agreement and Court Order by the Court. Said Defendants shall make out checks payable to the order of each of the clients so deposed by the U.S. Trustee and forward the checks to the U.S. Trustee for distribution.

8. Defendants Diltz and Critique Services, L.L.C. shall pay Ms. E. Rebecca Case, Esq. as compensation for her time and services in assisting the U.S. Trustee to prepare for trial the sum of $1,200.00 to be paid in six monthly payments of $200.00 each beginning the first day of the month following the date of entry of this Settlement Agreement and Court Order by the Court (see Exhibit A attached hereto).

9. Defendants Diltz and Critique Services, L.L.C. shall reimburse the U.S. Trustee for the cost of taking depositions of Critique Services' clients in preparation for this litigation the sum of $2,015.00 in twelve equal installments of $167.92 each, beginning thirty days from the date this Settlement Agreement and Court Order becomes final. (see Exhibit B attached hereto).

10. Upon a finding that any Defendant has violated the terms of this Settlement Agreement and Consent Decree, the Court retains jurisdiction to enter an Order assessing penalties to punish each such violation found to have occurred.

Agreed to on this the 27th of July, 2007 by the signatures of the parties as set out below:

UNITED STATES TRUSTEE
NANCY J. GARGULA

/s/ Peter Lumaghi
PETER LUMAGHI MO24160/FED14577
111 S. 10th St., Ste. 6.353
St. Louis, Missouri 63102
tel. 314 539-2952
fax 314 512-2990
email peter.lumaghi@usdoj.gov

/s/ Beverly Holmes Diltz
DEFENDANT BEVERLY HOLMES DILTZ

/s/ Beverly Holmes Diltz
BEVERLY HOLMES DILTZ as sole member of
OF DEFENDANT CRITIQUE SERVICES L.L.C.

/s/ Renee Mayweather
DEFENDANT RENEE MAYWEATHER

/s/ Laurence D. Mass, Esq.
LAURENCE D. MASS, ESQ.
Attorney for Defendants Beverly Holmes Diltz,
Critique Services, L.L.C., and Renee Mayweather.

COURT ORDER

The United States Trustee, Nancy J. Gargula, by her attorney, Peter Lumaghi, and the Defendants, Beverly Holmes Diltz, Critique Services L.L.C., and Renee Mayweather, by their attorney, Laurence D. Mass, Esq., having agreed by their signatures above to the terms of the Settlement Agreement as set out herein in full settlement of the Complaint filed in this Adversary and. the Court, being full advised in the premises,

ORDERS that the Settlement Agreement as set out herein is **APPROVED,** and the Defendants are hereby **ORDERED** to comply with paragraphs 1 through 9 of the Settlement Agreement, violation of which may subject a Defendant or Defendants to the imposition of sanctions by this Court.

Kathy A. Surratt-States

KATHY A. SURRATT-STATES
United States Bankruptcy Judge

DATED: July 31, 2007
St. Louis, Missouri
JJH

EXHIBIT A

July 23, 2007

Office of the United States Trustee Inv. # 86549

Complaint for Injunction, Sanctions and Disgorgement

Date	Atty	Description	Hours
02/06/07	ERC	Reviewed fax from Peter Lumaghi; Email to Susan Strube to pull filesfrom storage; Reviewed U.S. Trustee complaint against Beverly Holmes and Renee Mayweather; Preparation for meeting with Peter Lumaghi and for trial(.9)	0.90
02/07/07	ERC	Reviewed 15 filesin preparation for meeting with Peter Lumaghi (1.3)	1.30
02/08/07	ERC	Conference with Peter Lumaghi; Susan Strube to print allSchedules and Statements not from Pacer but from CD's with E. R. Case's recorded notes made at the Meeting of Creditors; Reviewed 15 files;Identified when each Debtor paid Critique, when each Debtor signed the Schedules and Statements, when the attorney signed the 2016, and when the case was filed;Shortest delay was two months and ten days; Longest delay was a year; Majority were not filedfor over six months from date payment was received; Identifiedother problems with allof the cases: Schedule A - incomplete; Schedule B - incomplete or inaccurate - each Debtor had $1.00 or $10.00 no cash; No Debtor had a lifeinsurance policy of any kind; Schedules D, E and F incomplete or inaccurate; No Debtor had a co-Debtor or a lease of any kind; Debtor listedcharitable deductions on Schedule J but no giftson the Statement of Financial Affairs;Debtors allowed to filewithout critique determining iffederal and state income taxes owed were dischargeable (2.7)	2.70
05/07/07	ERC	Reviewed email from Peter Lumaghi regarding trial was continued over the United States Trustee's	0.20

Date Attar — Description
Hours

Objections to August 1-3, 2007; IsE. R. Case available? Mr. Mass may want to depose E. R. Case (.1); Responded; E. R. Case is available for the trialon August 1-3, 2007 and is availableto be deposed (.1)

06/07/07 ERC Conference with Peter Lumaghi regarding trial
0.30 preparation (.3)

07/13/07 ERC Conference with Peter Lumaghi and Leonora Long re
0.50 facts of the case and issues of the case (.5)

Professional Fees

E. Rebecca Case 5,90 hr Q 260.00 $ 1534,00

Total Professional Fees
$ 1,534.00

TOTAL NEW CHARGES $
1,534.00

Summary of Account

Balance Forward	$	0.00
Total New Charges		1,534.00
Payments and Credits		0.00
TOTAL BALANCE DUE		$ 1,534.00

PLEASE MAKE YOUR CHECK PAYABLE TO
STONE, LEYTON & GERSHMAN

PAYMENT DUE ON RECEIPT

EXHIBIT B

U.S. TRUSTEE'S COSTS FOR DEPOSTIONS OF CRITIQUE SERVICES' CLIENTS

NAME	DATE OF DEPOSITION	COST
1. Sheila Shortridge-Vaughn	May 12, 2006	
2. Kellie Shelton	May 12, 2006	
3. Toriandre Jenkins	May 12, 2006	
4. LaTonya McCullough	May 12, 2006	
		Subtotal: $975.00
5. Tanis Jones	June 9, 2006	
6. Denise Quinn	June 9, 2006	
7. Gwendolyn King	June 9, 2006	
8. Shirley Damon	June 9, 2006	
9. Tawana Priestly	June 9, 2006	
		Subtotal: $1,040.00
		Total: $2,015.00

Copies to:

Ms.Beverly Holmes Diltz
4009 Westminster Place
St. Louis, Missouri 63108

Ms. Renee Mayweather
2025 North 46th St.
East St. Louis, Illinois 62204

Mr. Laurence D. Mass, Esq.
230 S. Brentwood Blvd., Ste 1200
St. Louis, Missouri 63105

Attachment 77

Motion to Disgorge, filed in *In re Steward*

Amended complaint case # 12-4341-705, [redacted] LS

[redacted] LS

Complaint with stipulation of facts
Case # 11-46399-705

Plaintiff:
Latoya Steward
Po Box 110
Troy Mo 63379
314-458-2630

Defendent:
James Robinson & Critique ~~Srevices~~ Services
3919 Washington Blvd.
St.Louis Mo 63108
314-533-4357

I would like to ask the courts to please except this letter as my (Latoya L Steward) complaint and stipulation of facts.
against Attorney jamse Robinson, and Critique Services LLC. The defendents were hired by my self Latoya Steward to represent
me in filling bankruptcy Chapter 7. in 2010 due to the unprofessional practices and negligence at this firm I have suffered multiple damages mental and financial, so I am asking the help of the courts to PLEASE help me. I have how ever filed a complaint online to the department of Justice Eastern dist. in 2012, and they responeded with appologys and informed me that my complaint will be followed looked in to, and a anonymous complaint with the missouri bar assoc. in 2012 and online to the BBB but they said I was to late for them to investigate. I am asking the courts to hear my story in hopes that any punishment, fines, etc... be brought against this business.
I apologize to the courts that I don't have dates and times documented but their is a paper trail...
My first apponment at Critique Services I meet with a lady name Dee, I paid my fee of $195. and was given a packet of paperwork to fill out of my personal info and creditors. I was told to pull my credit report from all 3 bureaus and fill in all my credit info. On my next visit I paid my remaing balance and Dee looked over my paperwork and informed me that I need to change my address to a St.Louis address because they can't represent me in St.Charles Co which was where I lived to the time. I asked if that was legal and she said its nothing I need to worry about because regaurdless as far as my concern I would not get in any trouble because its all the state of missouri but we have to change it because James Robinson can't represent me in St.Charles county courts for a chapter 7.
Weeks went by I never heard anything I called numerous times to find out what I needed to do next, my calls never get returned. I started to have creditors calling my work, friends, and family. I would inform them I was in the process of filing bankruptcy and I obtained an attorney. I provide my attorney's contact info and they would continue to call because my attorney's office refuse to speek with them. I drove into the office with no appointment and sit for hours until someone would talk to me. This is when I met April and she further informed me that NO they do not take collection calls from credtors, we just need to get me a court case number and i can give them that when they call, but I need to complete my Credit Counceling course online and provide my pay check stubs. I did that! so now I had to meet with the Attorney James Robinson.
Months went on and on i didn't hear anything from Critique Service I started calling again to find out if I got a court date yet. Again all voices mail boxes are full!!! if you select the option to be a new client the secratry does answer the phone but will not that a message. So another drive into the office with no appointment and alot of waiting finally I met with someone else i never seen before fulled my file and notes on it said- waiting for Class Certificate and pay stubs.... I knew they were faxed in by both parties (my employeer & Education course) because I had confirmation papers. She then went threw papers in my file and they were there whole time as she stated the were not in the correct place of the file. by then my certificate expired so I had to repeat and repay for my course, and update my paystubs.

help

I finnally got a case number and was called into the office to sing more papers one of the papers being my reaffemation to Ford Credit to keep my 2006 Explorer, about a 2weeks later I spoke with my attorney friend about my case and my decsion to keep me explorer because I was afraid I wouldn't be able to get financed for another car loan with a recent bankruptcy on my credit, thats when he informed me that that wasn't true. I told him that I signed an affermation with Ford so I thought I was stuck with it. He advised me to contact my attorney because I should have time to cancel the affermaition since I hadn't been to court but he wasn't sure of the time limit. So I called and called and left messages on every line I could when I could with detailed informtion of the nature of my call about surrendering my 2006 Explorer as usual my calls were never returned. So another drive into the office with no appointment. They pulled my file and looked up legal info on the affermation agreement and it was 2!!!! days too late to cancel the agreement and include the truck. I then asked for my file and a refund so I could hire another attorney, James Robinson himself called me on my cell phone and ask what was the problem I informed hime that his office is very unprofessinal, unorganized, and they don't return calls, and they don't help do anything so I didn't understand what I was paying them for so I would like my money back and my file since I did all the work anyway. He then informed I can have my file but it will be a $100 office fee and $5 per page. Which I couldn't afford.

I then called Ford my self and surrended the truck. I have since then been to court several times with Ford Motor Credit, my wages were garnished, and my bank accounts were also garnished. I really feel as all of this could have been avoided if Critique Service and James Robinson were not so negligent in handeling my case, I have also suffered other damages at the hands of this law firm, my wages were garnished by another creditor in 2011, and again they did not help me in anyway. My 1st court hearing no one from Critique Service showed up for my deposition. I called 2 weeks before and 1 week before to ask what I needed to do no one called back or showed up in court with me.

The day of my final court apperance I was not the only client waiting to see the judge we all were called the office leaving messages and again no answer no show!! I have never heard anything from Critique Service since my last office visit when I was 2days too late to cancel my affermation agreement.

At this time I am asking the courts to grant an monetary settlement in my favor for the following-

$495.- Fees paid to Critique Services
$100.- Education course
$8500.- Ford Credit
$3500.- Personal agervation, time off work, and gas.
total=$12595.00

Latoya Steward 4-4-13

Attachment 78

OCDC's Informant Brief Against Walton
and
the Missouri Supreme Court's Public Reprimand of Walton

In the

SUPREME COURT OF MISSOURI

En Banc

May Session, 2005

_____

Report of the Office of the Chief Disciplinary Counsel for the year 2004 together with the Financial Report of the Treasurer of the Advisory Committee Fund for 2004

MARIDEE F. EDWARDS
Chief Disciplinary Counsel

IN THE

SUPREME COURT OF MISSOURI

EN BANC

MAY SESSION, 2005

REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR THE YEAR 2004 TOGETHER WITH THE FINANCIAL REPORT OF THE TREASURER OF THE ADVISORY COMMITTEE FUND FOR 2004.

To the Honorable Judges of The Court:

Comes now the Chief Disciplinary Counsel, and respectfully reports to the Court on matters concluded during calendar year 2004 or pending on December 31, 2004.

NAME	DISPOSITION
WALTON, ELBERT A., JR. #24547 St. Louis, MO	Public Reprimand on 12/21/04
DHP Decision and Record filed on July 16, 2004. Matter was briefed and set for oral argument on December 9, 2004. Public Reprimand by order of the Court on December 21, 2004.	

WATKINS, ALBERT S. #34553 St. Louis, MO	Public Reprimand on 8/23/04
Stipulation, Decision & Recommendation of DHP filed on August 12, 2004. Public Reprimand by order of the Court on August 23, 2004.	

WILES, STANLEY L. #21807 Kansas City, MO	Suspension on 6/17/03 Suspension Stayed/Probation on 6/17/03 Probation Continued to 6/30/06
Rule 5.20 Information for Show Cause & Motion for Discipline filed on December 18, 2002, (Reciprocal-Kansas). Suspended indefinitely with leave to apply for reinstatement after six months; suspension stayed for one year and Respondent placed on probation pursuant to conditions by order of the Court on June 17, 2003. Motion to Terminate Probation filed on January 12, 2004 by Respondent and on January 16, 2004, Respondent's Motion to Terminate Probation overruled and Motion for Order to Show Cause why Probation Should not be Revoked filed March 18, 2004. On May 25, 2004, the Court ordered probation to continue until June 30, 2006, subject to conditions set forth in previous opinion of June 17, 2003.	

A. Five Disciplined Petitioners Were Reinstated By The Supreme Court

1) John J. Carey, St. Louis, MO, Missouri Bar #36918, reinstated on April 26, 2004. Petitioner was indefinitely suspended with leave to apply for reinstatement no sooner than one year from November 26, 2002.

2) Joseph P. Danis, St. Louis, MO, Missouri Bar #42989, reinstated on April 26, 2004. Petitioner was indefinitely suspended with leave to apply for reinstatement no sooner than one year from November 26, 2002.

3) James P. Robinson, St. Louis, MO, Missouri Bar #32502, reinstated on May 25, 2004. Petitioner surrendered license and was disbarred on November 26, 1986.

4) Christopher S. Swiecicki, St. Louis, MO, Missouri Bar #38402, reinstated on September 28, 2004. Petitioner was indefinitely suspended with leave to apply for reinstatement after two years from March 25, 1997.

5) Eddie Collins Hunter, II, Kansas City, MO, Missouri Bar #47463, reinstated on November 4, 2004. Petitioner was suspended with leave to apply for reinstatement no sooner than 90 days from September 24, 2002.

B. Two Disciplined Petitioners Were Denied Reinstatement By The Supreme Court

1) John W. Zimmerman, Missouri Bar #31720, denied reinstatement. Petitioner granted leave to file petition for reinstatement one year from September 28, 2004, without the necessity of taking the Bar exam or the MPRE prior to filing said petition for reinstatement. Petitioner filed a medical surrender and was disbarred on June 30, 1994.

2) John Lyng, Missouri Bar #22365, denied reinstatement. Petitioner surrendered license and was disbarred on June 29, 1993.

C. Three Petitions Were Dismissed By The Supreme Court

1) C. William Portell, Jr., Missouri Bar #20956, withdrew reinstatement petition and petition dismissed on May 13, 2004.

2) Marshall G. Shain, Jr., Missouri Bar #24745, withdrew reinstatement petition and petition dismissed on September 7, 2004.

3) Nathaniel M. Landman, Missouri Bar #38514, withdrew reinstatement petition and petition dismissed on November 1, 2004.

NON-DISCIPLINARY REINSTATEMENTS

The OCDC Jefferson City staff also handle investigations and reports to the Supreme Court on petitions for reinstatement by those attorneys suspended for non-payment of enrollment fees (Rule 6.01). The OCDC also processes applications of attorneys on inactive status requesting to be returned to active status (Rule 6.06). In 2004, the OCDC received seven (7) petitions per Rule 6.01 and thirteen (13) petitions per Rule 6.06, for a total of twenty (20) non-discipline reinstatement files.

A. Five Applicants Were Reinstated After Automatic Suspension For Non-payment of Enrollment Fees, Rule 6.01(f)

At the beginning of 2004, five (5) applications were pending before the Chief Disciplinary Counsel's office from the previous year for reinstatement based on nonpayment of enrollment fees for a period in excess of three years. Seven (7) lawyers filed applications for reinstatement after automatic suspension under Rule 6.01(f) during the year 2004 and said applications were referred to the Chief Disciplinary Counsel's office. Recommendations were made and reinstatements granted on five (5) of those applications. One (1) petitioner withdrew and the matter was dismissed; and six (6) applications were still pending investigation in the Chief Disciplinary Counsel's office at the end of 2004.

B. Twelve Applicants Were Reinstated To Active Status, Rule 6.06

At the beginning of 2004, one (1) application was pending before the Chief Disciplinary Counsel's office from the previous year by an attorney requesting a return to active status. During 2004, thirteen (13) lawyers who had previously requested inactive status filed applications for reinstatement under Rule 6.06 and these applications were referred to the Chief Disciplinary Counsel's office. Recommendations were made by OCDC and reinstatements granted on twelve (12) applications. Two (2) applications remained pending investigation in the Chief Disciplinary Counsel's office at the end of 2004.

IV. COMPLAINTS RECEIVED AND ACTED UPON IN 2004

In 2004, a total of **2,493** letters of complaint were received by the Office of Chief Disciplinary Counsel regarding alleged misconduct of attorneys in the state of Missouri. Of the total complaint letters, 915 formal investigation files were opened and 118 were placed in the Informal Resolution Program, for a total of 1,033.

The office took action on those complaint letters as follows:

Of those **1,033** files:

529 Investigation files were sent to regions
386 Investigation files were assigned to the Office of Chief Disciplinary Counsel
118 Complaint files were placed in the Informal Resolution Program of OCDC

Of the **1,460** remaining complaints:

1,011 Investigations not opened
271 Insufficient information to proceed
84 Referred to Fee Dispute Committees
68 Referred to Complaint Resolution Committee
26 Placed in "Inquiry" status

The office received and responded to one thousand eleven (1,011) **letters** where the office concluded that an investigation was not warranted or was not appropriate at that juncture.[1] In addition, twenty six (26) files were placed in "Inquiry" status for monitoring whether an investigation should be opened in the future. Of those matters in which the office determined not to open an investigation, the Chief Disciplinary Counsel received approximately two hundred forty-seven (247) letters requesting a review of the staff decision not to investigate their initial complaint. These complainants were provided a further review and response regarding the decision not to investigate through our internal review process. In twenty-three (23) instances, the Chief Disciplinary Counsel determined to take further action on the matter by opening an investigation or gathering additional information in order to make a determination whether to open an investigation.

V. DISCIPLINE ACTION INITIATED

A. Admonitions

The Office of Chief Disciplinary Counsel administered twelve (12) written admonitions and the Regional Disciplinary Committees administered sixty-one (61) written admonitions which were accepted by members of the Missouri Bar. A total of seventy-three (73) admonitions were administered. In addition, one hundred two (102) cautionary letters were sent to lawyers by OCDC and the committees at the conclusion of the investigations. Cautionary letters are not disciplinary action, but merely a caution to the attorney that their conduct may have constituted a violation of the rules or could lead to a future finding of a violation of the rules. These letters are used to educate the attorney on ethical responsibilities in cases where the state of the law or the facts may not be clear or to alert the attorney that a particular course of conduct, if unchecked in the future, may cause additional complaints to be filed.

[1] In certain instances, OCDC determines not to open a complaint until after litigation is completed.

B. Investigation Summary

Region	Investigations Pending 1/1/04	Investigations Referred 2004	Investigations Disposed in 2004
IV	139	228	187
X	134	195	176
XI	130	106	134
OCDC	279	504*	297**

* Includes Informal Resolution

** Includes those Informal Resolutions disposed of by OCDC

Region	Admonitions Issued in 2004	Cautionary Letters Issued in 2004
IV	39	28
X	17	16
XI	5	2
OCDC	12	56

C. Filed Hearing Matters

FILING INFORMATIONS

In 2004, due to the combined efforts of OCDC and the Regional Disciplinary Committees, Informations (the formal charging document before a disciplinary hearing panel) were filed on one hundred sixteen (116) files. "Files" indicate individual complaints against attorneys. An Information against one attorney may include multiple files. The number of Informations filed before the Advisory Committee was forty (40).

Thirty (30) Informations representing one hundred eighteen (118) complaint files were pending before the Advisory Committee and Disciplinary Hearing Panels at the beginning of 2004. Six (6) Informations resulted in defaults by the respondent, with default Informations being filed directly in the Supreme Court. Hearings were completed before Disciplinary Hearing Panels on twenty-one (21) attorneys involving forty-six (46) files.

D. Informant's Briefs, Replies And Oral Arguments

Eight Informant's briefs were filed in the Supreme Court in 2004.[2] Of those eight, two were briefed because OCDC did not concur in a DHP's recommended sanction, three were briefed because the Respondent did not concur in a DHP's recommended sanction, one was briefed because neither OCDC nor the Respondent concurred in the DHP's recommended sanction, and two were cases the Court ordered briefed after the parties filed a joint stipulation and joint recommendation for sanction. One reply brief was filed. Eight disciplinary cases appeared on the Court's oral argument calendar in 2004. The Court published one disciplinary opinion in 2004: *In re Shelhorse*, 147 S.W.3d 79 (Mo. banc 2004).

E. Cases Filed In The Supreme Court Pursuant To Rule 5

RULE 5.20

Four cases based on discipline administered in another jurisdiction (reciprocals) were filed in 2004: *In re Dyer*, SC86041, *In re Hampe*, SC86019, *In re Fletcher*, SC86090, and *In re Landis*, SC86064.

RULE 5.21

Likewise, four informations were filed advising the Court that lawyers had pled guilty, been found guilty, or pled nolo contendere to violations of criminal laws: *In re Kaiser*, SC86308, *In re Kellogg*, SC86048, *In re Coan*, SC86373, and *In re Van Meter*, SC86164.

RULE 5.24

Five informations requesting interim suspensions for threat of harm were filed in 2004: *In re Masters*, SC85787, *In re Sutton*, SC86004, *In re Levin*, SC86131, *In re Kaludis*, SC86258, and *In re Devkota*, SC86499. The Court ordered interim suspensions in all five cases.

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[2] *In re Holliday*, SC85857, *In re Shelhorse*, SC85977, *In re Hambrick*, SC86005, *In re Victor*, SC85972, *In re Walton*, SC86122, *In re Smith*, SC86187, *In re Crews*, SC86212, *In re Berndsen*, SC86342

RULE 5.25

Five report and recommendations on surrender applications were prepared and filed in 2004: *In re Cato*, SC85692, *In re Sayre*, SC85720, *In re Cushman*, SC86119, *In re Richey*, SC86275, and *In re Emmons*, SC86248.

ADVISORY COMMITTEE REVIEW

During 2004, at the conclusion of an investigation when no probable cause was found, complainants requested Advisory Committee review on seventy-six (76) complaint files. Thirty-two (32) of those review files were pending with the Committee at the end of the year. The Advisory Committee upheld the closure on thirty-three (33) of these review files and issued five (5) cautionary letters that were sent to lawyers at the conclusion of their review. The Advisory Committee assigned six (6) files for further investigation.

A. Informal Resolutions Of Complaints Without Opening Formal Investigation

In August 2001, the Office of Chief Disciplinary Counsel initiated a new program in an attempt to address a concern and suggestion made by the ABA team that made recommendations to the Supreme Court in February 2001 regarding the Missouri attorney discipline system. One recommendation (Recommendation #4) was to implement a complaint hotline which would provide a toll-free number for complainants to report a complaint. The recommendation also addressed a concern that the system be more "consumer friendly" in assisting complainants with expressing their complaints and to resolve matters where possible at the intake-screening stage.

In response to that concern, the "Informal Resolution Program" was implemented and enjoyed great success in 2001. In 2002, the program was instituted as a permanent method of complaint resolution. In this program, intake counsel identifies appropriate cases which are then assigned to a paralegal with directions to contact the complainant, the respondent, or both, to assist in resolving the complaint rather than proceeding with a formal investigation. This is most often in response to a complaint that the client has not had adequate communication from the lawyer or where the client is attempting to obtain file documents without success. It may also be used in a case where the complainant has trouble articulating the nature

of the complaint, or seems confused about the lawyer's responsibilities or the legal process. The Office of Chief Disciplinary Counsel believes the program will continue to be very successful in reducing processing time as well as preserving the attorney/client relationship.

In 2004, one hundred and eighteen (118) complaints were handled through the Informal Resolution Program. Of the one hundred and eighteen (118) complaints, ninety one (91) were resolved without resorting to opening a disciplinary investigation, fourteen (14) were unresolved and an investigation file was opened, ten (10) were closed, and three (3) were pending as of December 31, 2004. Processing time on these complaints averaged thirteen (13) days.

B. Missouri Bar Complaint Resolution/Fee Disputes

The Chief Disciplinary Counsel referred sixty-eight (68) complaints to the Missouri Bar Complaint Resolution Program for resolution outside of the disciplinary process in accordance with Rule 5.10. The report of the Complaint Resolution Program on the results of their efforts to resolve those complaints is attached and made a part of this annual report.

During the year, eighty-four (84) complainants were referred to Fee Dispute Committees.

The Missouri Bar, Kansas City Metropolitan Bar Association and the Bar Association of Metropolitan St. Louis continued to provide assistance to the discipline process in the form of the fee dispute resolution programs. These programs are valuable to the lawyers of the state and legal consumers by providing a forum for complaints which are primarily fee-oriented, to be addressed through non-disciplinary means. The Regional Disciplinary Committees, the Office of Chief Disciplinary Counsel and the Advisory Committee are grateful to the bar associations for their cooperation and assistance in the Fee Dispute and Complaint Resolution Programs.

VI. UNAUTHORIZED PRACTICE OF LAW

The Office of Chief Disciplinary Counsel opened complaint files on approximately fifty-one (51) individuals and organizations alleged to have engaged in the unlawful practice of law.

Some of these cases were referred to local prosecuting attorneys or to the Consumer Protection Division of the Missouri Attorney General's office. Others were resolved through communication with the company or individual.

In 2004, the office devoted more attention to investigating unauthorized practice of law complaints. However, the office remained understaffed to handle the volume of complaints in this area and was forced to devote its limited resources to conducting in-depth investigations only when there appeared to be widespread consumer fraud occurring. After the office conducted in-depth investigations of complaints and where appropriate, the office referred the materials to law enforcement for criminal prosecution as OCDC is only authorized to seek a civil injunction against a party for engaging in the unauthorized practice of law.

To be effective in this area the office staff attorneys suggest the revision of certain Rules and Statutes and additional staff be assigned to this function.

VII. PRESENTATIONS BY OCDC STAFF

During 2004, OCDC staff gave presentations at 45 Continuing Legal Education seminars, organizations and other programs. More specifically, the OCDC staff gave presentations to the following groups: the Bankruptcy Courts of the Eastern and Western Districts of Missouri; BAMSL; the Disciplinary Hearing Panel members; the Estate & Trust Institute; the Judge Advocate General; the Judicial Ethics and Campaigning Panel; the Lawyers' Association of Kansas City; the Mid-MO Paralegal Association; the MO Association of Criminal Defense Lawyers; the MO Circuit Clerks; the MO Deputy Sheriff's Association; the MO Municipal Attorneys Association; the MO Paralegal Association; the Springfield Metropolitan Bar Association; the St. Charles Bar Association; the St. Louis City Counselor's Office; the University of MO-Columbia Professionalism Class; and the U.S. Bankruptcy Trustees office. The OCDC staff also were speakers at the MO Bar Annual Meeting, the Solo and Small Firm Conference, and many other CLE presentations.

VIII. SIGNIFICANT ACTIVITIES IN 2004

Annual Training Of Regional Disciplinary Committees And Special Representatives.

The disciplinary system in Missouri utilizes volunteers in the two large metropolitan areas to investigate cases. The remainder of the cases from other parts of the state are investigated by the OCDC staff in Jefferson City. In 2004, there were sixty-eight (68) active volunteers acting in the capacity of Regional Disciplinary Committee members in the Kansas City and St. Louis areas. Fifty (50) of those members were lawyers and eighteen (18) were non-lawyers. The regional disciplinary committees are divided into ten (10) divisions – three in Kansas City, three in St. Louis City and four in St. Louis County. The committees are assisted by attorneys (Special Representatives of OCDC) who are paid on an annual basis by the OCDC to help the committees on a part-time basis. The eleven (11) Special Representatives, (ten (10) as of August, 2004 after a resignation) are also otherwise employed in the practice of law. These attorneys also act as trial counsel at disciplinary hearings if formal charges are filed, once they are so designated by the Chief Disciplinary Counsel.

On November 5, 2004, a full day training session conducted by OCDC was held in Columbia for members of the ten (10) divisions of the active Regional Disciplinary Committees from across the state. Three individuals from the Southern Missouri area who ultimately accepted volunteer positions on a committee which began in 2005 were also able to join the group for the annual training. This was the third annual training session. Nine (9) of the ten (10) Special Representatives who serve the committees were in attendance, and six (6) lay committee members, and nine (9) lawyer committee members, along with eight (8) OCDC staff. At this session, participants were given substantive training materials relating to various policies and practices in the system. The Chairman of the Advisory Committee attended the session and addressed the group. Supreme Court Judge Mary Rhodes Russell addressed the group during the luncheon portion of the meeting. Various Special Representatives, staff attorneys, committee members and the Legal Ethics Counsel presented portions of the training. A special speaker from the Supreme Court Intervention Committee addressed the group on recognizing and dealing with substance abuse problems in lawyers. Lawyer participants received continuing legal education credit for their participation.

Other Training Sessions:

In 2004, OCDC attorney staff participated in training by attending the National Organization of Bar Counsel conferences. Two Special Representatives also participated in some of these sessions.

OCDC became accredited as an MCLE provider in 2003. In 2004, we continued to host CLE presentations for the benefit of volunteers and special representatives. OCDC presented CLE presentations on current issues in the disciplinary system at luncheons honoring the Regional Disciplinary Committee members in Kansas City and St. Louis.

Paralegals in the office attended and presented training through the Missouri Paralegal Association.

A Paralegal-Investigator in the OCDC attended a three day training conference co-hosted by the Organization of Bar Investigators (OBI) and the Colorado Supreme Court Attorney Regulation Counsel's Office. This Paralegal-Investigator was elected as president of this national organization in 2004. This training conference included topics such as Navigating the Complex Disciplinary Case, HIPAA, Interviewing and Interrogation, Professional Conduct for Immigration Practitioners, Avoiding the Unauthorized Practice of Law, Testifying in Disciplinary Proceedings and Computer Forensics. The information provided in these courses has been utilized in daily investigations. Additionally, by attending this conference, this Investigator has expanded the networking function of OBI which has proven useful to this office. Subsequently, OBI was granted associate membership with the National Organization of Bar Counsel.

Additionally, this Paralegal-Investigator attended specialized training on Investigating by Computer hosted by the Association of Certified Fraud Examiners of which our office recently became an associate member. This training was utilized frequently throughout the course of the year to expand our ability to locate individuals and gather information using the internet and reducing costs by avoiding unnecessary travel. The ACFE also hosted a training course on Analyzing Written Statements and Investigative Discourse Analysis.

The Chief Disciplinary Counsel attended a three day national event training session on Risk Management, as applied to various aspects of business and non-profit organization management, including Capital Improvement Project Management; Safety Issues; Volunteer Oversight and

Screening; Insurance Basics; Crisis Communication and Public Relations; Continuity of Business Plans; Financial and Internal Controls; Personnel Issues, etc.

Expanded Advisory Committee:

In 2004**,** in response to notice that OCDC would be requesting an increase in fees to fund new programs and the costs associated with added staff, the Missouri Bar recommended to the Supreme Court that a separate disciplinary board be established as an oversight body over the OCDC. The Bar leadership proposed that a nine-person body be established with four members being appointed by the Missouri Bar Board of Governors. The Court did not adopt the Bar's suggestion to amend the existing Supreme Court rule setting forth the creation of the Office of the Chief Disciplinary Counsel. In August, 2004, the Supreme Court added three (3) members to the present Supreme Court Advisory Committee (two lawyers and one non-lawyer) and allowed the Bar, the Advisory Committee, and the OCDC to submit names for consideration. In December, 2004, the Court appointed three additional lawyers, deferring the decision on the additional lay person until further information was obtained on the proposed candidates. In early 2005, the additional lay person was appointed.

Changes in Rules:

Probation and Diversion -

In 2002, the Missouri Supreme Court adopted new rules authorizing diversion and probation programs, effective as of January 1, 2003. During the calendar year 2004, the OCDC monitored 13 diversion agreements and monitored 7 probation orders.

Several of the lawyers, as a condition of probation, utilized the services of a law practice management consultant; some had a mentor attorney; and some received counseling for mental health or substance abuse issues.

Rule 5.28 – Reinstatement -

On March 30, 2004, the Missouri Supreme Court adopted a new subdivision (h) to Rule 5.28, which became effective April 1, 2004. This new subdivision provides that an attorney who is suspended indefinitely with leave to reapply in a period of six months or less, and is not on

probation, shall be reinstated 30 days after the Application for Reinstatement is referred to the Chief Disciplinary Counsel for a Report and Recommendation. The Chief Disciplinary Counsel may file a Motion to Respond to the Application for Reinstatement within the 30-day period, otherwise, the license shall be reinstated.

Rules of Professional Conduct - Rule 4-1.15 – File Retention

On August 24, 2004, the Missouri Supreme Court amended Rule 4-1.15, with an effective date of January 1, 2005, by adopting a new subdivision (h) authorizing lawyers to destroy client files 10 years after completion or termination of the representation unless the lawyer and the client make other arrangements.

Certain restrictions on the destruction of client files are provided in the Rule.

The Rule does not affect a lawyer's obligation to maintain trust account records as required by subsection (a) of this Rule.

Staff:

In 2004, the OCDC was authorized to hire a receptionist and that position was filled November 1, 2004.

One special representative in the Kansas City region resigned her position in August, 2004. That position was not filled until 2005.

Physical Facilities:

The facility in Jefferson City is filled to capacity with staff and file storage. In August, 2004, the Supreme Court authorized OCDC to hire an architect to develop plans for expansion of its building onto an adjoining plat of land which was purchased in 2003 for this purpose. Preliminary plans were begun in late 2004 to accommodate future staff needs in an expanded building. In December 2004, an ad hoc building committee was appointed by the Court to facilitate the project.

Off-site storage has been acquired to store closed files which still must be accessed, since there is no room available at the OCDC office. Other options such as purchasing a compressed filing system, which would

entail altering the type of files used and transferring all materials to new files, or scanning files onto a computer imaging system were explored and experimented with in 2004. Due to the costs involved, lack of staff resources to address the problem, and the pending building expansion project, no final conclusion was reached in 2004 on these issues. The lack of storage remains an issue for OCDC.

The parking lot at OCDC is showing signs of wear and cracking. It may need maintenance work in the near future. This was not undertaken in 2004 since plans for the expansion of the building project were underway. The parking lot presently accommodates fourteen (14) cars and one (1) handicapped space. As of November, 2004, there were 15 staff at the OCDC office, therefore, there are insufficient parking spaces to meet current staff needs. There is no handicapped access to the lower floor of the building aside from driving around the building, over an unpaved area of grass to arrive at a loading room door in the basement. Likewise, action was not taken in 2004 to address these issues, given the plans for building and parking expansion.

Case Management/Tracking Data Base:

Substantial staff efforts were expended in 2004 to research and identify an appropriate case management system that would improve OCDC's ability to access all relevant information on an attorney's history and follow the progress on case files. Such a system is necessary to expedite the processing of new complaints, have current and comprehensive information on all aspects of an attorney's background and status at each stage of evaluation of a complaint file available and accessible in an easy to read format for participants in the disciplinary system (volunteers, special representatives and staff attorneys).

As part of the ABA Recommendations to the Supreme Court in 2001, it was suggested that branch offices be established in Kansas City and St. Louis. Part of the recommendation was to link the Jefferson City office via computer with the branch offices in order to more easily share relevant and developing information on cases. The recommendation for branch offices has not been adopted by the Supreme Court.

The ABA pointed out that regardless of whether branch offices were opened, the special representatives working in other regions of the state should have access to a computer data base established at OCDC to provide current information on respondent attorneys, their histories, and status of

current investigations. Under the present system (which was also in place at the time of the ABA visit), a photocopy of a handwritten list of past discipline investigations and their disposition is provided to the special representatives as the "discipline history" of any respondent attorney they are investigating. During the course of the ongoing investigation, the responsibility is placed on the special representative to determine, at critical points in the evaluation process, whether there is any change in that information or in the status of the attorney with regard to payment of annual licensing fees, continuing education requirements, the imposition of discipline, or new complaints. The special representative must call, write or email for this information which OCDC staff will locate and transmit to the special representative. This causes additional delay in the process; increases the risk that information could change in the interim between obtaining the updated data and the special representative taking action on the information; places the burden on the special representative to timely request the information; and places heavy reliance on the assumption that special representatives will remember to incorporate this step into their case processing at all stages. Failure to do so has resulted in disposition of cases without knowing the most recent developments on a respondent attorney which may have a significant bearing on an appropriate disposition.[3]

A computer data base with limited information on the complaint history of some attorneys was created in 2000. However, this data base is not accessible to the regional committees or the special representatives. In addition, this data base does not include all complaints received on attorneys, and it does not contain all discipline issued against attorneys. That information is obtained by looking at several individual references at the OCDC office. The primary source of information, which has been used as the "official disciplinary record" for each attorney in the state, is contained in a physical file folder. Specific information is written on the cover of the folder, other information is contained as loose documents within the folder. Other sources of disciplinary information are found on a "Word" document on the shared drive of the computer network at OCDC and on an additional data base kept for Admonitions.

In order to obtain current and "official" information on an attorney's address, status of dues payments, status of continuing legal education

[3] For example, a determination to dispose of a matter by admonition or cautionary letter may be inappropriate if it was known to the special representative that the respondent attorney had just received several more complaints of the same nature or was continuing to practice law without being current in payment of licensing fees or maintaining compliance with continuing legal education requirements.

(CLE) compliance, or any other official record of the attorney's history, OCDC staff must access the Missouri Bar's data base on an individual basis or call to find out particulars of CLE compliance. Each of these steps add processing time to preparation of complaint files. At critical stages in the evaluation process of any complaint file, these resources must be again reviewed to determine if there has been any change that would alter the recommendation at that point. At any stage at which correspondence is sent to an attorney which has "official" significance, such as a notice to the attorney of responsibility to respond to a complaint or serving a pleading on the attorney, the official data base maintained by the Missouri Bar of current addresses of record must be consulted. For this reason, the staff made it a requirement of any new case management system that integration of the Missouri Bar records be available on a continuous and instantaneous basis.

The computer data base system currently utilized at OCDC is an adaptation of Access software. The system has its limitations and is not user friendly.[4] In fact, most of the attorneys at OCDC do not use the data base because of the difficulty of retrieving information and the fact that it is not the sole source of information that must be accessed in order to get a full view of the complaint history and status of an attorney. Because of this reality, administrative staff spends a considerable amount of time retrieving files, contacting the Bar, or consulting the various data base resources to retrieve all relevant information to compile for the staff attorney's consideration when he or she is reviewing a complaint file.

For all these reasons, it was determined that it was important to replace the existing case management system with a more advanced data base that can handle all the relevant information necessary for evaluation, provide easy, user-friendly access to the information in one location, and incorporate existing official records from the Missouri Bar system into the data base as well as perform additional functions. Once this is accomplished, the proposed "link" between OCDC and the special representatives and regional committees can be undertaken.

In October, 2003, the Supreme Court directed OCDC to identify an appropriate case management system to accomplish these needs. In 2004, substantial efforts were made in this regard, including onsite demonstrations by various vendors, attendance by staff at trade shows

[4] Because the current case management system is not user-friendly, is difficult for the attorneys to use, and does not contain all relevant information, no steps have been taken to provide a link of the data base to special representatives.

featuring these products, travel to other facilities to observe other systems, etc. In late 2004, a product was identified that OCDC determined would adequately address its needs. A price quotation was received in late 2004 which was transmitted to the Supreme Court.

Rules of Professional Conduct "Ethics 2000":

In 1997, the American Bar Association developed a committee composed of lawyer representatives across the United States to review and revise the ABA Model Rules of Professional Conduct. After a comprehensive proposal was prepared by this group, individual states formed committees to consider the application of the proposals for their state. Likewise, the Missouri Bar's committee on the Rules of Professional Conduct did an extensive review and offered comments to the Court with some additional revisions. Their report was received by OCDC in the fall of 2003 and comments were offered by OCDC staff to the Court. Continuing into 2004, additional rule changes were proposed by Missouri Bar Committees in the area of multi-jurisdictional practice and advertising. Staff at OCDC reviewed the proposals as well and offered comments in early 2004 to the Court and the Bar. This was a very time-consuming review process by all involved and great effort was expended by the Bar and OCDC staff, the Legal Ethics Counsel and the Advisory Committee in 2003-2004 on this important project.

The "Ethics 2000" amendments, as revised by the Missouri Bar, were still pending with the Supreme Court on December 31, 2004.

Other Committee Work:

OCDC staff participated in various committees and sub-committees of the Missouri Bar. The Chief Disciplinary Counsel and staff presented materials and spoke before the Missouri Bar Executive and Finance Committees in early 2004 regarding information on its operations and request for a fee increase.

Open House:

On November 19, 2004, the Office of the Chief Disciplinary Counsel hosted an Open House. The Open House was scheduled on the same day as The Missouri Bar's Fall Meeting, in order to boost attendance from bar members from across the state. At the Open House, the Office of Chief Disciplinary Counsel provided tours of our facility and information about the discipline process.

IX. STATUS OF THE ABA RECOMMENDATIONS

In February 2001, the American Bar Association issued a Report on the Lawyer Regulation System in Missouri, at the request of the Supreme Court. The report contained 21 recommendations, many of which encompassed the themes of increased accessibility to the public, standardizing procedures through training and procedural rules, and providing alternatives to discipline in the form of probation or diversion programs.

Other recommendations included removing the ethics opinion function from the Office of Chief Disciplinary Counsel, making disciplinary proceedings public at an earlier stage, increasing efficiency and access by revising the system and opening branch offices in the two major metropolitan areas, requiring disciplined attorneys to reimburse the agency for costs, and requiring lawyers to maintain client trust accounts at banks which would notify the OCDC of overdrafts.

A report was submitted jointly by the Advisory Committee and the Office of Chief Disciplinary Counsel in February, 2002 to the Supreme Court on the ABA recommendations with comments from the Missouri Bar. Many actions were reflected in the annual reports of 2002 and 2003 which were in response to the ABA recommendations.

During the year of 2004, the following actions were taken in response to the ABA's recommendations:

1. A training session was conducted for disciplinary hearing officers by the Legal Ethics Counsel and the Advisory Committee. The Chief Disciplinary Counsel and a special representative presented information at the training session in Columbia, Missouri. (Recommendation 3)

2. The Third Annual Training Meeting was conducted for the volunteers in the Regional Disciplinary Committees and the Special Representatives (attorneys paid by OCDC to assist them) in November, 2004 in Columbia, Missouri. (Recommendation 3)

3. Proposals were sent to the Supreme Court in April and May 2004, on reimbursement for costs by disciplined attorneys and for fees to be assessed in reinstatement matters. (Recommendation 16)

4. Efforts were undertaken to identify and purchase an improved case management system as described above in Section VII, Significant Activities, which could be linked to the St. Louis and Kansas City regional committees and special representatives. (Recommendation 2)

5. The Supreme Court asked the Advisory Committee to perform an increased role in advising the Office of Chief Disciplinary Counsel in December, 2004. (Recommendation 1)

6. Continued public outreach efforts were made through press interviews and articles in legal and other publications to raise awareness of the functions of the office. Staff presentations to paralegal associations, and colleges were made. (Recommendations 4 and 5)

7. An automatic reinstatement process was adopted by the Supreme Court in cases of suspensions for six months or less, Rule 5.28 (h). (Recommendation 13)

X. PROGRESS ON BACKLOGGED INVESTIGATIONS

A common problem for attorney disciplinary agencies across the country is processing cases in a timely manner. Similarly, it was noted in 2002 that the Missouri attorney discipline system had a significant backlog of investigation files, particularly in the category of investigation files pending over 360 days. A major focus of the Chief Disciplinary Counsel in 2003 was to find methods to reduce the number of investigation files pending in this category.

Case processing guidelines were established in 2003 at the direction of the Court. A goal was set that no more than 10% of total investigations be at the over 360 days pending category.

The OCDC staff and the Regional Disciplinary Committees expended extraordinary efforts to reduce this backlog of cases in 2003 and achieved great success. However, in 2004 the number of backlogged cases pending 360 days and over increased.

- On January 1, 2004, the percentage of investigation files in the over 360 day category was 12% of the total investigation (normal)[5] files. As of December 31, 2004, the percentage of investigation files in the over 360 day category was 16% of the total investigation (normal) files.

The case processing guidelines further provide that the majority (80%) of investigations be completed within six months (180 days). According to case management reports, as of December 31, 2004, cases pending in investigation over six months constituted approximately 40% of the total investigation (normal) files.

It is believed this goal has not been met, in part, because the number of complaints received has increased dramatically in recent years:

1999 – 1475 complaints
2000 – 1649 complaints
2001 – 1506 complaints
2002 – 2002 complaints
2003 – 2529 complaints
2004 – 2493 complaints

[5] The OCDC case management system reports investigations in the categories of "normal", "held", and "post AC review". Normal cases are active pending files which have been processed without interruption. Held files are those temporarily placed in a non-active status because of pending litigation or other factors delaying the active pursuit of the investigation. Post AC files are those which were fully investigated, closed, then returned for further investigation after review by the Advisory Committee because it was believed by the committee that the finding of no probable cause was not appropriate.

SUMMARY OF DISCIPLINE ACTIONS

During 2004:

- **18** Eighteen lawyers were disbarred; and one **(1)** of those was set aside by the Court;

- **17** Seventeen lawyers were suspended; and **(7)** of those suspensions were stayed and attorneys placed on probation with conditions;

- **10** Ten lawyers received public reprimands;

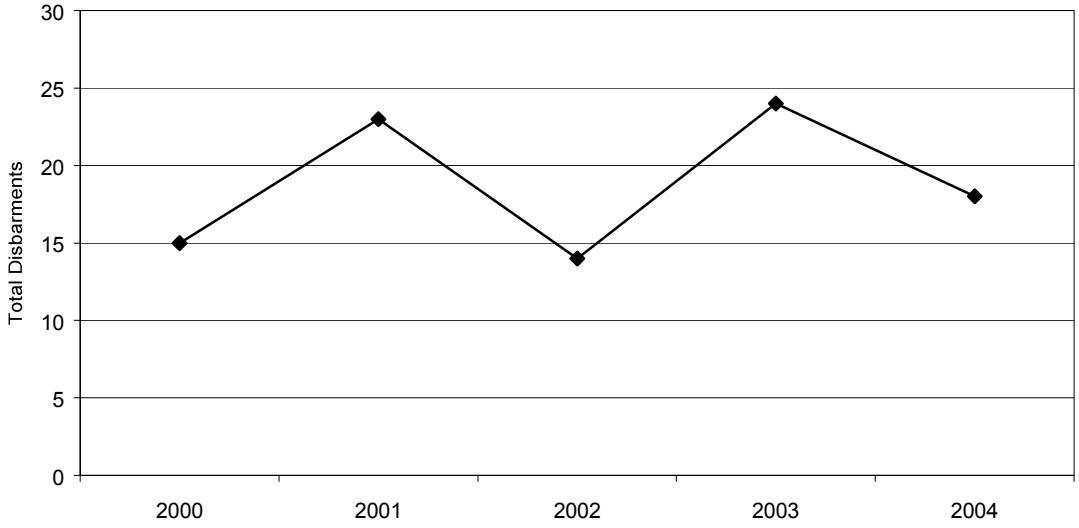
- **73** Seventy-three written admonitions were administered by the Regional Disciplinary Committees and the Office of Chief Disciplinary Counsel; and

- **3** Three additional matters were dismissed by the Court as moot or rejected without prejudice to re-filing.

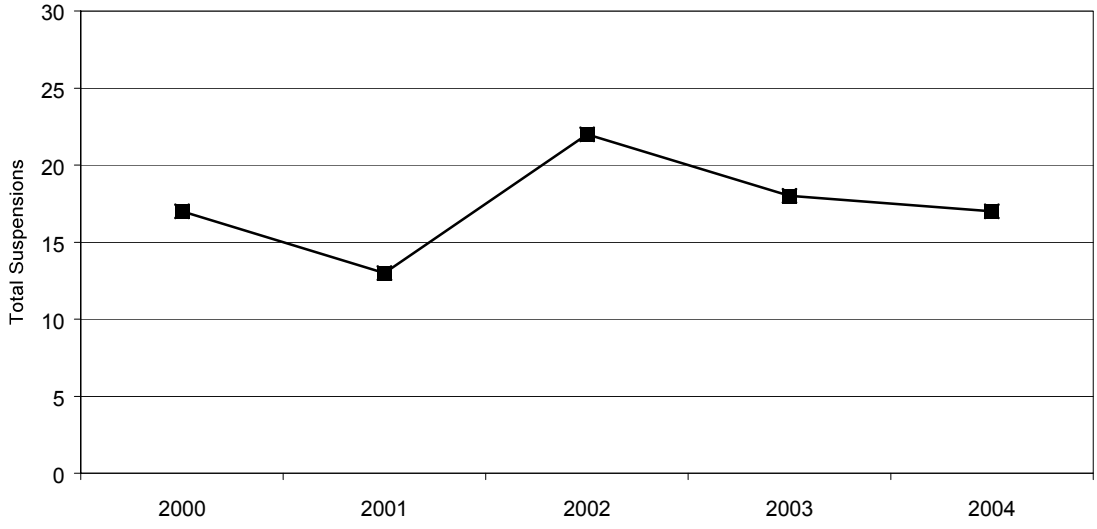
These figures include proceedings by all committees and the Office of Chief Disciplinary Counsel.

In light of the disbarments and suspensions, one hundred thirteen (113) other complaints about the disbarred and suspended attorneys were closed; and additional complaint files that were still in the process may have been closed due to disbarment or suspension of the attorneys.

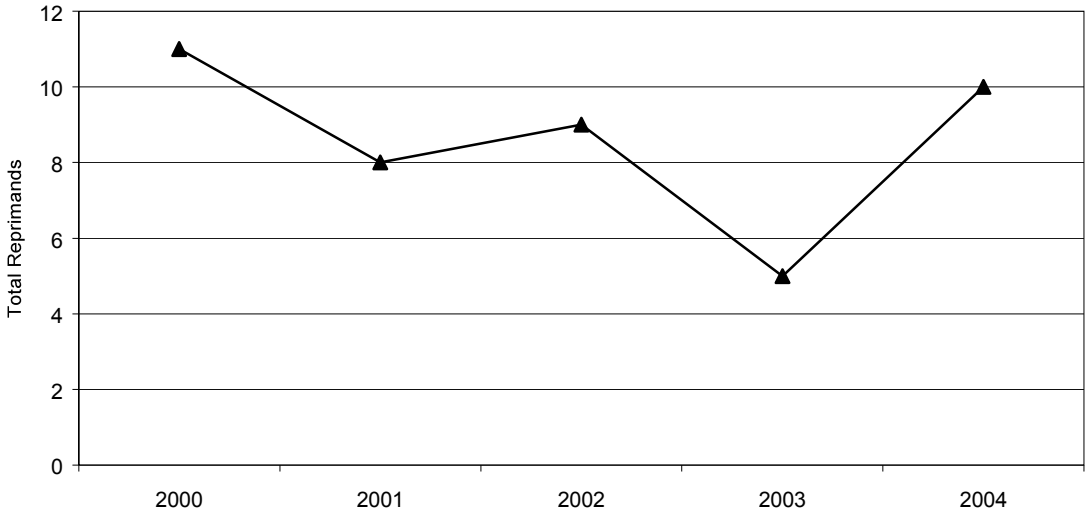
Disbarments



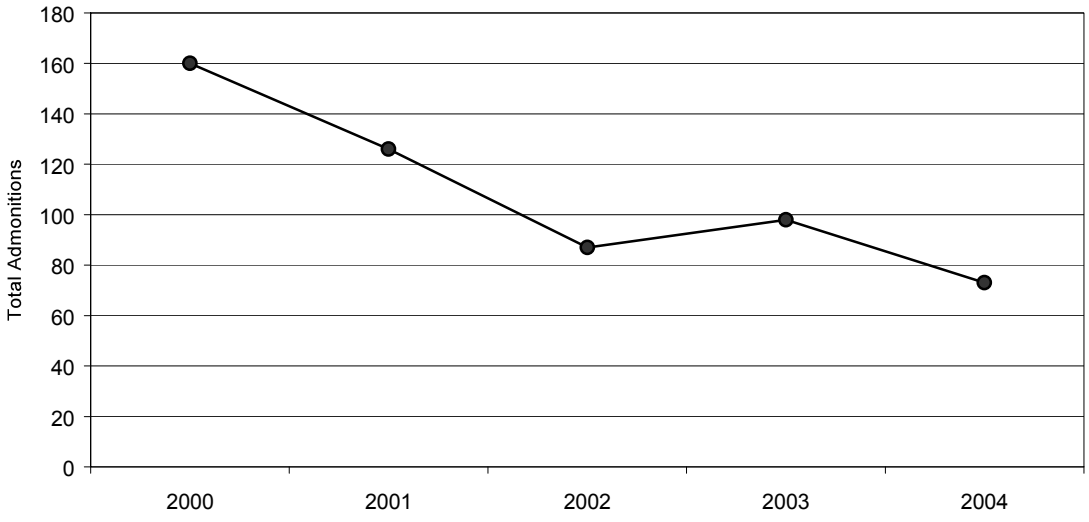
Suspensions

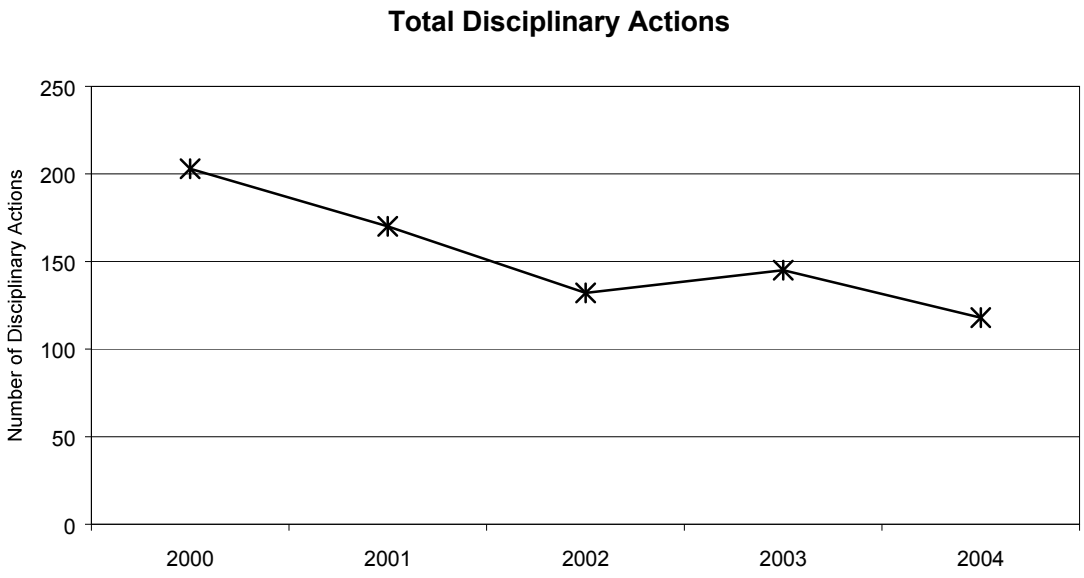


Reprimands



Admonitions





In 2004, there were a total of (121) disciplinary actions including admonitions and formal discipline matters.

It is believed that the decreased number of total disciplinary actions is a direct result of the decrease in admonitions. In recent years, there have been fewer admonitions issued for repeat offenders. Under current criteria and as a general rule, admonitions are only offered for an isolated instance of misconduct. Chronic offenders are evaluated by different criteria to determine whether remedial programs are warranted or by pursuit of higher levels of discipline. Admonitions have decreased for first-time offenders as well by utilizing educational tools, such as diversion programs or cautionary (educational) letters, in appropriate circumstances.

The total number of complaints opened as formal investigations during 2004 was nine hundred fifteen (915). The most common complaints and the fields of practice most likely to produce complaints are:

NATURE OF VIOLATIONS *	NO.
Rule 1.4 (Communication)	301
Rule 1.3 (Diligence)	253
Rule 8.4(c) (Dishonesty, Fraud, Deceit, Misrepresentation)	64
Rule 1.15 (Safekeeping Property)	56
Rule 1.7 (Conflicts)	54
Rule 5.5 (Unauthorized Practice)	38
Rule 1.1 (Competence)	30
Rule 1.16 (Improper Withdrawal)	28
Rule 7.2 (Advertising)	28
Rule 1.5 (Excessive Fees)	23
Rule 8.4(b) (Criminal Activity)	22
Rule 5.20 (Reciprocal Discipline)	7
Rule 5.3(b) (Supervisory Responsibility)	6
Rule 3.8 (Prosecutorial Responsibility)	6
Rule 1.6 (Confidentiality)	5
Rule 3.3 (Truth to Tribunal)	5
Rule 3.5(b) (Ex Parte Contacts)	4
Rule 8.1(b) (Failure to Cooperate)	4
Rule 3.4 (Obstruction/False Evidence)	4
Rule 4.1 (Truth to 3rd Persons)	2
Rule 8.4(g) (Bias & Prejudice)	1

* Many complaints included more than one allegation. Some complaints involved more than one area of law practice.

AREA OF PRACTICE *	NO.
Domestic	210
Other	147
Torts	131
Criminal	106
Bankruptcy/Receivership	97
Estate/Probate	36
Litigation	35
Workers Compensation	33
Real Property	29
Traffic	21
Labor Law	19
Immigration/Naturalization	15
Contracts	14
Collections	9
Landlord/Tenant	8
Administrative/Governmental	7
Insurance	7
Patent/Trademark	5
Corporate/Banking	4
Guardianship	3
Environmental	1
Civil Rights	1
Commercial Law	1
Taxation	1
Unemployment Benefits	1
Juvenile	1

* Many complaints included more than one allegation. Some complaints involved more than one area of law practice.

Dated at the Office of Chief Disciplinary Counsel at Jefferson City, Missouri this 5th day of July, 2005.

Respectfully Submitted,

MARIDEE F. EDWARDS
Chief Disciplinary Counsel

2004 LEGAL ETHICS COUNSEL ANNUAL REPORT

LEGAL ETHICS COUNSEL ROLE

Informal Advisory Opinions

Pursuant to Rule 5.30(c), the Legal Ethics Counsel issues non-binding informal advisory opinions.

The Legal Ethics Counsel provided informal advisory opinions in response to 1,452 oral contacts. Some of the contacts involved multiple, separate questions and, therefore, multiple opinions. Opinions given in conjunction with informal contact at bar meetings and CLE programs are not included in this count. Opinions provided at the "Legal Ethics Counsel Booth" at the Solo and Small Firm Conference are included.

The Legal Ethics Counsel also provided 64 written informal advisory opinions. Of these, 18 were summarized and published with the approval of the Advisory Committee.

CLE Presentations

The Legal Ethics Counsel prepared and gave 28 CLE presentations for various groups, including: The Missouri Bar, Kansas City Metropolitan Bar Association, Lawyers Association of Kansas City, University of Missouri at Kansas City Law School, St. Louis University Law School, Randolph County Bar Association, Pulaski County Bar Association, Boone County Bar Association, Child Support Enforcement Association, National Organization of Bar Counsel, and the Office of Chief Disciplinary Counsel.

COUNSEL TO ADVISORY COMMITTEE ROLE

Rule 5.07(b) provides that the Legal Ethics Counsel shall serve as staff to the Advisory Committee.

Review Summaries

Pursuant to Rule 5.12, the Advisory Committee reviews investigation files if the OCDC or a Regional Disciplinary Committee finds no probable cause and the complainant requests review. The Legal Ethics Counsel Office summarized and distributed 113 review files.

Hearings

The Legal Ethics Counsel planned a statewide training session for all Disciplinary Hearing Officers and presented portions of that training session. This was the first training session that had been held since 1996. In connection with this session, the Legal Ethics Counsel worked with the Chair of the Advisory Committee to revise and update the Disciplinary Hearing Manual.

The Legal Ethics Counsel Office provided assistance with arrangements for hearings, as requested, to Disciplinary Hearing Officers.

Meetings

The Legal Ethics Counsel Office coordinated arrangements for four regular Advisory Committee meetings around the state, as well as one special meeting and several conference call meetings.

Formal Opinions

The Legal Ethics Counsel provided additional assistance in relation to a formal opinion draft.

Other Matters

The Legal Ethics Counsel participated in meetings regarding rules proposed by the Missouri Bar on multi-jurisdictional practice and advertising.

The Legal Ethics Counsel prepared a draft of a "statute of limitations" rule for the Advisory Committee that was provided to the Missouri Bar for comment.

The Legal Ethics Counsel worked with a website developer to create a website for the Advisory Committee and Legal Ethics Counsel. The website includes a public area and a private area accessible only to Disciplinary Hearing Officers. The public area includes articles on ethics issues and Rules 4 and 5. The website address is: www.mo-legal-ethics.org.

The Legal Ethics Counsel served on the membership and program committees of the National Organization of Bar Counsel.

MISSOURI BAR
COMPLAINT RESOLUTION PROGRAM
ACTIVITY REPORT

	2004
Total Open Cases in 2004	95
New Cases referred from OCDC	68
Meetings Scheduled/Held	36
Agreements Reached*	19
Complainant Did Not Appear at Scheduled Meeting	1
Respondent Did Not Appear at Scheduled Meeting	0
Agreements Not Reached	10
Pending Conference Report	4
Meeting Held-Parties Resolved After Meeting*	1
Meeting Cancelled – Complainant Did Not Respond	1
Scheduling Conference	3
Cases Closed	75
Pending Closing	7
Complainant Did Not Respond or Consent	11
Respondent Did Not Consent or Respond	1
Respondent Responded But Did Not Consent	2
Respondent Withdrew Consent	3
Parties Resolved without Conference*	12
Complainant Withdrew Complaint*	13
Wrong Respondent Listed on Complaint	1
Pending Receipt of Consent Forms	6
Attorney v Attorney Complaints	1

Total Resolutions* 45

MISSOURI BAR
COMPLAINT RESOLUTION PROGRAM

NATURE OF COMPLAINT	NO.
Client Communication	26
Client's Directive	17
Diligence	9
Other	8
Fees	4
Competence	3
Attorney v Attorney	1

TYPE OF MATTER	NO.
Domestic	19
Other	10
Personal Injury	9
Real Estate	9
Estate/Probate	5
Bankruptcy	3
Litigation	3
Criminal Law	2
Landlord/Tenant	2
Attorney v Attorney	1
Contracts	1
Guardianship	1
Immigration/Naturalization	1
Traffic	1
Workers' Comp	1

MISSOURI BAR
COMPLAINT RESOLUTION PROGRAM

LOCATION OF ATTY.	NO.	LOCATION OF ATTY.	NO.
Bonne Terre	1	Kirkwood	1
Branson	1	Liberty	1
Cape Girardeau	1	Maryville	1
Chesterfield	1	Moberly	1
Columbia	2	N. Kansas City	1
Farmington	1	Osage Beach	1
Festus	1	Rock Port	1
Florissant	1	Springfield	4
Gladstone	1	St. Charles	5
Gower	1	St. Joseph	3
Jackson	1	St. Louis	19
Jefferson City	4	St. Peters	1
Joplin	2	Troy	1
Kansas City	7	Lenexa, KS	1
Kearney	1	Bethalto, IL	1

IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
ELBERT A. WALTON, JR.,	)	**Supreme Court #SC86122**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

SHARON K. WEEDIN #30526
STAFF COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Disciplinary History

Elbert Walton was admitted to Missouri's Bar in 1974. **App. 91, 96**. In 1989, Respondent accepted admonitions for two violations of Rule 4-1.1, two violations of Rule 4-1.3, and violation of Rule 4-1.4. **App. 91-92, 96, 105**. On May 15, 2001, the Court issued an order publicly reprimanding Mr. Walton for violation of Rules 4-1.1, 4-1.5, 4-5.3, 4-5.5, and 4-8.4. **App. 105**.

Disciplinary Case

A two-count amended information was mailed to Respondent on March 18, 2003. **App. 95**. Count I alleged that Respondent violated Rules 4-3.5(c) and 4-8.4(d) by his conduct at a hearing before Judge Smith on February 5, 2001. **App. 91-93**. Count II alleged violations of various Rules arising from a non-lawyer's referral to Respondent of a couple who wanted to file for bankruptcy. **App. 93-95**.

The disciplinary hearing was conducted over a two-day period on November 12 and 13, 2003. The Panel issued its decision on April 14, 2004, concluding Respondent violated Rules 4-3.5(c) and 4-8.4(d) as alleged in Count I. **App. 123**. The Panel found in favor of Respondent on Count II. **App. 125**. Informant is not briefing the Count II allegations.

The Panel recommended a "public admonition." **App. 125**. On May 11, 2004, the Panel issued a "Judgment Nunc Pro Tunc" containing the same findings and conclusions

as the April 14 decision, but with the recommendation that Respondent be "subject to a public reprimand." **App. 127**. The parties did not file a written stipulation concurring in the decision, so the record was filed with the Court.

Count I

On January 5, 2001, Associate Circuit Judge Dennis Smith conducted a hearing on Phillip Washington's motion to modify the terms of child custody in *Washington v. Washington*, #97FC-004617. **App. 4 (T. 9, 10, 12)**. Ernestine Washington, the minors' mother and Phillip Washington's ex-wife, did not appear at the January 5 hearing. **App. 5 (T. 14)**. Judge Smith modified custody of the daughters in favor of Phillip Washington. **App. 5 (T. 14)**.

Leon Sutton, an attorney working in Mr. Walton's office at the time, thereafter made a special entry of appearance on Ernestine Washington's behalf for the purpose of filing a motion to set aside the January 5 modification order. **App. 4 (T. 12), 77 (T. 302)**. Mr. Walton appeared for Ernestine Washington on February 5, 2001, to argue the motion to set aside. **App. 4 (T. 11-12), 77 (T. 302)**. The February 5 hearing concerned the issue of whether Ms. Washington had received proper notice of the January 5 hearing, and if not, to set aside the order modifying custody. **App. 4 (T. 10), 4-5 (T. 12-14), 10 (T. 35)**.

In addition to Judge Smith and his bailiff and clerk, Phillip Washington, his wife and his attorney, Barry Gubin, and Ernestine Washington and Respondent, a number of Ms. Washington's family members were present in the courtroom on February 5. **App. 6 (T. 18), 28 (T. 107), 30 (T. 115), 35 (T. 133-134), 39 (T. 149)**. Evidence had been

adduced from witnesses for about two hours on the issue of the notice to Ernestine Washington of the January 5 hearing, when Judge Smith announced that he would continue the hearing to a future date. **App. 4 (T. 11), 5 (T. 14)**. It had been a contentious hearing, but to that point no one had exceeded the bounds of advocacy. **App. 6 (T. 17)**.

Along with stating he would continue the hearing, Judge Smith advised that if he did set aside the January 5 modification order, he would proceed at that future hearing to hear the evidence on the underlying modification issue. **App. 5 (T. 14-15)**. Mr. Walton responded that if the Judge set aside the January 5 order, then he would not have authority to proceed because there would be no good service on Ernestine Washington at that point. **App. 5 (T. 15)**. Mr. Walton believed he was appearing pursuant to Mr. Sutton's special entry of appearance, thereby preserving for Ernestine Washington her ex-husband's obligation to provide her proper notice of hearing on his motion to modify custody. **App. 5 (T. 15), 80 (T. 312-313)**. In response, Judge Smith told Mr. Walton that he had made a general entry of appearance. **App. 5 (T. 15), 16 (T. 59)**. Judge Smith believed that Mr. Walton had entered a general appearance in the course of the two hour hearing already conducted that day by stating he wished to proceed in representing Ms. Washington. **App. 5 (T. 13), 10 (T. 36)**.

According to Judge Smith, Mr. Walton reacted to the judge's statement by rapidly approaching the bench, leaning across and, while waving his hand in a threatening manner within inches of Judge Smith's face, saying in a very loud voice, "You tricked

me, you tricked me." **App. 5-6 (T. 15-17), 19 (T. 70-71), 21 (T. 78-79), 22 (T. 81)**.[1] Judge Smith's bailiff, Charles Cunningham, observed Mr. Walton becoming obviously agitated. **App. 40 (T. 152-153)**. Bailiff Cunningham approached the bench, in the area where the clerk sits, upon observing Respondent's demeanor as he stood at, and leaned over, the bench. **App. 5 (T. 15), 39-40 (T. 151-153)**.

Mr. Walton's behavior at the bench caused Judge Smith to fear for his own safety and that of others in the courtroom. **App. 6 (T. 19)**. He feared the family members present, who the judge had observed talking contentiously amongst themselves, could create a substantial problem. **App. 6 (T. 18-19), 21 (T. 79)**.

Judge Smith told the bailiff to take Respondent into custody. **App. 5 (T. 15)**. The bailiff took Respondent by the arm and led him from the courtroom. **App. 40 (T. 154)**. He directed Respondent to sit at a desk in the corridor. **App. 40 (T. 154-155)**. Mr. Walton told the bailiff that he did not care "if he is the Judge." **App. 40 (T. 154)**. Mr. Cunningham returned to the courtroom to obtain a commitment order, but upon learning it was not ready, returned to Respondent and told him an apology would go a long way. **App. 6 (T. 20), 40 (T. 155), 77 (T. 301)**. The bailiff thereafter escorted Respondent back into the courtroom, where Mr. Walton apologized. **App. 40-41 (T. 155-156)**.

---

[1] Two cassette tapes bearing a recording of the February 5, 2001, hearing, and more particularly, the exchange between Respondent and the Judge, were played for the Disciplinary Hearing Panel and admitted to the record. The tapes are part of the record filed in this matter.

Respondent apologized for pointing his finger at Judge Smith. **App. 6 (T. 20)**. Respondent contends that he denied pointing a finger at the Judge, but that that part is not on the tape. **App. 79 (T. 310-311)**. Judge Smith accepted the apology and did not issue an order finding Respondent in contempt. **App. 6-7 (T. 20-21), 9 (T. 32), 15 (T. 56)**. Although he accepted the apology, in Judge Smith's view the apology was inaccurate – Respondent's behavior involved more than just pointing a finger. **App. 6 (T. 20), 9 (T. 32), 106-107**.

Mr. Walton was amazed that Judge Smith thought he had pointed his finger at the Judge, because in Respondent's view it did not happen. **App. 79 (T. 308-309)**. Respondent denies leaning across Judge Smith's bench. **App. 79 (T. 308-309), 85 (T. 334)**. In Respondent's view, he did nothing to warrant the Judge's actions, beyond arguing his client's case zealously. **App. 79 (T. 309), 80 (T. 312), 86 (T. 336)**. Mr. Walton acknowledges using the word "tricked" in reference to Judge Smith before he was escorted out of the courtroom. **App. 85 (T. 334-335)**. He said "tricked" because he thought Judge Smith had tricked him on the issue of making a general appearance. **App. 85 (T. 334-335)**. Respondent characterizes his apology as one for Judge Smith's perception of what Respondent did, and not for what Respondent says he actually did. **App. 81 (T. 317), 85 (T. 333)**.

Ernestine Washington does not believe Respondent disturbed the courtroom. In her view, Respondent was just trying to get back the kids that were stolen from her. **App. 23 (T. 86-87)**. Two of Ms. Washington's relatives who were present on February 5 likewise noticed no unusual behavior by Mr. Walton. **App. 30 (T. 113-114), 33 (T. 126-**

127). Mr. Washington's lawyer, Barry Gubin, testified that he was conferring with his client at the time, and does not recall much about the exchange between Judge Smith and Respondent, beyond, possibly, a raised voice. **App. 41-43 (T. 158-166)**.

Judge Smith continued to February 28 the hearing on the motion to set aside the January 5 modification order. **App. 7 (T. 21), 80 (T. 314)**. The Judge ultimately denied the motion. **App. 7 (T. 21-22), 77 (T. 303)**.

Pending concurrently with the modification issue in the *Washington v. Washington* file was a motion for contempt filed on February 2, 2001, by Phillip Washington against Ernestine Washington. **App. 7 (T. 22), 10 (T. 34)**. The contempt matter was set to be heard by Judge Smith on March 12, 2001. **App. 10 (T. 33), 11 (T. 40), 108**. On March 12, Ernestine Washington filed a complaint against Judge Smith with the Commission on Retirement, Removal, and Discipline. **App. 115**. Mr. Walton provided the Commission, at its request, a statement regarding Ms. Washington's complaint. **App. 114, 116**. The Commission ultimately closed the complaints filed against Judge Smith on findings of no probable cause of violations of the Code of Judicial Conduct. **App. 128-129**.

It is Respondent's belief that Judge Smith reported the February 5 courtroom incident to the Office of Chief Disciplinary Counsel in retaliation against Respondent for substantiating Ernestine Washington's complaint against Judge Smith. **App. 83 (T. 324, 326), 85 (T. 334)**. Respondent alleges that Judge Smith's complaint is "false and fraudulent and knowingly, willfully, maliciously, purposefully and intentionally made by Judge Smith in his attempt to manufacture facts that would give rise to disciplinary action being taken against Respondent in retaliation for Respondent giving a statement to the

Commission." **App. 97**. Respondent's wife is in the Missouri Legislature, and Respondent could get her to file articles of impeachment against the Judge any time. **App. 86 (T. 338-339), 130-131**.

POINT RELIED ON

I.

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT BECAUSE HIS COURTROOM CONDUCT ON FEBRUARY 5, 2001, VIOLATED RULES 4-3.5(c) AND 4-8.4(d) IN THAT HE LEANED OVER THE JUDGE'S BENCH AND WAVED HIS HAND IN A THREATENING MANNER CLOSE TO THE JUDGE'S FACE WHILE ACCUSING THE JUDGE OF TRICKING HIM.

Rule 4-3.5(c)

Rule 4-8.4(d)

In re Coe, 903 S.W.2d 916 (Mo. banc 1995)

In re Elam, 211 S.W.2d 710 (Mo. banc 1948)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT BECAUSE HIS COURTROOM CONDUCT ON FEBRUARY 5, 2001, VIOLATED RULES 4-3.5(c) AND 4-8.4(d) IN THAT HE LEANED OVER THE JUDGE'S BENCH AND WAVED HIS HAND IN A THREATENING MANNER CLOSE TO THE JUDGE'S FACE WHILE ACCUSING THE JUDGE OF TRICKING HIM.

Whether Mr. Walton is deserving of discipline for his conduct in Judge Smith's courtroom on February 5, 2001, turns on whether this Court, which reviews the evidence de novo, believes that Respondent leaned over Judge Smith's bench and, while waving his hand near the judge's face, accused the judge of tricking him. Respondent admits using the word "tricked," but denies leaning over the bench or any other behavior worthy of having the bailiff escort him from the courtroom. Judge Smith and his bailiff both testified that Respondent aggressively approached the bench and accused the judge, in a loud and angry voice, of tricking him.

The tape of the incident, though not a model of high technological clarity, is the best indicator of what actually happened. After the judge had indicated to Respondent that Respondent had entered his general appearance earlier in the hearing, Respondent's voice becomes noticeably angry, almost tremulous. Respondent tells the judge that the

judge does not need to play tricks on Respondent or his client, and that the judge knows that Respondent did not intend to make a general entry of appearance.

Judge Smith testified that he felt threatened by Respondent's actions, which were manifested by both words and physical movements. Judge Smith also testified that he was worried about what effect Respondent's conduct would have on the spectators in the courtroom. It should be remembered that this was a highly contentious, emotionally-charged, long-running domestic relations matter. The judge had observed fractious exchanges among family members in the courtroom. The last thing a lawyer should do in such a situation is anything that might inflame already volatile passions.

In what one hopes is a positive reflection of the historical civility of Missouri lawyers in the courtroom, only two cases were discovered in which Missouri lawyers were disciplined for their courtroom conduct. Respondent alluded in his cross-examination testimony to the more recent of the two cases, *In re Coe*, 903 S.W.2d 916 (Mo. banc 1995). In his cross-examination testimony, Mr. Walton asked rhetorically whether it is unethical for a lawyer "to argue zealously for your client?" **App. 86 (T. 336)**. According to Mr. Walton, that is all Carol Coe did, and all he was guilty of doing on February 5. In point of fact, this Court concluded to the contrary that Ms. Coe's conduct "intentionally disrupted the trial," and thereby violated Rule 4-3.5(c). The Court came to that conclusion notwithstanding Ms. Coe's protestations that her actions did not delay the trial, that she was baited by the trial judge, and that her reproaches against the trial judge were protected free speech. 903 S.W.2d at 917. Thus, Respondent's attempt

to consign Ms. Coe's behavior to the realm of protected zealous advocacy has already been examined and rejected by this Court.

Likewise, Respondent's conduct at Judge Smith's bench went well beyond zealous advocacy. As the Comment to Rule 4-3.5(c) explains, and as the Coe Court said, "Once a judge rules, a zealous advocate complies, then challenges the ruling on appeal; the advocate has no free-speech right to reargue the issue, resist the ruling, or insult the judge." 903 S.W.2d at 917. To that list should be added, "or lean across the bench, and in a loud and angry voice, accuse the judge of trickery." Ms. Coe's conduct was beyond zealous advocacy, and Mr. Walton's likewise crossed the line.

The other case touching on the issue of courtroom misbehavior pre-dates the modern Code or Rules. In the factually colorful case of *In re Elam*, 211 S.W.2d 710 (Mo. banc 1948), a 78-year old lawyer was disbarred for a litany of misconduct, including a disrespectful exchange with a trial judge who questioned Elam as to whether he had drafted a highly suspect deed. The judge suspected Mr. Elam had drawn up the deed for his law partner as part of a scheme to defraud two elderly sisters, one of whom was insane by way of a codeine addiction, and the elderly ladies' insane brother, from enjoying the benefits of the fair market partition sale of real estate owned in common by the aged and mentally-challenged siblings. To make matters worse, Mr. Elam also represented the sisters. The trial judge ultimately drafted a final decree disposing of the realty contrary to Mr. Elam's wishes, whereupon Mr. Elam filed motions referring to the judge's decree as an instrument "conceived in fraud and brought forth in iniquity and is not truthful in its statements and constitutes an actionable libel against its sponsors." 211

S.W.2d at 714. Mr. Elam also referred to his opposing counsel in the case as a snitch and liar. Mr. Elam's intemperate attacks are not unlike Mr. Walton's description, in his answer to the disciplinary information, of Judge Smith's complaint against Mr. Walton.

The Elam case involved a good deal more serious misconduct than Respondent's February 5 eruption. The case is nonetheless instructive, because even in the face of more serious misconduct, the Court cited Elam's courtroom behavior as a factor in its decision to disbar, i.e., "his attitude and conduct toward the trial court were flagrantly disrespectful." 211 S.W.2d at 718.

Respondent's intemperate language and inappropriate approach toward the judge on February 5, 2001, is a single act of misconduct deserving of a public reprimand. Further support for the recommended sanction is found in the presence in this case of the aggravating factors of multiple prior disciplinary offenses, and Respondent's refusal to acknowledge the wrongfulness of his conduct. Rules 7.3, 9.22(a)(g), ABA Standards for Imposing Lawyer Sanctions (1991 ed.). With regard to the aggravating factor of refusal to acknowledge the wrongfulness of misconduct, the Court should be aware that Mr. Walton characterized this Court's May 15, 2001, disciplinary order of public reprimand as a "request" that he go to a program on how to practice with paralegals. "[T]hey attempted to get me disbarred[2] . . . and the Supreme Court disagreed and said that, just go to a seminar on how to work with your paralegals," **App. 69 (T. 271)**. Upon being

[2] OCDC's recommendation in *In re Walton*, SC83341, was actually for a lengthy suspension, not disbarment.

shown a copy of the May 15 order, Respondent did finally agree that he had been reprimanded. Respondent's courtroom outburst and his physically menacing approach to the bench is deserving of, at least, another public reprimand for violation of Rules 4-3.5(c) and 4-8.4(d).

CONCLUSION

The tapes of Mr. Walton's February 5, 2001, courtroom outburst dispel Respondent's denial of what happened. And although he subsequently backpedaled from his apology, the tape reflects that Mr. Walton did apologize for getting emotional and for pointing his finger at the judge. Respondent's failure to refrain "from abusive or obstreperous conduct," constitutes a violation of Rules 4-3.5(c) (engage in conduct intended to disrupt a tribunal) and 4-8.4(d) (engage in conduct prejudicial to the administration of justice). The Court should publicly reprimand Respondent for his conduct.

Respectfully submitted,

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

By: _____

Sharon K. Weedin #30526
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2004, two copies of Informant's Brief have been sent via First Class mail to:

Bernard F. Edwards, Jr.
1221 Locust, #1000
St. Louis, MO 63103-2364

Attorney for Respondent

_____
Sharon K. Weedin

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06b);

3. Contains 3,235 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Sharon K. Weedin

APPENDIX

Attachment 79

The *Steward* Suspension Order

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

In re:	**§**	**Case No. 11-46399-705**
	§	
LaToya L. Steward,	**§**	**Chapter 7**
	§	
Debtor.	**§**	
	§	
LaToya L. Steward,	**§**	
Movant,	**§**	
v.	**§**	**[Docket No. 29]**
	§	
James C. Robinson and	**§**	
Critique Services L.L.C.,	**§**	
Respondents.	**§**	

AMENDED MEMORANDUM OPINION AND ORDER:

(1) DETERMING THAT SUBJECT MATTER JURISDICTION EXISTS, PERSONAL JURISDICTION EXISTS, RECUSAL IS NOT PROPER, AND NOTICE AND OPPORTUNITY TO BE HEARD HAVE BEEN GIVEN;
(2) IMPOSING CIVIL SANCTIONS UPON JAMES C. ROBINSON, CRITIQUE SERVICES L.L.C., AND ELBERT A. WALTON;
(3) SUSPENDING MR. ROBINSON AND MR. WALTON FROM THE PRIVILEGE TO PRACTICE BEFORE THE U.S. BANKRUPTCY COURT FOR A PERIOD OF ONE YEAR;
(4) REFERRING THIS MEMORANDUM OPINION TO THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL AS A COMPLAINT AGAINST MR. ROBINSON AND MR. WALTON, TO THE U.S. DISTRICT COURT FOR POSSIBLE DISCIPLINARY INVESTIGATION, AND TO THE OFFICE OF THE U.S. TRUSTEE AS A REPORT OF SUSPECTED BANKRUPTCY FRAUD OR ABUSE;
(5) PROVIDING A COPY OF THIS MEMORANDUM OPINION TO THE OFFICE OF THE U.S. ATTORNEY GENERAL;
(6) SUSPENDING THE ELECTRONIC AND REMOTE ACCESS FILING PRIVILEGES OF MR. ROBINSON AND MR. WALTON FOR A PERIOD OF ONE YEAR; AND
(7) GRANTING IN PART THE MOTION TO DISGORGE

"When even a single financially vulnerable client is preyed on by an unethical attorney . . . it is one too many."

In re Ezell, 502 B.R. 798, 818 (Bankr. N.D. Ill. 2013)

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Currently pending in the above-referenced main bankruptcy case (the "Main Case") is the Debtor's letter deemed to be a Motion for Disgorgement of Attorney's Fees and Other Equitable and Punitive Relief Based on Inadequate Representation by Debtor's Counsel (the "Motion to Disgorge") [Docket No. 29],[1] requesting disgorgement of the fees paid prepetition to the Debtor's bankruptcy attorney, James C. Robinson, and his firm, Critique Services L.L.C.[2] (together, the "Respondents"). Now, after months of the Respondents refusing to comply

[1] All docket references are to the Main Case docket, unless otherwise noted.

[2] The Respondents inconsistently include a comma in the name "Critique Services L.L.C." between "Services" and "L.L.C." When the Court refers to "Critique Services L.L.C.", it refers to "Critique Services L.L.C." or "Critique Services, L.L.C."—whichever is the proper legal name of that Respondent.

with their discovery obligations, but choosing instead to employ contempt, abuse of process, and vexatious litigation to avoid discovery, and after lesser sanctions failed to garner compliance, the Court orders, as set forth in this Memorandum Opinion and Order (the "Memorandum Opinion") that (i) the sanctions be imposed against the Respondents and Mr. Walton, and (ii) the Motion to Disgorge be granted in part.

I. THE RESPONDENTS' RELATIONSHIP WITH EACH OTHER

A. The Inconsistent Representations Regarding the Respondents' Relationship

Mr. Robinson has long practiced law before this Court. His practice is based on the low-cost/high-volume business model of representation of individuals. During the litigation of the Motion to Disgorge, he represented that he does business (that is, he practices law) as the other Respondent, Critique Services L.L.C., an artificial legal entity. (*See, e.g.,* Response to the Motion to Disgorge [Docket No. 33] and Response to the Motion to Compel [Docket No. 65].) Accordingly, in prior orders, the Court treated the Respondents essentially as being one-and-the-same.[3] However, Mr. Robinson also represented in other pleadings that he does business as "Critique Services." "Critique Services" (without the "L.L.C.") is a fictitious name, not an artificial legal entity. The problem is: a natural person, an artificial legal entity, and a fictitious name are distinct legal concepts. Because of these inconsistent representations, it is unclear how the Respondents are related. For purposes of this Memorandum Opinion and the accompanying Judgment, the Court will treat the Respondents as being "Mr. Robinson d/b/a Critique Services L.L.C." However, the Court also **ORDERS** that any monetary sanctions imposed upon the Respondents also be imposed upon Mr. Robinson and Critique Services, L.L.C., jointly and severally,

[3] This is not a legal conclusion that a natural person can be a d/b/a of an artificial legal entity. In a footnote in its Order Denying the Amended Motion to Dismiss [Docket No. 82], the Court expressed concern about whether, as a legal matter, an artificial entity can be a d/b/a of a natural person. The Respondents never offered any comment or clarification on the point.

should the Respondents not be the same entity, or should Critique Services L.L.C. otherwise not be Mr. Robinson's d/b/a.

B. Direction for Clarification Regarding the Respondents' Relationship

The conflicting representations about the Respondents' relationship raise serious concerns about the "services" offered to the public by the Respondents. *Is Critique Services L.L.C. a law firm, and if not, what is it, exactly? Is it a bankruptcy petition preparer? If it is not a law firm, how can Mr. Robinson represent that it is the d/b/a through which he practices law? Is Mr. Robinson an employee, owner, or independent contractor of Critique Services L.L.C.? If he is not the owner, who is the owner, and is that person licensed to practice law? If Mr. Robinson is not an owner, from whom does he take direction in terms of the legal services he provides, and is that person a lawyer? Which non-attorney staff members speak to the clients and on whose behalf, and upon whose instruction? What services are rendered before the attorney-client relationship is formed, and by whom? Are the clients informed of the distinction, if any, between Mr. Robinson and Critique Services L.L.C.? When and to whom do clients pay for their services? If Critique Services L.L.C. is not a law firm, do the clients pay for the services of Critique Services L.L.C. separately from fees paid to Mr. Robinson for his legal services? If the clients are provided non-attorney services by Critique Services L.L.C., are they informed that they have a choice of counsel and are not bound to hire Mr. Robinson, simply because they received services from Critique Services L.L.C.?*

These are not questions of morbid curiosity. The answers may bear directly on the veracity of the claim that Critique Services L.L.C. is Mr. Robinson's d/b/a, and on the veracity of Mr. Robinson's certification in his Declaration of Compensation of Attorney for Debtor(s) statement [Docket No. 1] that: "I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm." If Critique Services L.L.C. is not a law firm or Mr. Robinson's d/b/a, but Mr. Robinson agreed to share the Debtor's compensation with it, this certification appears suspect. The Court is obligated to ensure that an attorney is truthful in describing

himself, his relationship with his client, the nature of his compensation, and any fee-sharing arrangement.

Accordingly, the Court hereby **ORDERS** the Respondents to file, no later than fourteen (14) days from entry of this Memorandum Opinion:[4]

(I) a copy of the Articles of Incorporation of "Critique Services L.L.C.";

(II) a copy of all retainer or employment agreements between and among Critique Services L.L.C., Mr. Robinson, and the Debtor; and

(III) an affidavit attesting to:

(A) whether Critique Services L.L.C. is a law firm;

(B) what services Critique Services L.L.C. provides, if any, other than legal services;

(C) each owner, whether holding a majority or minority interest, of Critique Services L.L.C., and each such person's percent of ownership interest, from 2011 to the date of the submission of such affidavit;

(D) the exact nature (owner, employee, independent contractor, or other) of Mr. Robinson's relationship with Critique Services L.L.C.;

(E) whom Mr. Robinson's clients pay for his services;

(F) a description of what fee-sharing relationship Mr. Robinson may have with Critique Services L.L.C. and any other owners, members, or attorneys of Critique Services L.L.C.; and

(G) all attorneys employed by Critique Services L.L.C., in any capacity (whether as an employee, independent contractor or other relationship) from 2011 to the date of the submission of such affidavit.

[4] These documents may be filed under seal. The U.S. Court District for the Eastern District of Missouri (the "U.S. District Court"), the Office of the U.S. Trustee (the "UST"), the Office of the United States Attorney General (the "USAG"), the Missouri Supreme Court's Office of the Chief Disciplinary Counsel ("OCDC"), will be permitted to access the documents without the need for a motion, by filing a notice and stipulating that they will not disclose or share such information with other entities unless upon leave of Court or as required by non-bankruptcy law.

Because of the Respondents' inconsistent representations about their relationship and because the Respondents have gone to such lengths to avoid responding to discovery requests that relate to their business, the Court cannot permit Mr. Robinson to continue practicing before this Court until the nature of their relationship is clarified. The reinstatement of Mr. Robinson's privilege to practice (which is being suspended in Part XIV herein) will be contingent upon, among other things, the making of these disclosures.

II. FACTS AND PROCEDURAL HISTORY

In this Memorandum Opinion and accompanying Judgment, the Court imposes sanctions, pursuant to Federal Rule of Civil Procedure ("Rule") 37(b)(2)(A), whereby the matters embraced in the Motion to Disgorge and the Debtor's July 10, 2013 Affidavit (the "Debtor's Affidavit") [Docket No. 50] are taken as established. The findings of fact herein include those embraced facts.

A. The Debtor's Retention of the Respondents

In 2010, the Debtor retained Mr. Robinson to represent her in filing for bankruptcy relief.[5] (Motion to Disgorge at p. 1, ll. 3-5).[6] At her initial meeting at the office of Critique Services L.L.C., the Debtor met with a staff woman named "Dee," who took from her $195.00 in payment, handed her a packet to complete regarding personal information and her creditors, and instructed her to obtain a copy of her credit report. (Motion to Disgorge at p. 1, ll. 16-18.)

When the Debtor returned for her next visit, she paid to Dee the remainder of the balance owed. (Motion to Disgorge at p. 1, l. 19.) Dee advised the Debtor that she had to list a St. Louis residence in her petition papers, and that if she did not, Mr. Robinson would not represent her because Mr. Robinson does not "go to" St. Charles, the county of the Debtor's residence. (Motion to Disgorge at p. 1, ll.

[5] Missouri Supreme Court's Rule of Professional Conduct of the Rules Governing the Missouri Bar and the Judiciary (each, a "Mo. Prof. R.") 4-1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client."

[6] The Motion to Disgorge, prepared by the pro se Debtor, does not include line numbering. **Attachment A** provides the numbering system the purpose of citation in this Memorandum Opinion.

19-20, 21, 24-25; Aff. at ¶ 6.a.i.) When the Debtor inquired as to the propriety of listing a false address, Dee assured the Debtor that she "would not get in any trouble." (Motion to Disgorge at p. 1, ll. 22-24; Aff. at ¶ 6.a.i-ii.) The Debtor then provided the address of a St. Louis residence at which she did not reside. (Aff. at ¶ 6.a.iii.) When the Debtor later, finally, met Mr. Robinson, she advised him that she did not live in St. Louis. (Aff. at ¶ 6.a.iv.) Nevertheless, the false address, which was solicited by the Respondents, was included in her petition papers, which were prepared and filed by the Respondents.

At a subsequent meeting with a different staff person, the Debtor was advised that she could not file for bankruptcy unless she could list dependents, and was asked if she knew anyone that had children. (Aff. at ¶ 6.b.i-ii.) The Debtor's nephews lived with her, so the Debtor gave her nephews' names, although these nephews were not her dependents. (Aff. at ¶ 5.b.) This false representation about her dependents, which was solicited by the Respondents, was included in the petition papers, which were prepared and filed by the Respondents.

The petition papers contained other false statements, beyond those regarding the Debtor's address and dependents. (Aff. at ¶ 4.) The Debtor did not review the petition papers before signing them, but simply signed at the pages that had been tabbed by Critique Services L.L.C. for signature. As a result, she did not discover the majority of the false statements until she reviewed her papers with her new counsel in mid-2013. (Aff. at ¶ 4.) The Respondents did not advise the Debtor on the law regarding perjury. (Aff. at ¶ 7.)

In addition to soliciting and including false statements in her petition papers, the Respondents were highly unprofessional in other ways, in both their prepetition and postpetition acts. The business was operated so that it was nearly impossible for the Debtor to communicate with her attorney. The Respondents refused to return the Debtor's telephone calls. (Motion to Disgorge at p. 1, ll. 26-27 & p. 2, ll. 9-11.) The secretary refused to take messages. (Motion to Disgorge at p. 1, ll. 39-40.) Voicemail often did not permit a message to be left. (Motion to Disgorge at p. 1, l. 38.) The Respondents failed to properly

maintain the Debtor's file in a professional way, resulting in the loss of documents and the need for the Debtor to re-take a statutorily required course, and incur the associated fee. (Motion to Disgorge at p. 1, l. 40-47.)

The Respondents also abandoned the Debtor in her efforts to rescind her reaffirmation agreement with Ford Motor Credit (the "Reaffirmation Agreement") [Docket No. 12], despite Mr. Robinson having signed the Reaffirmation Agreement at Part C in the "Certification by Debtor's Attorney" section. After the approval of the Reaffirmation Agreement, the Debtor decided that she wanted to rescind it (Motion to Disgorge at p. 2, ll. 6-16), as was her right under § 524(c)(4) of title 11 of the United States Code (the "Bankruptcy Code"[7]), within sixty days of filing such an agreement. The Debtor repeatedly contacted the Respondents' office and left voicemail messages (when the voicemail system would permit it) seeking assistance with the rescission, but her messages went unreturned. (Motion to Disgorge at p. 2, ll. 9-10.) Finally, she went to the office without an appointment, where she was advised by a staff person that she had missed the deadline for rescinding by two days. (Motion to Disgorge at p. 2, ll. 11-13.) When she asked for a copy of her file, she was told that the file would be provided only if she paid a $100.00 office fee plus a $5.00 per page copying fee. (Motion to Disgorge at p. 2, ll. 18-19.)[8] As a result of not rescinding her Reaffirmation

[7] Hereinafter, any reference(s) to "section[s]" or "§[§]" shall refer to the section(s) of the Bankruptcy Code, unless otherwise indicated.

[8] Mo. Prof. R. 4-1.5(a) requires that "[a] lawyer shall not . . . collect an unreasonable fee." Further, Mo. Prof. R. 4.1-16(d) provides that, upon termination by a client, an attorney "shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled. . ." If the Debtor had terminated Mr. Robinson, he was obligated to surrender the file to her—that means, *to surrender it*—to give it up unconditionally and not to hold it hostage to the ransom of exorbitant, cost-prohibitive "administrative" fees. And even if the Debtor had not formally terminated Mr. Robinson at that point, she still was entitled to her client file without first having to pony-up for "administrative" fees. If Mr. Robinson wished to retain a copy of the file, the costs for copying the file were his to bear.

Agreement, the Debtor surrendered the vehicle and remained obligated on the debt. (Motion to Disgorge at p. 2, ll. 21-22.)

B. The Complaint for a Determination of Exception to the Discharge

On December 4, 2012, the Debtor filed, pro se, a complaint (the "Ford Complaint") against Ford Motor Credit, thereby commencing Adversary Proceeding No. 12-4341 ("Adversary Proceeding No. 12-4341") [Adv. Proc. No. 12-4341 Docket No. 1], requesting that her debt to Ford Motor Credit be determined to be excepted from discharge, based on the allegation that the Respondents failed to represent her in her rescission efforts. The Ford Complaint was electronically mailed to Mr. Robinson at his email address of record.[9]

On March 8, 2013, Ford Motor Credit filed a Motion to Dismiss [Adv. Proc. No. 4341 Docket No. 6], arguing that the alleged professional negligence by the Respondents could not, as a matter of law, establish an exception to discharge. At the hearing on the Motion to Dismiss, the Debtor orally motioned for leave to substitute the Respondents as the defendants. From the bench, the Court granted the request, and Ford Motor Credit's counsel prepared a proposed order granting dismissal as to Ford Motor Credit and allowing substitution of parties. That order [Adv. Proc. No. 12-4341 Docket No. 10] was entered on March 28, 2013. However, on April 5, 2013, the Court entered an Amended Order [Adv. Proc. No. 12-4341 Docket No. 13], granting the Motion to Dismiss but declining to order party substitution. Instead, the Court gave the Debtor fourteen days to file "whatever moving papers she believed proper" against the Respondents, offering no guidance as to what papers she might file or what relief she might seek. The Respondents were not electronically mailed the Amended Order (because they were not made parties to the Adversary Proceeding, and thus were not included on Adversary Proceeding No. 12-4341 service list). Mr. Robinson was electronically mailed to his email address of record (i) the notice of the entry of disposition in Adversary Proceeding No. 12-4341, and (ii) the notice

[9] The record of electronic mailing of a document can be viewed through the radial button at the left of the docket number on the electronic docket sheet.

of the closing of Adversary Proceeding No. 12-4341, both of which were entered as docket notations in the Main Case on April 9, 2013.

C. The Motion to Disgorge

On April 5, 2013,[10] the Debtor filed in the Adversary Proceeding 12-4341 a document captioned "amended complaint" [Adv. Proc. 12-4341 Docket No. 12], naming the Respondents as the defendants. Despite its caption, the document did not amend the Ford Complaint. In the document, the Debtor requested an entirely new form of relief, against entirely new parties, based on entirely new claims. Specifically, the Debtor requested "a monetary settlement" against the Respondents for the $495.00 she paid in attorney's fees, plus other damages, based on the Respondents' failure to represent her.

Because pro se filings must be liberally construed, the Court looked to the Debtor's substantive intent, rather than merely to the procedural mechanism employed. The Court determined that the document's clearest request was for disgorgement of attorney's fees. A request for disgorgement of attorney's fees is brought by a motion filed in the main bankruptcy case pursuant to § 329(b). It is not brought by the filing of a complaint, which initiates an adversary proceeding.

Accordingly, the Court directed the Clerk's Office to re-docket the document to the Main Case. In addition to affording the most accurate construction of the document based on the Debtor's substantive intent, the re-docketing also promoted judicial efficiency and economy. Had the Court dismissed the amended complaint without prejudice to it being re-filed as a motion in the Main Case, the Debtor simply would have re-filed the document in the Main Case, and the matter would be before the Court as it is now—as a contested matter in the Main Case.

The Motion to Disgorge, as docketed in the Main Case at Docket No. 29, was electronically mailed to Mr. Robinson at his email address of record. It was

[10] The same-day timing of the entry of the Amended Order and filing of the "amended complaint" was coincidental. When the Court sent its Amended Order for entry, it was unaware that the "amended complaint" had just been received by the Office of the Clerk of Court (the "Clerk's Office").

clear from the record that the Amended Motion to Disgorge had been filed in Adversary Proceeding No. 12-4341 then was re-docketed to the Main Case. The re-docketing was reported in the italicized language at Adversary Proceeding No. 12-4341 Docket No. 12 docket entry and the document history available at the radial button at Docket No. 29 indicates that the original file name of the document was "12-4341." And, the Amended Motion itself bears a prominent handwritten reference to Adversary Proceeding No. 12-4341. Moreover, the Court mentioned the procedural history at the May 15, 2013 hearing.

D. The Response to the Motion to Disgorge

On April 8, 2013, the Court entered a Notice of Hearing [Docket No. 30], setting the Motion to Disgorge for hearing on May 8, 2013. The Notice of Hearing was electronically mailed to Mr. Robinson at his email address of record.

Pursuant to Local Bankruptcy Rule ("L.B.R.") 9013-1(B), the Respondents were required to respond to the Motion to Disgorge within seven days of the May 8 hearing. The Respondents failed to do so. They also failed to request an extension of time to respond. Yet, despite these failures, the Court did not enter an order granting the Motion to Disgorge before the May 8 hearing, as it could have done pursuant to L.B.R. 9013-1(D).

On May 7, 2013—the day before the hearing—the Respondents finally and untimely filed their response to the Motion to Disgorge (the "Response") [Docket No. 33]. The Respondents then failed to even attempt any kind of good faith service of the Response. The certificate of service certified that the Respondents mailed the Response to the Debtor by regular U.S. Mail on the day before the hearing—thereby guaranteeing that the Debtor would not have received the Response before the hearing. The certificate of service also advised that the Respondents would provide the Debtor a copy "in open court." However, providing the late-filed, untimely Response for the first time on the day of the hearing in court was nothing more than a bad faith attempt to sandbag the Debtor at the hearing.

At 9:05 A.M. on May 8, 2013, the Respondents filed a Motion to Withdraw as Counsel [Docket No. 34]. At 9:30 A.M. that day, the Motion to Disgorge was

called for hearing. When the Debtor did not appear, the Respondents made an oral motion to dismiss. That is: after tardily responding to the Motion to Disgorge, then after making no good faith effort to serve their tardy Response, the Respondents demanded dismissal based on the Debtor's first-time tardiness. Their demand was made all the more audacious by the fact that the Court had just declined to order similarly harsh relief against the Respondents, by granting the Motion to Disgorge after the Respondents failed to timely respond. To any degree, the Court does not ordinarily dismiss upon a first-time tardy appearance. The matter was continued a week. The Debtor arrived later during the docket, and was advised of the continuance.

On May 15, 2013, the Court called the Motion to Withdraw and the Motion to Disgorge for hearing. The Debtor appeared pro se and the Respondents appeared through Mr. Walton. Mr. Robinson was present in the courtroom. The Debtor had just received a copy of the Response. The Court granted the Motion to Withdraw then turned to the Motion to Disgorge. The Court asked the Debtor to speak to the nature of her motion. The Court gave her this opportunity, since she had not received the tardily filed and improperly served Response until shortly before the hearing. The Debtor had not had an opportunity to consider or address the Respondents' non-specific allegations that the Motion to Disgorge was "vague, indefinite and uncertain." The Respondents objected to the Debtor being permitted to comment. The Court allowed the Respondents to have a running objection, but the Debtor's comments were not received as evidence or treated as establishing any fact.

It quickly became clear that the parties had not attempted to communicate with each other in advance of the hearing, as required by L.B.R. 2093(B). They had not prepared a joint stipulation of uncontested facts. The Debtor had not had an opportunity to consider the generic defenses and needed time to serve subpoenas for telephone records. Mr. Robinson had only just been allowed to withdraw as the Debtor's counsel. The matter was not ready to be heard.

The Court directed the Debtor to provide to the Respondents written proposed agreed facts, so that they could determine to which facts they could

stipulate. The Court also warned the Debtor that although she was pro se, she had to proceed in a lawyerly fashion. The Court continued the matter to June 26, 2013. The Respondents objected to the continuance and again made a request for dismissal, which was denied. The Respondents had not timely filed their Response, and there had been no opportunity for discovery, briefing, or the taking or presentation of evidence. Dismissal was not proper at that point.

E. The Requests for Discovery and the Motions to Quash

On June 17, 2013, the Debtor's new counsel filed his Notice of Appearance [Docket No. 38], as well as his Disclosure of Compensation of Attorney for Debtor(s) statement [Docket No. 40], in which he represented that he was representing the Debtor on a pro bono basis in all matters before the Court. Also on June 17, 2013, the Debtor, through her new counsel, filed a Motion to Continue the June 26 Hearing [Docket No. 39], requesting that the June 26 setting be used as a status conference instead of an evidentiary hearing on the Motion to Disgorge. That request was granted, although the June 26 status conference was later continued to August 14, 2013.

On June 26, 2013, the Debtor served upon the Respondents interrogatories and requests for production (together, the "Requests for Discovery") [Docket Nos. 46 & 47]. Pursuant to Rules 33(b)(2) and 34(b)(2)(A), and pursuant to the Federal Rules of Bankruptcy Procedure (each, a "Bankruptcy Rule") 7033 and 7034, the Respondents had thirty days to respond by answering and producing, or by declining to do so based upon a specific objection. Instead of responding as required, on July 20, 2013, the Respondents filed a frivolous Motion to Quash the Interrogatories [Docket No. 56] and a frivolous Motion to Quash the Requests for Production (together, the "Motions to Quash") [Docket No. 58], arguing that discovery is not permitted in contested matters. However, it is well-established law that discovery is permitted in contested matters.[11] The Motions to Quash were another example of the Respondents' and Mr. Walton's

[11] Mo. Prof. R. 4-3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is basis in law or fact for doing so that is not frivolous . . . "

bad faith and vexatious litigation. On July 31, 2013, the Court entered an Order Denying the Motions to Quash [Docket No. 60].

F. The Failure to Timely Respond to the Requests for Discovery

Federal discovery deadlines are not suggestions and the failure to abide by them has consequences. The Respondents failed to timely respond to the Requests for Discovery. They failed to request an extension of time to respond. They failed to allege any cause for their failure to timely respond.[12] As such, the Respondents waived whatever objections they may have had to the Requests for Discovery, regardless of the bases of any such objections, and cannot now refuse to respond based on any objection.[13] This is true even if the Requests for Discovery demanded embarrassing, privileged, confidential, trade secret, financial, or damaging information.[14] The Respondents are bound to respond, in full, to each and every request in the Requests for Discovery. No amount of courtroom histrionics, pleadings deluging, raising of waived objections, asserting

[12] If the Respondents could have raised objections but failed to do so by their counsel's strategy or incompetence, then perhaps they can seek a remedy against their counsel in connection with his lawyering. However, their remedy is not with this Court, by way of having their untimely objections entertained now.

[13] *Carfagno v. Jackson Nat'l Life Ins. Co.*, 2001 WL 34059032, at *2 (W.D. Mich. Feb. 13, 2001); *Cleveland Indians Baseball Co. v. U.S.*, 1998 WL 180623, at *4 (N.D. Ohio Jan. 28, 1998)(holding that waiver of untimely objections "applies with equal force to all objections" even to "those based on attorney-client privilege or attorney work product"); *Zaremba v. Federal Ins. Co.* (*In re Continental Cap. Inv. Servs., Inc.)*, 2011 WL 4624678, at *4 (Bankr. N.D. Ohio Sept. 30, 2011).

[14] *Peat, Marwick, Mitchell & Co. v. West*, 748 F.2d 540, 542 (10th Cir. 1984)("Failure to [timely object] is not excused because the document is later shown to be one which would have been privileged if a timely showing had been made."); *Davis v. Romney*, 53 F.R.D. 247, 248 (E.D. Pa. 1971)("Regardless of how outrageous or how embarrassing the questions may be, the defendants have long since lost their opportunity to object to the questions. If they feel that the questions are unfair[,] they have no one to blame but themselves for being required to answer them now").

of baseless legal positions, making of false representations, or shouting at the Court will resurrect their right to object.[15]

G. The August 14 Status Conference

On August 14, 2013, the Court held a status conference, at which the Mr. Walton represented that the Respondents' responses to the Requests for Discovery were complete and would be provided. The next status conference was set for 9:30 A.M. on September 4, 2013.

H. The September 4 Status Conference

On September 3, 2013—three weeks after August 14, 2013—the Respondents finally provided what the Respondents claimed were "responses." These "responses" were provided near the end of business or after business hours on September 3, only hours ahead of the 9:30 A.M. conference the next day. Once again, the Respondents demonstrated bad faith in their litigation.

At the September 4 hearing, the Respondents offered no excuse for failing to respond until the eleventh hour, despite having represented weeks earlier that they were ready to respond. Mr. Walton did represent that "we did email them all to him, all of the documents and the answer to the interrogatories." However, because the documents and interrogatories to which Mr. Walton was referring had been sent the night before, opposing counsel had not had the opportunity to review them. The Court continued the conference to September 11, 2013, to allow opposing counsel an opportunity to review the responses. The Court even offered to accommodate Mr. Walton's trial schedule in other courts, and instructed the parties to advise if they would need a further continuance.

I. The September 11 Status Conference

At the September 11 status conference, it was established that the September 3 "responses" were grossly insufficient. The Respondents' and Mr.

[15] This waiver would not have prevented the Respondents from timely objecting to extraneous or new issues. The Respondents remained free to object to new discovery demands outside the scope of the Requests for Discovery. In addition, the Court indicated that it would consider ordering production in a tiered format, to help ensure that production was not overly broad—despite the fact that the Respondents have waived the right to object based on breadth.

Walton's August 14 representation that the "responses" were complete had been misleading. Their "responses" amounted to a bad faith effort to respond. The "responses" were mostly refusals to respond based on untimely, non-specific objections to scope, vagueness, relevancy, work product or harassment. As the Debtor's counsel summarized: "I asked for a lot of things; got nothing."

During the hearing, Mr. Walton belligerently argued with the Court, insisting that he had not represented at the August 14 status conference that the responses would not include objections. Regardless, however, the Respondents had waived their objections by failing to timely raise them, and thus had no right to rely on any objection in declining to answer or produce.[16]

Mr. Walton used the September 11 status conference to attempt obfuscation, create distraction, and misplace blame:[17]

- When addressing why Mr. Robinson had not produced the tax and financial information, Mr. Walton announced that, "I don't think [the Debtor's counsel is] entitled to [Respondent Robinson's] tax returns."[18] He appeared to be drawing a distinction between the Respondents for purposes of that production. However, Mr. Robinson represented that Critique Services L.L.C is his d/b/a. Therefore, he could not later turn around and claim that he is distinct from Critique Services L.L.C. Moreover, even if such a distinction could have been drawn, the objection

[16] Mo. Prof. R. 4-3.4(d) provides that a lawyer shall not "in pretrial procedure . . . fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

[17] Mo. Prof. R. 4-3.5(d) provides that a lawyer shall not "engage in conduct intended to disrupt a tribunal." Comment (4) explains this obligation: "[r]efraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. . . . An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics."

[18] Mr. Walton made similar arguments in support of the untimely objection based on "trade secrets." But again, this objection was waived and, to any degree, merely declaring that trade secrets exist, then baselessly accusing the Debtor's counsel of trying to steal them through discovery, is not evidence of either point.

had not been timely raised and therefore had been waived. And, even if Mr. Robinson is distinct from Critique Services L.L.C., that distinction does not excuse the non-production of the requested documents. Critique Services L.L.C. still must produce the documents through an agent.

- Mr. Walton blamed his clients for the failure to respond, accusing them of failing to give him the discovery—despite the fact that Mr. Walton had represented three weeks earlier that the responses were complete and were ready to be provided.
- Mr. Walton accused the Debtor of perjury. He stated that he had looked at the docket sheets posted downstairs (presumably referring to the criminal docket sheets publicly posted outside the U.S. District Court), and saw people prosecuted for perjury. This was a bad faith argument offered in explanation for his clients' refusal to meet their discovery obligations. Whether the Debtor committed perjury was irrelevant to the issue of whether the Respondents were obligated to respond in full to the Requests for Discovery. Mr. Walton was simply trying to bully the Debtor with the suggestion of a criminal prosecution if she continued to proceed on her Motion to Disgorge.
- Mr. Walton accused the Court of being "interested in dumping on Mr. Robinson," trying to blame the Court for the Respondents' situation, despite the fact that the Respondents' predicament was caused by their decision not to timely participate in the discovery process—a decision that was made while they were represented by Mr. Walton.
- When the Court pointed out to Mr. Walton that his clients had failed to properly and fully respond to the Requests for Discovery, Mr. Walton argued with the Court, being either unwilling or incapable of accepting that the Respondents had not met their legal obligation to respond.
- Mr. Walton was obnoxious and disrespectful in his tone and demeanor. He accused the Court of ignoring his (irrelevant) accusations of perjury and his unpersuasive arguments. He insisted that he was correct about procedural issues when he was not, implying that the Court did not know

the rules of procedure, and claiming (wrongly—twice), "that's what the rules say!" but citing to no rule. This self-attributed expertise on procedure was ironic, given that it had been Mr. Walton who had filed the frivolous Motions to Quash and ignored the deadline for objecting to discovery.

- Mr. Walton insisted that the Debtor's counsel must "send me a pre-motion" before filing a motion to compel and seeking sanctions, because "[t]hat's the rules I looked at." The Court pointed out to Mr. Walton that the Debtor was not seeking sanctions under Rule 11, the rule that prohibits a party from filing a motion for sanctions thereunder without first providing to the other party an opportunity to withdraw or correct the challenged document.

Despite Mr. Walton's bellicose presentation, misrepresentation of the facts, and unsound legal arguments, the Court declined to consider imposing sanctions without a motion. Moreover, the Court advised that it would entertain a motion for a protective order, if the Respondents would file one. The Court continued the status conference to 9:00 A.M. on September 18, 2013.

J. The September 18 Status Conference and the Order Compelling Discovery

On September 16, 2013, the Respondents supplemented their responses. Later on September 16, 2013, the Debtor filed the Motion to Compel Discovery (the "Motion to Compel") [Docket No. 63], detailing the many problems and insufficiencies with the "responses." Attached to the Motion to Compel were numerous exhibits, including a table captioned "Itemization of Time Spent in Preparation for Motion to Compel Discovery" (the "Exhibit 7 Fee Statement"), submitted in support of the Debtor's request for relief of attorney's fees as permitted under Rule 37. The Exhibit 7 Fee Statement set forth that the Debtor's lead counsel and co-counsel spent 8.1 hours in preparation for the Motion to Compel and gave the customary billable rates for those attorneys.

The Motion to Compel was set concurrently with the September 18 status conference.[19] At 8:24 A.M. on September 18, 2013, the Respondents filed a

[19] The Debtor also filed a Motion to Expedite [Docket No. 64] related to the setting of the Motion to Compel Discovery. At the September 18 hearing, the Respondent orally consented to the request for an expedited setting.

Response [Docket No. 65] to the Motion to Compel. Despite the Court's invitation to the Respondents to file a motion for a protective order, the Respondents did not file a motion for a protective order.

At the September 18 status conference and hearing, it was established that the Respondents remained willfully noncompliant with their discovery obligations. Emails submitted by the Respondents and the Debtor showed that the Debtor's counsel repeatedly sought compliance with the discovery requests, and that Mr. Walton either ignored the requests or insufficiently responded. Moreover, Mr. Walton advised in an email to the Debtor's counsel that the Respondents would not produce anything else without an order compelling discovery. This was a bad faith response to a legal obligation to respond to *uncontested discovery requests*, and an effort to vexatiously litigate an otherwise straightforward matter. The Respondents also continued to assert waived objections,[20] and many of their "responses" to interrogatories were so vague or incomplete that they were non-responsive.

For example:

- When asked to describe "each oral communication between [the Debtor] and you or [a person who has worked for you, or with you, or with whom you have been professionally associated]," the Respondents responded that there had been "the usual and customary attorney client interview as to her bankruptcy filing the specific words of which the respondent has no present recollection other than to set forth in general those areas of discussion that are usual and customary in providing advice and counsel to the movant as to the filing of a Chapter 7 bankruptcy case." Aside from being vacuous, non-specific nonsense, this response appears to refer to the personal memory of Mr. Robinson only. It does not offer a representation of Critique Services L.L.C.'s institutional memory. However, Mr. Robinson is responsible for not merely his own personal memory, but

[20] A motion to compel discovery does not present a chance to raise, for the first time, objections to the requests for discovery.

also the memory of Critique Services L.L.C., his purported d/b/a. And, even if Critique Services L.L.C. is not his d/b/a, Critique Services L.L.C. is still required to respond through an authorized agent. The Respondents could not avoid responding based on claims of personal ignorance related to Critique Services L.L.C. Moreover, the "usual and customary" description was deliberately vague. It revealed nothing about the content of the discussion, other than the fact that Mr. Robinson allegedly provided whatever he happens to subjectively believe to be "usual and customary." It provided no specifics, such as the date or the length of the conversation, or any other relevant details.

- When asked to describe each complaint filed against the Respondents for a violation of Rule 4 of the Missouri Supreme Court's Rules of Professional Conduct, the Respondents refused. (This interrogatory specifically excluded from its request any information about the complainant or any attorney-client privileged information.) Instead of properly responding, the Respondents untimely raised objections based on breadth (without alleging what made the request overly broad), confidentiality (without citing with specificity any ground for such confidentiality), and privilege (despite the interrogatory excluding privileged information). Then, after raising these untimely, non-specific objections, the Respondents also responded by telling the Debtor to go get the information herself from the OCDC.
- Much of the requested material related to tax and financial information still was not provided, with the Respondents continuing to baselessly insist that the Debtor was not entitled to it.
- A document labeled "Case notes" was provided, but it appeared to be pulled from thin air, with no indication as to who prepared it or when.
- Other production was illegible, with key handwritten notes obscured.

These responses are evidence of the Respondents' and Mr. Walton's bad faith in "responding" to the Requests for Discovery.

Oral arguments did not help matters for the Respondents, as Mr. Walton chose to conduct a sideshow of irrelevancy and mischaracterization:

- Mr. Walton offered no excuse for the non-responsiveness. Instead, he insisted that the discovery requests were objectionable. When the Court again, and pointedly, told Mr. Walton that full response to the Requests for Discovery was required because the Respondents had waived their right to object, he simply proclaimed, "I haven't waived anything!"
- Mr. Walton argued that it was the Debtor who was proceeding in bad faith—apparently because the Debtor had the nerve to point out the defectiveness of the Respondents' non-responsive "responses." Mr. Walton baselessly insisted that the Debtor was required to have notified him of the illegibility before she was permitted to raise the issue to the Court. However, it was *the Respondents* who chose not to provide the documents timely; it was *the Respondents* who waited until shortly before the status conference to provide the documents; it was *the Respondents* who failed to review their own discovery responses; it was *the Respondents* who provided illegible documents; it was *the Respondents* who provided substantively non-responsive "responses"; and it was *the Respondents* who provided their supplemental "responses" so late that there was not time for the Debtor to contact Mr. Walton to ask for the documents to be re-submitted. It was the Respondents who were the perpetrators of bad faith, not the victims of it.
- Mr. Walton mischaracterized the requests made in the interrogatories, falsely alleging that the interrogatories did not request certain information that they clearly did. After he got caught in his lie when the Debtor's counsel read the interrogatory into the record, Mr. Walton dismissively asserted that, as far as he was concerned, the interrogatory was vague. That assertion, aside from being untrue, was irrelevant since the Respondents waived their objections, including an objection to vagueness.
- Mr. Walton repeatedly yelled at the Court, bellowing over the Judge and interrupting him, to insist that the Court must produce a written order on

the Motion to Compel Discovery for him, outlining specifically for him what discovery had to be made—as if the Court owed to him a how-to manual on responding to uncontested discovery requests.

- Mr. Walton accused the Court of trying to "trap him" to explain how Mr. Walton and the Respondents ended up in their situation in this matter.
- When the Court advised Mr. Walton that it did not appreciate his remarks at the last hearing that implied that the Court did not know the law, Mr. Walton denied that he made any such remarks. He asserted, "I didn't say you weren't an expert…" then, in a rare moment of self-reflection, asked to no one in particular, "…did I?" But Mr. Walton quickly recovered to his predictable temerity, concluding that he could not have made such a representation because, "I am not a fool!" The Court chose not to comment on this unsolicited self-assessment.

By the end of the hearing, it was established that the Respondents: participated in bad faith and abused the judicial process at nearly every step of discovery; launched personal attacks on the Court; made irrelevant factual allegations to disparage the opposing party; made misleading representations as to their intent to properly respond; asserted frivolous legal positions; relied on waived objections; knowingly submitted incomplete, insufficient responses to the Requests for Discovery; and were in willful violation of their discovery obligations, thereby deliberately depriving the Debtor of the discovery to which she was entitled.[21]

From the bench, the Court directed the Respondents to respond to the Requests for Discovery within seven days, and gave notice that, if they did not, they would face sanctions of $1,000.00 a day for each day of noncompliance after those seven days. On September 20, 2013, the Court entered an order consistent with its bench ruling (the "Order Compelling Discovery")[Docket No.

[21] Mo. Prof. R. 4-3.4(a) provides that a lawyer shall not "unlawfully obstruct another party's access to evidence . . . [and a] lawyer shall not counsel or assist another person to do any such act."

68].[22] In the Order Compelling Discovery, the Court allowed the Respondents to produce any financial information under seal (despite the fact that the Respondents never filed a motion for protective order). The Court did not include "trade secrets" information in that protection, but it also did not foreclose the possibility of permitting their protection—if the Respondents would ever offer any evidence (other than their self-serving beliefs and unsupported pronouncements) of the existence of any trade secrets.[23] The Court ordered that the Respondents pay $1,710.00 of the Debtor's attorney's fees incurred in prosecuting the Motion to Compel Discovery.

> Also, at the end the Order Compelling Discovery, the Court provided that:
>
> > the Court is exhausted of [Mr. Walton's] unprofessional and disrespectful demeanor in the courtroom, which appears to be part of an ill-conceived strategy of delay and obfuscation. At status conferences over the course of the past month, counsel for Mr. Robinson has been belligerent, bombastic, bellicose and prevaricating (often complemented with being misguided, misleading, or simply incorrect). In any future court proceeding in this matter, if Mr. Walton so much as raises his voice above the level necessary for civil discourse and argument, or employs a disrespectful tone with the Court, other counsel, or any party, for any reason, such behavior will be immediately sanctionable in the amount of $100.00 for each such incident, charged to Mr. Walton personally.

And to make sure that the often direction-deaf Mr. Walton got the message, the Court stated: "In the future, Mr. Walton should bring to this Court either a professional, respectful demeanor or his checkbook."

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[22] Even though a hearing was not required before sanctions were imposed pursuant to the Order Compelling Discovery, *see Comiskey v. JFTJ Corp.,* 989 F.2d 1007, 1012 (8th Cir. 1993), the Court nevertheless held the October 1 status conference before imposing sanctions.

[23] As it turned out, even if the Court had allowed "trade secrets" to be produced under seal, the Respondents would not have been satisfied. As was later made clear in the Motion to Set Aside the Order Compelling Discovery, what the Respondents really wanted was not the right to submit their alleged "trade secrets" under protection, but to be shielded from producing them. This request was simply an untimely, backdoor objection to the request for production.

K. The Ten Days Following the Entry of the Order Compelling Discovery

Rather than complying with the Order Compelling Discovery, the Respondents spent the next ten days filing a slew of motions,[24] including:

- A Motion to Recuse (the "First Motion to Recuse") [Docket No. 69], which contained false and misleading allegations.
- A Motion for Judgment on the Pleadings [Docket No. 70], which amounted to an attack on the Debtor with allegations that she had committed bankruptcy crimes while the Respondents represented her.
- A Motion to Set Aside the Order Compelling Discovery and a Memorandum in Support [Docket No. 74], which was an attempt to litigate for the first time the merits of waived objections and to complain that the Court did not enter a sufficient protective order. The Respondents also threw in a baseless personal attack against opposing counsel.[25]
- A Motion to Dismiss [Docket No. 77].
- An Amended Motion to Dismiss [Docket No. 78], a Brief [Docket No. 79], and an Amended Brief in Support of the Amended Motion to Dismiss [Docket No. 80], which contained frivolous arguments related to personal jurisdiction and baseless allegations and mischaraterizations of the actions of the Court and the Clerk's Office staff in support of the subject matter jurisdiction argument.

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[24] Mo. Prof. R. 4-3.2 provides that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interest of his client." Comment (1) provides that "[t]he question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client."

[25] The Respondents alleged that the discovery "suggests something more nefarious" by the Debtor's counsel, accusing him of trying to obtain the Respondents' unspecified trade secrets, to "use for his own design." However, there was no evidence that the Debtor's counsel is a diabolical puppeteer with evil plans of corporate espionage. And, after watching the Respondents in action in this matter, it defies belief that the Debtor's counsel—who has shown himself in this matter to be a capable, honest lawyer—could possibly want to adopt for himself whatever "trade secrets" the Respondents claim to have.

Most of these motions and briefs employed verbosity over quality, and relied on unpersuasive argument and unsupported allegations. To properly adjudicate the matters but without adding to the delay, the Court and its staff worked for more than a week, producing orders that were as thorough and detailed as necessary [Docket Nos. 71, 72, 81, & 82]. The Court also entered a notice [Docket No. 73] of an October 1 status conference.

L. The October 1 Status Conference

At the October 1 status conference, it was established that no discovery had been made since the entry of the Order Compelling Discovery. Further, Mr. Walton advised that the Respondents did not intend to comply with the Order Compelling Discovery, but would seek leave to appeal and file a petition for writ of mandamus. From the bench, the Court continued the conference for a week.

M. The First Order Imposing Sanctions

Following the status conference, the Court sua sponte reconsidered the continuation in the bench ruling, given that the Respondents advised that the continuance would produce no additional discovery. Deciding that there was no point in going through the charade of another week without discovery compliance, on October 2, 2013, the Court entered an order imposing sanctions (the "First Order Imposing Sanctions") [Docket No. 84]. Consistent with its previous notice, the Court sanctioned the Respondents $1,000.00 a day for each day of noncompliance going forward thereafter, and gave notice that, after thirty days, the Court may impose further sanctions. The Court also provided that sanctions would not accrue on any day that there was a pending request for leave to appeal or an appeal, to protect the Respondents from being effectively punished for their appeal efforts.

N. The Motion for Leave to Appeal

Also on October 2, 2013, the Respondents filed in this Court a Notice of Appeal [Docket No. 85], with a copy of the Motion for Leave to Appeal Interlocutory Orders (the "Motion to Leave to Appeal") attached. In the Motion for Leave to Appeal, the Respondents sought leave of the Bankruptcy Appellate Panel (the "B.A.P.") to appeal three interlocutory orders: the Order Compelling

Discovery; the Order Denying the First Motion to Recuse; and the Order Denying the Motion to Dismiss. Later on October 2, 2013, the Respondents filed a Motion for Stay Pending Appeal [Docket No. 87], then an Amended Motion for Stay Pending Appeal [Docket No. 88]. On October 4, 2013, the Court entered an Order Denying the Amended Motion for Stay Pending Appeal [Docket No. 93]. On October 8, 2013, the B.A.P. entered a Judgment denying the Motion for Leave to Appeal [Docket No. 95].[26] On October 9, 2013, the sanctions imposed in the Order Compelling Discovery began accruing.

O. The Petition for Writ of Mandamus

On November 1, 2013, the Respondents filed a Petition for Writ of Mandamus with the U.S. District Court for the Eastern District of Missouri (the "U.S. District Court"), initiating Case No. 4:13-cv-02214, and suing the Judge[27] in his official capacity for the Court's actions in this matter. On December 10, 2013, the U.S. District Court dismissed the petition for writ of mandamus.

P. The Second Order Imposing Sanctions

Between October 9, 2013 and November 12, 2013, the Respondents continued to refuse to comply with the Order Compelling Discovery, thereby incurring $35,000.00 in sanctions. On November 13, 2013, the Court entered its Second Order Imposing Sanctions [Docket No. 100]. In that order, the Court stopped the accrual of the daily monetary sanctions and imposed two new sanctions: (i) a finding of contempt pursuant to Rule 37(b)(2)(A)(vii), and (ii) the making of the accrued sanctions due for payment.[28]

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[26] The B.A.P. Judgment was docketed in the Main Case on October 9, 2013.

[27] This Memorandum Opinion and the accompanying Judgment are issued by the office that the Judge occupies—that is, by the bench of the Court—and not by the Judge personally. A court, and the person who occupies the bench of the court, are distinct. To reflect this distinction, the Court employs the third-person voice when referring to facts about the Judge.

[28] In addition, the Court revoked Mr. Robinson's electronic and drop-box filing privileges. The Court required that Mr. Robinson file any pleadings on behalf of himself or his clients in person, during business hours, at the desk at the Clerk's Office, until such time as the sanctions are paid.

The sanctions in this second round were not imposed for the purpose of inducing discovery. By then, the Court had no hope that discovery compliance could be induced. Rather, they were imposed to punish the willful refusal to obey the Order Compelling Discovery and to deter others from similar conduct. However, despite the fact that the Court had no realistic expectation that discovery would be made, it still did not impose the most severe sanctions. For example, it did not strike the Response, deem the Debtor's allegations to be admitted, or enter a default judgment. The Motion to Disgorge remained pending and, thus, the Respondents remained obligated in the discovery process. As such, the opportunity to purge by compliance with their discovery obligations remained available. The Court also gave notice that additional sanctions might be imposed for the continued refusal to satisfy their discovery obligations.

Q. The Notice Regarding the Second Order Imposing Sanctions

On November 27, 2013, the Respondents filed a Notice of Appeal [Docket No. 107], giving notice that they were seeking to appeal the Second Order Imposing Sanctions to the U.S. District Court. In that appeal, they alleged that the Second Order Imposing Sanctions was a final order for criminal sanctions.

However, by the terms of the Second Order Imposing Sanctions, discovery remained due, and thus purgation remained available, thereby making the sanctions interim and civil, and not final and criminal. On December 2, 2014, the Court entered a Notice to the Respondents Regarding Sanctions Imposed [Docket No. 113], providing a clear purgation term—just in case the Respondents had a sincerely held misunderstanding that they could not purge the sanctions. In the December 2 Notice, the Court stated in unequivocal terms: "should the Respondents have a change of heart and decide to properly participate in discovery, the Court would embrace that decision as evidence that sanctions are no longer needed. The ball is in the Respondents' court."

R. The Alternate Choice for Satisfying the Sanctions

Over the course of the litigation of the Motion to Disgorge, the Respondents went from responding to a relatively small-dollars claim for disgorgement to finding themselves at the bottom of a $35,000.00 sanctions hole.

Moreover, the Respondents could not climb out of that hole simply by settling with the Debtor. The *Court's* sanctions for violating its order could not be negotiated-away through a settlement of the *parties'* disputes.[29] By January 2014, the Respondents' sanctions hole was in jeopardy of becoming their grave.

The Court sent a rope down the hole to the Respondents. On or about January 23, 2014, the Court instructed its law clerk to advise the chapter 7 trustee, a highly respected attorney who was already in communication with the parties, that the Respondents would be given the choice of satisfying their sanctions by an alternate, nonmonetary method. The Court conveyed this choice through the chapter 7 trustee, who was not a party to the sanctions, to avoid yet-again memorializing on the record the Respondents' bad acts and bringing them into even further public disgrace.

This alternate choice required that the Respondents: file under seal certain information regarding the ownership structure and employees of Critique Services L.L.C. (to clarify how the Respondents are related); file a letter of apology for their contempt and admit that they made, through their attorney, false representations; agree to attend continuing legal education; and agree not to be represented again by, or serve as co-counsel with, Mr. Walton before this Court (to ensure that the improprieties that occurred in this matter would not be repeated). However, the Court did not modify the sanctions terms in the Second Order Imposing Sanctions. As such, the Respondents remained free to satisfy

[29] Mr. Walton claimed in the Third Motion to Recuse—in an effort to argue that the alternate choice showed bias—that the settlement negotiations involved the issue of the Court's sanctions. This is false. As the Court warned the parties in its February 13 Notice, while the parties were free to seek to settle disputes between them, the sanctions were a debt owed to the Court. They were not the parties' currency to spend. This meant that, unless discovery was made, the sanctions would be imposed on a final basis, regardless of any settlement between the parties. The sanctionable behavior had already occurred; settling the dispute between the parties cannot wipe clean the unpurged sanctions or deprive the Court of jurisdiction to impose those sanctions. The offer of a choice to the Respondents as to how they could satisfy their sanctions was unrelated to how the Respondents might settle their disputes with the Debtor.

the sanctions by payment, as set forth in the Second Order Imposing Sanctions, and to continue employing Mr. Walton.

The chapter 7 trustee conveyed this choice to the Respondents and Mr. Walton. The Respondents did not perform pursuant to this alternate choice. They also chose not to pay the sanctions. Instead, they chose to continue in their contempt, choosing also to continue to employ Mr. Walton as their counsel.

S. The Settlement Negotiations

On December 9, 2013, the Debtor filed a complaint [Docket No. 118] thereby commencing an adversary proceeding (the "Adversary Proceeding No. 13-4284") against the Respondents and other individuals currently or formerly associated with Critique Services L.L.C., requesting money damages and injunctive relief under §§ 110, 526, 527, & 528. Adversary Proceeding No. 13-4284 was assigned by "the wheel" to another U.S. Bankruptcy Judge of the District (the "Originally Assigned Judge"). On December 12, 2013, the Originally Assigned Judge issued a show-cause order, directing the defendants in Adversary Proceeding No. 13-4284 to show cause as to why the matter should not be transferred to the docket of the undersigned Judge, consistent with the practice of this Court when matters in different proceedings involve the same or overlapping issues of law and fact. On January 13, 2014, the Originally Assigned Judge held a hearing on the show-cause order, at which Mr. Walton (representing most of the defendants, including the Respondents) and Mr. Ross Briggs (representing himself, an attorney associated with Critique Services L.L.C. who also was a defendant in the Adversary Proceeding, and representing his co-defendant, Doreatha Jefferson) appeared and made argument. Instead of addressing the issue of whether transfer was proper based on the issues of facts and law raised in the Adversary Proceeding No. 13-4284 complaint, the defendants argued against transfer based on the fact that they planned to file a motion to recuse if the matter would be transferred. On January 21, 2014, the Originally Assigned Judge issued an order determining that the defendants had failed to show cause as to why the matter should not be transferred, and ordered the transfer.

Shortly after the transfer, the undersigned Judge's Chambers was notified by the chapter 7 trustee in the Main Case that the parties to the Motion to Disgorge and Adversary Proceeding No. 13-4284 planned settlement negotiations. As a courtesy, the Court made available, at no cost, courthouse conference rooms on January 28, 2014, for these negotiations.

The Respondents did not request relief from the Order Compelling Discovery or an abatement of the Motion to Disgorge while settlement negotiations were undertaken. As such, the settlement negotiations had no impact on the effectiveness of the Order Compelling Discovery. The Respondents chose to continue to refuse to meet their discovery obligations.

In the six weeks that followed the January 28 settlement negotiations, no certificate of status regarding settlement negotiations or a motion to approve settlement was filed. On March 4, 2014, the Court entered an Order Regarding Status in the Main Case and Adversary Proceeding [Docket No. 128], directing the Debtor to file a certificate of status or a motion to approve settlement by March 7, 2014. On March 6, 2014, the Debtor filed a Motion for an Extension of Time [Docket No. 129], representing that the parties were close to settlement. On March 7, 2014, the Court granted the motion [Docket No. 131], giving the Debtor an additional week to comply.

On March 14, 2014, the Debtor filed a Declaration [Docket No. 132], advising that the parties were close to finalizing a settlement. The Debtor did not request another extension of the deadline. However, on March 22, 2014, the Debtor filed an Amended Declaration [Docket No. 133], advising that the settlement efforts had collapsed. Thereafter, the Court prepared to proceed on the Motion to Disgorge and any sanctions related to the litigation of the motion.

T. The Events Between April 3, 2014 and April 28, 2014

April 3 Notices of Intent to Impose Sanctions. On April 3, 2014, the Court entered a Notice Regarding Sanctions [Docket No. 134], giving notice that the Court was considering imposing further and final sanctions against the Respondents for their refusal to meet their discovery obligations, and giving them until April 11, 2014 to fulfill those obligations. Also on April 3, 2014, the Court

entered a Notice Regarding Sanctions Against Mr. Elbert Walton [Docket No. 136], giving notice that the Court was considering imposing sanctions against Mr. Walton, and giving him until April 11, 2014 to file a Brief in Response.

Affidavit of Attorney's Fees. On April 7, 2014, the Court entered an Order Directing the Debtor's Counsel to File an Affidavit Attesting to Attorney's Fees, Costs and Expenses [Docket No. 139], giving notice that "it is considering the imposition of additional sanctions against the Respondents . . . and the imposition of sanctions against the Respondents' counsel, Mr. Elbert Walton," and directed the Debtor's counsel to submit an affidavit in support of his fees, costs, and expenses by April 11, 2014. Since the Debtor's counsel was serving pro bono, the Court instructed that it "expects [counsel] to calculate his hourly fees for purposes here as he would calculate such fee in a comparable for-fee representation. He should not charge more than his regular hourly rate, and he should not discount his rate." The Court gave the Respondents and Mr. Walton until April 18, 2014, to respond to the attestations in such affidavit.

On April 10, 2014, the Debtor's counsel filed a Motion to Extend Time to File the Affidavit. On April 22, 2014, the Court entered an order granting the extension [Docket No. 166], giving the Debtor's counsel until April 23, 2014 to file the affidavit. On April 23, 2014, the Debtor's counsel filed two affidavits, one for the Debtor's lead counsel and one for co-counsel (the "Fee Affidavits") [Docket Nos. 171 & 172].[30] Neither the Respondents nor Mr. Walton requested an extension of time to respond or filed a response to the Fee Affidavits at any point for the Court to consider. The attestations in the Fee Affidavits are uncontested.

[30] The 8.1 hours of time set forth in the Exhibit 7 Fee Statement (which had been filed in support of the Motion to Compel Discovery) were included in the Fee Affidavits, except for .9 of an hour for co-counsel for services rendered on September 13, 2013 and 16, 2013. Co-counsel's Fee Affidavit was not duplicative of any time previously reported in the Exhibit 7 Fee Statement. His Fee Affidavit included time from September 17, 2013 forward.

Mr. Walton's Status as Counsel. On April 10, 2014, Mr. Walton filed a Motion to Withdraw as Attorney [Docket No. 141].[31] Later that day, the Court entered an order [Docket No. 143] denying such motion because it was untimely and appeared to be another attempt to create delay. In addition, the Court construed it to be a backdoor effort by Mr. Walton to avoid the Court's jurisdiction over him personally. However, in denying the motion, the Court permitted the renewal of the withdrawal request after the pending matters were concluded.

Also on April 10, 2014, Mr. Robinson filed a "Notice of Dismissal" [Docket No. 142], in which he purported that he had "dismissed" Mr. Walton as his counsel. The Notice of Dismissal was filed by Mr. Robinson only—this time Mr. Robinson claimed "Critique Services" (the fictional name) was his d/b/a, and not the other Respondent, Critique Services L.LC. Nothing in the Notice of Dismissal represented that Critique Services L.L.C.—to the degree that it is a separate entity from Mr. Robinson—had fired Mr. Walton. To any degree, even if Mr. Robinson's claim that he had dismissed Mr. Walton as counsel for himself was true (no evidentiary hearing was requested to establish this claim), Mr. Robinson still could not release Mr. Walton from his Notice of Appearance. L.B.R. 2093-A requires that withdrawal of counsel from a notice of appearance be done by motion. On April 11, 2014, the Court entered an order [Docket No. 147] striking the Notice of Dismissal as ineffective.

At 2:40 P.M. on April 11, 2014, Mr. Walton filed a Motion to Substitute Attorney [Docket 151], trying again to get out of the matter. This time he claimed that he had a conflict with the Respondents. He pleaded no facts in support of that contention—just his word. Ordinarily, the word of an attorney might be sufficient to establish that withdrawal is proper. However, based on Mr. Walton's making false and misleading statements over the course of this matter, his word meant little. At 3:50 P.M. on April 11, 2014, the Court entered an order [Docket

[31] On the docket sheet, Mr. Walton captioned this motion as "Agreed," presumably meaning that the motion was either jointly made with Mr. Robinson and Critique Services L.L.C., or that Mr. Robinson and Critique Services L.L.C. consented to the relief request. However, neither Mr. Robinson nor Critique Services L.L.C. was a signatory to the motion.

No. 155] denying the motion, but doing so without prejudice to Mr. Walton renewing the request upon the pleading of facts in support and the setting of the matter for an evidentiary hearing. Thereafter, Mr. Walton continued to file papers on behalf of Mr. Robinson and Critique Services L.L.C., and did not renew his withdrawal request.

Responses to the April 3 Notices of Intent to Impose Sanctions. At 2:16 P.M. on April 11, 2014, Mr. Robinson filed a Response [Docket No. 149] on behalf of himself. Mr. Robinson did not substantively address the issue of whether sanctions should be imposed against him. Instead, he advised that discovery had not been made because the Debtor's counsel allegedly told him he did not have to participate in the discovery process. He requested an extension of time to participate in the discovery process. This request was not a credible representation of the Respondents' intent to participate in good faith in the discovery process. The Respondents had not made even the merest gesture of producing discovery in good faith. This latest request for an extension of time in which to participate in the discovery was nothing more than yet-another stall tactic, in an attempt to delay the imposition of sanctions. The Court had no reason to believe that, if a formal extension was granted, the time would be used to provide the discovery. At 3:48 P.M. on April 11, 2014, the Court entered an order [Docket No. 154] denying the Response as to its request for a formal extension of time. However, even with the denial of a formal extension, the Respondents still were compelled to participate in the discovery process and still were free to meet their discovery obligations until the sanctions were entered on the final basis. At any time, between then and today, the Respondents could have fulfilled their discovery obligations. They never did. They never even tried.

Second Motion to Recuse. At 3:47 P.M. on April 11, 2014, Mr. Walton filed on behalf of himself a Motion to Recuse (the "Second Motion to Recuse") [Docket No. 153]. Mr. Walton did not request a hearing on his motion. None of the allegations supported disqualification. On April 14, 2014, the Court entered an Order Denying the Second Motion to Recuse [Docket No. 163]. In that order, the Court reiterated that, if the Respondents wanted to meet their discovery

obligations, they needed to do it soon, before the entry of the disposition on the Motion to Disgorge and the entry of an order for sanctions on a final basis.

Filing of the State Court Action by Mr. Walton Against the Judge in his Personal Capacity. On April 14, 2014, Mr. Walton filed a civil suit in the Circuit Court for the City of St. Louis (the "State Court Action"), on behalf of himself, against the Judge in his personal capacity, alleging claims related to the Court's offer to the Respondents of an alternate choice for satisfying the sanctions the Court had imposed. On May 2, 2014, the State Court Action was removed to the U.S. District Court.

The April 21 Notice to the Respondents and Mr. Walton. On April 21, 2014, the Court entered a Notice to the Respondents and Mr. Walton [Docket No. 165], giving notice that the Court intended to impose sanctions against them for the making of false statements about the Judge's service in governmental employment as the UST. The Court gave the Respondents and Mr. Walton until April 28, 2014 to file a joint response or separate responses.

The Third Motion to Recuse. On April 23, 2014, Mr. Walton, on behalf of himself and the Respondents, filed yet-another Motion to Recuse (the "Third Motion to Recuse") [Docket No. 168]. They did not request a hearing. This time, the requested recusal was made pursuant to 28 U.S.C. § 144 (with a renewed request for disqualification under § 455 thrown in). However, the law is well-settled that § 144 does not apply to bankruptcy judges. Moreover, even if § 144 applied, the Respondents and Mr. Walton failed to provide a "sufficient affidavit" as required. In addition, no ground for disqualification under § 455 was shown. On April 23, 2014, the Court entered its Order Denying the Third Motion to Recuse [Docket No. 170]. In the order, the Court also stressed to the Respondents and Mr. Walton the importance of responding to the April 21 Notice by the deadline, warning that the Court was considering monetary and nonmonetary sanctions, including the revocation of privileges before the Court.

The Responses to the April 21 Notices. On April 28, 2014, Mr. Walton and Mr. Robinson each filed a Response to the April 21 Notice [Docket Nos. 178 & 179]. The Responses offered no cause upon which sanctions should not be

imposed and no reason to mitigate the sanctions. They did not address the degree, nature or amount of sanctions. They did not request a hearing on the issue of whether sanctions should be imposed.

The Motion to Compromise Controversy. In midst of all this, on April 3, 2014, the Debtor filed in Adversary Proceeding No. 13-4284 a Motion to Submit Settlement Agreement Under Seal [Adv. Proc. No. 13-4284 Docket No. 23]. The Court entered an order granting the request [Adv. Proc. No. 13-4284 Docket No. 24], based on the representation that information in the proposed settlement agreement was of a sufficiently sensitive nature to warrant sealing.

On April 10, 2014, the Debtor filed in the Main Case a Motion to Compromise Controversy [Docket No. 144] and a proposed settlement agreement (the "Settlement") [Docket No. 152], which was filed under seal. She also filed a "Notice" [Docket No. 146], in which she advised the Court that she would no longer accept discovery because of the filing of the Motion to Compromise Controversy. On April 11, 2014, the Court entered an Order Directing the Debtor to Accept Discovery, Should the Respondents Attempt to Make Discovery [Docket No. 148]. In that Order, the Court rejected the implied contention that the Debtor had the authority to decline to accept discovery if it were offered. While the Court had no naïve hope that the Respondents would meet their discovery obligations at that point, given the severity of the sanctions that would be imposed, it was proper to make clear that the Respondents remained free to purge their contempt. At 2:19 P.M. on April 11, 2014, the Debtor filed another Notice [Docket No. 150], advising that she would accept discovery, if it were offered. On April 12, 2014, the Debtor filed a Notice [Docket No. 157], advising the Court that she had received no additional discovery.

On April 28, 2014, the Court entered an order [Docket No. 177] denying the Motion to Compromise Controversy for failure of standing under Bankruptcy Rule 9019. The denial was without prejudice to re-filing the request within fourteen days, provided that: (i) the request be either filed by or joined by the chapter 7 trustee; (ii) the proposed settlement agreement be publicly available (not under seal); (iii) a copy of the motion and the proposed settlement

agreement be served upon all creditors; and (iv) an objection date and hearing date be noticed. No new motion to compromise controversy was filed within fourteen days, or at any point thereafter.

III. CURRENT STATUS

The Respondents have spent the last eight months in willful, bad faith contemptuous refusal to obey the Order Compelling Discovery. This refusal is without excuse and is an act of contumacious defiance of their legal obligation. The imposition of escalating sanctions has proven ineffective. The Respondents' contempt was facilitated and promoted by Mr. Walton through his strategy of untimeliness, obfuscation, vexatious litigation, misleading representations, false statements, abuse of process and frivolous legal positions. As a result, the holding of an evidentiary hearing on the merits of the Motion to Disgorge at this point would be a mockery of the judicial process, as the Debtor would have to litigate her claim and respond to the defenses without the benefit of the discovery to which she is entitled.

The time has come for the contempt to end and for this matter to move forward. Without the sanctions imposed herein, the Respondents would benefit from their contempt, Mr. Walton would escape any accountability for his role in the contempt, and the Debtor would be denied the opportunity to proceed on the merits of the Motion to Disgorge with the benefit of the discovery to which she is entitled. The Court has the power "to control litigation and to preserve the integrity of the judicial process." *Nick v. Morgan's Food, Inc.*, 270 F.3d 590, 594-95 (8th Cir. 2001). The Court now will employ that power for that purpose. Before addressing the merits of the Motion to Disgorge and imposing sanctions, the Court will examine the issues of subject matter jurisdiction, personal jurisdiction, judicial disqualification, notice and the opportunity to be heard, and the civil nature of the sanctions—issues raised by the Respondents and Mr. Walton during the course of this litigation.

IV. SUBJECT MATTER JURISDICTION

A. Subject Matter Jurisdiction Over Disgorgement Request

Shortly after the Order Compelling Discovery was entered, the Respondents sought dismissal for a lack of subject matter jurisdiction. In its Order Denying the Amended Motion to Dismiss, the Court determined that subject matter jurisdiction existed. In connection with ordering the relief herein, the Court considers anew the issue of subject matter jurisdiction and again determines that subject matter jurisdiction exists.

The bankruptcy court has subject matter jurisdiction over a request for disgorgement of attorney's fees paid to the debtor's attorney. *Walton v. LaBarge (In re Clark)*, 223 F.3d 859, 863 (8th Cir. 2000)(affirming disgorgement of attorney's fees where the attorney overcharged clients, misused the bankruptcy process for his personal gain, and had a non-attorney prepare and file documents and give legal advice).[32] Regardless, the Respondents challenged subject matter jurisdiction by arguing that the re-docketing of the Motion to Disgorge that occurred six months earlier was an error, and that such error destroyed subject matter jurisdiction. They offered no legal authority in support.

The re-docketing was not an error. A court is permitted to re-docket improperly docketed pleadings,[33] and by directing the re-docketing, the Court was satisfying its obligation to construe a pro se pleading liberally. Moreover,

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[32] The "Walton" in *Walton v. LaBarge (In re Clark)* is the same Elbert Walton involved here. The Court does not cite to *Walton v. LaBarge* for the purpose of pointing out Mr. Walton's history of unethical lawyering and sanctionable behavior. It cites to this case because the case happens to be precedential Eighth Circuit authority on the issue of fee disgorgement and attorney sanctions.

[33] *See, e.g., Winston v. Friedline*, 2009 WL 3747225, at *1 (W.D. Pa. Nov. 5, 2009)(re-docketing a pro se complaint as a motion for sanctions, "in fairness" to the nature of the document); *Excell v. Woods*, 2009 WL 3124424, at *3 n.2 (N.D.N.Y. Sept. 29, 2009)(re-docketing a declaration of support of a motion as a reply to a response); *Jones-Coon v. U.S.*, 2006 WL 2358647, at *1 (W.D.N.C. Aug. 14, 2006)(re-docketing a 28 U.S.C. § 2255 motion filed in a civil case as a Federal Rule of Criminal Procedure 35 motion in a criminal case); *Gaud v. Havana Tropical Café*, 2007 WL 2749446, at *1 (D.S.C. Sept. 20, 2007)(re-docketing a motion to deny charges as an answer to the complaint).

even if the re-docketing was an error, it did not deprive the Court of subject matter jurisdiction over the issue of disgorgement. Just as a party cannot create subject matter jurisdiction by stipulating to it where it otherwise does not exist, the Court cannot destroy subject matter jurisdiction by its acts. The Motion to Disgorge contained a request for disgorgement when it was docketed in Adversary Proceeding No. 12-4341, and it contained that same request when it was re-docketed in the Main Case. Even if the Court erred by re-docketing the Motion to Disgorge, that would not have destroyed subject matter jurisdiction.

B. Subject Matter Jurisdiction Over the Imposition of Sanctions

Because the Court has subject matter jurisdiction over the issue of disgorgement, it also has subject matter jurisdiction over the issue whether sanctions should be imposed under Rule 37(b), § 105(a) and Bankruptcy Rule 9011. In addition, even if it does not have subject matter jurisdiction over the disgorgement request, it still has subject matter jurisdiction over the issue of whether sanctions under Bankruptcy Rule 9011 may be imposed:

> imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate. Such an order implicates no constitutional concern because it "does not signify a district court's assessment of the legal merits of the complaint." It therefore does not raise the issue of a district court adjudicating the merits of a "case or controversy" over which it lacks jurisdiction.

Willy v. Coastal Corp., 503 U.S. 131, 138 (1992)(quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395-96 (1990)).

Accordingly, the Court **ORDERS** that any request for dismissal based on a failure of subject matter jurisdiction be **DENIED.**

V. PERSONAL JURISDICTION

A. Personal Jurisdiction Over the Respondents

Shortly after the Order Compelling Discovery was entered, the Respondents sought dismissal for a lack of personal jurisdiction. In its Order Denying the Amended Motion to Dismiss, the Court determined that the personal jurisdiction argument was frivolous and denied the request. In connection with

ordering the relief herein, the Court considers anew the issue of personal jurisdiction and again determines that personal jurisdiction exists.

Personal jurisdiction is waivable by a person's act or the failure to act. *Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990)(noting that the defense of a lack of personal jurisdiction may be lost by submission to personal jurisdiction through conduct or by implication). The Respondents made numerous representations in this matter and have waived any objection based on personal jurisdiction.

B. Personal Jurisdiction Over Mr. Walton

Because the Respondents submitted to personal jurisdiction over them, the Court has personal jurisdiction over Mr. Walton for purposes of sanctioning him under Rule 37(b), § 105(a), and Bankruptcy Rule 9011. *Alexander v. Hedback (In re Stephens)*, 2013 WL 3465281, at *3 (D. Minn. Jul. 10, 2013)(citing Rule 16(f)[34] and *Gundaker v. Unisys Corp.*, 151 F.3d 842, 849 (8th Cir. 1998)), *aff'd*, *Alexander v. Hedback (In re Stephens)*, 2014 WL 1302928, at *1 (8th Cir. Apr. 2, 2014).

Accordingly, the Court **ORDERS** that any request for dismissal based on a failure of personal jurisdiction be **DENIED.**

VI. JUDICIAL DISQUALIFICATION

Over the course of the litigation of the Motion to Disgorge, the Respondents and Mr. Walton filed three Motions to Recuse. In connection with ordering the relief herein, the Court considers anew the issue of judicial disqualification and again concludes that disqualification is not proper.

A. False Statements Made in Support of the Requests for Recusal

The Respondents made numerous false and misleading statements about the Judge's service in governmental employment as the UST,[35] apparently on the

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[34] *See* Part IX.D (recognizing similarities between Rule 16(f) (applicable in *Alexander v. Hedback*) and Rule 37(b) (applicable in the instant matter)).

[35] Mo. Prof. R. 4-8.2 provides that "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . ." Mo. Prof. R. 4-3.3(a)(1) provides that a lawyer shall not knowingly "make a false statement of fact or law . . . to a tribunal . . ."

theory of *audacter calumniare, semper aliquid haeret*.[36] The Respondents first made false and misleading statements in the First Motion to Recuse and the accompanying Brief in Support. In the Order Denying the First Motion to Recuse at footnote 4, the Court advised the Respondents that some of their statements about the Judge were false. Yet despite being so advised, the Respondents nevertheless repeated the allegations—and made additional false or misleading allegations—in the Motion for Leave to Appeal, a copy of which was filed in this Case. In its Order Denying the Motion for Stay Pending Appeal, the Court advised of the false and misleading allegations in the Motion for Leave to Appeal.[37]

The false and misleading statements included:

- The Judge was an attorney with the UST prior to his appointment as the UST. (First Motion to Recuse at 2.) (The Judge was never employed as an attorney for the UST prior to being appointed as the UST.)
- The Judge served as the "prosecuting attorney" against Critique Services L.L.C. and "he himself" had prosecuted cases against Critique Services L.L.C. (Brief in Support of First Motion to Recuse at 5 & 7.) (The Judge was never an attorney with the Office of the UST, separate and apart from being the UST, and as UST, never served as the "prosecuting attorney," chairing a prosecution. He was the name-plaintiff in the capacity of the UST.)
- The Judge drafted injunctions, holdings and adversarial positions against Critique Services L.L.C. and employees of Critique Services L.L.C. (Brief

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[36] *Latin.* "Slander boldly; something always sticks."

[37] And, despite being advised that their allegations were false, the Respondents *again* made the allegations in their Petition for Writ of Mandamus. In the Second Order Imposing Sanctions, the Court recounted the Respondents' attempts to avoid making discovery, noting the filing of Petition of Writ of Mandamus and the false and misleading allegations therein.

in Support of the First Motion to Recuse at 10.) (The Judge never drafted such documents.)

- The Judge served as an investigator (First Motion to Recuse at 3.) (The Judge never served as an "investigator"; he served as the UST.)
- The Judge served as the U.S. Attorney. (Motion for Leave to Appeal at 24 & 25.) (The Judge never served as the U.S. or as an attorney with the Office of the USAG.)
- The Judge "either personally or in his supervisory or official capacity investigated [Critique Services L.L.C.] and advocated out of court adversarial positions and matters against Critique Services [L.L.C.] . . ." (Motion for Leave to Appeal at 17.) (The Judge was the UST, acting as a name-plaintiff and in an official capacity. He did not act "personally.")

In short, the Respondents blew a lot of phoney smoke to create the false impression of a real fire. But, not all rising vapor is smoke; sometimes it is the telltale sign of a steaming pile of fetid manure.

The actual facts about the Judge's employment relevant to the issue of disqualification are as follows: In June 2003, the Judge was appointed as the UST for Region 13 and served in that capacity until May 2006. As such, his three-year tenure began more than a decade ago. This was the Judge's only service in governmental employment before being elevated to the bench. He never served as an attorney with the Office of the UST prior to his service as the UST. He never served as the U.S. Attorney or as attorney with that office. In his capacity as the UST, Judge supervised the Assistant USTs in their duties and was the name-plaintiff in actions brought by his Office. He was not a party in his personal capacity. He was not an attorney who chaired prosecutions. He did not personally conduct investigations. He did not personally draft pleadings. During his service, his Office received numerous complaints about Critique Services L.L.C. and undertook several investigations into Critique Services L.L.C. His Office filed two lawsuits against Critique Service L.L.C. and certain of its employees (but not Mr. Robinson), both of which settled. All the matters involving Critique Services L.L.C. that were undertaken during the Judge's service as the

UST were wholly unrelated to the pending Motion to Disgorge. The only commonality between those matters and the Motion to Disgorge is that Critique Services L.L.C. happens to have been involved. The Judge's service in governmental employment as the UST did not expose him to any extrajudicial facts about the Motion to Disgorge, which was not filed until many years after he resigned as the UST.

B. The Law on Judicial Disqualification

When considering a request for judicial disqualification, "[a] judge should be very careful to explain why recusal is not appropriate." *In re Tri-State Ethanol Co., L.L.C.*, 369 B.R. 481, 488 (D.S.D. 2007). As such, the Court will endeavor to provide a thorough consideration of why judicial disqualification is not required.

Section 455 specifies when a federal judge must disqualify himself:

> (a) Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> . . .
>
> (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.

28 U.S.C. § 455 (in relevant part). By its plain language, § 455 applies to any federal judge. *See also* Fed. R. Bankr. P. 5004(a).

A federal judge has an affirmative duty to preside unless he is disqualified. *See Davis v. C.I.R.*, 734 F.2d 1302, 1303 (8th Cir. 1984)(citing *National Auto Brokers Corp. v. General Motors Corp*., 572 F.2d 953, 958 (2d Cir. 1978)); *S.E.C. v. Drexel Burnham Lambert Inc. (In re Drexel Burnham Lambert Inc.)*, 861 F.2d 1307, 1312 (2d Cir. 1988)("A judge is as much obliged not to recuse himself

when it is not called for as he is obliged to when it is."). A judge must not disqualify himself unnecessarily "because a change of umpire in mid-contest may require a great deal of work to be redone . . . and facilitate judge-shopping." *Matter of National Union Fire Ins. Co. of Pittsburgh*, 839 F.2d 1226, 1229 (7th Cir. 1988); *White v. National Football League*, 585 F.3d 1129, 1138 (8th Cir. 2009)(holding that § 455 "is not intended to give litigants veto power over sitting judges, or a vehicle for obtaining a judge of their choice." (quoting *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993)); *M.K. Metals, Inc. v. National Steel Corp.*, 593 F.Supp. 991, 993-94 (N.D. Ill. 1984)(observing that if a judge were to recuse unnecessarily, "the price of maintaining the purity of appearance would be the power of the litigants or third parties to exercise a negative power over the assignment of judges"). A judge is presumed to be impartial, and it is the "substantial" burden of the movant on a § 455 motion to prove otherwise. *United States v. Dehghani*, 550 F.3d 716, 721 (8th Cir. 2008); *Pope v. Federal Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992).

A § 455 motion is determined by the judge whose disqualification is sought, at the Court's sound discretion. *In re Medtronic, Inc. Sprint Fidelis Leads Prods. Liability Litigation*, 601 F.Supp.2d 1120, 1124 (D. Minn. 2009)(citing *Moran v. Clarke*, 296 F.3d 638 648 (8th Cir. 2002)). A § 455 motion may not be transferred to another judge for determination. 28 U.S.C. § 455 (providing that a judge shall disqualify "*himself*")(emphasis added).[38]

The Court is not required accept as true the allegations made in a § 455 motion. *U.S. v. Marin*, 662 F.Supp.2d 155, 158 (D.D.C. 2009)("[T]here is no support for the position that the facts alleged by a person relying on [§] 455 must in every case be accepted as true, whether the papers be a verified memorandum or are in some other form."); *U.S. v. Greenough*, 782 F.2d 1556,

[38] Each of the three motions to recuse included a request that the motion be transferred to another judge, upon denial of the request for recusal. However, because a § 455 motion must be determined by the judge who is the subject of such request, the Court denied the requests to transfer the motions. In addition, the Court notes that the proper challenge to a denial of a motion to recuse is an appeal to a higher court, not upon a transfer to another trial court for a "do-over."

1558 (11th Cir. 1986)("If a party could force [recusal] by factual allegations, the result would be a virtual 'open season' for recusal."); *U.S. v. Heldt*, 668 F.2d 1238, 1272 (D.C. Cir. 1981)) ("[("The very fact that [§] 455 is addressed directly to the judge makes it evident that some evaluation by the court of the facts giving rise to the motion is anticipated in most cases.").[39]

Moreover, a judge may contradict the allegations made with facts drawn from his own personal knowledge. *U.S. v. Balistrieri*, 779 F.2d 1191, 1202 (7th Cir. 1985); *Massachusetts Sch. of Law at Andover, Inc. v. American Bar Ass'n*, 872 F. Supp. 1346, 1349 (E.D. Pa. 1994); *see also U.S. v. Sciarra*, 851 F.2d 621, 625 n.12 (3d Cir. 1988)(noting that "[t]here is considerable authority for the proposition that the factual accuracy of [§ 455] affidavits may be scrutinized by the court deciding the motion for recusal.").

Whether to hold a hearing of a § 455 motion is within the Court's discretion. *U.S. v. Heldt*, 668 F.2d at 1271-72. Whether it is appropriate and necessary to hold a hearing "may depend upon the nature of the allegations made." *Id.* at 1272.

A § 455 motion must be timely made. *United States v. Bauer*, 19 F.3d 409, 414 (8th Cir. 1994). To be timely, a § 455 motion must be made at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim. *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 664 (8th Cir. 2003); *U.S. v. Tucker*, 82 F.3d 1423, 1425 (8th Cir. 1996)(quoting *Apple v.*

[39] *But see In re Krisle*, 54 B.R. 330, 346 (Bankr. D.S.D. 1985)(holding that allegations made in support of a § 455 motion must be accepted as true). However, *Krisle* cites to *Berger v. United States*, 255 U.S. 22 (1921), and *U.S. v. Dodge*, 538 F.2d 770 (8th Cir. 1976), both of which involved § 144 and affidavits, and neither of which addressed on-point whether allegations in a § 455 motion must be accepted as true. In contrast to a § 455 motion, a § 144 request must be made by affidavit, and that affidavit must be accepted as true when determining the sufficiency of the affidavit. Section 455, however, has no affidavit requirement, and by its terms, requires that adjudication on the merits of the request for recusal—an act that necessarily involves determining the truth of the allegations made. *See Cooney v. Booth*, 262 F.Supp.2d 494, 505 n.6 (E.D. Pa. 2003)(noting that the court is not required to accept as true the facts alleged in a § 455, in contrast to the requirement that the court accept as true for the attestations in a § 144 affidavit).

Jewish Hosp. & Med. Ctr., 829 F.2d 326, 333 (2d Cir. 1987)). Timeliness is necessary for two reasons: (1) a prompt application affords the judge an opportunity to assess the request on its merits; and (2) a prompt application avoids the risk that a party is holding back a recusal motion as a fall-back position in the face of an adverse ruling. *U.S. v. Tucker*, 82 F.3d at 1425 (citing *In re Internat'l Bus. Machines Corp*., 45 F.3d 641, 643 (2d Cir. 1995)); *see also In re Cargill, Inc*., 66 F.3d 1256, 1262-63 (1st Cir. 1995)("In the real world, recusal motions are sometimes driven more by litigation strategies" than by genuine ethical concerns"). The failure to timely raise § 455 can result in waiver of the claim at the trial court level or forfeiture of judicial review at the appellate court level. *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d at 664 (citing to *United States v. Mathison*, 157 F.3d 541, 545-46 (8th Cir. 1998)).

C. Analysis under § 455(b)(3)

Section 455(b)(3) provides that a judge shall disqualify himself "where he has served in governmental employment and in such capacity . . . expressed an opinion concerning the merits of the particular case in controversy." The Judge served in governmental employment as the UST from June 2003 to May 2006. However, the "particular case in controversy" here, the Motion to Disgorge, did not exist until 2013. As such, it is not possible for the Judge to have expressed an opinion about the particular case in controversy while in the capacity of serving in governmental employment.

Section 455(b)(3) also provides that a judge shall disqualify himself "[w]here he has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding . . ." This is the "personal participation rule." *Baker & Hostetler LLP v. U.S. Dept. of Commerce*, 471 F.3d 1355, 1357 (D.C. Cir. 2006). It stands in contrast to the "associational standard," applicable pursuant to § 455(b)(2), which sets forth when a judge must disqualify himself related to his previous service in private practice. If the associational standard applied to § 455(b)(3), a judge would be prohibited from presiding on the bare fact of his previous governmental employment. By contrast, the plain language of § 455(b)(3) makes it clear that a

judge is not automatically proscribed from presiding over a case due solely to his previous governmental employment. *See Rahman v. Johanns*, 501 F.Supp.2d 8, 14 (D.D.C. 2007)("Indeed, it is commonplace for judges to serve in the government prior to appointment to the federal bench, and [§] 455(b)(3) reflects Congress's studied response to this circumstance.")(internal citation omitted); *Mangum v. Hargett*, 67 F.3d 80, 83 (5th Cir. 1995)("§ 455(b)(3) does not mandate recusal unless the former government attorney has actually participated in some fashion in the proceedings."). For purposes of § 455(b)(3), the Judge "participated" only in those proceedings that were pending while he served in governmental employment as the UST and now is obligated under § 455(b)(3) to disqualify himself from those proceedings—should they come before the Court. Here, however, the Judge could not have "participated" in the proceeding currently before the court, the Motion to Disgorge, because that proceeding did not even exist at the time that the Judge served as the UST. The fact that the Judge participated in cases that are not now proceedings before the Court, but which happen to have involved one of the Respondents, does not establish that disqualification is proper under § 455(b)(3).

D. Analysis under § 455(b)(1)

Section 455(b)(1) provides that a judge shall disqualify himself where he has "personal knowledge of disputed evidentiary facts concerning the proceeding." The disputed evidentiary facts here relate to whether disgorgement of the fees paid by the Debtor to the Respondents is proper, and whether the Respondents and Mr. Walton committed acts for which they should be sanctioned. The Judge has no personal knowledge, based on his employment as the UST or from any other source, regarding these issues.

Section 455(b)(1) provides that a judge shall disqualify himself "[w]here he has a personal bias or prejudice concerning a party . . ." Such bias[40] must be actual, not merely in appearance. Bias "must be evaluated in light of the full

[40] For the purpose of brevity, the Court uses the term "bias" to refer to the statutory concept of "bias or prejudice."

record, not simply in light of an isolated incident." *In re Federal Skywalk Cases*, 680 F.2d 1175, 1184 (8th Cir. 1982). A judge may not disqualify himself simply because a litigant has transformed his fear of an adverse decision into a fear that the judge will not be impartial. *In re Kansas Pub. Employees Retirement Sys.*, 85 F.3d 1353, 1359 (8th Cir. 1996)(citing Sen. Rep. No. 93-419, 93d Cong., 1st Sess. 5 (1973)). An "extrajudicial source" is the common basis for bias under § 455(b)(1). *Liteky v. United States,* 510 U.S. 540, 549-550 (1994). However, on a rare occasion, a bias may be acquired from judicial sources after the commencement of the matter. However, this type of bias is rare. A judge is permitted to make judgments while he is presiding:

> [t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. As Judge Jerome Frank pithily put it: "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." *In re J.P. Linahan, Inc*., 138 F.2d 650, 654 (CA2 1943). Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant.

510 U.S. at 550-51.[41] The Respondents allege numerous bases for establishing bias for purposes of § 455(b)(1). The Court now addresses those in turn:

[41] *Liteky* also gave an example of a comment that "reveal[ed] such a high degree of favoritism or antagonism as to make fair judgment impossible," pointing to the case of a judge who, while presiding over an espionage trial of a German-American in 1921 commented that, "One must have a very judicial mind, indeed not [to be] prejudiced against German Americans" because their "their hearts are reeking with disloyalty." *Id*. at 555. Despite the Respondents' and Mr. Walton's bald insistence of their victimhood, the Court responding with little indulgence of the Respondents' and Mr. Walton's abuse of process, improper courtroom

Prior rulings. The Respondents argued that the Court's prior rulings against them is evidence of the bias. However, prior rulings are almost never evidence of bias. *Liteky v. United States,* 510 U.S. at 555.

"Open and notorious pronouncements." The Respondents and Mr. Walton alleged that the Judge made unspecified "open and notorious pronouncements" about them, and argued that these pronouncements are evidence of bias. However, the Respondents' use of hyperbolic adjectives and accusatory terminology is not evidence. Moreover, remarks by a court, even if critical of a party or his counsel generally are not evidence of bias. *Id.* at 555 ("[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge"). Examples of judicial commentary that are not evidence of bias include: "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges sometimes display." *Id.* at 555-56. The generic complaint here of "open and notorious pronouncements" amounts to indignation at the Court not being sufficiently solicitous of the Respondents' and Mr. Walton's abuse of process and contempt.

The Unclean Hands Doctrine. The Respondents argued that the fact the Debtor is permitted to proceed at all is evidence of bias. Specifically, they alleged that the Debtor has "unclean hands"—and therefore the Court is biased if it permits the Debtor to come before the Court on her claim, at all. However, the fact that the Court did not dismiss on the ground of "unclean hands" is not evidence of bias.

The "checkbook" warning. The Respondents and Mr. Walton argued that the "checkbook" warning to Mr. Walton is evidence of bias against Mr. Walton personally and against the Respondents derivatively. The warning is not evidence of bias against anyone. It is evidence that the Court's patience with Mr. Walton's courtroom antics had expired. The Court is not obligated to deliver its

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decorum, dishonesty, and contempt is not remotely equivalent to being subjected to an ethnic slur regarding treasonous intent.

threat of sanctions in the offender's preferred choice of deferential terms. The warning was designed to get Mr. Walton's attention—no small task, since the Court would have to be heard over the deafening volume of Mr. Walton's ego. Although the Court has issued stern orders on a rare occasion in other matters, the bluntness required here was a first. But then, almost universally, the attorneys who appear before the Court do not confuse presenting argument with being argumentative, or mistake belligerence for zealous advocacy.

The Respondents also argued that the warning is evidence of bias because "no judge should direct a lawyer to bring his checkbook to court because the judge is going to fine him if he zealously represents his client." There is no basis for the assertion that a judge cannot give explicit directions that an attorney be prepared to pay his sanctions for sanctionable behavior. Moreover, the allegation that the Court stated that it would sanction Mr. Walton for zealous advocacy is false. The Court threatened sanctions for unprofessional courtroom behavior. Despite the Respondents' and Mr. Walton's confusion on this point, zealous advocacy and disrespectful courtroom behavior are not synonymous.

Timely dispositions. The Respondents argued that the Court's timeliness in disposing of their motions is evidence of bias. They cited to no authority in support of their argument. The dearth of supportive authority may be because efficient, timely dispositions are not evidence of bias. They are evidence of hard work and a commitment to the administration of justice without delay. The Respondents' suspicion of timeliness may lie in the fact that timeliness is a foreign concept to them, as so amply demonstrated in this matter.

The Court's alleged lack of respect for Mr. Walton. The Respondents and Mr. Walton argued that the Court's alleged lack of respect for Mr. Walton is evidence of bias against Mr. Walton personally and against the Respondents derivatively. This argument conflates two distinct concepts. Having a lack of respect for someone is not synonymous with having a bias against that person. Having a bias is the condition of having an *improper* predisposition towards someone or something. By contrast, having a lack of respect is merely the condition of not having esteem for someone or something. Unlike a bias, a lack

of respect may be *entirely proper*, if it is deserved. An attorney cannot act sanctionably, then demand judicial disqualification because the Court develops an understandable lack of respect for the attorney, based on his sanctionable acts. By that logic, a court would almost never be able to sanction an attorney, since most sanctionable acts suggest that the actor is not worthy of respect for committing those acts. Accordingly, even if the Court has a lack of respect for Mr. Walton, that lack of respect would be a result of Mr. Walton's behavior and would not establish bias against Mr. Walton. It would establish an opinion of Mr. Walton that is well-deserved, based on his actions in this matter.

Second, § 455(b)(1) requires disqualification when the judge holds a bias against a party, and the Respondents cite no authority for the premise that a court's disposition towards a party's counsel can derivatively establish bias against that party. In making this argument, the Respondents demonstrated a fundamental misunderstanding of their available remedy. If they believed that Mr. Walton was not their best choice of counsel because they suspected that the Court has a lack of respect for him, their remedy was not to change the judge; it was to change their counsel. While a party generally may select the attorney of his choice, in making that choice, the party takes on the risks of that choice—including the risk that the attorney's behavior may result in the Court taking a dim professional view of the attorney. A party is not entitled to a judge who respects his attorney or to a judge who respects him for his choice of attorney. "A litigant chooses counsel at his peril." *Boogaerts v. Bank of Bradley*, 961 F.2d 765, 768 (8th Cir. 1992).

The Re-Docketing of the Motion to Disgorge. The Respondents argued that the re-docketing of the Motion to Disgorge is evidence of bias. However, as previously noted in herein, a court is permitted to re-docket improperly docketed pleadings. Moreover, nothing about the re-docketing substantively assisted the Debtor. In addition, the Respondents made this request for disqualification out of time. The re-docketing occurred on April 5, 2013, but the Respondents failed to raise the issue until five months later. To excuse their tardiness, the Respondents claimed (for the first time) in the Motion for Leave to Appeal that Mr.

Walton became aware of the re-docketing until just after the Court compelled discovery). However, Mr. Robinson, an attorney, received electronic mailings regarding all docket entries in the Main Case in April 2013, including the notice of the disposition of Adversary Proceeding No. 12-4341 and the filing of the Motion to Disgorge and its attendant document history. Mr. Robinson had the obligation to raise the issue at the earliest possible moment. Moreover, the claim that Mr. Walton only "recently" became aware of the re-docketing is not true. At the May 15 hearing, the Court pointed out the procedural history of this matter, when both Mr. Walton and Mr. Robinson were present. Moreover, the re-docketing and the document's history was part of the electronic docket sheet when Mr. Walton was retained as counsel. The assertion that Mr. Walton did not notice the re-docketing in the six months between May and October—but did, coincidentally, manage to notice it just after the Court compelled discovery—is not believable. And, even if Mr. Walton actually failed to familiarize himself with the Motion to Disgorge and its history when he began his representation of the Respondents, that negligence does not now make timely the raising of the re-docketing as a ground for disqualification.[42]

The Judge's Service in Governmental Employment. The Respondents argued that the Judge's service in governmental employment as the UST is evidence of bias. As the Court determined in its Order Denying the First Motion to Recuse, the request for disqualification on this ground was untimely because it was raised for the first time six months after the Motion to Disgorge was filed.

However, in their Motion for Leave to Appeal, the Respondents alleged (for the first time) that Mr. Walton "was unaware of the [Judge's UST] role in the [matters] . . . at the time he entered his appearance in this case, and only became aware thereof when discussing with Robinson" the discovery sanctions.

[42] In raising the re-docketing as an issue, the Respondents argued that the re-docketing deprived the Court of subject matter jurisdiction. A subject matter jurisdiction challenge, of course, is not subject to a timeliness requirement. The Court addresses the merits of the re-docketing as the basis of a subject matter jurisdiction challenge in Part IV.A.

However, Mr. Walton's claim of protracted ignorance is not credible. Mr. Walton has long practiced before the bankruptcy courts here. *Walton v. LaBarge (In re Clark)*, 223 F.3d at 861 (noting that Mr. Walton is "one of the more frequent bankruptcy petition filers" in the District.) It is a well-known among bankruptcy practitioners in this District that the Judge served as the UST prior to taking the bench. It is not believable that Mr. Walton wandered for months in this matter in a cloud of cluelessness about his own clients' previous encounters with the UST but then suddenly realized—only after his clients ran out of options for avoiding discovery—that one of the Respondent's paths crossed with that of the Judge when the Judge served as the UST.

Moreover, even if Mr. Walton actually was ignorant of his own clients' history with the Office of the UST, his ignorance does not now make the disqualification request timely. The request for disqualification should have been made by Mr. Robinson—an attorney himself, who purports do to business as Critique Services L.L.C.—at the earliest possible moment after the filing of the Motion to Disgorge.

And, even if the hiring of Mr. Walton somehow restarted the timeliness clock, the request for disqualification based on the Judge's service in governmental employment as the UST still was untimely. The First Motion to Recuse was filed four months after Mr. Walton filed his Notice of Appearance. It was Mr. Walton's responsibility, at the beginning of his representation, to assess the facts to determine how to proceed in advocating for his clients' interests in a timely manner—which would have included considering whether there were grounds for judicial disqualification at that time. If Mr. Walton was ignorant of the facts related to the interactions that the Office of the UST had with Critique Services L.L.C. during the Judge's service as the UST, that ignorance was by his own negligence and does not now inure to the benefit of his clients.

Further, setting aside the untimeliness issue, the reading of § 455 as a whole does not support the argument that the Judge's service in governmental employment requires disqualification under § 455(b)(1). Section 455(b)(3) sets forth the limited circumstances under which a judge must disqualify himself

based upon his previous governmental employment—and the Judge is not required to disqualify under § 455(b)(3). To argue that § 455(b)(1) nevertheless requires disqualification because of the Judge's service as the UST undermines § 455(b)(3) while artificially over-empowering § 455(b)(1).

The Offering to the Respondents of a Choice of an Alternate Method for Satisfying the Sanctions. The Respondents allege that the offering of a choice of an alternate, nonmonetary method of satisfying their monetary sanctions is evidence of bias. That is, the Respondents argue that the Judge is biased *against them* because the Court was willing *to cut them a break* so that they would not have to pay tens of thousands of dollars in sanctions. However, the Court showing mercy towards the Respondents is not evidence of the Judge having a bias against them. In addition, the request for disqualification on this ground is untimely. The choice for satisfying the sanctions by the nonmonetary method was offered to the Respondents near the end of January. They did not seek disqualification on this ground until mid-April.

The State Court Action. In the Third Motion to Recuse, which is in the form of an affidavit, Mr. Walton attested that the Judge is biased against him because he sued the Judge in the State Court Action, and attached in support a copy of the State Court Action petition. However, the fact that Mr. Walton chose to sue the Judge in his personal capacity during the pendency of this matter is not evidence that the Judge is biased against him. A party cannot "create" judicial bias by the act of suing the judge. This is not to say that the Court necessarily respects Mr. Walton for his decision to sue him. But, in choosing to sue the Judge, Mr. Walton opened himself up to the risk that the Judge might not respect him for that choice.

In addition, nothing alleged in the State Court Action petition supports a finding that the Judge is biased.[43] In the petition, Mr. Walton baselessly claims that the Court's act of mercy towards his clients was really an effort to harm *him*.

[43] The Court would have preferred not to comment on the State Court Action in this Memorandum Opinion. However, Mr. Walton pointed to the State Court Action as a basis for his request for disqualification. Accordingly, the Court must address the issue of whether the State Court Action is a basis for disqualification.

In support of this, he makes numerous false and misleading allegations, including that: the Court "mandated" that Mr. Walton be fired (in reality, the Respondents remained free to satisfy the sanctions by payment pursuant to the terms set forth in the Second Order Imposing Sanctions); the Court "interfered" with settlement negotiations (in reality, the choice of the alternate method for satisfying the sanctions was conveyed to the chapter 7 trustee before the settlement negotiations began); the Court's offer was related to claims at issue in the settlement negotiations (in reality, the parties had no ability to agree among *themselves* how to satisfy sanctions owed to *the Court*); the Court participated in ex parte communications (in reality, the Court communicated with the chapter 7 trustee, who was not a party to the sanctions); and the Judge acted outside the scope of his judicial authority by giving the Respondents this choice (in reality, the offer of this choice was made through the Court's law clerk, upon the Court's direction, in a matter before the Court, concerning the Court's sanctions).

The crux of Mr. Walton's argument in the Third Motion to Recuse and the attached State Court Action is that the Judge has a "vendetta" against him. However, sanctioning Mr. Walton for his sanctionable behavior is not personal; it is professional. Likewise, offering the Respondents the choice to satisfy their sanctions by agreeing to never engage Mr. Walton again before this Court was not personal. The Court took the facts that it had before it—including the fact that Mr. Walton facilitated the contempt that caused the need for sanctions—and offered the Respondents a choice by which they could satisfy their sanctions and ensure the Court that there would not be a re-play of this collusion of contempt. Mr. Walton may resent that the Court gave his clients this choice, but his resentment does not establish bias.

Issuance of the April 3 Notices of Sanctions. The Respondents and Mr. Walton argued that the issuance of the April 3 Notices of Sanctions is evidence of bias. They alleged that the "reasonable inference" from the issuance of the April 3 Notices is that the Court had ex parte communications regarding the settlement negotiations, then issued the Notices in response. This "inference" is neither reasonable nor supported. On March 22, 2014, the Court received notice

from the Debtor in her filed Declaration, advising that negotiations had collapsed. After this, the Court began to prepare to dispose of the Motion to Disgorge and to impose sanctions for the sanctionable behavior that occurred during the course of the litigation. While the parties remained free to continue to negotiate, the Court proceeded on the assumption that a settlement would not occur. Providing due process notice of the Court's intent to impose sanctions and allowing the Respondents and Mr. Walton an opportunity to respond was a necessary step in the process of preparing the final order in this matter.

Correction of the Incorrect April 11, 2014 Docket Entry. The Respondents argued that the correction of an incorrect entry on the electronic docket is evidence of bias. On April 11, 2014, the Debtor filed a document captioned "Notice from Debtor related to Debtor's Motion to Compel Discovery." For reasons unknown, the Debtor described the document on the electronic docket as "Correspondence, Withdrawal of Document." However, the document was not correspondence and it did not operate to withdraw anything. The document provided that "for all intents and purposes the motion [to compel discovery] is withdrawn." This representation had no legal effect. A motion cannot be withdrawn for "all intents and purposes," and it cannot be withdrawn after its disposition. The electronic docket sheet's description of the document as correspondence or a withdrawal was incorrect and misleading. Because the electronic docket is publicly available, the Court strives to maintain it so that it does not become a tool for incorrect or misleading representations. Therefore, the Court directed the correction on the electronic docket sheet of the description so that it now reads as the exact title that the Debtor gave to the document—no more, no less, and no different. This correction had no substantive effect and does not establish bias.

Issuance of the April 21 Notice of Sanctions Against Mr. Walton. Mr. Walton alleges that the issuance of the April 21 Notice against him after he brought the State Court Action is evidence of bias against him. A judge cannot disqualify himself from presiding over a case just because an attorney facing sanctions decides to sue him. Accordingly, the Motion to Disgorge and the issue

of the imposition of sanctions had to go forward—which meant that the Court needed to issue due process notices regarding its intent to impose sanctions. Nothing about giving such notice is evidence of bias.

E. Analysis under § 455(a).

Section 455(a) provides that "[a]ny . . . judge . . . of the United States shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned." The standard under § 455(a) is objective (what a reasonable person might believe), not subjective (what the judge feels about his ability to rule without bias); therefore, the proper test under § 455(a) is whether "a reasonable person who knew the circumstances would question the judge's impartiality, even though no actual bias or prejudice has been shown." *U.S. v. Tucker*, 78 F.3d at 1324 (quoting *Gray v. University of Ark.*, 883 F.2d 1394, 1398 (8th Cir. 1995)). As one court explained, "[t]he reasonable outside observer is not . . . 'a person unduly suspicious or concerned about a trivial risk that a judge may be biased,' since a presiding judge is not required to recuse himself solely because of 'unsupported, irrational or highly tenuous speculation.'" *In re 1103 Norwalk Street, L.L.C.,* 2003 WL 23211563, at *2 (Bankr. M.D.N.C. Dec. 11, 2003)(quoting *United States v. DeTemple*, 162 F.3d 279, 286 (4th Cir. 1988)).

However, despite the sweeping language of § 455(a), the statute does not extend literally to any kind of doubtful behavior. *United States v. Sypolt,* 346 F.3d 838, 839 (8th Cir. 2003). Section 455(a) "must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merely unsubstantiated suggestion of personal bias or prejudice." *U.S. v. Cooley*, 1 F.3d at 993 (quoting *Franks v. Nimmo*, 796 F.2d 1230, 1234 (10th Cir. 1986)). Section 455 is not "intended to bestow veto power over judges or to be used as a judge shopping device." *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995)(internal citations omitted). If opinions "are based on 'facts introduced or events occurring in the course of the current proceedings,' those opinions warrant recusal under § 455(a) only if they 'display a deep-seated favoritism or antagonism that would make fair judgment impossible.'" *U.S. v. Sypolt*, 346 F.3d at 839 (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

Section 455(a) inquiries are extremely fact driven and must be judged on their unique facts and circumstances. *Nichols v. Alley*, 71 F.3d at 351. Among the various matters and allegations that ordinarily are insufficient include: rumors; speculation; beliefs; conclusions; innuendo; opinion; prior rulings in the proceeding or another proceeding, solely because they were adverse; the mere fact that the judge has previously expressed an opinion on a point of law or has a dedication to upholding the law or a determination to impose severe punishment with the limits of the law; mere familiarity with the party, the type of claim, or the defense offered; baseless personal attacks on the judge; and suits against the judge by a party. *U.S. v. Cooley,* 1 F.3d at 994-94 (numerous citations omitted); *see also In re U.S.*, 158 F.3d 26, 30 (1st Cir. 1998)(holding that "compulsory recusal must require more than subjective fears, unsupported accusations, or unfounded surmise").

To the degree that the Respondents allege that it is reasonable to question the Judge's impartiality based on any of the grounds Part VI.D, the Court concludes that these allegations do not establish that it is proper for the Judge to disqualify himself § 455(a), for the same reasons that they do not establish actual bias under § 455(b)(1). These allegations are no more persuasive that it is reasonable to question the Judge's impartiality than they are persuasive of the Judge having actual bias.

In addition, the Court notes a few points specifically:

- It is not reasonable to question a judge's impartiality based on a false or misleading statement made in support of disqualification.
- It is not reasonable to question a judge's impartiality based on the sheer number of allegations, when none of the allegations makes it reasonable to question the judge's impartiality. One cannot consider $x = 0 + 0 + 0$, then reasonably question whether x is equal to anything other than 0.
- The reading of § 455 as a whole does not support the request for disqualification under § 455(a) based on the Judge's service as UST. It cannot be reasonable to question a judge's impartiality under § 455(a)

based solely on the judge's previous service in government employment when that service does not require disqualification under § 455(b)(3).

Accordingly, the Court **ORDERS** that any request for judicial disqualification be **DENIED.**

VII. NOTICE AND THE OPPORTUNITY TO BE HEARD

A. The Law on Notice and the Opportunity to be Heard Before the Imposition of Sanctions

Notice is required before sanctions are imposed. *Walton v. LaBarge* (*In re Clark)*, 223 F.3d at 864. Due process is provided where "the sanctioned party has a real and full opportunity to explain its questionable conduct before sanctions are imposed." *Coonts v. Potts*, 316 F.3d 745, 753 (8th Cir. 2003)(*Chrysler Corp. v. Carey*, 186 F.3d 1016, 1023 (8th Cir. 1999)). However, this is not a mandate that a hearing be conducted prior to the imposition of sanctions. *Walton v. LaBarge* (*In re Clark)*, 223 F.3d at 864 ("The court may act [to impose sanctions] without a hearing if it has provided an opportunity for one but no parties in interest requested it."); *Chrysler Corp. v. Carey*, 186 F.3d at 1022 ("[N]o hearing is necessary before sanctions are imposed where the record demonstrates a willful and bad faith abuse of discovery and the non-cooperating party could not be unfairly surprised by the sanction."); *In re Rimsat, Ltd*., 212 F.3d 1039, 1046 (7th Cir. 2000)("Putting to one side the possibility that the appellants were not entitled to a hearing in the first place, the problem with the appellants' argument that the bankruptcy court should have held a hearing before imposing sanctions is that the appellants never requested a hearing. Since a court is not invariably required to provide a hearing before imposing sanctions, the appellants' failure to request a hearing waives any right they might have had to one."); *see* 11 U.S.C. § 102(1)(providing that "'notice and a hearing', or a similar phrase . . . means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but . . . authorizes an act without an actual hearing if such notice is given properly and if . . . such a hearing is not requested timely by a party in interest.").

B. The Respondents' Notice and Opportunity to be Heard Before the Imposition of Sanctions Under Rule 37(b) & § 105(a) for Discovery Violations

The Respondents received notice and an opportunity to be heard before sanctions were imposed on an interim basis:

- At the September 18 hearing on the Motion to Compel Discovery, the Court held that the Respondents were compelled to meet their discovery obligations within seven days and advised that, afterwards, sanctions of $1,000.00 a day would be imposed for each day of noncompliance. At that hearing, the Respondents had an opportunity to be heard.
- In its September 20 Order Compelling Discovery, the Court reduced its September 18 bench ruling to writing, and gave notice that further sanctions may be imposed for refusal to meet the discovery obligations.
- At the October 1 status conference, the Court gave notice that further sanctions may be imposed for the refusal to satisfy the discovery obligations, and the Respondents had an opportunity to be heard.

The Respondents received notice and an opportunity to be heard before sanctions were imposed on a final basis, along with repeated reminders that the sanctions could be purged by compliance with the Order Compelling Discovery:

- In the November 13 Second Order Imposing Sanctions, the Court gave notice that the continued refusal to obey the Order Compelling Discovery may result in the imposition of "any other sanction that is reasonable and just under the circumstances."
- In its December 2 Notice, the Court provided an explicit purgation term: "[c]omply, and the sanctions will be purged. Refuse to comply, and the sanctions will stand. Continue to refuse to comply, and additional sanctions may be imposed."
- In its February 13 Notice of Satisfaction,[44] the Court advised that it was "giv[ing] notice (again) to [the Respondents]: if they continue to refuse to

[44] The Notice of Satisfaction was issued to make a record that Mr. Robinson had satisfied a separate $3,000.00 in sanctions he accrued in this matter when he

make the required discovery, the sanctions will stand and further sanctions may be imposed for additional violations." Moreover, in the Notice, the Court warned the Respondents that they could not purge their sanctions by settling their disputes with the Debtor:

> the Court is aware that the parties have been attempting to negotiate a settlement of their disputes, and wishes them the best in reaching a mutually acceptable agreement. However, the Court wants to make clear: Mr. Robinson and his law firm cannot buy their way out of the Court-imposed sanctions for discovery abuse simply by settling with the Debtor. The sanctions are not owed to the Debtor; they are not part of the claim and issues between the parties. The sanctions are owed to the Court . . . The sanctions will not b[e] purged simply as a bi-product of any settlement. If Mr. Robinson and his law firm intend to use settlement as a way to permanently avoid making the discovery . . . then they should understand that such avoidance will come at the price of the unpurged sanctions. If Mr. Robinson and his law firm had wanted to settle this dispute to avoid making discovery, they should have done so before abusing the Court and the discovery process.

- In its April 3 Notice Regarding Sanctions, the Court gave the Respondents until April 11, 2014 to meet their discovery obligations, and gave notice that, if they did not, the Court may impose additional sanctions enumerating specifically what those sanctions might include.
- On April 11, 2014, the Respondents filed a Response to the April 3 Notice. The Respondents did not request that the matter be set for hearing.
- In footnote 1 of its April 14 Order Denying Second Motion to Recusal, the Court reminded the Respondents that they still could satisfy their discovery obligations until such time as the final disposition of the Motion to Disgorge, but advised that the time for doing so was quickly expiring, as the Court was preparing its disposition on the Motion to Disgorge.
- In its April 21 Order Denying the Motion to Compromise Controversy, the Court once again stated that the Respondents still could meet their

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violated the Second Order Imposing Sanctions by using the Court's exterior drop box for filing three documents in bankruptcy cases pending before other Judges.

discovery obligations and purge the sanctions, until such time as the final order on the Motion to Disgorge was entered.

- In its April 23 Order Denying the Third Motion to Recuse, the Court impressed upon the Respondents the importance of responding to the April 21 Notice, providing that: "In addition, the Court encourages the Respondents and Mr. Walton to respond by the April 28 deadline by filing a Brief in Response. This is not a minor matter. It may result in monetary sanctions and/or the revocation of privileges with this Court."
- In a May 15 Order, the Court again reminded the Respondents: "Mr. Robinson carries the keys to his sanctions prison in his own pocket. If he complies with the Order Compelling Discovery, the sanctions he has accrued will be purged."

C. Mr. Walton's Notice and Opportunity to be Heard Before the Imposition of Sanctions Under Rule 37(b) and § 105(a) for Discovery Violations

Mr. Walton received notice and an opportunity to be heard before sanctions were imposed against him. In the April 3 Notice Regarding Sanctions Against Mr. Walton, the Court gave notice that was

> considering imposing monetary and non-monetary sanctions against him personally for his participation in the Respondents' improper efforts to avoid making discovery, including, but not limited to, the acts of: vexatiously increasing the costs of litigation by interfering with discovery; making false representations to the Court about the Respondents' intent to participate in discovery; filing frivolous motions for the purpose of avoiding discovery; attempting to avoid discovery by asserting untimely and waived objections; requiring the Court to hold numerous hearings in an attempt to stall the making of discovery; making false allegations regarding the presiding Judge; prolonging this proceeding without excuse; and vexatiously attempting to prevent the Debtor from prosecuting her Motion to Disgorge by refusing without excuse to make discovery.

The Court gave Mr. Walton until April 11, 2014, to respond, adding that "[i]f the Respondents make their legally required discovery by responding in full and without objections . . . by that time, the Court will take the . . . compliance into

consideration when determining whether to issue sanctions personally against Mr. Walton." Mr. Walton filed a response, but did not request a hearing.

D. The Respondents' and Mr. Walton's Notice and Opportunity to be Heard Before the Imposition of Sanctions Under Bankruptcy Rule 9011 and § 105(a) for Making of False Statements about the Judge's Previous Service as the UST

In its April 21 Notice to the Respondents and Mr. Walton, the Court advised that it intended to impose sanctions for the making of false statements:

> for the numerous false representations and statement made by the Respondents through Mr. Walton, willfully and in bad faith, at hearing and in pleadings, during the course of the litigation of the Motion to Disgorge. Those false statements and representations include, but are not limited to, the false representations made at hearings regarding the status of the Respondents' discovery responses and the Respondents' intent to make discovery, and the false statements made about the presiding Judge's previous employment as the United States Trustee made in support of a demand for the Judge's disqualification. The sanctions contemplated by the Court are both monetary and nonmonetary in nature, and may be imposed pursuant to any statutory authority available to the Court. These sanctions may be in addition to any sanctions that may be imposed upon the Respondents related to their refusal to make discovery, and in addition to sanctions that may [be] impose[d] upon Mr. Walton for his vexatious and contumacious efforts to undermine the judicial process in his facilitation of the Respondents' refusal to make discovery.

The Court gave the Respondents and Mr. Walton until 4:00 P.M. on April 28, 2014 to respond. Both filed responses, but neither requested a hearing.

VIII. CIVIL NATURE OF THE SANCTIONS IMPOSED HEREIN

A. The Law on the Difference Between Civil and Criminal Sanctions

"Where a contempt sanction is not compensatory, it is civil, and therefore non-punitive, only if the contemnor is afforded some opportunity to purge the contempt." *Duby v. United States*, 451 B.R. 664, 670 (B.A.P. 1st Cir. 2011)(citing *International Union v. Bagwell*, 512 U.S. 821, 829 (1994) and *Penfield Co. of Cal. v. SEC*, 330 U.S. 585, 590 (1947)); *Armstrong v. Rushton (In re Armstrong)*, 304 B.R. 432, 437 (B.A.P. 10th Cir. 2004); *In re Ware*, 2003 WL 1960454, at *9 (M.D.N.C. Apr. 24, 2003). "This purge mechanism distinguishes civil from

criminal contempt." *May-Ex II v. Du-an Prods., Inc. (In re Mayex II Corp.)*, 178 B.R. 464, 470 (Bankr. W.D. Mo. 1995) (citing *United States v. Ayer*, 866 F.2d 571, 573-74 (2d Cir. 1989)). Not even incarceration is a criminal sanction, if the incarceration may be ended upon purging. *Shillitani v. United States*, 384 U.S. 364, 370 n.6 (1966)(affirming the bankruptcy court's order of imprisonment to coerce compliance when the contemnor had the ability to comply). If non-compensatory sanctions are purged, then the court issues a notice of purgation, relieving the contemnor of his obligation to satisfy the sanctions. *See, e.g., First Mariner Bank v. Resolution Law Group, P.C.*, 2014 WL 1681986, at *3 (D. Md. Apr. 28, 2014). However, if the non-compensatory sanctions are purged by compliance, but the court punishes the contemnor by imposing the sanctions anyway, then the sanctions are criminal. *First Mariner Bank v. The Resolution Law Group, P.C.*, 2014 WL 1681986, at *3 ("A sanction imposed following compliance would be punitive, and thus, a remedy for criminal contempt.").

B. The Civil Nature of the Sanctions Imposed Under Rule 37(b) and § 105(a) Upon the Respondents for Discovery Violations

The sanctions imposed in the First Order Imposing Sanctions were not compensatory. They also were not criminal. They were civil sanctions imposed to garner compliance with the Order Compelling Discovery within thirty days. Likewise, the sanctions imposed in the Second Order Imposing Sanctions were not compensatory. They also were not criminal. Although they were not imposed specifically to garner compliance with the Order Compelling Discovery (because the Court had no realistic expectation at that point that discovery would be made), they also did not cut off the possibility of compliance. This second round of sanctions were imposed, in part, to discourage others from such behavior and, in part, to punish the Respondents with the disgrace of being found in contempt and the Court's public acknowledgment in its loss of trust in Mr. Robinson. However, this "punishing" effect did not make the sanctions criminal in nature. All sanctions "punish," in the sense that they all rebuke the offender and hold him up for condemnation for his behavior. What makes non-compensatory sanctions criminal in nature is the imposition of punishment without the opportunity to purge.

The fact that purgation was possible was evident from the terms of the Second Order Imposing Sanctions and the purgation provision of the December 2 Notice. Since the Second Order Imposing Sanctions, the Respondents have had months to meet their discovery obligations but have chosen not to do so. The non-compensatory discovery-related sanctions imposed herein pursuant to Rule 37(b) and § 105(a) are civil in nature.

C. The Civil Nature of the Sanctions Imposed Under Rule 37(b) and § 105(a) Upon Mr. Walton for Discovery Violations

The sanctions imposed herein upon Mr. Walton under Rule 37(b) and §105(a) for his bad faith and willful abuse of process, vexatious litigation, making of misleading representations about the condition of the discovery and the Respondents' intent to provide the discovery, and facilitation of the Respondents' refusal to meet their discovery obligations and contempt are compensatory and civil in nature. They are imposed for the purpose of "compensating the [C]ourt for the added expense of the abusive conduct," consistent with *Carlucci v. Piper Aircraft Corp*., and for the purpose of deterring other from similar discovery-related abuse of process and vexatious litigation.

D. The Civil Nature of the Sanctions Imposed Under § 105(a) Upon the Respondents and Mr. Walton for the Value of the Debtor's Attorneys' Fees

The sanctions imposed herein upon the Respondents and Mr. Walton under Rule 37(b) and § 105(a) for the value of the Debtor's attorneys' fees and costs are compensatory and civil in nature. These sanctions are imposed to compensate the Debtor's counsel and require the bad acting parties to bear the burden of the costs caused by their bad acts.

E. The Civil Nature of the Sanctions Imposed Under Bankruptcy Rule 9011 and § 105(a) Upon the Respondents and Mr. Walton for False Statements

The sanctions imposed herein upon the Respondents and Mr. Walton under Bankruptcy Rule 9011 for the making of false statements about the Judge's service in governmental employment as the UST are civil in nature. *Wayland v. McVay (In re Tbyrd Enters., L.L.C.)*, 354 Fed. Appx. 837, 839 (5th Cir. 2009)("There is no legal basis for equating" Bankruptcy Rule 9011 sanctions and

criminal sanctions); *see Miller v. Cardinale (In re DeVille)*, 361 F.3d 539, 552-53 (9th Cir. 2004); *In re W.A.R. L.L.P*., 2012 WL 4482664, at *3 (Bankr. D.D.C. Sept. 26, 2012). To the degree that these sanctions may be imposed under § 105(a), they are compensatory and civil in nature. They are payable to the Court to compensate the Court for the damages inflicted as a result of the making of the false statements.

IX. SANCTIONS IMPOSED UPON THE RESPONDENTS AND MR. WALTON UNDER RULE 37(b)(2) AND § 105(a) FOR THE VIOLATION OF RULE 37(a)

A. The Law on Rule 37(a) & (b)(2)

Rule 37(a)(3)(B) [45] provides, in relevant part, that "a party seeking discovery may move for an order compelling an answer, designation, production, or inspection."

In turn, Rule 37(b)(2)(A) provides, in relevant part, that

> [i]f a party . . . fails to obey an order to provide or permit discovery, including an order under . . . [Rule] 37(a), the court . . . may issue further just orders. They may include the following:
>
> (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
>
> (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matter in evidence;
>
> (iii) striking pleadings in whole or in part;
>
> . . .
>
> (vi) rendering a default judgment against the disobedient party; or
>
> (vii) treating as contempt of court the failure to obey any order . . .

By the plain language, the Court is not limited to those enumerated sanctions; it also may enter any "further just orders." The purpose for Rule 37(b) sanctions

[45] Rule 37 is applicable pursuant to Federal Rule of Bankruptcy Procedure "("Bankruptcy Rule") 9014(a), which provides that Rule 7037 (which, in turn, makes applicable Rule 37) is applicable in contested matters.

may include (1) compensating the court and other parties for the added expense of the abusive conduct, (2) compelling discovery, (3) deterring others from similar conduct, and (4) punishing the guilty party. *Carlucci v. Piper Aircraft Corp*., 775 F.2d at 1453 (internal citations omitted).

The Court has broad discretion in determining appropriate sanctions for the failure to participate in discovery. *See National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639, 642 (1976); *Aziz v. Wright*, 34 F.3d 587, 589 (8th Cir. 1994). "[W]hen the facts show willfulness and bad faith in the failure to permit discovery, the selection of a proper sanction is entrusted to the sound discretion" of the court. *The Cooperative Fin. Ass'n v. Garst*, 917 F.Supp 1356, 1374 (N.D. Iowa 1996)(citing *Avionic Co. v. General Dynamics Corp*., 957 F.2d 555, 558 (8th Cir. 1992)). This includes discretion to impose extreme sanctions available under the Rule. *Comiskey v. JFTJ Corp*., 989 F.2d at 1009 (holding that Rule 37(b)(2)(C) grants "the authority to enter a default judgment against a party who abuses the discovery process."); *Boogaerts v. Bank of Bradley*, 961 F.2d at 768 ("Rule 37(b)(2)(C) authorizes . . . discovery abuse sanctions of [dismissal], striking pleadings, or entering a default judgment against the abusive litigant.").

By the plain language of Rule 37(b)(2), the sanctions must be "just," *Comiskey v. JFTJ Corp*., 989 F.2d at 1009 (citing *Shelton v. American Motor Corp.*, 805 F.2d 1323, 1329-30 (8th Cir. 1986)), and "relate to the claim at issue in the order to provide discovery," *Harmon Autoglass Intellectual Property, L.L.C. v. Leiferman (In re Leiferman)*, 428 B.R. 850, 853 (8th Cir. B.A.P. 2010)(quoting *Hairston v. Alert Safety Light Prod., Inc*., 307 F.3d 717, 719 (8th Cir. 2002)). This means that the sanctions are bound only by that which is "reasonable" in light of the circumstances. *Carlucci v. Piper Aircraft Corp*., 775 F.2d at 1453; *see U.S. v. $18,680.00 in U.S. Currency*, 2009 WL 1158953, at *1 (M.D. Ga. April 28, 2009).

Relevant factors in determining whether Rule 37(b) sanctions are just and reasonable in light of the circumstances include the materiality of the issue on which discovery is withheld and the difficulty posed to the seeking party by the withholding. *The Cooperative Finance Ass'n v. Garst*, 917 F.Supp. at 1374 (citing *Avionic Co. v. General Dynamics Corp*., 957 F.2d at 558). For example, a party

is unfairly prejudiced if the failure of the opposing party to meet their discovery obligations impairs the requesting party's ability to determine the factual merits of the opponent's claim or defense. *Id.* (citing *Avionic Co. v. General Dynamics Corp.*, 957 F.2d at 558).

In *Poulis v. State Farm Fire & Casualty Co*., 747 F.2d 863, 868 (3d Cir. 1984), U.S. Court of Appeals for the Third Circuit provided six factors to consider when determining sanctions under Rule 37(b): (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary cause by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal; and (6) the meritoriousness of the claim or defense.

In *Tan v. Tranche 1 (SVP-AMC), Inc. (In re Tan)*, 2007 WL 7541007, * 6 n.19 (B.A.P. 9th Cir. Sept. 28, 2007), the B.A.P. for the Ninth Circuit recognized a higher burden must be met when imposing dispositive sanctions:

> "[d]ispositive" sanctions such as dismissal (Fed. R. Civ. P. 37(b)(2)(6)), default (Fed. R. Civ. P. 37(b)(2)(C)), and their functional equivalents (i.e. refusing to allow the disobedient party to support or oppose designated claims or defenses (Fed. R. Civ. P. 37(b)(2)(B)), or precluding any evidence as to a prima facie element of a claim . . . must meet a higher standard. First, noncompliance must be due to willfulness, fault or bad faith. . . . Then the court must weigh five factors:
>
> > (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the [opposing] party; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.

see also Paolino v. Brener (In re Paolino), 87 B.R. 366, 379 (Bankr. E.D. Pa. 1988) (imposing the sanction of dismissal where plaintiff "manifested an intent to refuse to comply at all" with discovery requests).

In addition to Rule 37(b), § 105(a) also provides authority for the Court to sanction for abuse of the discovery process. Section 105(a) provides that

> [t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

See also Walton v. LaBarge (In re Clark), 223 F.3d at 864 (holding that the bankruptcy court may impose sanctions under § 105(a) for abuse of process); *In re Rimsat, Ltd.,* 212 F.3d at 1047 (affirming § 105(a) sanctions where there was abuse of process in a vexatious manner). "Abuse of process generally occurs when the legal process is used for improper purposes or to achieve an end not lawfully attainable." *In re DeLaughter*, 1997 WL 34725992, at *6 (Bankr. S.D. Iowa Mar. 21, 1997).

The Court assumes that sanctions imposed under § 105(a) should be warranted by clear and convincing evidence. *See May-Ex II v. Du-an Prods., Inc. (In re Mayex II Corp.)*, 178 B.R. 470-71 (holding that a moving party must prove civil contempt by clear and convincing evidence); *see, e.g., The Cadle Co. v. Moore*, 739 F.3d 724, 720-30 (5th Cir. 2014)(holding that invocation of the inherent power to sanctions requires a finding of bad faith or willful abuse of judicial process upon a finding of clear and convincing evidence); *Shepherd v. American Broadcasting Cos., Inc*., 62 F.3d 1469, 1478 (D.C.C. 1995)(requiring clear and convincing evidence of litigation misconduct as a condition for a default judgment as an exercise of the Court's inherent powers). *But see In re Silberkraus*, 253 B.R. 890, 913-14 (Bankr. C.D. Cal 2000)(questioning whether "clear and convincing" is the applicable standard where the bankruptcy court makes an explicit finding that conduct constituted or was tantamount to bad faith).

The Court has broad discretion in determining what remedy is appropriate for an act of civil contempt. *May-Ex II v. Du-an Prods., Inc. (In re Mayex II Corp.)*, 178 B.R. at 470 (citing *CBS Inc. v. Pennsylvania Record Outlet, Inc.*, 598 F.Supp. 1549, 1557 (W.D. Pa. 1984)). In general, "the appropriate sanction for an act of civil contempt is a calculated monetary penalty equal to that of the loss incurred and/or the amount necessary to coerce . . . compliance with the order." *In re*

Burnett, 455 B.R. 187, 195 (Bankr. E.D. Ark. 2011)(citing *U.S. v. United Mine Workers*, 330 U.S. 258, 304 (1947), and *McDonald's Corp. v. Victory Invests*., 727 F.2d 82, 87 (3d Cir. 1984)). The amount of civil sanctions should be determined upon consideration of (i) the character and magnitude of the harm threatened by continued contumacy, (ii) the probable effectiveness of any suggested sanction in bringing about the result desired, and (iii) the amount of the contemnor's financial resources and consequent seriousness of the burden. *Id.* (quoting *U.S. v. United Mine Workers*, 330 U.S. at 304)).

B. The Violation of Rule 37(a)

The clear and convincing evidence shows that the Respondents are in the contemptuous, willful, bad faith violation of the Order Compelling Discovery. Although the Respondents are legally obligated to respond, in full, to the Requests for Discovery, regardless of any basis for objection that they might have raised by timely objection, they refuse to meet their discovery obligations. Mr. Walton advised the Debtor's counsel that his clients would not produce without an order compelling discovery, needlessly forcing the Debtor to file the Motion to Compel Discovery. The Court and the Debtor endured weeks of status conferences and stalling that failed to produce the required discovery. The "responses" that were (very untimely) provided were grossly insufficient. When the Court finally entered the Order Compelling Discovery, the Respondents then filed numerous rapid-fire motions in an attempt to avoid complying—several of which were either frivolous or close to it, and some of which contained false or misleading representations. The Respondents made bad faith representations about having made reasonable inquiry before making false allegations. They misstated the record about what the Court had ordered. When those motions were denied, Mr. Walton told the Court at the October 1 hearing that the Respondents did not intend to comply with the Order Compelling Discovery. Thereafter, the Court entered the First Order Imposing Sanctions. When those sanctions did not garner the discovery, the Court entered its Second Order Imposing Sanctions. In the meantime, the Respondents lied again about the Judge in federal pleadings, accrued $35,000.00 in sanctions, attempted to

appeal twice, and filed a petition for writ of mandamus that was denied. Still, no discovery was made. The Court offered the Respondents an alternative, nonmonetary choice for satisfying the sanctions, but the Respondents instead chose to persist in their contempt. After the Motion to Compromise Controversy was denied for a lack of standing, the Respondents then filed another motion to recuse, denied they had made false statements, claimed they were excused from making discovery by the Debtor's counsel, and continued to refuse to meet their discovery obligations.

The clear and convincing evidence also shows that Mr. Walton, in an effort to facilitate and promote the Respondents' contempt, willfully and in bad faith abused the judicial process and vexatiously litigated the issue of the Respondents' discovery obligations, resulting in the multiplication of hearings and the length of this litigation for no legal reason. His actions included: failing to timely file a Response on behalf of the Respondents, then attempting to "serve" the Debtor by jumping her in court on the day of the hearing with the untimely Response; demanding that the Debtor obtain an order compelling his clients' response to uncontested discovery requests; raising waived objections and insisting that they had not been waived; taking frivolous legal positions both in pleadings and at court; misstating the record and the content of orders; repeatedly insisting that the required discovery would be made when it later was not; insisting that his clients did not have to respond to the Requests for Discovery in full; waiting until the last possible moment before the court date to produce the already untimely discovery responses (depriving the Debtor's counsel of the opportunity to review the documents before the hearing), then providing the Respondents' grossly insufficient "responses"; accusing the Debtor of bad faith for not advising him of his obviously inadequate responses; using an obnoxious and unprofessional demeanor in the courtroom that included shouting at the Judge and arguing belligerently; making false representations regarding his clients' intent to participate as required in the discovery; making personal attacks on opposing counsel in pleadings; and blaming the Judge for the circumstances of his clients. As a result of Mr. Walton's abuse of judicial process,

what should have been a simple § 329 disgorgement request has dragged on more than a year, monopolizing scores of hours of the Court's and opposing counsel's time, and denying the Debtor the opportunity to proceed on her litigation. From the moment Mr. Walton filed his Notice of Appearance, he has utilized bad faith and willful, bad acts to advocate for his clients—to their grave detriment, but not mitigating their own responsibility.

C. Sanctions Imposed Upon the Respondents Under Rule 37(b)(2) and § 105(a) for Discovery Violations

Pursuant to Rule 37(b)(2)(A) and § 105(a), (either of which would, alone, be sufficient as a ground for imposing these sanctions), the Court **ORDERS** that:

(I) the accrued $30,000.00[46] in sanctions be imposed on a final basis and made immediately due for payment;

(II) pursuant to Rule 37(b)(2)(A)(vii), the Respondents' refusal to obey the Order Compelling Discovery be treated as contempt of the Court;

(III) pursuant to Rule 37(b)(2)(A)(ii), the Respondents be prohibited from supporting any claim or defense they may have raised to the claims in the Motion to Disgorge and from opposing any claim of the Debtor made in the Motion to Disgorge;

(IV) pursuant to Rule 37(b)(2)(A)(i), it be directed that all well-pleaded facts alleged by the Debtor in the Motion to Disgorge and all well-attested facts to which she attested in her Affidavit be established for purposes of the Motion to Disgorge, even if any such fact is contrary to any factual allegation made by the Respondents in any pleading or at any hearing in this matter; and, in any circumstance where any fact established pursuant to this sanction may conflict

[46] The Respondents accrued $35,000.00 in sanctions. However, those sanctions were reduced in the February 13 Notice of Satisfaction. In that Notice, the Court recognized that Mr. Robinson had satisfied a separate $3,000.00 in sanctions that he had accrued in this matter, following his violation of the bar on his use of the Court's drop box. In recognizing this satisfaction, the Court also reduced the $35,000.00 in sanctions by $5,000.00—even though the Court expressed skepticism about Mr. Robinson's claimed excuse for why he violated the bar. The Court sua sponte reduced the sanctions in recognition that Mr. Robinson showed some modicum of respect by paying those sanctions promptly.

> with any factual allegation made by the Respondents in a pleading or at a hearing in this matter, then such conflicting allegation shall be disregarded.

The Court considered the *Poulis* factors and determined that those factors weighed in favor of imposing sanctions:

(1) ***Poulis* Factor 1: Personal Responsibility.** The Respondents—an attorney and his purported d/b/a—were not innocent bystanders to the abuse of process. They were not victimized by their bad-acting attorney. Mr. Robinson is an officer of the Court and knew that what the Respondents were doing was unlawful. The Respondents are personally responsible for their refusal to meet their discovery obligations and for the strategies employed to avoid making discovery.

(2) ***Poulis* Factor 2: Prejudice.** The Debtor was severely prejudiced by the refusal to meet their discovery obligations. She was deprived of the material responses and production to which she was entitled. She was severely hindered in her ability to prosecute her motion and to respond to the defenses.

(3) ***Poulis* Factor 3: Dilatoriness.** The Respondents had a history of dilatoriness. They failed to timely file their Response to the Motion to Disgorge. They failed to timely serve their Response upon the Debtor. They failed to timely respond to the Requests for Discovery. They consistently waited in the very last possible moment to file most of their pleadings and to provide already-late, grossly deficient discovery "responses," in a clear effort to stall the proceedings and deny the Debtor a proper opportunity to consider the documents.

(4) ***Poulis* Factor 4: Willful, Bad Faith Conduct.** The Respondents' conduct was willful and in bad faith. For example, they filed the frivolous Motions to Quash. They failed to timely respond to the Requests for Discovery. They repeatedly raised

waived objections and refused to meet their discovery obligations based on those waived objections. They asserted the frivolous defense of a failure of personal jurisdiction. And they submitted vague, unreadable and otherwise deficient late responses to the Requests for Discovery.

(5) ***Poulis* Factor 5: Effectiveness of Other Sanctions.** Previous, lesser sanctions were ineffective.

(6) ***Poulis* Factor 6: Meritoriousness.** Nothing about the generic denials and blame-the-Debtor defenses indicates that they are meritorious, especially in light of the Respondents' refusal to participate in the discovery process on those defenses.

In addition, the Court also considered the *Tan* factors and determined that those factors weighed in favor of imposing the dispositive sanctions:

(1) ***Tan* Factor 1: Public Interest.** The public has a strong interest in the expeditious resolution of this litigation, as a year-plus delay in making discovery to the uncontested discovery requests on a motion to disgorge does not build confidence in the judicial system's timeliness, and undermines the public's confidence in the process.

(2) ***Tan* Factor 2: Docket Management.** The Court has a need to manage its docket so that this matter no longer usurps an inordinate amount of the Court's time and resources due to frivolous and vexatious litigation and willful contempt.

(3) ***Tan* Factor 3: Risk of Prejudice:** The risk of prejudice to the Debtor if these sanctions are not imposed is considerable, as she will be forced to either abandon the Motion to Disgorge or prosecute it blind, after essentially no discovery.

(4) ***Tan* Factor 4: Policy of In Favor of Disposing on the Merits.** While public policy favors disposing of cases on the merits, that policy is not trumped by the need to protect the Debtor and the

Court from the further bad faith, contempt and abuse of the Respondents and their counsel.

(5) ***Tan* Factor 5: Less Drastic Sanctions.** Less drastic sanctions have failed, as the Respondents are recalcitrant in their refusal to participate in the discovery process as required.

Further, the Court considered whether the sanctions are "just" as required under Rule 37(b)(2), and reasonable, and "necessary or appropriate" as required under § 105(a):

An inducement to obey the Order Compelling Discovery and a consequence for refusing to obey the Order Compelling Discovery. The sanctions were just, reasonable, necessary, and appropriate to induce compliance with the Order Compelling Discovery. By the time they were imposed on October 2, 2013, the Respondents were in willful, bad faith, unexcused refusal to obey the Order Compelling Discovery. They had made it clear at the October 1 hearing that they did not intend to obey the Order Compelling Discovery. As such, the Court concluded that the Respondents could not be induced to obey simply by pointing out the law and asking firmly.

In setting the sanctions at $1,000.00 a day, the Court considered the *In re Burnet* factors: (i) the "character and magnitude of the harm threatened" by the refusal to obey the Order Compelling Discovery (the harm was inflicted in bad faith, done for the purpose of preventing the Debtor from proceeding, and was of a great magnitude, since the refusal denied the Debtor of significant discovery); (ii) "the probable effectiveness" of the sanctions (these sanctions offered the best chance of garnering compliance, especially as compared with toothless demands); and (iii) "the amount of [the Respondents'] financial resources and the consequent seriousness of the burden" (the Court balanced the need to make the sanctions significant enough not to be an absorbable cost of doing business, with the goal of not over-sanctioning).

As to the third *Burnet* factor: Respondents receive approximately $1,000.00 in attorney compensation each day for new cases filed in this Court. Pursuant to the records of the Clerk's Office (**Attachment B**), in 2013, the

Respondents filed 1,133 bankruptcy cases in this District. Of those, 89% (1,009) were chapter 7 cases and 11% (124) were chapter 13 cases (thereby averaging three new chapter 7 cases a day). Further, a random sampling[47] done by the Clerk's Office of 100 of cases filed by the Respondents in the first six months of 2013 shows that the Respondents' average chapter 7 case fee was $296.23. As such, the Respondents average approximately $900.00 a day in compensation for chapter 7 cases alone—a figure that does not include any of the considerable compensation for the Respondents' chapter 13 cases.[48] Given this, the $1,000.00 a day in sanctions constituted a monetary penalty equal to that of the loss incurred and/or the amount necessary to coerce compliance, as articulated in *In re Burnet*.

The Respondents did not raise as a defense to the imposition of these sanctions based on a claim of financial inability. Had they raised and established such defense, the Court would have recalibrated the sanctions. However, establishing such a defense would have required the presenting of evidence on the issue of the Respondents' financial abilities, thereby exposing their business to at least some degree of scrutiny—something that the Respondents have gone to considerable lengths to avoid in discovery.

A discouragement to others from such sanctionable behavior. The sanctions were just, reasonable, necessary, and appropriate to discourage others from similar, sanctionable behavior. The unexcused, willful refusal to obey a lawful court order must be strongly discouraged. The fact that these Respondents in particular were not discouraged by the sanctions does not mean that the sanctions would not discourage others. The Respondents' unmitigated

[47] The sample was weighted so that 90 percent of the cases were chapter 7 proceedings and 10 percent of the cases were chapter 13 proceedings, mirroring the Respondents' percentage of chapter 7 cases to chapter 13 cases.

[48] According to the records of the Clerk's Office, the Respondents charge an average of $4,000.00 to represent a debtor in a chapter 13 case (more than thirteen times the usual rate charged for chapter 7 representation). As such, even though chapter 13 cases are only 11% of the Respondents' filings, they account for a significant portion of the Respondents' disclosed compensation.

refusal to obey a lawful court order and their imperviousness to deterrents is certainly an outlier of attorney behavior, in the Court's experience.

A consequence for willful, bad faith contempt. The sanctions are just, reasonable, necessary and appropriate as a consequence for the Respondents' bad faith and willful refusal to purge their contempt and to meet their discovery obligations. The Respondents deserved to be sanctioned for unpurged contempt and held up for public dishonor. The monetary sanctions are a particularly just, reasonsable, necessary and appropriate consequence, given that the Respondents receive considerable compensation for cases filed before this Court, for which they clearly have no respect. As such, it is entirely just, necessary and appropriate that they be hampered in their ability to make money off filings here while they abused the judicial process.

In light of the effect of the Respondents' refusal to meet their discovery obligations. The effect of the refusal to meet their discovery obligations was significant and severe, as set forth previously in this Memorandum Opinion in the discussion of the *Poulis* Factor 2.

D. Sanctions Imposed Upon Mr. Walton Under Rule 37(b)(2) & § 105(a) for Discovery Violations

Sanctions may be imposed under Rule 37(b) against not only the violating party, but also against his attorney, when that attorney has engaged in abuse of the discovery process. In the recent case of *Alexander v. Hedback (In re Stephens)*, 2014 WL 1302928, at *1, the Eighth Circuit affirmed the bankruptcy court's imposition of sanctions against an attorney under Rule 16(f), the rule governing pretrial procedure. *Hedback* determined that the contemnor as well as his counsel had "flagrantly abused not only the discovery process and the rules but [also] this Court's scheduling order" without regard "to this Court's integrity" and without regard to anything "other than an obstructionist attitude," *Alexander v. Hedback (In re Stephens)*, 2013 WL 3465281, at *3 (quoting the bankruptcy court's order), and imposed sanctions against both the contemnor and his counsel. Sanctions also were imposed against counsel for vexatiously increasing the costs of litigation by interfering with discovery, by requiring the court to hold

additional hearings, and by prolonging the already protracted litigation. *Id.* at *6. The language of Rule 16(f) is similar to the language of Rule 37(b)(2)(A), and even incorporates Rule 37(b) by reference: "On motion or on its own, the court may issue any *just orders*, including those authorized by Rule 37(b)(2)(A)(ii-vii), if a party or its attorney fails to appear at a pretrial conference or fails to participate in or obey an order related to pretrial obligations." (emphasis added.) As such, *Hedback* supports the conclusion that the Court may impose sanctions against an attorney pursuant to the "just orders" provision of Rule 37(b)(2)(A). Rule 37(b)(2)(A) permits sanctions to be imposed upon an attorney for violations by his client of the discovery process, if circumstances make such relief just.[49]

Moreover, even if Rule 37(b) does not contemplate the imposition of sanctions against the attorney, the Court still has authority under § 105(a) to sanction an attorney for abuse of the bankruptcy process, including abuse of the discovery process. *Walton v. LaBarge (In re Clark)*, 223 F.3d at 864 (holding that the bankruptcy court "had ample . . . authority to sanction Walton. Section 105 gives to bankruptcy courts the broad power to implement the provisions of the [B]ankruptcy [C]ode and to prevent an abuse of the bankruptcy process, which includes the power to sanction counsel. This provision has been interpreted as supporting the inherent authority . . . to impose civil sanctions for abuses of the bankruptcy process.")(internal citations omitted).

Abuse of the bankruptcy process occurs when the legal process is used for improper purposes or to achieve an end not lawfully attainable. "A federal judge is responsible for each case before him, for seeing it to completion with the efficient use of the court's and parties' time and resources in a timely manner." *In re DeLaughter*, 1997 WL 34725992, at *6. Abuse of the bankruptcy process is committed by a party's attorney when an attorney acts in such a way that he

[49] The Court does not suggest that it should be common practice to impose sanctions against an attorney when his client chooses to violate his discovery obligations. To the contrary, an attorney generally should not be sanctioned because his client chooses a contemptuous path. However, here, the attorney did not merely suffer a noncompliant client. He actively facilitated and promoted the contempt through his advocacy.

uses the legal process for improper purposes or in an effort to obtain an unlawful end—which is what Mr. Walton did here.

Pursuant to Rule 37(b)(2)(A) and § 105(a),[50] the Court **ORDERS** that Mr. Walton be made jointly and severally liable with the Respondents for the $30,000.00 in sanctions payable to the Court for the Respondents' refusal to obey the Order Compelling Discovery. These sanctions are just, reasonable, necessary and appropriate, in light of the facts set forth in this Memorandum Opinion. Mr. Walton assisted in, endorsed, facilitated, and actively promoted the Respondents' refusal to meet their discovery obligations and their months of contempt. Mr. Walton's actions have been just as disgraceful, abusive and worthy of sanctions as have been those of his clients.

X. THE DISPOSITION OF THE MOTION TO DISGORGE

Because of the effect of the sanctions imposed herein, a hearing on the Motion to Disgorge is not required or appropriate. The Respondents are deemed to have admitted the well-pleaded facts in the Motion to Disgorge and the well-attested attestations in the Affidavit. They also are prohibited from presenting or supporting any defense they may have, or from opposing the Debtor's claims. Because the well-pleaded facts and the well-attested attestations establish that disgorgement is proper, the Court now can dispose of the Motion to Disgorge on the merits.

A. The Law on Disgorgement Under § 329

Section 329(b) provides that "[i]f such compensation [of a debtor's attorney] exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to . . . the estate, if the property transferred . . . would have been property of the estate." This statute "allows the court sua sponte to regulate attorneys and other people who seem to have charged debtors excessive fees." *(Brown v. Luker) In re Zepecki*, 258 B.R. 719, 725 (B.A.P. 8th Cir. 2001)(citing *In re Weatherley*, 1993 WL 268546 (E.D. Pa. 1993)). Section

[50] The Court cites the authority in complement, but notes that these sanctions could be ordered imposed under either Rule 37(b) or § 105(a), standing alone.

329, by its terms, applies to post-petition services as well as to prepetition services. *See Schroeder v. Rouse (In re Redding)*, 247 B.R. 474, 478 (B.A.P. 8th Cir. 2000). As such, pursuant to § 329(b), the bankruptcy court may order that a request for payment of the debtor's attorney's fees be denied or that fees paid to the debtor's attorney be disgorged. *Walton v. LaBarge (In re Clark)*, 223 F.3d at 864 (noting the power of the bankruptcy court to award or deny fees); *In re Burnett*, 450 B.R. at 130-31 (providing that § 329(b) allows the court to disgorge compensation already received).

Disgorgement of attorney's fees is not a punitive measure and does not constitute damages. *In re Escojido*, 2011 WL 5330299, at *2 (Bankr. S.D. Cal. Oct. 28, 2011) (citing *Berry v. U.S. Trustee (In re Sustaita)*, 438 B.R. 198, 213 (B.A.P. 9th Cir. 2010)). As such, disgorgement pursuant to § 329(b) is a civil remedy with no additional procedural protections.

Section 329 "is aimed solely at preventing overreaching by a debtor's attorney." *In re Benjamin's-Arnolds, Inc.*, 1997 WL 86463, *6 (Bankr. D. Minn. Feb. 28, 1997). Before disgorgement may be ordered, there must first be a determination that the fees are excessive. *Schroeder v. Rouse (In re Redding)*, 247 B.R. at 478. In determining whether fees are excessive, "a court should compare the amount of compensation that the attorney received to the reasonable value of the services rendered." *Brown v. Luker (In re Zepecki)*, 258 B.R. at 725 (citing *Schroeder v. Rouse (In re Redding)*, 247 B.R. at 478). The attorney bears the burden of proving that his compensation is consistent with the reasonable value of his services. *See id.*

An attorney may not hide behind the excuse that his non-attorney staff rendered poor or improper services,[51] regardless of whether he specifically

[51] Mo. Prof. R. 4-5.3(a) & (b) requires that "a lawyer who . . . possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that [a nonlawyer's] conduct is compatible with the professional obligations of the lawyer" and that "a lawyer having direct supervisory authority of the nonlawyer shall make reasonable efforts to ensure that the [nonlawyer's] conduct is compatible with the professional obligations of the lawyer."

directed his staff to practice law without a license or to commit improprieties, or whether he just incompetently managed his staff. "Responsibility for the inadequate representation . . . cannot be placed on [the attorney's] employees. Purely as a matter of his role as the attorney in [the] case, [the attorney] bears responsibility for the actions of his employees." *In re Burnett*, 450 B.R. at 135.

B. Analysis of the Request for Disgorgement Under § 329

The evidence establishes that the reasonable value of the Respondents' services—which were not "legal services" in any meaningful sense—is $0.[52] Their value is $0 because, in order for legal services to be worth anything, they must actually be rendered. Here, the evidence shows that the Respondents abjectly failed to render anything close to "legal services." Moreover, those "services" that were rendered constituted a *dis*service:

- The Respondents failed to properly manage their office to allow them to meet basic clients needs, such as by allowing the voicemail system to remain full (making client contact by telephone impossible) and by losing the Debtor's credit counseling certificate, requiring her to re-take (and incur the cost for) the credit counseling course.
- Non-attorney agents of the Respondents gave the Debtor legal advice.
- Mr. Robinson relied on his non-attorney staff to do the substantive client contact, interviewing and document preparation.
- Mr. Robinson met with the Debtor only after she had paid for his legal services and only after the Respondents' non-attorney agents improperly provided her with legal advice about the preparation of her petition papers.
- An agent of the Respondents solicited false information from the Debtor for the purpose of including such in the Debtor's petition papers.

[52] The Court chooses to assign zero-value because this dovetails with § 329(b)'s "excess" requirement. However, an alternate holding would be that the Respondents failed to adequately represent the Debtor, thereby failing to earn the $495.00. *In re Bost*, 341 B.R. 666, 689 (Bankr. E.D. Ark. 2006)(ordering disgorgement because the attorney had not adequately represented his clients and has not earned the fees they paid him).

- An agent of the Respondents advised the Debtor that she must make false representations on her petition papers in order for Mr. Robinson to represent her in a chapter 7 bankruptcy case.
- An agent of the Respondents misled the Debtor into believing that her false representations would not present a legal problem.
- Mr. Robinson failed to correct the petition papers, despite knowing that they contained a false representation regarding the Debtor's address.
- Mr. Robinson signed the Debtor's petition papers and filed them on behalf of the Debtor, knowing that they contained a false representation.
- Mr. Robinson failed to advise the Debtor that making false representations on her petition papers was illegal, and represented, by filing the papers, that these false representations were acceptable.
- Following the filing of the petition papers, the Respondents' failure to return telephone calls, keep client records, and properly advise the Debtor as to how she could rescind the Reaffirmation Agreement resulted in the Debtor being unable to rescind her Reaffirmation Agreement.

In summary, the facts show that Mr. Robinson "practiced law" (and the Court uses that phrase very loosely) by using his non-attorney staff to collect payments, interview clients, and prepare the petition paperwork. He did not meet with the Debtor until after she paid for his services, and after she was improperly and repeatedly given bad "legal advice" from Mr. Robinson's non-attorney staff. At best, Mr. Robinson is a human rubberstamp who signs legal paperwork prepared by his non-attorney staff, but is so intellectually unengaged, incapable or indifferent that he fails to correct known false statements. However, the Court believes that the clear and convincing evidence (including the admitted facts and the reasonable inferences drawn from the Respondents' steadfast refusal to meet their discovery obligations, which involved disclosures about their business) establishes that the reality is much worse. Mr. Robinson runs a business that is a low-rent petition preparation mill masquerading as a law practice, where non-attorneys solicit false information, the attorney provides no real legal representation, and money is made off the exploitation of the vulnerable—those

who are without the financial means to employ better counsel or to hold their attorney accountable for his failure to provide legal services.

The conclusion that the Respondents' services were worth $0 is an understatement that approaches flattery. The Respondents' "services" did not benefit the Debtor in any way and instead caused her financial damage.[53]

Accordingly, the Court **FINDS** that the reasonable value of the "services" rendered by the Respondents is $0, and that the Debtor paid $495.00 in excess compensation. As such, the Court **HOLDS** that it is proper that the Respondents disgorge the excess compensation of $495.00[54] and **ORDERS** that the Motion to Disgorge be **GRANTED IN PART**.[55] The Respondents are directed to forthwith

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[53] Mo. Prof. R. 4-1.3 requires that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." Mo. Prof. R. 4-1.4(a)(1) & (2) requires that "[a] lawyer shall . . . keep the client reasonably informed about the status of the matter . . . [and] promptly comply with reasonable requests for information." Mo. Prof. R. 4-1.1 requires that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

[54] In her November 12, 2013 Declaration [Docket No. 99], the Debtor represents that Mr. Ross Briggs, an attorney associated with Critique Services L.L.C. (and now a defendant in Adversary Proceeding No. 13-4284), remitted to the Debtor's attorney a payment of $199.00. In the Declaration, it was represented that, in remitting these funds, Mr. Briggs indicated that the Debtor had paid him $199.00 for representation in a bankruptcy case that Mr. Briggs never filed. The Debtor's counsel advised that his client did not accept the remittance, to the degree that it may have constituted an effort at settlement, but that he would retain the funds as an offset against any future awards that the Debtor may obtain. To the degree that the $199.00 constitutes a payment from Critique Services L.L.C., such payment should be an offset as the Debtor's counsel indicated, and remitted to the chapter 7 trustee for administration, when the remainder of the $495.00 is remitted.

[55] There is a discrepancy between the amount of attorney's fees that the Debtor alleges she paid in attorney's fees ($495.00) and the amount Mr. Robinson represented in his Disclosure of Compensation of Attorney for Debtor(s) statement that he was paid ($199.00). Because the sanctions herein provide that "in any circumstance where any fact established pursuant to this sanction may conflict with any factual allegation made by the Respondents in a pleading or at a

disgorge the $495.00 in fees and that those disgorged fees be remitted to the chapter 7 trustee for administration.

However, the Court also **ORDERS** that the Motion to Disgorge be **DENIED IN PART** as to the request to order additional monetary relief for damages the Debtor alleges she suffered as a result of the Respondents' failure to render legal services. The only form of relief available under § 329 is disgorgement—and disgorgement is necessarily limited to the amount paid. The relief requested by the Debtor related to her damages sounds in malpractice. The law indicates that a § 329 motion is not a substitute for a malpractice action.[56] *See, e.g., In re Burton*, 442 B.R. 421, 468 (Bankr. W.D.N.C. 2009) ("The sanctions matter, while a serious disciplinary proceeding, is not an adequate substitute for a malpractice suit." (citing *In re Palumbo Family Ltd. P'ship*, 182 B.R. 447,473-74 (Bankr. E.D. Va. 1995)). Accordingly, the Court declines to award on the Motion to Disgorge damages or sanctions to compensate the Debtor for any losses that she alleges were the result of malpractice. However, this denial in part is without prejudice to the bringing of a malpractice claim. *See, e.g., Woodward v. Sanders (In re SPI Communications & Marketing, Inc.),* 112 B.R. 507, 510 (Bankr. N.D.N.Y. 1990)(holding that postpetition claims for legal malpractice by a debtor's attorney were core proceedings); *Hershman v. Thorne, Grodnik & Ransel (In re Stockert Flying Serv., Inc.)*, 74 B.R. 704, 707-08 (N.D. Ind. 1987)(holding that legal malpractice claim against the debtor's attorney for postpetition mishandling of the estate assets was a core proceeding).

In the alternative, if entering the judgment on the merits were not proper for whatever reason, the Court would impose additional sanctions of (i) striking the Response to the Motion to Disgorge pursuant to Rule 37(b)(2)(A)(iii), and (ii) entering a default judgment in the Debtor's favor under Rule 37(b)(2)(A)(vi), and

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hearing in this matter, then such conflicting allegation shall be disregarded," the Court accepts $495.00 as the amount of the fees paid.

[56] The issue of whether an attorney committed malpractice in the course of overcharging the debtor is different from the issue of whether disgorgement is proper because of overcharging—even if facts that are relevant to the § 329 determination may also be relevant to a malpractice claim.

would order that the $495.00 in fees be disgorged without prejudice to the bringing of any other claim against the Respondents.

XI. FALSE DISCLOSURE OF COMPENSATION STATEMENT

The review of the relevant pleadings in connection with the Motion to Disgorge raises the concern for the Court that Mr. Robinson filed a false Disclosure of Compensation Statement under Rule 2016(b). In the Disclosure of Compensation of Attorney for Debtor(s) statement filed in the Main Case, Mr. Robinson certified he "agreed to render legal service in all aspects of the bankruptcy case, including: a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy; b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required; c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof; d. [Other provisions as needed]."[57] However, Mr. Robinson's rendering of "advice" included having his non-attorney staff advise the Debtor and solicit false representations for inclusion in the petition papers. His "preparation and filing" of the petitions papers involved known false representations. His postpetition rendering of services was not better. The Respondents did not return

[57] According to the Disclosure of Compensation of Attorney for Debtor(s) statement, excluded from the scope of representation of the Debtor were "any dischargeability actions, judicial lien avoidances, redemption, relief from stay actions or any other adversary proceeding *and/or* motions." (emphasis added.) This "and/or" gibberish, coupled with the unspecified "[Other provisions as needed]," takes the practice of "services unbundling" to a new low. First, a carve-out of representation cannot be on an "and/or" basis. The service either is, or is not, carved out. Second, the "and/or" permits the scope of representation to be left up to the whim of Mr. Robinson. This is inconsistent with an attorney's obligation to make clear to his client the scope of the representation. *See* Mo. Prof. R. 4-1.5(b). Third, the carving out of representations on all "motions" (apparently, even for motions related to or challenging papers prepared by Mr. Robinson) is inconsistent with Mr. Robinson's obligation to provide competent representation. *See* "You're Charging Me For Text Messages? Communication Should Begin With Your Representation Agreement," Melody Nashan, Nov. 13, 2013 (article available on the OCDC website)("The scope of the engagement may not be so limited that it violates the lawyer's duty to provide competent representation pursuant to Rule 4-1.1."). An attorney cannot contract for client abandonment when competent representation is required.

calls, did not permit messages, did not maintain the Debtor's file properly, and provided no services to assist the Debtor in her legal efforts to rescind the Reaffirmation Agreement. The evidence suggests that Mr. Robinson did not intend to provide the services for which he had been retained.

Accordingly, this apparently false statement, along with other issues and concerns raised in this Memorandum Opinion supports the Court's directions to provide a copy of this Memorandum Opinion to (i) the U.S. District Court for referral for any disciplinary investigation that may be proper, (ii) the Office of the UST as a report of suspected bankruptcy fraud or abuse, and (iii) the Office of the USAG, for that Office's information.

XII. SANCTIONS IMPOSED UPON THE RESPONDENTS AND MR. WALTON UNDER § 105(a) FOR VALUE OF THE DEBTOR'S ATTORNEYS' FEES

On April 23, 2014, the Debtor's counsel filed the Fee Affidavits, as ordered by the Court. Neither the Respondents nor Mr. Walton challenged the attestations in the Fee Affidavits. A hearing on the issue of the imposition of sanctions for attorney's fees was not requested.

The Court now **ORDERS** that the Respondents and Mr. Walton be sanctioned by being made jointly and severally liable for $19,720.00. This is the amount of the value of the attorney's fees incurred by the Debtor's counsel between September 5, 2013 (the day that the Fee Affidavits indicate that the Debtor's counsel began devoting significant time to the issue of the Respondents' refusal to meet their discovery obligations) through January 27, 2014 (the day before settlement negotiations), as reflected in the Fee Affidavits and the Exhibit 7 Fee Statement, with certain adjustments backed out (**Attachment C**).[58] These sanctions are necessary and appropriate because they make the bad actors bear the burden of the time, effort, and resources spent by the Debtor's counsel as

[58] The Court closely scrutinized the Affidavits in determining the appropriate sanctions for attorneys' fees. Excluded from fees included in the sanctions are those related to: Adversary Proceeding No. 13-4284; preparation for mediation efforts and settlement negotiations; meetings with the Office of the UST; and reviewing press coverage related to the Case. In calculating the value, the Court applied the attorneys' attested hourly rates, as set forth in the Fee Affidavits.

direct result of the Respondents' refusal to meet their discovery obligations, their vexatious litigation, and their abuse of process. The Debtor's counsel's good faith efforts to obtain the discovery were met with nothing other than bad faith responses and litigation in an effort to avoid making discovery. There were numerous unproductive hearings. One of the attorneys was subjected to an unfounded attack upon his character. Sanctioning the Respondents and Mr. Walton for the value of the attorney's fees for that time period is necessary and appropriate for the purpose of protecting the sanctity of the judicial process and to properly place the burden of their bad acts upon them. The fact that the the Debtor's counsel served on a pro bono basis makes no difference. Public policy should not operate to hold a bad actor less accountable because opposing counsel provided his services on a pro bono basis.[59]

Specifically, the Court **ORDERS** as follows:

(I) $1,710.00 of the $19,720.00 (the amount of attorneys' fees ordered to be paid in the Order Compelling Discovery) be paid in full and forthwith, by cashier's check or other source of immediately payable funds, to the Debtor's counsel, pursuant to Rule 37(a)(5)(A) and 37(b)(2)(C);

(II) $18,010.00—the remainder of the $19,720.00—be paid in full and forthwith, by cashier's check or other source of immediately payable funds, to a local legal services charity of the choice of the Debtor's counsel, pursuant to § 105(a). Along with tendering payment, the Respondents and Mr. Walton shall provide to the charity: (i) a cover letter advising that the funds are being transferred, free and clear and without contingencies, in fulfillment of Court-ordered sanctions; (ii) a copy of this Memorandum Opinion along with a citation to the page number on which this relief is ordered; (iii) a request that the donation be made in honor of "All Honorable Attorneys Who Practice Before the U.S. Bankruptcy Court for the Eastern District of Missouri"; and (iv) a specification that "no public acknowledgement, recognition, honor or accolades of charitable intent be given to the transferor(s) in connection with this transfer," with the explanation that: "This transfer, while being made to a charity, is not being made as a personal act of generosity or charity on the part of the transferor(s), but is being made solely in satisfaction of sanctions directive set forth in a federal court order." Upon payment of this amount, a "Notice of

[59] The Court will honor the Debtor's counsel's intent to provide pro bono services.

Satisfaction of Sanctions Payable to Charity" shall be filed, with a copy of the form of payment and the cover letter attached.

(III) The Debtor's counsel to file a "Notice of Choice of Legal Charity," with the name, address and contact information of their chosen local legal services charity, within three days of entry of this Memorandum Opinion, so that the Respondents and Mr. Walton can act forthwith.

XIII. SANCTIONS IMPOSED UPON THE RESPONDENTS AND MR. WALTON FOR THE VIOLATION OF BANKRUPTCY RULE 9011

A. The Law on Bankruptcy Rule 9011

Bankruptcy Rule 9011(b) provides, in relevant part, that

> [b]y presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . .

By the plain language of Rule 9011, an attorney "presents" a petition, pleading, written motion or other paper whether "by signing, filing, submitting, or later advocating." This list is disjunctive, meaning that an attorney subjects himself to Bankruptcy Rule 9011 merely by signing, or by filing, or by submitting, or by advocating, the document.

If a Court has cause to believe that an attorney has violated Bankruptcy Rule 9011(b), it may, "[o]n its own initiative . . . enter an order describing the specific conduct that appears to violate subsection (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto." Bankruptcy Rule 9011(c)(1)(B). As such, both the attorney and the party may be sanctioned under Bankruptcy Rule 9011(c)(1)(B).

Bankruptcy Rule 9011 sanctions are "limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. . . . [and] may consist of, or include, directives of a nonmonetary nature . . ." Fed. R. Bankr. P. 9011(c)(2). Moreover, while courts have the power to sanction

attorneys for misconduct, that power must be limited in scope; thus, sanctions should be imposed judiciously. *Halverson v. Funaro (In re Funaro)*, 263 B.R. 892, 901 (B.A.P. 8th Cir. 2001)(addressing the imposition of Rule 9011 sanctions). The Court "may not 'not rush into ill-considered imposition of sanctions.' Rather [the Court] should consider the imposition of different kinds of sanctions, the effect of the sanctions on litigation, and the ability of the prejudiced parties to present their case in light of their misconduct." *Id.* (quoting *In re Brown*, 152 B.R. 563, 569 (Bankr. E.D. Ark. 1993)).

B. The Notice and the Responses by the Respondents and Mr. Walton

In the April 21 Notice, the Court issued a show cause directive in the form of notice that it intended to impose sanctions against the Respondents and Mr. Walton for the making of false statements at hearings and in pleadings, including but not limited to, "the false representations made at hearings regarding the status of the Respondents' discovery responses and the Respondents' intent to make discovery, and the false statements made about the presiding Judge's previous employment as the United States Trustee made in support of a demand for the Judge's disqualification." It advised that such sanctions might be imposed on any ground permissible under the law. This necessarily included (as any bankruptcy attorney would know) sanctions under Bankruptcy Rule 9011 (for false statements in pleadings) and § 105(a). The Court gave the Respondents until April 28, 2014 to respond.

In the Third Motion to Recuse filed the next day, Mr. Walton collaterally attacked the April 21 Notice, complaining that the Court indicated that it intended to impose sanctions on representations made in the Second—not the First—Motion to Recuse. In its April 23 Order Denying the Third Motion to Recuse, the Court pointed out that the false statements to which the April 21 Notice referred were not made in the Second Motion to Recuse, but had been made in earlier pleadings (and which had been identified as false in previous Orders).

On April 28, 2014, Mr. Walton filed on behalf of himself and the Respondents a response to the April 21 Notice. He cited no on-point case law or statute. He did not address Bankruptcy Rule 9011 or § 105(a). For the most part,

his arguments were re-hashing of previously raised issues, generic claims, or baseless factual allegations and legal contentions.

Also on April 28, 2014, Mr. Robinson filed a response on behalf of himself. First, he argued that he did not have sufficient notice as to which false representations were included in the "are not limited to" language of the April 21 Notice. Without commenting on the merits of this position, the Court notes that this point is moot. To the degree that sanctions are imposed under Bankruptcy Rule 9011, they are imposed for the false statements made regarding the Judge's service in governmental employment as UST—false statements about which the Respondents were well-aware, as the Court had identified them as false in previous orders.

Second, Mr. Robinson argued that he was not afforded an evidentiary hearing on the issue of whether the false statements were false. However, Mr. Robinson was not entitled to an evidentiary hearing on the falsity of those statements. When he filed the motions that included those false statements, he did not seek a hearing from this Court on the veracity of those allegations. In doing so, he ran the risk that the Court would do exactly what it did: determine that the allegations were false. The Court also notes that, even now, Mr. Robinson does not contend that the allegations he made about the Judge are, in fact, true. He just claims that he did not make false statements.

Third, Mr. Robinson accused the Court of "prejudging" him by issuing the April 21 Notice. The April 21 Notice was a show cause directive. Such a directive advises a party that the Court intends to enter a particular disposition and warns that such a disposition may be entered unless cause is shown to do otherwise. It necessarily means that the Court has an inclination as to a judgment. Moreover, Mr. Robinson seems to complain he is being "prejudged" not on the issue of whether sanctions should be imposed, but on the issue of whether he made false statements—an issue that the Court determined long ago.

Fourth, Mr. Robinson argued that the Court lacks jurisdiction because he currently is attempting to appeal the Second Order Imposing Sanctions. Those appeal efforts do not divest the Court of jurisdiction to enter an order for

sanctions. The Court is under no obligation to keep this matter in a holding pattern until the disposition of those appeal efforts.

Fifth, Mr. Robinson argued that the Court is constitutionally prohibited from imposing criminal sanctions. However, the sanctions imposed herein are not criminal in nature, as the Court discussed in Part VIII.

Sixth, Mr. Robinson argues that sanctions should not be imposed until after the Motion to Compromise Settlement is determined. Without commenting on the merits of this argument, the Court notes that said motion was denied.

Neither the Respondents nor Mr. Walton requested a hearing on the issue of whether sanctions under Bankruptcy Rule 9011 should be imposed. Without an indication they wanted a hearing and would have used a hearing in good faith, the Court was disinclined to set a hearing, given that the Respondents' and Mr. Walton's record of using hearings to mislead and bloviate. Moreover, the parties' legal positions were clear from their papers, and their factual allegations amounted to a rejection of the Court's finding that those statements were false.

C. The Violation of Bankruptcy Rule 9011(a)

By filing in the Main Case the First Motion to Recuse and the Motion for Leave to Appeal, Mr. Walton "presented" those documents to the Court for purposes of Bankruptcy Rule 9011(a).[60] Pursuant to Bankruptcy Rule 9011(b), by presenting those pleadings, he certified that, to the best of his knowledge, information and belief, formed after inquiry reasonable under the circumstances, the allegations and factual contentions therein that had evidentiary support or were likely to have evidentiary support upon further investigation or discovery. As set forth in Part II.P, these documents contained false statements about the Judge's previous service as the UST.

The evidence shows that, before filing the First Motion to Recuse, Mr. Walton had no good faith basis for representing that the allegations against the

[60] The fact that the Motion to Leave was before the U.S. District Court for disposition does not relieve Mr. Walton of his obligations under Bankruptcy Rule 9011 before this Court. He also filed a copy of the document in the Main Case. Bankruptcy Rule 9011 is clear that "filing" a document constitutes "presenting" a document to the Court.

Judge had evidentiary support or were likely to have evidentiary support "to the best of [his] knowledge, information and belief" formed after reasonable inquiry. Had he conducted even minimal inquiry, he easily would have ascertained the falsity of the allegations. However, he did not ask for an evidentiary hearing; he did not ask to conduct discovery; he did not ask for a short period of time to conduct an inquiry; he did not even ask the Judge about his UST services during the numerous hearings. Instead, he simply made false allegations about a federal judge in a federal pleading, in an effort to obtain judicial disqualification.

Moreover, the evidence indicates that Mr. Walton did not simply fail to make a reasonable inquiry before making these allegations; it also clearly and convincingly establishes that Mr. Walton willfully and in bad faith made these false allegations *knowing that they were false*. Before the Motion for Leave to Appeal was filed, the Court specifically advised in the Order Denying the First Motion to Recuse that the allegations were false. The Respondents ignored this and then made false allegations again in the Motion for Leave to Appeal, in the apparent hope of obtaining judicial disqualification, by either harassment of this Court or fraud upon higher one.

D. Monetary Sanctions Under Bankruptcy Rule 9011

Bankruptcy Rule 9011(c)(1)(B) permits the imposition of monetary sanctions for the purpose of deterring "other similarly situated" from such conduct. However, the Court has no reason to believe that within the bankruptcy law community of this District (that is, among the "others similarly situated"), there is a contingent of ethically challenged lawyers, lying in wait with an ill-conceived strategy of deceit similar to that employed by the Respondents and Mr. Walton. To impose monetary sanctions under Bankruptcy Rule 9011 on the premise that there are "others similarly situated" in need of deterrence from such behavior is an insult to the bankruptcy bar of this District. In the Court's experience, the vast majority of practitioners here could not conceive of knowingly making a false representation in a federal pleading about a judge in an effort to obtain recusal. Accordingly, the Court declines to impose sanctions under Bankruptcy Rule 9011 for the purpose of purportedly deterring others. The "others similarly situated"

have done nothing to warrant the presumption that such deterrence is needed and do not deserve to be besmirched by the remotest association with this matter.

Bankruptcy Rule 9011(c)(1)(B) also permits the imposition of monetary sanctions "sufficient to deter repetition of such conduct" by the violator. The Court declines to impose monetary sanctions under the pretense that sanctions might deter repetition of this disreputable conduct by the Respondents and Mr. Walton. Based on the Respondents' and Mr. Walton's actions in this matter, the Court does not believe that any monetary sanctions, in any amount, would be sufficient to deter Mr. Robinson and Mr. Walton from repetition of their conduct. It has already been shown that significant monetary sanctions do not deter the Respondents from untoward behavior, and nothing suggests that Mr. Walton—a repeat bad actor before the U.S. Bankruptcy Court in this District—can be persuaded to be an honest, rule-abiding practitioner. Any monetary sanctions imposed against them under Bankruptcy Rule 9011 would achieve nothing other than increasing the sanctions dollars total—a result that would be inconsistent with the plain language and the purpose of Bankruptcy Rule 9011.

E. Nonmonetary Sanctions under Bankruptcy Rule 9011

Although the Court declines to impose monetary sanctions under Bankruptcy Rule 9011, it remains incumbent upon the Court to deter the future visitation of abuse and dishonesty by the Respondents and Mr. Walton. The Court will use nonmonetary sanctions and discipline, as set forth in Parts XIV and XV, to accomplish that purpose. The violation of Bankruptcy Rule 9011(a) makes appropriate these sanctions and discipline ordered herein against both Mr. Walton and the Respondents. However, these sanctions and discipline also are made necessary and appropriate under § 105(a). The sanctions could be imposed under either Bankruptcy Rule 9011 or § 105(a).

XIV. SUSPENSION FROM THE PRIVILEGE TO PRACTICE

A. The Law on Suspension

Suspension Pursuant to the Court's Inherent Power. Bankruptcy courts "possess 'inherent power . . . to sanction 'abusive litigation practices.'" *Law v. Siegel*, __U.S.__, 2014 WL 813702, *5 (Mar. 4, 2014)(quoting *Marrama v.*

Citizens Bank of Mass., 549 U.S. 365, 375-376 (2007)). "This power is broad in scope, and includes the power to impose monetary sanctions, as well as to 'control admission to its bar and to discipline attorneys who appear before it.'" *In re Burnett*, 450 B.R. at 132 (Bankr. E.D. Ark. 2011)(quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991), and citing *Plaintiffs' Baycol Steering Comm. v. Bayer Corp*., 419 F.3d 794, 802 (8th Cir. 2005), and *Harlan v. Lewis*, 982 F.2d 1255, 1259 (8th Cir. 1993)). And although great restraint and discretion is necessary when fashioning a sanction under those powers, *id.*, that restraint and discretion does not mean that severe sanctions cannot be warranted.

Suspension Under Local Rules. In addition, the applicable local rules make it clear that the Court has the authority to discipline an attorney, including by suspending him. L.B.R. 2093-A provides that "[t]he professional conduct of attorneys appearing before this Court shall be governed by the Rules of Professional Conduct adopted by the Supreme Court of Missouri, the Rules of Disciplinary Enforcement of the United States District Court for the Eastern District of Missouri, and these Rules." In addition, L.B.R. 2094-C provides that "[n]othing in this Rule shall preclude the Court from initiating its own attorney disciplinary proceedings regardless of whether an attorney has been disciplined by another court," and L.B.R. 2090-A provides that this Court adopts "[t]he requirements for . . . attorney discipline . . . outlined in Rules 12.01-12.05" of the Local Rules of the U.S. District Court (each, an "E.D.Mo. L.R.")

In turn, E.D.Mo. L.R. 12.02 provides that "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 the U.S. District Court's Rules of Disciplinary Enforcement (each, an "E.D.Mo. R.D.E.").

And in turn, E.D.Mo. R.D.E. IV-A provides that "[f]or misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such

other disciplinary action as the circumstances may warrant."[61] E.D.Mo. R.D.E. IV-B defines conduct "which violates the Code of Professional Responsibility adopted by the Supreme Court of Missouri" may be grounds for discipline.[62]

B. Propriety of Suspension

The Court gave repeated notices to Mr. Robinson and Mr. Walton that it was considering the imposition of sanctions against them. It warned that the sanctions it was contemplating included revocation of privileges before the Court. It afforded them the opportunity to respond in writing, and neither the Respondents nor Mr. Walton requested a hearing on the issue of whether sanctions should be imposed. Neither offered any cause showing why the Court should not sanction them or offered a basis for mitigation of the sanctions.

Good cause has been shown to suspend Mr. Robinson and Mr. Walton each from the privilege to practice. As detailed in the footnotes throughout this Memorandum Opinion, Mr. Walton and Mr. Robinson violated numerous Rules of the Missouri Supreme Court's Rules of Professional Conduct. They refused to obey a lawful discovery order in violation of Rule 37(a). They falsely represented their intent to meet their discovery obligations. They purposely and in bad faith stalled on making discovery, and what little discovery they did make was grossly inadequate. They made an unfounded personal attack on opposing counsel in a pleading. They violated Bankruptcy Rule 9011 by conducting no reasonable inquiry before making material factual allegations. They lied about the Judge in pleadings in an effort to obtain disqualification. They filed frivolous motions, took meritless legal positions, asserted waived objections, abused the judicial process and vexatiously litigated. Not only did Mr. Robinson and Mr. Walton show bad faith by delaying or disrupting the litigation [and] by hampering enforcement or a

[61] Disciplining an attorney by suspending him under E.D.Mo. L.R. 12.02 and E.D.Mo. RDE IV-A is not the same as bringing a "formal disciplinary proceeding" against that attorney under E.D.Mo. R.D.E. V, whereby the court may refer the matter to counsel is appointed under E.D.Mo. R.D.E. X, for investigation and prosecution of the misconduct.

[62] The Missouri Supreme Court's Rules of Professional Conduct serve as the code of professional responsibility for attorneys licensed to practice by that court.

court order, but by their actions, "the very temple of justice has been defiled." *Chambers v. NASCO, Inc.*, 501 U.S. at 44. These *attorneys*—who were entrusted with the privilege of practicing upon their oath—flagrantly disregarded their obligations as officers of the Court to pursue their illicit plan of contempt and abuse, which deprived the Debtor her opportunity to prosecute her motion upon the discovery to which she was legally entitled. And they did all of this to avoid disclosure of information regarding the Respondents' business—a business that is in the business of filing pleadings before this Court. They have no respect for this Court, the law, or their duties as officers of the Court. Mr. Robinson and Mr. Walton "cannot be depended upon to faithfully perform the duties of an attorney representing a debtor under any chapter of the Bankruptcy Code in this Court." *In re Moix-McNutt*, 220 B.R. 631, 638 (Bankr. E.D. Ark. 1998).

C. Terms of Suspension

Accordingly, pursuant to § 105(a) and Bankruptcy Rule 9011, the Court **ORDERS** that, effective immediately, Mr. Robinson and Mr. Walton each be suspended from the privilege to practice before the U.S. Bankruptcy Court for the Eastern District of Missouri for one year (365 days) from the date of the entry of this Memorandum Opinion. However, nothing in this Memorandum Opinion or accompanying Judgment shall prevent the Court from issuing an additional suspension, upon separate notice and by separate order, additional terms of suspension, should such a suspension be warranted following the determination of the OCDC, or upon any determination by the Board of Judges of this Court, or upon any determination by the U.S. District Court.

Mr. Robinson's privilege to practice will not be reinstated after one year unless: (i) Mr. Robinson has submitted the information required in Part I.B; (ii) all monetary amounts due by Mr. Robinson pursuant to this Memorandum Opinion are satisfied; (iii) Mr. Robinson provides evidence that he is in good standing in all other courts in which he has been admitted to practice; and (iv) the facts otherwise establish that reinstatement is proper. Mr. Robinson may file a Motion to Reinstate Privilege to Practice thirty days before the end of the one-year term.

Mr. Walton's privilege to practice will not be reinstated after one year unless: (i) all monetary amounts due by Mr. Walton pursuant to this Memorandum Opinion are satisfied; (ii) Mr. Walton can provide evidence that he is in good standing in all other courts in which he has been admitted to practice; and (iii) the facts otherwise establish that reinstatement is proper. Mr. Walton may file a Motion to Reinstate Privilege to Practice thirty days before the end of the one-year term.

During his suspension from practice, neither Mr. Walton nor Mr. Robinson may file a pleading or document of any sort on behalf of anyone other than himself, or represent any person, other than himself, before this Court in any capacity. Mr. Walton and Mr. Robinson each is barred from practicing or appearing before this Court on behalf of another person, whether it be by: special appearance or regular appearance; for representation of a paying client or a pro bono client; for representation of a family member or an unrelated person; or in a Main Case or an Adversary Proceeding. Mr. Robinson may not represent the artificial legal entity of Critique Services L.L.C., regardless of his insistence that it is his d/b/a.[63] The Court gives **NOTICE** that any violation of this suspension may be met with further sanctions.

XV. FORWARDING OF THIS MEMORANDUM OPINION

To ensure that the proper authorities are aware of the events that transpired in this matter, the Court **DIRECTS** that a copy of this Memorandum Opinion be forwarded to:

(I) the U.S. District, for referral for any disciplinary investigation or other action or proceeding against the Respondents and Mr. Walton that it may deem proper in light of this Memorandum Opinion;

(II) the Office of the UST as a report of suspected bankruptcy fraud or other abuse by the Respondents based on the findings of fact herein;

[63] Nothing herein shall prohibit Mr. Robinson or Mr. Walton from being subpoenaed or summonsed in any matter before this Court or from responding to such subpoena or summons. They may be subject to deposition in matters before this Court and may give testimony in hearings and trials before this Court.

(III) the Office of the USAG; and

(IV) the OCDC as a complaint against Mr. Robinson and Mr. Walton each under each Rule of the Missouri Supreme Court's Rules of Professional Conduct cited herein.[64]

[64] Mo. Prof. R. 4-8.4 provides that it is professional misconduct for a lawyer to . . . violate or attempt to "violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

XVI. SUSPENSION OF MR. ROBINSON'S AND MR. WALTON'S ELECTRONIC AND REMOTE ACCESS FILING PRIVILEGES

The Court **DIRECTS** the Clerk of Court to continue the suspension of the electronic filing system and remote access filing privileges of Mr. Robinson, both in his individual capacity and in his capacity as "d/b/a Critique Services L.L.C.", and immediately suspend the electronic filing system and remote access filing privileges of Mr. Walton. The term of the suspension is effectively immediately and will be for one year (365 days) from the date of the entry of this Memorandum Opinion. Neither Mr. Robinson nor Mr. Walton may submit any document for filing by using the Court's electronic filing system or the exteriorly located drop box for the U.S. Bankruptcy Court, or by delivering a document to the Clerk's Office through the U.S. Mail or by any other carrier. To file a document, Mr. Robinson and Mr. Walton on behalf of himself must present such document at the Clerk's Office during business hours. Mr. Robinson and Mr. Walton each may not present a document for filing through an agent. No agent, associate, or assistant may operate the computers in the Clerk's office for either Mr. Robinson or Mr. Walton; all acts related to filing must be done entirely by Mr. Robinson or Mr. Walton on behalf of himself. Any agent, associate, or assistant brought to the Clerk's Office with Mr. Robinson or Mr. Walton cannot be left unattended by Mr. Robinson or Mr. Walton or be permitted to do any filing-related work for Mr. Robinson or Mr. Walton. If either Mr. Robinson or Mr. Walton violates this suspension, the document may be rejected for filing and returned, and the violator may be sanctioned $1,000.00 for each document submitted for filing in violation of the suspension; and

XVII. OPPORTUNITY TO WITHDRAW AS COUNSEL

Now that the Court has disposed of the Motion to Disgorge and rendered determination regarding sanctions, Mr. Walton may withdraw from his notice of appearance in this matter, if he wishes. He may do so by filing on his own behalf a motion to withdraw. No hearing for such a motion is required to be set.

XVIII. CONCLUSION

Accordingly, the Court now summarizes[65] the relief ordered and acts directed herein, which includes but is not limited to ordering and directing that:

(I) monetary sanctions be imposed in the amount of $30,000.00 upon the Respondents and Mr. Walton, for which they will be jointly and severally liable;

(II) nonmonetary sanctions be imposed upon the Respondents, pursuant to which: (a) the Respondents be found in contempt for their refusal to obey the Order Compelling Discovery and prohibited from supporting any claim or defense they may have raised to the claims in the Motion to Disgorge and from opposing any claim of the Debtor made in the Motion to Disgorge; and (b) it be directed that all well-pleaded facts alleged the Motion to Disgorge and all well-attested facts in the Debtor's Affidavit be established for purposes of the Motion to Disgorge, and any conflicting allegations be disregarded;

(III) the Motion to Disgorge be granted in part, and that the $495.00 in attorney's fees be disgorged and remitted to the chapter 7 trustee;

(IV) sanctions be imposed under Rule 37(b)(2)(A) in the amount of $1,710.00 in attorney's fees upon the Respondents and Mr. Walton, for which they will be jointly and severally liable, to be paid forthwith to the Debtor's counsel; and sanctions be imposed under § 105(a) in the amount of $18,010.00 in attorney's fees upon the Respondents and Mr. Walton, for which they will be jointly and severally liable, to be paid forthwith to the legal services charity of the Debtor's counsel choice;

(V) a copy of this Memorandum Opinion be forwarded to the OCDC, the U.S. District Court, the Office of the UST, and the Office of the USAG; and

(VI) Mr. Robinson and Mr. Walton each be suspended from the privilege to practice before this Court other than to represent himself, until such time as the terms set forth herein are satisfied.

[65] The statements in the "Conclusion" portion are for summary only. The specifics governing each form of relief and direction are set forth within the Memorandum Opinion.

In addition, a Judgment consistent with the relief ordered herein will be issued forthwith. This Memorandum Opinion constitutes a final order on the Motion to Disgorge and the sanctions imposed herein.

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

DATED: June 11, 2014
St. Louis, Missouri
jim

Copy Mailed To:
David Nelson Gunn
Law Offices of Mueller & Haller, LLC DBA
The Bankruptcy Company
2025 S. Brentwood, Ste 206
Brentwood, MO 63144

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

Elbert A. Walton, Jr.
Metro Law Firm, LLC
2320 Chambers Road
St. Louis, MO 63136

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

Office of U.S. Trustee
111 South Tenth Street Suite 6353
St. Louis, MO 63102

ATTACHMENT A

LS

Complaint with stipulation of facts
Case # 11-46399-705

RECEIVED + FILED
2013 APR -5 PM 3:32
CLERK, US BANKRUPTCY COURT
EASTERN DISTRICT
ST LOUIS, MISSOURI

Plaintiff:
Latoya Steward
Po Box 110
Troy Mo 63379
314-458-2630

Defendent:
James Robinson & Critique ~~Srevices~~ Services
3919 Washington Blvd.
St.Louis Mo 63108
314-533-4357

* Court Line Numbering

I would like to ask the courts to please except this letter as my (Latoya L Steward) complaint and stipulation of facts. against Attorney jamse Robinson, and Critique Services LLC. The defendents were hired by my self Latoya Steward to represent me in filling bankruptcy Chapter 7. in 2010 due to the unprofessional practices and negligence at this firm I have suffered multiple damages mental and financial, so I am asking the help of the courts to PLEASE help me. I have how ever filed a complaint online to the department of Justice Eastern dist. in 2012, and they responeded with appologys and informed me that my complaint will be followed looked in to, and a anonymous complaint with the missouri bar assoc. in 2012 and online to the BBB but they said I was to late for them to investigate. I am asking the courts to hear my story in hopes that any punishment, fines, etc... be brought against this business.

I apologize to the courts that I don't have dates and times documented but their is a paper trail...

My first apponment at Critique Services I meet with a lady name Dee, I paid my fee of $195. and was given a packet of paperwork to fill out of my personal info and creditors. I was told to pull my credit report from all 3 bureaus and fill in all my credit info. On my next visit I paid my remaing balance and Dee looked over my paperwork and informed me that I need to change my address to a St.Louis address because they can't represent me in St.Charles Co which was where I lived to the time. I asked if that was legal and she said its nothing I need to worry about because regaurdless as far as my concern I would not get in any trouble because its all the state of missouri but we have to change it because James Robinson can't represent me in St.Charles county courts for a chapter 7.

Weeks went by I never heard anything I called numerous times to find out what I needed to do next, my calls never get returned. I started to have creditors calling my work, friends, and family. I would inform them I was in the process of filing bankruptcy and I obtained an attorney. I provide my attorney's contact info and they would continue to call because my attorney's office refuse to speek with them. I drove into the office with no appointment and sit for hours until someone would talk to me. This is when I met April and she further informed me that NO they do not take collection calls from credtors, we just need to get me a court case number and i can give them that when they call, but I need to complete my Credit Counceling course online and provide my pay check stubs. I did that! so now I had to meet with the Attorney James Robinson.

Months went on and on i didn't hear anything from Critique Service I started calling again to find out if I got a court date yet. Again all voices mail boxes are full!!! if you select the option to be a new client the secratry does answer the phone but will not that a message. So another drive into the office with no appointment and alot of waiting finally I met with someone else i never seen before fulled my file and notes on it said- waiting for Class Certificate and pay stubs.... I knew they were faxed in by both parties (my employeer & Education course) because I had confirmation papers. She then went threw papers in my file and they were there whole time as she stated the were not in the correct place of the file. by then my certificate expired so I had to repeat and repay for my course, and update my paystubs.

* Court Line Numbering

help

I finnally got a case number and was called into the office to sing more papers one of the papers being my reaffemation to Ford Credit to keep my 2006 Explorer, about a 2weeks later I spoke with my attorney friend about my case and my decsion to keep me explorer because I was afraid I wouldn't be able to get financed for another car loan with a recent bankruptcy on my credit, thats when he informed me that that wasn't true. I told him that I signed an affermation with Ford so I thought I was stuck with it. He advised me to contact my attorney because I should have time to cancel the affermaition since I hadn't been to court but he wasn't sure of the time limit. So I called and called and left messages on every line I could when I could with detailed informtion of the nature of my call about surrendering my 2006 Explorer as usual my calls were never returned. So another drive into the office with no appointment. They pulled my file and looked up legal info on the affermation agreement and it was 2!!!! days too late to cancel the agreement and include the truck. I then asked for my file and a refund so I could hire another attorney, James Robinson himself called me on my cell phone and ask what was the problem I informed hime that his office is very unprofessinal, unorganized, and they don't return calls, and they don't help do anything so I didn't understand what I was paying them for so I would like my money back and my file since I did all the work anyway. He then informed I can have my file but it will be a $100 office fee and $5 per page. Which I couldn't afford.

I then called Ford my self and surrended the truck. I have since then been to court several times with Ford Motor Credit, my wages were garnished, and my bank accounts were also garnished. I really feel as all of this could have been avoided if Critique Service and James Robinson were not so negligent in handeling my case, I have also suffered other damages at the hands of this law firm, my wages were garnished by another creditor in 2011, and again they did not help me in anyway. My 1st court hearing no one from Critique Service showed up for my deposition. I called 2 weeks before and 1 week before to ask what I needed to do no one called back or showed up in court with me.

The day of my final court apperance I was not the only client waiting to see the judge we all were called the office leaving messages and again no answer no show!! I have never heard anything from Critique Service since my last office visit when I was 2days too late to cancel my affermation agreement.

At this time I am asking the courts to grant an monetary settlement in my favor for the following-

$495.- Fees paid to Critique Services
$100.- Education course
$8500.- Ford Credit
$3500.- Personal agervation, time off work, and gas.
total=$12595.00

Latoya Steward 4-4-13

ATTACHMENT B

UNITED STATES GOVERNMENT
OFFICIAL MEMORANDUM

Bankruptcy Court
Eastern District of Missouri

To: Judge Rendlen's Chambers

These calculations below relate to the CM/ECF Report on 100 cases filed by James Robinson in 2013.
Below is an average fee for Mr. Robinson:
Chapter 7 case - $296.23
Chapter 13 Case - $4,000.00

Math calculations shown below:
Chapter 7 Cases
1 Case $199 = $ 199.00
77 Cases $249.00 = $ 19,173.00
11 Cases $299.00 = $ 3,289.00
1 Case $4,000.00 = $ 4,000.00
90 Cases $26,661.00 / Average Case Fee of $296.23

Chapter 13 Case
10 Cases $4,000.00 = Average Case Fee of $ 4,000.00

Select a Case

There was 1 matching person.
Robinson, James Clifton (aty)
(100 cases)

There were 100 matching cases.

Name	Case No.	Case Title	Chapter / Lead BK case	Date Filed	Party Role	Date Closed
	13-40050 $249.00		7	01/03/13	N / A	04/11/13
	13-40051 $249.00		7	01/03/13	N / A	08/02/13
	13-40052 $249.00		7	01/03/13	N / A	04/11/13
	13-40053 $249.00		7	01/03/13	N / A	04/11/13
	13-40054 $249.00		7	01/03/13	N / A	04/11/13
	13-40056 $249.00		7	01/03/13	N / A	04/11/13
	13-40057 $4,000.00		13	01/03/13	N / A	N / A
	13-40058 $249.00		7	01/03/13	N / A	04/11/13
	13-40059 $4,00.00		13	01/03/13	N / A	03/12/14
	13-40061 $249.00		7	01/03/13	N / A	05/29/13
	13-40159 $249.00		7	01/08/13	N / A	04/18/13
	13-40160 $249.00		7	01/08/13	N / A	04/18/13
	13-40161 $249.00		7	01/08/13	N / A	04/18/13
	13-40162 $249.00		7	01/08/13	N / A	04/18/13
	13-40163 $249.00		7	01/08/13	N / A	06/20/13
	13-40164 $249.00		7	01/08/13	N / A	04/18/13
	13-40165 $299.00		7	01/08/13	N / A	06/05/13
	13-40166 $249.00		7	01/08/13	N / A	04/18/13
	13-40167 $299.00		7	01/08/13	N / A	04/18/13
	13-40168 $249.00		7	01/08/13	N / A	04/18/13
	13-40169 $4000.00		13	01/08/13	N / A	N / A

13-40170	$249.00	7	01/08/13	N / A	12/19/13
13-40227	$249.00	7	01/10/13	N / A	N / A
13-40228	$4,000.00	13	01/10/13	N / A	07/11/13
13-40229	$249.00	7	01/10/13	N / A	04/18/13
13-40232	$249.00	7	01/10/13	N / A	04/18/13
13-40234	$249.00	7	01/10/13	N / A	N / A
13-40235	$299.00	7	01/10/13	N / A	04/18/13
13-40236	$299.00	7	01/10/13	N / A	04/18/13
13-40237	$249.00	7	01/10/13	N / A	04/24/13
13-40311	$249.00	7	01/15/13	N / A	07/18/13
13-40312	$4,000.00	13	01/15/13	N / A	N / A
13-40313	$249.00	7	01/15/13	N / A	09/16/13
13-40314	$249.00	7	01/15/13	N / A	08/14/13
13-40315	$249.00	7	01/15/13	N / A	04/25/13
13-40316	$249.00	7	01/15/13	N / A	04/25/13
13-40317	$249.00	7	01/15/13	N / A	04/25/13
13-40318	$249.00	7	01/15/13	N / A	05/06/14
13-40322	$249.00	7	01/15/13	N / A	04/25/13
13-40323	$249.00	7	01/15/13	N / A	04/25/13
13-40324	$4,000.00	13	01/15/13	N / A	N / A
13-40325	$249.00	7	01/15/13	N / A	07/03/13
13-40326	$4,000.00	7	01/15/13	N / A	06/27/13
13-40388	$4,000.00	13	01/17/13	N / A	N / A
13-40395	$249.00	7	01/17/13	N / A	04/30/13
13-40397	$249.00	7	01/17/13	N / A	04/30/13
13-40398	$249.00	7	01/17/13	N / A	04/30/13
13-40399	$249.00	7	01/17/13	N / A	04/30/13

13-40403	$249.00	7	01/17/13	N / A	07/02/13
13-40404	$249.00	7	01/17/13	N / A	04/30/13
13-40406	$249.00	7	01/17/13	N / A	04/30/13
13-40407	$4,000.00	13	01/17/13	N / A	N / A
13-40408	$299.00	7	01/17/13	N / A	04/30/13
13-40552	$249.00	7	01/24/13	N / A	05/23/13
13-40553	$249.00	7	01/24/13	N / A	05/09/13
13-40554	$249.00	7	01/24/13	N / A	05/23/13
13-40556	$4,000.00	13	01/24/13	N / A	N / A
13-40563	$299.00	7	01/24/13	N / A	05/23/13
13-40565	$249.00	7	01/24/13	N / A	05/21/13
13-40567	$249.00	7	01/24/13	N / A	05/09/13
13-40568	$249.00	7	01/24/13	N / A	05/09/13
13-40630	$249.00	7	01/28/13	N / A	05/09/13
13-40632	$249.00	7	01/28/13	N / A	05/09/13
13-40633	$249.00	7	01/28/13	N / A	05/09/13
13-40635	$249.00	7	01/28/13	N / A	05/09/13
13-40636	$299.00	7	01/28/13	N / A	05/09/13
13-40637	$249.00	7	01/28/13	N / A	05/09/13
13-40638	$249.00	7	01/28/13	N / A	05/09/13
13-40639	$249.00	7	01/28/13	N / A	05/09/13
13-40640	$249.00	7	01/28/13	N / A	05/09/13
13-40679	$4000.00	13	01/29/13	N / A	N / A
13-40680	$249.00	7	01/29/13	N / A	05/15/13
13-40681	$249.00	7	01/29/13	N / A	05/15/13
13-40682	$249.00	7	01/29/13	N / A	05/24/13
13-40685	$249.00	7	01/29/13	N / A	01/14/14
13-40686	$249.00	7	01/29/13	N / A	05/15/13

13-40688 $249.00	7	01/29/13	N / A	05/15/13
13-40689 $299.00	7	01/29/13	N / A	05/15/13
13-40690$299.00	7	01/29/13	N / A	05/15/13
13-40801 $249.00	7	01/31/13	N / A	06/04/13
13-40805 $249.00	7	02/01/13	N / A	04/14/14
13-40875 $299.00	7	02/05/13	N / A	05/16/13
13-40876 $249.00	7	02/05/13	N / A	05/16/13
13-40877 $249.00	7	02/05/13	N / A	N / A
13-40878 $249.00	7	02/05/13	N / A	05/16/13
13-40879 $299.00	7	02/05/13	N / A	N / A
13-40910 $249.00	7	02/06/13	N / A	08/13/13
13-40911 $249.00	7	02/06/13	N / A	05/16/13
13-40913 $249.00	7	02/06/13	N / A	05/16/13
13-40914 $249.00	7	02/06/13	N / A	05/22/13
13-40915 $249.00	7	02/06/13	N / A	05/22/13
13-40916 $249.00	7	02/06/13	N / A	05/22/13
13-40917 $249.00	7	02/06/13	N / A	05/22/13
13-40919 $249.00	7	02/06/13	N / A	05/22/13
13-40922 $249.00	7	02/06/13	N / A	05/22/13
13-40925 $249.00	7	02/06/13	N / A	05/24/13
13-40957 $249.00	7	02/07/13	N / A	05/22/13
13-40958 $199.00	7	02/07/13	N / A	05/22/13
13-40960 $249.00	7	02/07/13	N / A	05/22/13
13-40964 $249.00	7	02/07/13	N / A	05/22/13

ATTACHMENT C

HALLER AFFIDAVIT

(with the Court's handwritten annotations to indicate time included in sanctions)

Haller
Fee
Affidavit

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Case No. 11-46399
	)	
Latoya Steward,	)	Chapter 7
	)	
Debtor.	)	Affidavit

AFFIDAVIT

I, James J. Haller, make the following statement under oath and penalty of perjury:

1. I am an attorney engaged in the representation of the Debtor in the above captioned matter.
2. My representation of the Debtor is pro bono and the retainer agreement entered into with the Debtor states that my client is not responsible for compensating me for my services.
3. As such I have not kept contemporaneous time records of my representation.
4. I am submitting the attached itemization of my time at the request of the Court.
5. I spent 5.1 hours recreating my time records from reviewing my calendar, the dates that documents that I drafted were created and updated, and from reviewing my email and phone records.
6. I can personally verify the accuracy of the attached time records by my own reference to these sources.
7. I believe that I performed substantially more work that is not referenced in this time record as I could not verify it from a separate source. As such my actual work may be understated significantly.

James J. Haller

STATE OF ILLINOIS)
) ss.
COUNTY OF ST. CLAIR)

On this 23rd day of April, 2014, before me the undersigned, a Notary Public, in and for the County of St. Clair, State of Illinois, personally appeared the above signed, to me known to be the person described in and who executed the foregoing Affidavit, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

"OFFICIAL SEAL"
GERI B. LEVERY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 7/31/2016

Court's handwritten annotations:
~~Date~~ = time entry not included in attorney's fees sanctions
✓Date = time entry included in attorney's fees sanctions

	Date	Time	Attorney	Description
✓	9/17/2013	0.5	JJH	Review of email communication 1) between D Gunn and E Walton regarding discovery on 9/17/13 (5 emails), and 2)email from and reply to D Gunn concerning upcoming sanction hearing.
✓	9/18/2013	0.1	JJH	Review of email from D Gunn re sanction hearing on 9/18/13
✓	9/19/2013	0.7	JJH	Listened to audio file of hearing on 9/18/13 and sent email to DGunn re same
✓	9/20/2013	0.7	JJH	Reviewed Order Granting Motion To Compel and Notice to Respondents' Counsel; reviewed DGunn's email to EWalton asking if EWalton wanted to confer about discovery, exchanged emails with DGunn re case
✓	9/23/2013	0.3	JJH	Reviewed email from DGunn re communication to go to EWalton further explaining discovery in detail and offering to assist Defendants in answering discovery requests
✓	9/24/2013	3.5	JJH	Reviewed Motion to Recuse Judge with memo Filed by Respondent James C. Robinson (29 pages) Discussed same with DGunn over the phone and via email. Drafted up Response and sent to DGunn.
✓	9/25/2013	1.7	JJH	Reviewed emails from DGunn (sent at 11:40 p.m. and 11:52 p.m. Monday evening – 9/24/13) which enclosed the Motion to Judgment on the Pleadings for Respondents against Movant Steward Filed with memo by Respondent James C. Robinson (19 pages) and DGunn's statement for the 9/25/13 scheduled hearing. Reviewed those documents as well. Did research and began prep of response to motion for summary judgment (during down time at 341 hearings in ESTL) and sent DGunn email re same. Reviewed Orders from the Court entered on 9/25/13. Reviewed further emails from DGunn re same later in the day.
✓	9/27/2013	0.4	JJH	Reviewed Motion to Set Aside, Motion for Protective Order , Motion To Stay Filed by Respondent James C. Robinson (12 pages).
✓	9/29/2013	0.7	JJH	Reviewed Motion to Dismiss Case as to Motion to Disgorge and for Sanction; Amended Motion to Dismiss Case as to Motion to Disgorge and for Sanction, Brief Filed by Respondent James C. Robinson Amended Brief Filed by Respondent James C. Robinson. I began drafting a response.

8.6 hours included in sanctions

	Date	Time	Attorney	Description
✓	9/30/2013	0.4	JJH	Reviewed Court Orders re Motions filed.
✓	10/1/2013	0.8	JJH	Listened to audio file of hearing on 10/1/13; exchanged emails with DGunn and BMueller re hearing and Orders.
✓	10/3/2013	2.5	JJH	Review of 10/2/13 Order, the Notice of Appeal to BAP (85 pages), Motion to Stay Pending Appeal (4 pages), Amended motion to Stay Pending Appeal (4 pages)Review and exchange of emails with DGunn re same. Review of appellate rules re appealing interlocutory orders, set deadline of 14 days to draft up objection to Motion for Leave; began research and preparation of same.
✓	10/7/2013	0.5	JJH	Review of 10/4/13 Court Order. Multiple email communication to and from DGunn re this order and other issues in the case.
✓	10/9/2013	0.2	JJH	Review of BAP Order.
✓	11/7/2013	1.2	JJH	Email exchange with DGunn re status of case and other issues. Review of Petition for Writ of Mandamus filed in Federal Court on 11/1/13 (31 pages), review of law regarding writs of mandamus.
✓	11/8/2013	0.3	JJH	Email exchange with DGunn re possible settlement issues.
	~~11/11/2013~~	3.5	JJH	Reviewed and edited the Certificate of Non-Compliance and multiple emails with DGunn discussing same along with strategy for the case. Did research on prior cases involving Critique et al on PACER, reviewed docs re same. Drafted initial draft of Complaint against Critique et al. Sent to DGunn for review, changes and editing. Exchanged multiple emails with DGunn re same.
✓	11/12/2013	0.1	JJH	Reviewed email from DGunn re Certificate of Noncomplaince.
✓	11/14/2013	0.5	JJH	Reviewed Court order of 11/13/13. Discussed evidentiary issues with DGunn in multiple emails.
	~~11/15/2013~~	0.5	JJH	Reviewed recent ABI article regarding 707 violations, exchanged email with DGunn regarding draft Adv Complaint against Critique et al.
✓	11/25/2013	0.3	JJH	Email exchange with DGunn re the status of the Petition for Writ of Mandamus.

6.8 hours included in sanctions

Date	Time	Attorney	Description
✓ 11/27/2013	0.2	JJH	Email exchanges with DGunn re adversary complaint against Critique et al.
✓ 12/6/2013	1.5	JJH	Reviewed DGunn's Adv Complaint vs Critique et al, Notice of Appeal to the district Court and associated docs filed by EWalton. Multiple email exchanges with DGunn re same.
~~12/9/2013~~	2.5	JJH	Drafted Answer in Opposition to the Motion for Leave and memo and performed research for same. Email exchange with DGunn re same.
~~12/9/2013~~	0.3	JJH	Reviewed final version of Complaint against Critique.
~~12/10/2013~~	2.5	JJH	Drafted Motion to Dismiss procedurally defective appeal and memo in support of same. Email exchange with DGunn re same.
~~12/12/2013~~	0.3	JJH	Email exchange with DGunn re Motion to Dismiss appeal and memo.
~~12/13/2013~~	0.5	JJH	Review of Bankruptcy Court's Sua Sponte Order of 12/12/13. Review of multiple email exchanges re settlement.
~~12/17/2013~~	0.5	JJH	Review of Order Dismissing the Petition for writ of mandamus. Email exchange with DGunn re same and mediation.
~~12/20/2013~~	0.4	JJH	Multiple emails with DGunn re mediation
~~12/30/2013~~	0.1	JJH	Email exchange re mediation.
✓ 1/6/2014	0.6	JJH	Review of Response to the Court's Sua Sponte Order of 12/12/13 by DGunn, and Defendants. Edits made to DGunn's reponse.
✓ 1/17/2014	0.2	JJH	Email exchanges with DGunn re case
~~1/25/2014~~	0.3	JJH	Review of settlement statement from DGunn
~~1/28/2014~~	8.5	JJH	Attendance and participation at settlement conference at US BK Ct building in St. Louis.
~~2/7/2014~~	1.5	JJH	Draft of initial settlement document, email to DGunn with same
~~2/9/2014~~	0.4	JJH	Review of Court order of 2/7/14 and email exchange with DGunn re same
~~3/13/2014~~	0.2	JJH	Email to DGunn re settlement proceedings

2.5 hours included in sanctions

Date	Time	Attorney	Description
~~3/14/2014~~	0.4	JJH	Email to DGunn re settlement proceeding, review of multiple emails between the parties re settlement
~~3/21/2014~~	2.5	JJH	Review of multiple email exchanges between the parties including EWaltons email at 5:59 p.m. Friday, multiple email exchange with DGunn re settlement proceedings including (.4) Research into law regarding motion for vexatious multiplication of proceedings (2.1).
~~3/23/2014~~	0.2	JJH	Email to DGunn re settlement proceedings, status of settlment
~~3/27/2014~~	1.3	JJH	Multiple emails with DGunn re settlement agreement, the meeting with the parties scheduled at 12 p.m. at the Courthouse today and EWalton's late appearance which led to delay and further new objections and demands in the settlement agreement.
~~3/28/2014~~	0.3	JJH	Discussion via phone withDGunn and BMueller re settlement of case more details from Thursday's settlement conference and settlement status.
~~4/1/2014~~	2.5	JJH	Researched and drafted Motion and memorandum to Disqualify Defendant's counsel. Send to DGunn via email.
~~4/4/2014~~	0.2	JJH	Email to DGunn re settlement agreement
~~4/7/2014~~	0.4	JJH	Review of Notices regarding Sanctions to Robinson, Critique and Walton dated 4/3/14. Review of motion to approve settlement agreement from DGunn. Tele conf with DGunn re motion for approval of settlement agreement.
~~4/8/2014~~	0.3	JJH	Review of Court's 4/7/14 Order and discussion of same with DGunn.
~~4/9/2014~~	5.1	JJH	Review of email exchange between the parties and particularly the email by EWalton sent at 6:42 p.m. on 4/8/14 in pertinent part that his clients are not bound by the settlement agreement. Discussion with DGunn and BMueller re same. (.6) Reviewed email inbox and sent folders for all emails re this case including docket entries to recreate my time records for this case (4.5).

Ø hours included in sanctions

TOTAL HOURS 53.1

Total hours included in sanctions → for Mr. Haller (in this Affidavit)

8.6 hours
6.8
2.5
17.9 hours

EXHIBIT 7 ATTACHED
TO MOTION TO COMPEL

(with the Court's handwritten annotations to indicate time included in sanctions)

Court's handwritten annotations:
~~Date~~ = time entry not included in attorney's fees sanctions (this time was accounted-for already because it was included in Mr. Gunn's Fee Affidavit)
✓ Date = time entry included in attorney's fees sanctions (Mr. Haller's Fee Affidavit began on 9/17/13; thus, these entries were not accounted-for already)

Exhibit 7

Itemization of Time Spent in Preparation for Motion to Compel Discovery

Date	Time	Attorney	Description
~~9/7/13~~	0.1	DNG	Email from David Gunn to James J. Haller re: instructions on Motion to Compel Discovery
✓ 9/9/13	0.4	JJH	Email from James Haller to David Gunn re: detailed instructions on Motion to Compel Discovery
~~9/13/13~~	1.5	DNG	Initial draft of Motion to Compel Discovery
~~9/14/13~~	2.2	DNG	Initial draft of Exhibits to Motion to Compel Discovery
~~9/15/13~~	1.5	DNG	Completion and revisions to Motion to Compel Discovery and related exhibits
~~9/15/13~~	0.2	DNG	Email from David Gunn to James J. Haller re: Motion to Compel Discovery
✓ 9/16/13	0.5	JJH	Review and revisions to Motion to Compel Discovery
~~9/16/13~~	1.2	DNG	Revisions to Motion to Compel Discovery and drafting of Motion to Expedite Hearing for Motion to Compel Discovery based on James Haller feedback.
~~9/16/13~~	0.1	DNG	Email from opposing counsel Elbert Walton to David Gunn containing supplemental answer to interrogatory 1
~~9/16/13~~	0.1	DNG	Email from David Gunn to Elbert Walton re: request for complete answer for interrogatory 1
~~9/16/13~~	0.3	DNG	Revisions to Motion to Compel and Exhibits based on Respondents supplemental answer to interrogatory number 1

→ Total hours included in sanctions: .9 hours for Mr. Haller

Customary Attorney fees of David N. Gunn (DNG) are $200.00 per hour.

Customary Attorney fees of James J. Haller (JJH) are $300.00 per hour.

Total time of David N. Gunn at $200.00 per hour is 7.2 hours. Total attorney fee is $1,440.00

Total time of James J. Haller at $300.00 per hour is 0.9 hours. Total attorney fee is $270.00

Total attorney fee expended prosecuting Motion to Compel Discovery as of September 16, 2013 is $1,710.00

GUNN AFFIDAVIT

(with the Court's handwritten annotations to indicate time included in sanctions)

Gunn
Fee
Affidavit

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Case No. 11-46399
	)	
Latoya Steward,	)	Chapter 7
	)	
Debtor.	)	Affidavit

AFFIDAVIT

I, David Gunn, make the following statement under oath and penalty of perjury:

1. I am an attorney engaged in the representation of the Debtor in the above captioned mater.
2. My representation of the Debtor is pro bono and the retainer agreement entered into with the Debtor states that my client is not responsible for compensating me for my services.
3. As such I have not kept contemporaneous time records of my representation for any matter regarding this case other than the prosecution of the Motion to Compel Discovery as I was aware of the statutory requirements regarding attorney fees.
4. I am submitting the attached itemization of my time at the request of the Court.
5. I spent 13.9 hours recreating my time records from reviewing my calendar, the dates that documents that I drafted were created and updated, and from reviewing my email and phone records.
6. I can personally verify the accuracy of the attached time records by my own reference to these sources.
7. I believe that I performed substantially more work that is not referenced in this time record as I could not verify it from a separate source. As such my actual work may be understated by this time record by as much as 200%.
8. Additionally, a majority of my time spent conversing on the telephone is not reflected in this affidavit as it was impossible to measure the time actually spent from reviewing my records.

9. My customary hourly rate is $200.00; the customary hourly rate for James Haller is $300.00.

David Gunn

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

On this 23rd day of April, 2014, before me the undersigned, a Notary Public, in and for the County of St. Louis, State of Missouri, personally appeared the above signed, to me known to be the person described in and who executed the foregoing Affidavit, and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

NOTARY PUBLIC

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JENNIFER A. HANNER
My Commission Expires
May 25, 2015
St. Louis County
Commission #11192724

My Commission Expires:

Court's handwritten annotations:
~~Date~~ = time entry not included in attorney's fees sanctions
✓Date = time entry included in attorney's fees sanctions

Date	Time	Attorney	Description
~~5/16/2013~~	0.5	DNG	listen to audio file for status conference of Pro Se Motion to Disgorge
~~5/16/2013~~	0.2	DNG	email to William Mueller and James Haller re: audio file of stauts conference of Pro Se Motion to Disgorge
~~5/16/2013~~	1	DNG	legal research regarding statute of limitation for perjury
~~5/17/2013~~	0.1	DNG	email from Willaim Mueller re: representation of client pro bono
~~5/17/2013~~	0.2	DNG	email to Willaim Mueller and James Haller re: representation of client pro bono
~~5/17/2013~~	0.5	DNG	reivew of rules of professional conduct re solication of clients
~~5/17/2013~~	0.2	DNG	email to William Mueller and James Haller re: ethcial rules regarding solication of clients
~~5/17/2013~~	0.4	DNG	phone conversation with James Haller re: representation of client pro bono
~~5/17/2013~~	0.5	DNG	drafting letter to client re: representation pro bono
~~5/17/2013~~	0.2	DNG	email to William Mueller and James Haller with copy of letter to client attached
~~5/17/2013~~	0.2	DNG	email to James Haller containing order entered in case 05-43244 UST v. Critique
~~5/20/2013~~	0.1	DNG	emial from client re: representation pro bono
~~5/20/2013~~	0.1	DNG	email to William Mueller and James Haller re: correspondence from client
~~5/21/2013~~	0.01	DNG	email to client re: representation pro bono
~~5/21/2013~~	0.3	DNG	phone call with client re: represenation pro bono
~~5/21/2013~~	0.1	DNG	email from client re: thanking attorney for the call
~~5/23/2013~~	1	DNG	drafting of retainer agreement and acknowlegment regarding purjuried testimony
~~5/23/2013~~	0.1	DNG	email retainer agreement and acknowlegement regarding perjury to Willaim Mueller and James Haller
~~5/23/2013~~	2	DNG	first consultation with client
~~5/23/2013~~	0.5	DNG	review of reaffirmation agreement between client and Ford
~~5/23/2013~~	0.4	DNG	phone call with client and Cricket Debt Solutions re: credit counseling classes obtained by client prior to filing for bankruptcy
~~5/23/2013~~	0.1	DNG	email from Cricket Debt Solutions containing all credit counselling certifications obtained by client
~~5/27/2013~~	0.2	DNG	email from client re: gathering documents for amendments
~~5/27/2013~~	0.3	DNG	email to client re: documents required for amendments
~~5/30/2013~~	0.5	DNG	research regarding other Critique clients
~~5/30/2013~~	0.1	DNG	email to Willaim Mueller and James Haler re: research of other Critiuqe clients
~~6/4/2013~~	3	DNG	meeting with client to discuss case and to review documents and prepare amended bankruptcy schedules and statements

Ø hours included in sanctions

~~6/4/2013~~	0.2	DNG	email to paralegal re: instructions for processing amendments into bankruptcy preparation software
~~6/5/2013~~	0.4	DNG	email to William Mueller and James Haller re: errors and omissions in original bankruptcy schedules and statements
~~6/5/2013~~	0.3	DNG	draft of letter to UST requesting 341 audio transcript for client's original 341 meeting held on July 25, 2011
~~6/6/2013~~	0.2	DNG	pick up CD with audio file of 341 held on July 25, 2011 at office of UST
~~6/6/2013~~	4.5	DNG	meeting with client to review and adjust amended bankruptcy schedules and statements and listen to audio file of 341 meeting held on July 25, 2011
~~6/6/2013~~	0.8	DNG	email to James Haller contain draft version of amended schedules and statements, original schedules and statements, and issues regarding discovery
~~6/7/2013~~	0.1	DNG	fax to UST requesting all other audio files regarding all 341s held on July 25, 2011
~~6/7/2013~~	0.1	DNG	email from James Haller with link to dropbox containing additional 341 audio files from July 25, 2011
~~6/7/2013~~	2	DNG	review fax to Ford sent on November 30, 2011 for voluntary surrender of vehicle secured by reaffirmed loan; legal research regarding notification of rescission
~~6/8/2013~~	6	DNG	review of audio files for all 341s held on July 25, 2011
~~6/8/2013~~	0.5	DNG	email to William Mueller and James Haller re: audio file of client's 341 is not present on material provided by UST
~~6/9/2013~~	0.1	DNG	email from James Haller re: missing audio file of client's 341 testimony
~~6/9/2013~~	0.5	DNG	email to William Mueller and James Haller re: missing 341 audio file
~~6/11/2013~~	1	DNG	email to William Mueller and James Haller re: ethics regarding candor to the court regarding false statements made by client while represented by another attorney, confidentality of incriminating disclosures, recantation, and proffer to US Attorney
~~6/11/2013~~	3	DNG	meeting with client to discuss amendments and strategy regarding recantation
~~6/11/2014~~	2	DNG	review PACER for documents of other Critique clients with 341 meetings on July 25, 2011
~~6/12/2013~~	3	DNG	initial draft of memorandum regarding changes dislcosed in amended bankruptcy petition, statements, and schedules
~~6/15/2013~~	8	DNG	legal research regarding recantation
~~6/15/2013~~	0.5	DNG	email to Willaim Mueller and James Haller summarizing legal research regarding recantation
~~6/17/2013~~	3	DNG	research regarding recantation and proffer for immunity
~~6/17/2013~~	2	DNG	drafting memorandum concerning recantation and proffer of immunity
~~6/17/2013~~	0.5	DNG	drafting and filing of motion to continue evidentiary hearing
~~6/17/2013~~	0.3	DNG	drafting proposed order granting motion to continue hearing

Ø hours included in sanctions

~~6/17/2013~~	0.2	DNG	drafting and filing disclosure of attorney compensation
~~6/17/2013~~	0.3	DNG	email from James Haller with comments on amended schedules and statements
~~6/17/2013~~	0.5	DNG	email to James Haller with reply to comments on amended schedules and statements
~~6/17/2013~~	0.5	DNG	drafting and filing entry of appearance
~~6/18/2013~~	0.1	DNG	review of Order Granting motion to continue evidentiary hearing
~~6/18/2013~~	0.3	DNG	review of Trustee's withdraw of notice of conclusion of 341 meeting and withdraw of report of no distribution
~~6/19/2013~~	0.5	DNG	email to client regarding research of recantation
~~6/18/2013~~	3	DNG	drafting acknowldegement regarding consequences of recantation for client
~~6/18/2013~~	1.5	DNG	meeting with client to review acknowledgement regarding consequences of recantation
~~6/20/2013~~	4	DNG	initial draft of interrogatories and request for production of documents
~~6/20/2013~~	0.5	DNG	email of draft discovery to William Mueller and James Haller
~~6/20/2013~~	0.5	DNG	draft letter to UST requesting 341 audio files for August 19, 2011 and September 26, 2011
~~6/21/2013~~	0.2	DNG	email from James Haller with comments on discovery requests
~~6/21/2013~~	0.1	DNG	email to James Haller re: comments on discovery requests
~~6/21/2013~~	0.2	DNG	email from James Haller re: comments on discovery requests
~~6/22/2013~~	0.5	DNG	email to James Haller re: comments on discovery requests
~~6/24/2013~~	0.1	DNG	reivew of Notice of Special Meeting of Creditors
~~6/24/2013~~	4	DNG	review of bankruptcy filing statistics for Critique in St. Charles County and audio files for 341 meetings of other Critique clients
~~6/24/2013~~	0.5	DNG	email to William Mueller re: research regarding Critique filing stastics in St. Charles County
~~6/24/2013~~	3	DNG	review audio files of 341 meetings with other clients of Critique; cross reference bankruptcy documents from PACER with Lexis Nexis public record reports
~~6/25/2013~~	5	DNG	revisions to interrogatories and request for production of documents
~~6/26/2013~~	0.5	DNG	filing of interrogatories and request for production of documents, reivew of filed documents, revisions for corrected .pdf, filing of corrected .pdf
~~6/26/2013~~	1	DNG	status conference in Courtroom 7 South
~~6/26/2013~~	1	DNG	drafting and filing subpoena for client's phone records from Sprint
~~6/26/2013~~	0.3	DNG	email to William Mueller and James Haller re: outcome of status conference
~~6/27/2013~~	4	DNG	
~~7/2/2013~~	0.2	DNG	email to Eva Kozney, attorney for Ford, regarding settling reaffirmed debt
~~7/3/2013~~	1	DNG	initial draft of affidaivt of false statements for recantation
~~7/3/2013~~	2	DNG	meeting with client re recantation and meeting of creditors

Ø hours included in sanctions

~~7/6/2013~~	5	DNG	
~~7/8/2013~~	1	DNG	revisions to affidavit re: false statements and recantation
~~7/8/2013~~	2	DNG	mock 341 meeting
~~7/8/2013~~	3	RJL	mock 341 meeting (includes driving time from St. Charles office to Brentwood office) - Robert Lawson taking role of panel trustee
~~7/9/2013~~	2	DNG	review of affidavit re: false statements and recantation with client and revisions to the same
~~7/9/2013~~	2	DNG	preparation for meeting of creditors
~~7/10/2013~~	4	DNG	meeting of creditors and debriefing with client
~~7/10/2013~~	0.2	DNG	email to Ross Briggs re: statements made at 341 meeting, request for copy of retainer agreement, and confirmation of his status as a creditor in client's bankruptcy
~~7/11/2013~~	0.1	DNG	email from Ross Briggs containing copy of retainer agreement
~~7/11/2013~~	0.1	DNG	forward email from Ross Briggs containing retainer agreement to William Mueller and James Haller
~~7/11/2013~~	0.1	DNG	email to Ross Brigges requesting amout of debt owed to him
~~7/11/2013~~	0.1	DNG	email from Ross Briggs advising that he is not a creditor of client
~~7/22/2013~~	0.1	DNG	email from book keeper re: whether firm is paying for costs for filing fees out of pocket
~~7/22/2013~~	0.1	DNG	email to book keeper confirming that firm is not being reimbursed for costs associated with case
~~7/22/2013~~	1	DNG	review of motion to quash discovery and memorandum in support filed by Respondent
~~7/23/2013~~	0.1	DNG	email from client re: 341 audio files of other Critique clients
~~7/23/2013~~	0.1	DNG	email to client re: 341 audio files of other Critique clients
~~7/31/2013~~	0.2	DNG	review of Order Denying Motion to Quash Discovery
~~8/1/2013~~	0.1	DNG	email to client re: reciept of phone records
~~8/6/2013~~	0.1	DNG	email to attorney for Respondent re: status of discovery
~~8/6/2013~~	0.1	DNG	reivew of response by attorney for Respondent of email requesting status of providing discovery
~~8/6/2013~~	2	DNG	review phone records
~~8/7/2013~~	2	DNG	compare phone records with case notes provided by Respondent through discovery
~~8/6/2013~~	0.1	DNG	email to attorney for Respondent re: status of discovery - indicating that motion to quash had previously been denied
~~8/14/2013~~	1.5	DNG	status conference in Courtroom 7 South
~~8/26/2013~~	0.2	DNG	email to client re: meeting to review phone records and listen to audio recordings of 341s for other Critique clients
~~8/27/2013~~	3	DNG	meeting with client re: review of phone records and audio files for 341s of other Critique clients
✓ 9/5/2013	3	DNG	review of discovery emailed by attorney for Respondent
✓ 9/7/2013	0.1	DNG	Email from David Gunn to James J. Haller re: instructions on Motion to Compel Discovery
✓ 9/7/2013	0.2	DNG	email to client with discovery attached
~~9/9/2013~~	0.4	JJH	Email from James Haller to David Gunn re: detailed instructions on Motion to Compel Discovery

not Mr. Gunn's time (appears mistakenly included on this Affidavit); this time of Mr. Haller included on Exhibit 7 attached to the Motion to Compel [Docket No. 63]

3.3 hours included in the Sanctions

✓ 9/11/2013	1	DNG	status conference in Courtroom 7 South
✓ 9/11/2013	3	DNG	review discovery
✓ 9/13/2013	1.5	DNG	Initial draft of Motion to Compel Discovery
✓ 9/14/2013	2.2	DNG	Initial draft of Exhibits to Motion to Compel Discovery
✓ 9/15/2013	1.5	DNG	Completion and revisions to Motion to Compel Discovery and related exhibits
✓ 9/15/2013	0.2	DNG	Email from David Gunn to James J. Haller re: Motion to Compel Discovery
~~9/16/2013~~	0.5	JJH	Review and revisions to Motion to Compel Discovery
not Mr. Gunn's time; this time of Haller's included on Exhibit 7			
✓ 9/16/2013	1.2	DNG	Revisions to Motion to Compel Discovery and drafting of Motion to Expedite Hearing for Motion to Compel Discovery based on James Haller feedback.
✓ 9/16/2013	0.1	DNG	Email from opposing counsel Elbert Walton to David Gunn containing supplemental answer to interrogatory 1
✓ 9/16/2013	0.1	DNG	Email from David Gunn to Elbert Walton re: request for complete answer for interrogatory 1
✓ 9/16/2013	0.3	DNG	Revisions to Motion to Compel and Exhibits based on Respondents supplemental answer to interrogatory number 1
✓ 9/17/2013	3	DNG	prepare for motion hearing on motion to compel discovery, prepare for arguments on potential motion for protective order if filed prior to hearing
✓ 9/18/2013	1	DNG	hearing on Motion to Compel Discovery
✓ 9/19/2013	0.1	DNG	email from client re: sanctions
✓ 9/19/2013	0.1	DNG	email to client re: sanctions
✓ 9/19/2013	0.5	DNG	review audio file of hearing on Motion to Compel Discovery
✓ 9/19/2013	0.5	DNG	prepare and file supplement for certificaiton of good faith communication regarding discovery
✓ 9/20/2013	0.5	DNG	review Order Granting Motion to Compel
✓ 9/23/2013	0.9	DNG	draft of email to attorney for Respondent regarding clarificaiton of interrogatory 1
✓ 9/23/2013	0.1	DNG	email draft of email regarding interrogatory 1 to James Haller
✓ 9/23/2013	0.5	DNG	phone call with James Haller re: email to attorney for Respondent regarding discovery and other attorneys and employees that have known associations with Critique
✓ 9/23/2013	0.1	DNG	email to attorney for Respondnet re: interrogatory 1
✓ 9/24/2013	2	DNG	review of motion to recuse filed by Respondent
✓ 9/24/2013	0.2	DNG	email motion to recuse filed by Respondent to Willaim Mueller and James Haller
✓ 9/24/2013	0.2	DNG	email from William Mueller re: motion to recuse
✓ 9/24/2013	0.3	DNG	email to Willaim Mueller and James Haller re: motion to recuse
✓ 9/24/2013	0.3	DNG	phone call with William Mueller and James Haller re: motion to recuse
✓ 9/24/2013	0.1	DNG	email from William Mueller re: motion to recuse
✓ 9/24/2013	1.5	DNG	review of motion for judgement on the pleadings filed by Respondent

23.0 hours included in sanctions

✓ 9/24/2013	0.3	DNG	email to Willaim Mueller and James Haller re: motion for judgment on the pleadings
✓ 9/25/2013	0.5	DNG	review of Orders Denying Motion to Recuse and Motion for Judgment on the pleadings
✓ 9/26/2013	3	DNG	review phone records
✓ 9/27/2013	0.5	DNG	reivew of motion to set aside Order Denying Motion for Judgment on the Pleadings
✓ 9/28/2013	0.5	DNG	prepare and file notice to the Court regarding status of discovery
✓ 9/28/2013	0.3	DNG	prepare and file second supplement for certificaiton of good faith communication regarding discovery
✓ 9/30/2013	2	DNG	review briefs filed by Respondent regarding motion to dismiss
✓ 10/1/2013	1	DNG	status conference in Courtroom 7 South
✓ 10/1/2013	0.2	DNG	email to William Mueller and James Haller re: status conference held in Courtroom 7 South
✓ 10/1/2013	0.4	DNG	review of audio file for status conference held in Courtroom 7 South
✓ 10/1/2013	0.2	DNG	email from James Haller re: status conference held in Courtroom 7 South
✓ 10/1/2013	1	DNG	review of Order Denying Motion to Vacate
✓ 10/1/2013	0.5	DNG	review Order Denying Amended Motion to Dismiss Case
✓ 10/2/2013	0.5	DNG	review of Order Removing Status Conference from Docket and Directing the Immediate Imposition of Sanctions
✓ 10/2/2013	0.5	DNG	email to William Mueller and James Haller re: Order Removing Status Conference from Docket and Directing the Immediate Imposition of Sanctions
✓ 10/3/2013	1	DNG	review motion and amended motion for stay pending appeal
✓ 10/5/2013	0.5	DNG	review Order Denying Motion for Stay Pending Appeal
✓ 10/7/2013	3	DNG	review documents filed by Respondent for appeal
✓ 10/8/2013	0.5	DNG	reivew of Order Denying Motion for Interluctory Appeal entered by BAP
✓ 10/8/2013	0.2	DNG	email Willaim Mueller and James Haller Order Denying Appeal
✓ 10/9/2013	0.2	DNG	email from William Mueller re: status of BAP appeal
✓ 10/9/2013	0.2	DNG	email to William Mueller re: status of BAP appeal
✓ 10/15/2013	3	DNG	meeting with Jim Haller re: trial strategy
✓ ~~10/15/2013~~	4	JJH	meeting with David Gunn re: trial strategy (includes driving time from Belleville, IL office to Brentwood, MO office)
~~11/6/2013~~	0.1	DNG	conversation with Judge Barry S. Schermer re: mediation of contested matter
~~11/6/2014~~	0.5	DNG	phone conversation with William Mueller re: mediation of contested matter by Judge Schermer
~~11/7/2013~~	1	DNG	letter to Paul Randolf of UST requesting depositions of former clients of Critique taken in previous lawsuits
~~11/8/2013~~	0.2	DNG	phone call with Judge Schermer re: mediation of contested matter
~~11/8/2013~~	0.3	DNG	email to William Mueller and James Haller re: mediation of contested matter by Judge Schermer

Not Mr. Gunn's time but also not included in Mr. Haller's time in Exhibit 7 or in his Fee Affidavit; therefore, included here as part of hours

24 hours included in sanctions
↳ of which 20 are Mr. Gunn's time and 4 are Mr. Haller's time

~~11/8/2013~~	0.2	DNG	email from William Mueller and James Haller re: mediation of contested matter by Judge Schermer
~~11/8/2013~~	0.3	DNG	email to William Mueller and James Haller re: mediation of contested matter by Judge Schermer
✓11/11/2013	0.2	DNG	email from James Haller re: Writ of Mandamus
✓11/11/2013	0.1	DNG	email to James Haller re: Writ of Mandamus
✓11/11/2013	1.5	DNG	drafting attorney certification of non-compliance regarding Order Granting Motion to Compel Discovery
✓11/12/2013	0.2	DNG	filing attorney certification of non-compliance regarding Order Granting Motion to Compel Discovery
~~11/13/2013~~	0.3	DNG	review of article written on case by Missouri Lawyers Weekly
✓11/14/2013	3	DNG	review of Order Imposing Additional Sanctions
~~11/21/2013~~	0.5	DNG	email to James Haller re: article written by Missouri Lawyers Weekly
~~11/21/2013~~	8	DNG	research for adversary claims, drafting complaint
✓11/25/2013	0.1	DNG	email from James Haller re: Writ of Mandamus
✓11/25/2013	0.1	DNG	email to James Haller re: Writ of Mandamus
✓11/25/2013	0.1	DNG	email from James Haller re: Writ of Mandamus
✓11/25/2013	0.1	DNG	email to James Haller re: Writ of Mandamus
~~11/25/2013~~	1	DNG	drafting and filing motion to extend time to file complaint
~~11/26/2013~~	3	DNG	drafting complaint
~~11/27/2013~~	0.1	DNG	email from James Haller re: motion to extend time to file complaint
~~11/27/2013~~	0.1	DNG	email to James Haller re: motion to extend time to file complaint
✓11/28/2013	0.5	DNG	review motion for leave to file appeal filed by Respondent
~~12/2/2013~~	3	DNG	research on legal malpractice
✓12/4/2013	3.5	DNG	legal research re: appeal
~~12/5/2013~~	3	DNG	drafting complaint
~~12/8/2013~~	4	DNG	drafting complaint
~~12/9/2013~~	1	DNG	meeting with Paul Randolf and Peter Lamaghui at office of UST re: possible subpoena for depositions of former Critique clients taken in previous trials
✓12/9/2013	0.5	DNG	review of records for appeal
✓12/10/2013	3	DNG	revisions to appeallate documents; filing response to motion for leave to appeal and memorandum of law
✓12/12/2013	5	DNG	revisions to motion to dismiss appeal and memorandum of law; filing of the same
✓12/17/2013	0.2	DNG	review of dismissal re: writ of mandamus
~~1/27/2014~~	4	DNG	prepation for settlement conference
~~1/28/2014~~	8	DNG	settlement conference
~~1/29/2014~~	1	DNG	draft notes from settlement conference; telephone call with client re settlement conference
~~1/31/2014~~	0.1	DNG	email to Ross Briggs re: status of settlement agreement
~~1/31/2014~~	0.1	DNG	email from Ross Briggs re: status of settlement agreement
~~1/31/2014~~	0.1	DNG	email to Ross Briggs re: status of settlement agreement
~~1/31/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement

18.1 hours included in sanctions 15.1

~~1/31/2014~~	0.2	DNG	email to Ross Briggs re: settlement agreement
~~2/3/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/4/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/5/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/5/2014~~	0.1	DNG	phone call with Rebecca Case re: settlement agreement
~~2/5/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/5/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/6/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/7/2014~~	0.5	DNG	email from Ross Briggs re: settlement agreemnt (with proposed language)
~~2/7/2014~~	0.2	DNG	email to Ross Briggs re: settlement agreement
~~2/7/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/7/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~2/7/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~2/7/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~2/8/2014~~	0.5	DNG	review of Order Imposing Sanctions Upon Respondent James Robinson for Violating the Order Imposing Additional Sanctions
~~2/10/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/11/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/14/2014~~	0.5	DNG	review of Notice of Satisfaction entered by the Court
~~2/18/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~2/18/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~2/18/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~2/19/2014~~	0.1	DNG	email to Ross Briggs and Elbert Walton re: status of D. Gunn to draft settlement agreement
~~2/19/2014~~	0.1	DNG	email from Ross Briggs re: status of D. Gunn to draft settlement agreement
~~2/21/2014~~	0.1	DNG	email from Rebecca Case re: contested matter
~~2/25/2014~~	4	DNG	drafting settlement agreement
~~2/25/2014~~	0.3	DNG	email to Willaim Mueller and James Haller re: settlement agreement
~~2/25/2014~~	0.2	DNG	email to Ross Briggs and Elbert Walton re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/26/2014~~	0.2	DNG	email to client re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from client re: settlement agreement
~~2/26/2014~~	0.1	DNG	email to client re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from client re: settlement agreement
~~2/28/2014~~	0.1	DNG	email from client re: settlement agreement
~~2/28/2014~~	0.1	DNG	email to client re: settlement agreement
~~2/28/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/3/2014~~	0.1	DNG	email proposed settlement agreement to Ross Briggs and Elbert Walton

ø hours included in sanctions

~~3/4/2014~~	0.5	DNG	drafting and filing motion to extend time to object to discharge in bankruptcy case of D. Conners
~~3/5/2014~~	0.3	DNG	review of Order Regarding Status in Main Case and Adversary
~~3/5/2014~~	0.1	DNG	email to Ross Briggs re:Order Regarding Status in Main Case and Adversary
~~3/5/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/5/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	phone call with client re: settlement agreement
~~3/6/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/6/2014~~	0.5	DNG	drafting and filing motion for extension of time to provide status of settlement agreement
~~3/7/2014~~	0.2	DNG	review of Order Granting Motion to Extend Time
~~3/7/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~3/7/2014~~	0.1	DNG	email from client re: settlement agreement
~~3/7/2014~~	0.2	DNG	email to client re: settlement agreement
~~3/11/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/11/2014~~	0.1	DNG	email to client re: settlement agreement
~~3/11/2014~~	0.1	DNG	email from client re: settlement agreement
~~3/11/2014~~	1.5	DNG	revisions to settlement agreement
~~3/12/2014~~	0.2	DNG	email from Ross Briggs re: settlement agreement (with revisions)
~~3/12/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/13/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/13/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/13/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/13/2014~~	0.1	DNG	email to client re: settlement agreement
~~3/13/2014~~	0.5	DNG	email from Elbert Walton re: settlement agreement (with draft with revisions)
~~3/13/2014~~	0.1	DNG	email to Elbert Walton and Ross Briggs re: proposed changes to settlement agreement
~~3/13/2014~~	0.5	DNG	email to Elbert Walton rejecting proposed changes and advising that the Debtor will not file a second motion to extend time regarding status of settlement agreement
~~3/14/2014~~	0.1	DNG	email from client re: settlement agreement
~~3/14/2014~~	0.1	DNG	email to client re: settlement agreement
~~3/14/2014~~	0.5	DNG	revisions to settlement agreement
~~3/14/2014~~	1	DNG	drafting and filing disclosure to the Court re: status of settlement agreement
~~3/14/2014~~	0.3	DNG	email from Elbert Walton re: settlement agreement (with draft with revisions)
~~3/14/2014~~	0.2	DNG	email to Elbert Walton accpeting settlement agreement with his revisons
~~3/17/2014~~	0.1	DNG	email from Rebecca Case re: process for Court approval of settlement agreement

~~Ø~~ hours included in sanctions

~~3/18/2014~~	0.1	DNG	email to Rebecca Case containg draft of settlement agreement accepted on 3/14/2014
~~3/18/2014~~	1	DNG	drafting joint motion for approval of settlement agreement
~~3/19/2014~~	0.5	DNG	email from Rebecca Case containing comments regarding latest version of settlement agreement
~~3/19/2014~~	0.1	DNG	email from Rebecca Case re: status of POCs filed in case
~~3/19/2014~~	0.1	DNG	email to Rebeccas Case re: latest version of settlement agreement
~~3/19/2014~~	0.1	DNG	email to Rebecca Case re: notice to creditors regarding settlement agreement
~~3/19/2014~~	0.1	DNG	email from Rebecca Case re: notice to creditors regarding settlement agreement
~~3/20/2014~~	0.1	DNG	email from Rebecca Case re: latest version of settlement agreement
~~3/20/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement (with signatures by Briggs and Conners)
~~3/20/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/21/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~3/21/20134~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~3/21/2014~~	0.5	DNG	email to Elbert Walton and Ross Briggs re: status of settlement agreement
~~3/22/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~3/22/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~3/22/2014~~	1	DNG	drafting and filing amended disclosure to the Court regarding status of settlement agreement
~~3/24/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/26/2014~~	0.1	DNG	email from Rebecca Case re: status of claims in case and settlement
~~3/26/2014~~	0.1	DNG	email to Rebecca Case re: status of settlement
~~3/31/2014~~	0.1	DNG	email from client re: status of settlement
~~4/1/2014~~	0.1	DNG	email from James Haller re: settlement agreement
~~4/1/2014~~	0.1	DNG	email to Jamess Haller re: settlement agreement
~~4/1/2014~~	0.1	DNG	email to client re: status of settlement
~~4/1/2014~~	1	DNG	email from Ross Brigges (containing executed settlement agreement)
~~4/2/2014~~	0.5	DNG	email to Ross Briggs re: executed settlement agreement
~~4/2/2014~~	0.1	DNG	email from Ross Briggs re: executed settlement agreement
~~4/2/2014~~	0.1	DNG	email from Rebecca Case re: POC of Ford
~~4/2/2014~~	0.1	DNG	email to Rebecca Case re: POC of Ford
~~4/2/2014~~	0.1	DNG	email to Ross Briggs re: executed settlement agreement
~~4/3/2014~~	0.1	DNG	email from Ross Briggs re: executed settlement agreement
~~4/3/2014~~	0.1	DNG	email copy of executed settlement agreement to Rebecca Case
~~4/3/2014~~	0.1	DNG	email from Rebecca Case re: executed settlement agreement
~~4/3/2014~~	0.1	DNG	email from Rebecca Case re: executed settlement agreement
~~4/3/2014~~	0.5	DNG	revisions to motion to submit settlement agreement under seal and motion for court approval of settlement

Ø hours included in sanctions

~~4/3/2014~~	0.2	DNG	filing motion to submit settlement agreement under seal
~~4/3/2014~~	1	DNG	meeting with client and execution of settlement agreement
~~4/4/2014~~	0.5	DNG	review of Notice Regarding Sanctions and Notice to Elbert Walton Regarding Sanctions entered by Court
~~4/4/2014~~	0.1	DNG	email from James Haller re: motion to approve settlement agreement
~~4/4/2014~~	0.1	DNG	email to James Haller re: motion to approve settlement agreement
~~4/4/2014~~	0.1	DNG	review of Order Granting Motion to Submit Settlement Agreement Under Seal
~~4/5/2014~~	0.5	DNG	review of Order Psecifying June 2, 2014 as date to execute summons in adversary
~~4/6/2014~~	2	DNG	drafting notice to the Court regarding acceptance of discovery and revisions to motion for court approval of settlement
~~4/6/2014~~	0.2	DNG	email notice to the Court regarding discovery and motion to approve settlement to William Mueller and James Haller
~~4/8/2014~~	0.3	DNG	review of Order Directing Debtor to File Affidavit Regarding Attorney Fees
~~4/8/2014~~	0.1	DNG	email to Eva Kozney re: settlement of Ford claim
~~4/8/2014~~	0.2	DNG	email from Elbert Walton re: settlement agreement
~~4/8/2014~~	0.3	DNG	email to Elbert Walton re: settlement agreement
~~4/9/2014~~	0.1	DNG	email to William Mueller and James Haller re: settlement agreement
~~4/9/2014~~	0.2	DNG	email from James Haller re: settlement agreement
~~4/9/2014~~	0.5	DNG	email from Elbert Walton re: settlement agreement (including proposed revisions)
~~4/10/2014~~	0.5	DNG	email to Elbert Walton re: settlement agreement
~~4/10/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~4/10/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~4/10/2014~~	0.1	DNG	email from Jim Haller re: agreed motion to withdraw filed by Elbert Walton
~~4/10/2014~~	1	DNG	delivery of sealed settlement agreement to bankruptcy clerk's office
~~4/10/2014~~	0.5	DNG	drafting and filing motion to extend time to submit affidavit regarding fees
~~4/11/2014~~	0.3	DNG	drafting Notice to the Court Regarding Order Directing the Debtor to Accept Discovery
~~4/11/2014~~	0.3	DNG	email to James Haller re: status of settlement agreement
~~4/12/2014~~	0.2	DNG	review of Order Striking Notice of Dismissal
~~4/14/2014~~	0.2	DNG	email from Rebecca Case re: settlement agreement
~~4/14/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~4/15/2014~~	0.1	DNG	email to Rebecca Case re: settlement of Ford claim
~~4/15/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~4/15/2014~~	0.1	DNG	email to Eva Kozney re: offer to settle of Ford claim
~~4/15/2014~~	0.1	DNG	email to Rebecca Case re: settlement of Ford claim
~~4/22/2014~~	6.5	DNG	review of case records to prepare affidaivt regarding attorney fees

~~Ø~~ hours included in sanctions

~~4/23/2014~~	7.4	DNG	review of case records to prepare affidaivt regarding attorney fees
~~4/23/2014~~	0.5	DNG	drafting affidavit for James Haller
~~4/23/2014~~	0.2	DNG	drafting affidavit for David Gunn
	241.71		

→ Ø hours included in sanctions

Total hours included in sanctions in this Affidavit:

Mr. Gunn → 3.3 hours
23.0
20.0
18.1
64.4 hours

Mr. Haller → 4.0 hours

Total hours included in sanctions based on all documents:

Mr. Gunn → (Gunn Fee Affidavit) 64.4 hours
@ $200./hr.
= $12,880.00

Mr. Haller → (Haller Fee Affidavit) 17.9 hours
(Exhubit 7) .9
(Gunn Fee Affidavit) 4.0
22.8 hours
@ $300/hr.
= $6,840.00

* Gunn + Haller fees for inclusion in sanctions → $12,880.00
6,840.00
$ 19,720.00

Attachment 80

Orders on Violations of Suspension, entered in *In re Steward*

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

In re:	**§**	**Case No. 11-46399-705**
	§	
LaToya L. Steward,	**§**	**Chapter 7**
	§	
Debtor.	**§**	

ORDER FINDING MR. ELBERT WALTON AND
MR. JAMES ROBINSON KNOWINGLY VIOLATED
THE JUNE 11, 2014 MEMORANDUM OPINION AND ORDER

On April 5, 2013, the Debtor filed a Motion to Disgorge [Docket No. 29], seeking disgorgement of the attorney's fees she paid to her then-bankruptcy counsel, Mr. James Robinson and his firm, Critique Services L.L.C. (the "Respondents"). Since the filing of the Motion to Disgorge, the Respondents and their counsel, Mr. Elbert Walton, have committed acts of bad faith, abuse of process, vexatious litigation, and dishonesty before the Court. The Respondents refused, without excuse, to produce discovery and remained in contempt of the Court's Order Compelling Discovery. Mr. Walton facilitated and promoted this contempt and abuse. Rather than detailing the bad acts of the Respondents and Mr. Walton here, the Court incorporates its findings of fact set forth in its June 11, 2014 Amended Memorandum Opinion and Order (the "Memorandum Opinion") [Docket No. 201].

After enduring months of contempt of Court and abuse of process, and after imposing escalating sanctions, and after giving repeated notices to the Respondents and Mr. Walton that the Court was considering imposing sanctions against them on a final basis, and after giving the Respondents and Mr. Walton opportunities to respond to the issue of whether sanctions should be imposed, and giving the Respondents numerous opportunities to comply with the Order Compelling Discovery, the Court entered its Memorandum Opinion, in which it imposed on a final basis monetary and nonmonetary sanctions upon the Respondents and Mr. Walton, jointly and severally. In the Memorandum Opinion, the Court suspended, effective immediately, as of the date of the entry of the Memorandum Opinion and for a period of one year thereafter, Mr. Robinson and

Mr. Walton each from (i) the privilege to practice before this Court in any capacity other than by each representing himself, and (ii) the privilege of using the Court's electronic and remote access filing capabilities.

The Memorandum Opinion was clear in the terms of the suspension from the privilege to practice before the Court:

> During his suspension from practice, neither Mr. Walton nor Mr. Robinson may file a pleading or document of any sort on behalf of anyone other than himself, or represent any person, other than himself, before this Court in any capacity. Mr. Walton and Mr. Robinson each is barred from practicing or appearing before this Court on behalf of another person, whether it be by: special appearance or regular appearance; for representation of a paying client or a pro bono client; for representation of a family member or an unrelated person; or in a Main Case or an Adversary Proceeding. Mr. Robinson may not represent the artificial legal entity of Critique Services L.L.C., regardless of his insistence that it is his d/b/a.

The Memorandum Opinion also was clear in its terms regarding the suspension of electronic and remote access filing privileges (emphasis added):

> Neither Mr. Robinson nor Mr. Walton may submit any document for filing by using the Court's electronic filing system or the exteriorly located drop box for the U.S. Bankruptcy Court, or by delivering a document to the Clerk's Office through the U.S. Mail or by any other carrier. To file a document, Mr. Robinson and Mr. Walton on behalf of himself must present such document at the Clerk's Office during business hours. ***Mr. Robinson and Mr. Walton each may not present a document for filing through an agent.*** No agent, associate, or assistant may operate the computers in the Clerk's office for either Mr. Robinson or Mr. Walton; ***all acts related to filing must be done entirely by Mr. Robinson or Mr. Walton on behalf of himself.*** Any agent, associate, or assistant brought to the Clerk's Office with Mr. Robinson or Mr. Walton cannot be left unattended by Mr. Robinson or Mr. Walton or be permitted to do any filing-related work for Mr. Robinson or Mr. Walton.

Consistent with the bad faith behavior shown by Mr. Walton and Mr. Robinson throughout the course of this litigation, Mr. Walton and Mr. Robinson promptly ignored the terms of their suspensions. On the day after the entry of the Memorandum Opinion—June 12, 2014—Mr. Walton alone presented to the Clerk's Office, for filing, four documents which were joint documents of Mr.

Walton and Mr. Robinson: a Notice of Appeal [Docket No. 202]; a Separate Election [Docket No. 203]; an Appellate Designation of Contents [Docket No. 204]; and a Motion for Stay Pending Appeal [Docket No. 205]. In doing so, Mr. Walton acted as Mr. Robinson's agent. (Mr. Robinson was not present in the Clerk's Office at the time of the presentation for filing.) The Clerk's Office accepted the documents, but thereafter notified Chambers of the violation. The Clerk's Office was directed to docket the documents, with the notation at each docket entry that the document was filed in violation of the Memorandum Opinion.

Mr. Walton's presentation of the four documents, to the degree that they were to be filed on behalf of Mr. Robinson, was in violation of the Memorandum Opinion. While Mr. Robinson is free to select Mr. Walton as his counsel in any matter in another court, Mr. Robinson may not utilize Mr. Walton as his agent in filing any document before this Court. Mr. Walton and Mr. Robinson were aware of these suspension terms and chose to knowingly violate them.

The Court directs the Clerk's Office, going forward, to reject for filing any document presented by Mr. Walton or Mr. Robinson that is presented in violation of the Memorandum Opinion. If the Clerk's Office has any questions or concerns regarding whether to accept the document for filing, it is directed to hold the document and to seek guidance from the judge presiding over the matter into which the document would be docketed, if accepted for filing.

To state again, as plainly as possible: effective as of June 11, 2014, Mr. Walton and Mr. Robinson are done practicing before this Court in any capacity, other than by representing themselves, for the next year.[1] This suspension means, for example (but not exclusively), that Mr. Walton and Mr. Robinson may not practice law by: submitting a proposed order (other than for himself as a party) in any case; appear on behalf of any party (other than himself) in any case; filing a document on behalf of any party (other than himself) in any case;

[1] This is subject to the Court's consideration of the Motion for Stay Pending Appeal. Should the Court grant that motion, the suspension of the privilege to practice may be stayed pending appeal. The Court will address that motion in due course, as its other workload demands permit. In the meantime, the suspension stands.

appearing at a § 341 meeting on behalf of any party (other than himself) in any case; and communicating (whether orally, in writing, by electronic device, or otherwise) with any person inside the bar or the well of the courtroom during a proceeding, or otherwise attempting to "ghost lawyer" during a proceeding.

If either Mr. Walton or Mr. Robinson attempts to violate the terms of their suspensions again, additional monetary and/or nonmonetary sanctions may be imposed upon the violator. Courthouse security may be notified, if such attempt warrants alerting security. The Court does not want this situation to become any more unfortunate for Mr. Walton and Mr. Robinson than they have already made it for themselves. However, the Court cannot permit Mr. Walton or Mr. Robinson to interrupt the proper functions of this Court or to place other persons in the situation where Mr. Walton or Mr. Robinson demand that the terms of their suspensions be violated.

To Mr. Walton and Mr. Robinson: *Play by the rules of your suspension, and you will have no problems from this Court. You may obtain counsel who has the privilege of practicing before this Court. You may represent yourself and are welcome to file any document you wish on behalf of yourself. The Court encourages you to represent your interests here, properly and in accordance with Court's rules and orders. However, if you further violate the terms of your suspension, such act will be addressed by the Court, including the imposition of further monetary and/or nonmonetary sanctions, and/or by a referral of the violation to the Board of Judges of this Court.*

The Court directs that this Order be included with the documents to be forwarded to the Missouri Supreme Court's Office of Disciplinary Counsel and the U.S. District Court, as the Court directed in the Memorandum Opinion.

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

DATED: June 13, 2014
St. Louis, Missouri
jim

Copy Mailed To:

David Nelson Gunn
Law Offices of Mueller & Haller, LLC DBA
The Bankruptcy Company
2025 S. Brentwood, Ste 206
Brentwood, MO 63144

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

Elbert A. Walton, Jr.
Metro Law Firm, LLC
2320 Chambers Road
St. Louis, MO 63136

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

Office of U.S. Trustee
111 South Tenth Street Suite 6353
St. Louis, MO 63102

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

In re:	**§**	**Case No. 11-46399-705**
	§	
LaToya L. Steward,	**§**	**Chapter 7**
	§	
Debtor.	**§**	

ORDER FINDING THAT MR. ELBERT WALTON, AGAIN, ACTED IN BAD FAITH AND COMMITTED ABUSE OF PROCESS

On April 5, 2013, the Debtor filed a Motion to Disgorge [Docket No. 29], seeking disgorgement of the fees she paid to her then-counsel, Mr. James Robinson and his firm, Critique Services L.L.C. (the "Respondents"). During the litigation of the Motion to Disgorge, the Respondents and their counsel, Mr. Elbert Walton, committed acts of bad faith, abuse of process, vexatious litigation, and dishonesty before the Court. The Respondents refused, without excuse, to produce discovery and remained in contempt of the Order Compelling Discovery. Mr. Walton facilitated and promoted this contempt and abuse. Rather than detailing the bad acts of the Respondents and Mr. Walton here, the Court incorporates its findings of fact set forth in its June 11, 2014 Amended Memorandum Opinion and Order (the "Memorandum Opinion") [Docket No. 201].

After enduring months of contempt of Court and abuse of process, and after imposing escalating sanctions, and after giving repeated notices to the Respondents and Mr. Walton that the Court was considering imposing sanctions against them on a final basis, and after giving the Respondents and Mr. Walton opportunities to respond to the issue of whether sanctions should be imposed, and after giving the Respondents numerous opportunities to comply with the Order Compelling Discovery, the Court entered its Memorandum Opinion. In the Memorandum Opinion, the Court imposed, on a final basis, monetary and nonmonetary sanctions upon the Respondents and Mr. Walton. Those sanctions included the Court suspending, effective immediately, as of the date of the entry of the Memorandum Opinion and for a period of one year thereafter, Mr. Robinson and Mr. Walton each from (i) the privilege to practice before this Court

in any capacity other than by each representing himself, and (ii) the privilege of using the Court's electronic and remote access filing capabilities.

On June 12, 2014—the day after the entry of the Memorandum Opinion—Mr. Walton and Mr. Robinson violated the terms of their suspension by improperly having Mr. Walton serve as Mr. Robinson's agent in filing documents at the Clerk's Office. On June 13, 2014, the Court entered an order [Docket No. 207], finding that Mr. Walton and Mr. Robinson knowingly violated the terms of their suspension.

Further, since the entry of the Memorandum Opinion, Mr. Robinson has allowed another attorney, Mr. Ross Briggs, to improperly represent to the Court in numerous other cases that Mr. Robinson is serving as co-counsel in those cases, along with Mr. Briggs. However, Mr. Robinson may not serve as co-counsel or "jointly represent" any party in any matter before this Court. *He is suspended from the privilege of practicing before this Court—in any case before this Court, in any capacity, other than to represent himself.* The suspension is in all regards, whether it involves matters inside or outside the courtroom. Mr. Briggs's and Mr. Robinson's representation that Mr. Robinson is practicing law as co-counsel in cases before this Court will be addressed by this Court in separate orders. The Court merely notes it here, to give a full picture of the violations of the Memorandum Opinion that have occurred in the nine days following the entry of the Memorandum Opinion.

Now, today, June 19, 2014, Mr. Walton filed, in an unrelated case that is before another Judge of this Court (Case No. 14-44207), what appears to be a request that the Judge presiding over that case either (i) stay the Memorandum Opinion pending appeal, or (ii) transfer the issue of whether the Memorandum Opinion should be stayed pending appeal to an *en banc* panel of the U.S. Bankruptcy Court for determination [Case No. 14-44207 Docket No. 17]. As all matters in Case No. 14-44207 are before another Judge, the undersigned Judge here makes no comment on the merits of that request. However, the Court notes for purposes of *this Case* that Mr. Walton failed to serve a copy of the request filed in Case No. 14-44207 upon the Debtor or her counsel. That is, Mr. Walton

requests a modification of the effectiveness Memorandum Opinion *entered in this Case*, and to transfer the issues raised in the Motion for Stay Pending Appeal *filed in this Case*, without providing notice to the Debtor and her counsel of his request. Mr. Walton once again shows himself to be a bad faith practitioner who willing to abuse the judicial process in an effort to sandbag the Debtor.

The Court **DIRECTS** that a copy of this Order be forwarded to the Missouri Supreme Court's Office of Disciplinary Counsel and the U.S. District Court, in supplement to the referrals already made in the Memorandum Opinion to those authorities.

DATED: June 19, 2014
St. Louis, Missouri 63102
mtc

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

Copy Mailed To:

David Nelson Gunn
Law Offices of Mueller & Haller, LLC DBA
The Bankruptcy Company
2025 S. Brentwood, Ste 206
Brentwood, MO 63144

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

Elbert A. Walton, Jr.
Metro Law Firm, LLC
2320 Chambers Road
St. Louis, MO 63136

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

Office of U.S. Trustee
111 South Tenth Street Suite 6353
St. Louis, MO 63102

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

In re:	**§**	**Case No. 11-46399-705**
	§	
LaToya L. Steward,	**§**	**Chapter 7**
	§	
Debtor.	**§**	

ORDER FINDING THAT MR. ELBERT WALTON, AGAIN, ACTED IN BAD FAITH AND COMMITTED ABUSE OF PROCESS

On April 5, 2013, the Debtor filed a Motion to Disgorge [Docket No. 29], seeking disgorgement of the fees she paid to her then-counsel, Mr. James Robinson and his firm, Critique Services L.L.C. (the "Respondents"). During the litigation of the Motion to Disgorge, the Respondents and their counsel, Mr. Elbert Walton, committed acts of bad faith, abuse of process, vexatious litigation, and dishonesty before the Court. The Respondents refused, without excuse, to produce discovery and remained in contempt of the Order Compelling Discovery. Mr. Walton facilitated and promoted this contempt and abuse. Rather than detailing the bad acts of the Respondents and Mr. Walton here, the Court incorporates its findings of fact set forth in its June 11, 2014 Amended Memorandum Opinion and Order (the "Memorandum Opinion") [Docket No. 201].

After enduring months of contempt of Court and abuse of process, and after imposing escalating sanctions, and after giving repeated notices to the Respondents and Mr. Walton that the Court was considering imposing sanctions against them on a final basis, and after giving the Respondents and Mr. Walton opportunities to respond to the issue of whether sanctions should be imposed, and after giving the Respondents numerous opportunities to comply with the Order Compelling Discovery, the Court entered its Memorandum Opinion. In the Memorandum Opinion, the Court imposed, on a final basis, monetary and nonmonetary sanctions upon the Respondents and Mr. Walton. Those sanctions included the Court suspending, effective immediately, as of the date of the entry of the Memorandum Opinion and for a period of one year thereafter, Mr. Robinson and Mr. Walton each from (i) the privilege to practice before this Court

in any capacity other than by each representing himself, and (ii) the privilege of using the Court's electronic and remote access filing capabilities.

On June 12, 2014—the day after the entry of the Memorandum Opinion—Mr. Walton and Mr. Robinson violated the terms of their suspension by improperly having Mr. Walton serve as Mr. Robinson's agent in filing documents at the Clerk's Office. On June 13, 2014, the Court entered an order [Docket No. 207], finding that Mr. Walton and Mr. Robinson knowingly violated the terms of their suspension.

Further, since the entry of the Memorandum Opinion, Mr. Robinson has allowed another attorney, Mr. Ross Briggs, to improperly represent to the Court in numerous other cases that Mr. Robinson is serving as co-counsel in those cases, along with Mr. Briggs. However, Mr. Robinson may not serve as co-counsel or "jointly represent" any party in any matter before this Court. *He is suspended from the privilege of practicing before this Court—in any case before this Court, in any capacity, other than to represent himself.* The suspension is in all regards, whether it involves matters inside or outside the courtroom. Mr. Briggs's and Mr. Robinson's representation that Mr. Robinson is practicing law as co-counsel in cases before this Court will be addressed by this Court in separate orders. The Court merely notes it here, to give a full picture of the violations of the Memorandum Opinion that have occurred in the nine days following the entry of the Memorandum Opinion.

Now, today, June 19, 2014, Mr. Walton filed, in an unrelated case that is before another Judge of this Court (Case No. 14-44207), what appears to be a request that the Judge presiding over that case either (i) stay the Memorandum Opinion pending appeal, or (ii) transfer the issue of whether the Memorandum Opinion should be stayed pending appeal to an *en banc* panel of the U.S. Bankruptcy Court for determination [Case No. 14-44207 Docket No. 17]. As all matters in Case No. 14-44207 are before another Judge, the undersigned Judge here makes no comment on the merits of that request. However, the Court notes for purposes of *this Case* that Mr. Walton failed to serve a copy of the request filed in Case No. 14-44207 upon the Debtor or her counsel. That is, Mr. Walton

requests a modification of the effectiveness Memorandum Opinion *entered in this Case*, and to transfer the issues raised in the Motion for Stay Pending Appeal *filed in this Case*, without providing notice to the Debtor and her counsel of his request. Mr. Walton once again shows himself to be a bad faith practitioner who willing to abuse the judicial process in an effort to sandbag the Debtor.

The Court **DIRECTS** that a copy of this Order be forwarded to the Missouri Supreme Court's Office of Disciplinary Counsel and the U.S. District Court, in supplement to the referrals already made in the Memorandum Opinion to those authorities.

DATED: June 19, 2014
St. Louis, Missouri 63102
mtc

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

Copy Mailed To:

David Nelson Gunn
Law Offices of Mueller & Haller, LLC DBA
The Bankruptcy Company
2025 S. Brentwood, Ste 206
Brentwood, MO 63144

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

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Metro Law Firm, LLC
2320 Chambers Road
St. Louis, MO 63136

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

Office of U.S. Trustee
111 South Tenth Street Suite 6353
St. Louis, MO 63102

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

In re:	**§**	**Case No. 11-46399-705**
	§	
LaToya L. Steward,	**§**	**Chapter 7**
	§	
Debtor.	**§**	

ORDER (i) REJECTING DOCUMENTS PRESENTED FOR FIILNG BY MR. JAMES ROBINSON BECAUSE SUCH DOCUMENTS WERE PRESENTED IN VIOLATION OF THE TERMS OF MR. ROBINSON'S SUSPENSION; (ii) DIRECTING THAT THE DOCUMENTS BE RETURNED; AND (iii) FINDING THAT MR. ROBINSON, AGAIN, KNOWINGLY VIOLATED THE TERMS OF HIS SUSPENSION

On April 5, 2013, the Debtor filed a Motion to Disgorge [Docket No. 29], seeking disgorgement of the fees she paid to her then-counsel, Mr. James Robinson and his firm, Critique Services L.L.C. (the "Respondents").[1] During the litigation of the Motion to Disgorge, the Respondents and their counsel, Mr. Elbert Walton, committed acts of bad faith, abuse of process, vexatious litigation, and dishonesty before the Court. The Respondents refused, without excuse, to produce discovery and remained in contempt of the Order Compelling Discovery. Mr. Walton facilitated and promoted this contempt and abuse. Rather than detailing the bad acts of the Respondents and Mr. Walton here, the Court incorporates its findings of fact set forth in its June 11, 2014 Amended Memorandum Opinion and Order (the "Memorandum Opinion") [Docket No. 201].

After enduring months of contempt of Court and abuse of process, and after imposing escalating sanctions, and after giving repeated notices to the Respondents and Mr. Walton that the Court was considering imposing sanctions against them on a final basis, and after giving the Respondents and Mr. Walton opportunities to respond to the issue of whether sanctions should be imposed,

[1] Some of the Court's factual recitation herein may read almost identically to that of previous orders. Since Mr. Walton and Mr. Robinson have chosen to make a habit of violating the terms of their suspensions, the Court has previous orders from which to extract its language, so that it is not required to reinvent the wheel with every new violation.

and after giving the Respondents numerous opportunities to comply with the Order Compelling Discovery, the Court entered its Memorandum Opinion. In the Memorandum Opinion, the Court imposed, on a final basis, monetary and nonmonetary sanctions upon the Respondents and Mr. Walton. Those sanctions included the Court suspending, effective immediately, as of the date of the entry of the Memorandum Opinion and for a period of one year thereafter, Mr. Robinson and Mr. Walton each from (i) the privilege to practice before this Court in any capacity other than by each representing himself, and (ii) the privilege of using the Court's electronic and remote access filing capabilities. Additionally, if Mr. Robinson or Mr. Walton seeks to file a document on behalf of himself, he must present that document in person in the Clerk's Office. He may not act through an agent.

On June 12, 2014—the day after the entry of the Memorandum Opinion—Mr. Walton and Mr. Robinson violated the terms of their suspensions by improperly having Mr. Walton serve as Mr. Robinson's agent in filing documents at the Clerk's Office. On June 13, 2014, the Court entered an order [Docket No. 207], finding that Mr. Walton and Mr. Robinson knowingly violated the terms of their suspensions. In light of Mr. Walton's and Mr. Robinson's refusal to obey the terms of their suspensions, in the June 13 order, the Court directed that "the Clerk's Office, going forward, to reject for filing any document presented by Mr. Walton or Mr. Robinson that is presented in violation of the Memorandum Opinion. If the Clerk's Office has any questions or concerns regarding whether to accept the document for filing, it is directed to hold the document and to seek guidance from the judge presiding over the matter into which the document would be docketed, if accepted for filing."

In the ten days since the entry of the Memorandum Opinion, the Court has had to enter: (a) an order finding that Mr. Walton and Mr. Robinson violated the terms of their suspensions by improperly filing documents [Docket No. 207]; (b) an order striking a document filed by Mr. Walton and Mr. Robinson that was falsely labeled a "reply" and constituted an effort to abuse of bankruptcy process [Docket No. 215]; and (c) an order finding that Mr. Walton violated the terms of

his suspension [Docket No. 219] by seeking relief from this Court's Memorandum Opinion before another Judge of this Court, without serving the Debtor with a copy of that filing. The Court also has had to enter numerous orders striking notices of appearance filed by Mr. Ross Briggs (an attorney who has long worked with Mr. Robinson before this Court and who is a co-defendant with Mr. Robinson in a currently pending adversary proceeding in this matter). Mr. Briggs filed those notices of appearance in bankruptcy cases in which the suspended Mr. Robinson is counsel of record, and represented that he would serve as "co-counsel" with Mr. Robinson. That representation, of course, is legally ineffective. An attorney in good standing cannot agree to serve as co-counsel with an attorney who is suspended from practicing before the Court. Mr. Briggs's representation that he would be Mr. Robinson's "co-counsel" is nothing more than a backdoor attempt to make proper Mr. Robinson's improper practice before this Court.

And today, Mr. Robinson presented to the Clerk's Office five documents for filing (a copy of each is attached hereto). Mr. Walton was not present when the documents were presented. Mr. Robinson signed each document. However, in each document, Mr. Robinson purports to be the attorney for "Critique" or "Critique Services" and purports to sign on behalf of that artificial entity.[2] However, the Memorandum Opinion was clear: Mr. Robinson may not represent any other entity before this Court. The Memorandum Opinion even specified that Mr. Robinson could not represent "Critique Services L.L.C."

Any document that purports to be filed on behalf of Critique Services L.L.C., but was filed by Mr. Robinson or Mr. Walton is in violation of the Memorandum Opinion, and is ineffective before this Court as a legal representation made on behalf of Critique Services L.L.C. In addition, four of the five documents presented today by Mr. Robinson purport in their opening sentences to be filed by the "Appellants," which would include both Critique Services L.L.C. and Mr. Walton. The Notice of Appeal goes even further,

[2] Presumably, Mr. Robinson means "Critique Services L.L.C.," the only entity with "Critique" in its name that would have standing to appeal.

purporting to be filed on behalf of Mr. Robinson, as well as Critique Services L.L.C. and Mr. Walton, specifically.

As such, the Court **FINDS** that Mr. Robinson, again, knowingly violated the Memorandum Opinion, by presenting the five documents for filing in violation of the terms of his suspension. As the Court gave notice it would do, it now **ORDERS** that the five documents be rejected for filing and returned to Mr. Robinson. This rejection is without prejudice to Mr. Robinson filing these documents properly, on behalf of himself only.

The Court **DIRECTS** that a copy of this Order be forwarded to the Missouri Supreme Court's Office of Disciplinary Counsel and the U.S. District Court, in supplement to the referrals already made in the Memorandum Opinion to those authorities.

Charles E. Rendlen III

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

DATED: June 20, 2014
St. Louis, Missouri
jim

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

In re:	**§**	**Case No. 11-46399-705**
	§	
LaToya L. Steward,	**§**	**Chapter 7**
	§	
Debtor.	**§**	

ORDER REJECTING FOR FILING DOCUMENTS PRESENTED FOR FILING BY MR. LAURENCE MASS ON BEHALF OF CRITIQUE SERVICES L.L.C. BECAUSE SUCH DOCUMENTS ARE THE POST-SUSPENSION WORK OF MR. JAMES ROBINSON AND MR. ELBERT WALTON

On April 5, 2013, the Debtor filed a Motion to Disgorge [Docket No. 29], seeking disgorgement of the fees she paid to her then-counsel, Mr. James Robinson and his firm, Critique Services L.L.C. (the "Respondents").[1] During the litigation of the Motion to Disgorge, the Respondents and their counsel, Mr. Elbert Walton, committed acts of bad faith, abuse of process, vexatious litigation, and dishonesty before the Court. The Respondents refused, without excuse, to produce discovery and remained in contempt of the Order Compelling Discovery. Mr. Walton facilitated and promoted this contempt and abuse. Rather than detailing the bad acts of the Respondents and Mr. Walton here, the Court incorporates its findings of fact set forth in its June 11, 2014 Amended Memorandum Opinion and Order (the "Memorandum Opinion") [Docket No. 201].

After enduring months of contempt of Court and abuse of process, and after imposing escalating sanctions, and after giving repeated notices to the Respondents and Mr. Walton that the Court was considering imposing sanctions against them on a final basis, and after giving the Respondents and Mr. Walton opportunities to respond to the issue of whether sanctions should be imposed, and after giving the Respondents numerous opportunities to comply with the

[1] Some of the Court's factual recitation herein may read almost identically to that of previous orders. Since Mr. Walton and Mr. Robinson have chosen to make a habit of violating the terms of their suspensions, the Court has previous orders from which to extract its language, so that it is not required to reinvent the wheel with every new violation.

Order Compelling Discovery, the Court entered its Memorandum Opinion. In the Memorandum Opinion, the Court imposed, on a final basis, monetary and nonmonetary sanctions upon the Respondents and Mr. Walton. Those sanctions included the Court suspending, effective immediately, as of the date of the entry of the Memorandum Opinion and for a period of one year thereafter, Mr. Robinson and Mr. Walton each from (i) the privilege to practice before this Court in any capacity other than by each representing himself, and (ii) the privilege of using the Court's electronic and remote access filing capabilities. Additionally, if Mr. Robinson or Mr. Walton seeks to file a document on behalf of himself, he must present that document in person in the Clerk's Office. He may not act through an agent. Neither Mr. Walton nor Mr. Robinson is permitted to represented Critique Services L.L.C. Since the entry of the Memorandum Opinion, Mr. Walton and Mr. Robinson have repeatedly violated the terms of their suspensions, as reflected in orders entered on the docket since June 11, 2014.

Today, Mr. Laurence Mass, an attorney, presented to the Clerk's Office for filing six documents on behalf of Critique Services L.L.C. (a copy of each is attached hereto). 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 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.

However, neither Walton nor Mr. Robinson is permitted to practice before this Court in any capacity other than on behalf of himself. That includes being prohibited from "ghost-writing" documents or providing documents for another attorney to file with the Court on behalf of Critique Services L.L.C.

Mr. Mass is in good standing with this Court and is welcome to represent Critique Services L.L.C. before this Court. However, his representation of Critique Services L.L.C. may not be used to facilitate Mr. Walton's and Mr. Robinson's violation of their suspensions. If Mr. Walton, Mr. Robinson, and Mr. Mass had any designs on Mr. Mass being improperly used as a pass-through vehicle, through which Mr. Walton and Mr. Robinson could practice before this Court on behalf of Critique Services L.L.C. under Mr. Mass's name, those plans end now. Any document Mr. Mass may file on behalf of Critique Services L.L.C. before this Court may not be the cribbed or ghost-written work of Mr. Robinson or Mr. Walton. The Court hereby gives **NOTICE** to Mr. Mass that any further such filings may be met with sanctions imposed upon him.

The Court now **ORDERS** that the six documents presented to the Clerk's Office for filing by Mr. Mass be rejected for filing and returned to Mr. Mass. This rejection is without prejudice to Mr. Mass filing requests for relief that are not the work of Mr. Robinson or Mr. Walton, and in which Mr. Mass makes clear and coherent representations as to whom he represents.

The Court **DIRECTS** that a copy of this Order be forwarded to the Missouri Supreme Court's Office of Disciplinary Counsel and the U.S. District Court, in supplement to the referrals made in the Memorandum Opinion.

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

DATED: June 20, 2014
St. Louis, Missouri
jim

Copy Mailed To:

David Nelson Gunn
Law Offices of Mueller & Haller, LLC DBA
The Bankruptcy Company
2025 S. Brentwood, Ste 206
Brentwood, MO 63144

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

Elbert A. Walton, Jr.
Metro Law Firm, LLC
2320 Chambers Road
St. Louis, MO 63136

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

Office of U.S. Trustee
111 South Tenth Street Suite 6353
St. Louis, MO 63102

Laurence D. Mass

230 S. Bemiston Ave.

Suite 200

Clayton, MO 63105

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

In re:	**§**	**Case No. 11-46399-705**
	§	
LaToya L. Steward,	**§**	**Chapter 7**
	§	
Debtor.	**§**	

ORDER

On June 11, 2014, the Court entered a Memorandum Opinion [Docket No. 201], suspending attorneys James Robinson and Elbert Walton from practicing before this Court. Beginning on the day after the entry of the Memorandum Opinion, Mr. Robinson and Mr. Walton began violating or attempting to violate the terms of their suspensions, as determined by the Court in orders entered in this matter post-suspension. They pulled two other attorneys currently in good standing before this Court—Mr. Laurence Mass and Mr. Ross Briggs—into their efforts to violate their suspensions. Mr. Mass's actions were taken in *In re Steward* and were addressed by the Court in previous orders (the "Mass Orders") [Docket Nos. 222 & 223]. Mr. Briggs's actions were taken in other bankruptcy cases pending before this Judge, and the Court entered the attached order (the "Briggs Order") in those other cases. The Court now **DIRECTS** that a copy of the Briggs Order be docketed in *In re Steward* as an attachment to this Order, as it is a record of Mr. Robinson's efforts, through Mr. Briggs's representations, to continue practicing before this Court despite his suspension. The Court also **DIRECTS** that a copy of this Order, with its attachment, be forwarded to the Missouri Supreme Court's Office of Disciplinary Counsel and the U.S. District Court, in supplement to the referrals already made in the Memorandum Opinion regarding Mr. Robinson and Mr. Walton.

DATED: June 25, 2014
St. Louis, Missouri 63102
mtc

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