



**IT IS ORDERED as set forth below:**

**Date: February 04, 2010**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_| |  
IN RE:

CASE NO. 09-82270

Ada C. McDuffie

CHAPTER 7

JUDGE MASSEY  
\_\_\_\_\_| |

ORDER DIRECTING FILE TO BE CLOSED

To commence a voluntary case under title 11 of the United States Code, a person must file a petition. 11 U.S.C. § 301. In this matter, Ada C. McDuffie's counsel filed electronically on August 26, 2009, a document to open a case under Chapter 7 of the Bankruptcy Code, undoubtedly believing that it included a petition. The document included a statement of financial affairs, schedules and other required filings, but no petition.

The error was not detected by Ms. McDuffie's counsel, the person designated as Chapter 7 trustee or the Clerk's office. The Court discovered the error when reviewing a motion to approve a compromise and settlement in early January 2010. The Court then telephoned Ms. McDuffie's

counsel and the trustee-designate to inform them that no case existed. The Court suggested the possibility of filing the petition under the present case number, even though all of the events in the case would have to be repeated. In that connection, the Court told Ms. McDuffie's counsel to contact senior staff in the Clerk's office if pursuing that possibility was of interest. The Court frankly expected immediate action, given the unusual circumstances.

Counsel finally got around to submitting documents to the Clerk on February 4 that were not in the nature of what the Court had mentioned in the earlier telephone conversation. The documents included an "amended" petition, but that which has not been filed cannot be amended. On further reflection, it is clear that trying to create a case in the midst of a non-case is likely to lead to confusion and added costs that a new case would avoid.

Because Ms. McDuffie did not file a petition when attempting to initiate a Chapter 7 case that was assigned case no. 09-82270, she has not filed a case in this Court. The reaffirmation agreement filed in this matter is a nullity. No automatic stay exists or has ever existed with respect to Ada C. McDuffie in connection with this attempted filing of a bankruptcy case. The Clerk is directed to send a copy of this Order to all persons who received the notice of the filing of a case for Ms. McDuffie and all other parties in interest and to close the file under case no. 09-82270. Finally, the Clerk is directed to refund the filing fee to the person who paid it.

IT IS SO ORDERED.

\*\*\*END OF ORDER\*\*\*