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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CASE NO. 06-61285-JB
	)	
PATRICIA H. WILLIS,	)	
	)	CHAPTER 13
Debtor	)	
_____	)	
	)	
MARY IDA TOWNSON, as	)	CONTESTED MOTION
Chapter 13 Trustee,	)	
	)	
Movant	)	
	)	
v.	)	
	)	
STANLEY J. KAKOL, JR.,	)	
	)	
Respondent.	)	

**ORDER**

This case is before the Court on a motion by the Chapter 13 Trustee for attorney Stanley J. Kakol to show cause (1) why he did not file a Statement under Rule 2016(b) disclosing compensation he received from the debtor; (2) why he did not file a status report of the return of funds to the debtor within three days of returning the funds as directed by the Court's May 14, 2007 Order; (3) the circumstances regarding the return of funds to the debtor at his office on May 9, 2007, including why the funds were returned to the debtor in cash; and (4) whether debtor's funds were placed in an escrow account as represented by Mr. Kakol. The show cause hearing was set for July 17, 2007, at which time Mr. Kakol appeared and testified. The Chapter 13 Trustee Mary Ida Townson was present as were the debtor, David Weidenbaum for the

United States Trustee, and Matthew Dyer representing creditor America's Servicing Company. The hearing was continued to August 15, 2007, in order to give Mr. Kakol time to respond to the Chapter 13 Trustee's contention that Mr. Kakol had also failed to file disclosure of compensation forms in some thirteen (13) other bankruptcy cases pending in the Northern District of Georgia.

Debtor Patricia Willis filed this Chapter 13 case on February 6, 2006, through counsel Reanee M. Godfrey. A year later, on February 2, 2007, Mr. Kakol filed a notice of appearance as debtor's attorney. At that time, he filed an emergency motion to reimpose the automatic stay so as to prevent a foreclosure by America's Servicing Company. The emergency motion was scheduled to be heard on February 5, 2007, but counsel rescheduled the hearing for April 10, 2007. The day before the April 10, 2007 hearing, Mr. Kakol filed a motion to suspend plan payments for six months, a modification to the Chapter 13 plan, and amended schedules with respect to income and expenses. He scheduled a hearing on the motion to suspend and the plan modifications for May 1, 2007, which resulted in a further delay of the hearing on his motion to reimpose the stay.

At the May 1, 2007 hearing, the Chapter 13 Trustee asked Mr. Kakol whether he had received any fee to represent Ms. Willis, as she previously had been represented by another attorney. Mr. Kakol advised the Chapter 13 Trustee that he had received a fee from Ms. Willis in the amount of \$1,000.00. Mr. Kakol did not file a statement under Rule 2016(b), nor did he file any fee application or notification with the Court regarding his having received attorneys fees from this Chapter 13 debtor. At the May 1, 2007 hearing, the Chapter 13 Trustee reported in open court that Mr. Kakol had stated to her that he had received the \$1,000.00 from Ms.

Willis and that it was in an "escrow account." Mr. Kakol stated that he had told Ms. Willis that if he was unable to get the automatic stay imposed, he would return her money.

The Court ordered Mr. Kakol to refund the \$1,000.00 to Ms. Willis and to file a status report within three days after returning the \$1,000.00 to Ms. Willis. He returned the money on May 9, 2007, but waited until June 2, 2007 to file a status report indicating that he had refunded the money. His explanation for failing to file the report as ordered was that he "must have overlooked the Order." He testified that he tried to delegate the filing to a paralegal and assumed that she would follow up.

Mr. Kakol testified that he did not file a Rule 2016(b) Statement disclosing compensation received in this case because of a "policy" he had in place. His policy was if he took a case that he thought was questionable (which he defined as a case where he was not totally sure he could win on the facts), he would tell the client that if he could not obtain the desired result, he would refund the money. His policy in such a case is to take the fee, but since he is not certain whether he will keep the fee, he takes the position that he need not file a Rule 2016(b) statement. The instant case was such a case. He did not have any fee agreement in writing with Ms. Willis. He also testified that he construed Rule 2016(b) to require disclosure of fees taken within one year before filing the petition, but that no disclosure is required for fees received from a debtor after a petition is filed. Finally, Mr. Kakol testified that it was his intention to file a Rule 2016(b) statement in this case once he obtained the result that would justify a fee.

On July 17, 2007, Mr. Kakol also testified that he was wrong when he told the Chapter 13 Trustee on May 1, 2007 that he had placed Ms. Willis' \$1,000.00 into an escrow account. In fact, he testified that he did not have an escrow account and that on May 1, 2007, he did not

even have a checking account. He testified that he had given Ms. Willis' money order for \$1,000.00 to a colleague of his, Clint Eakin. Mr. Eakin is not a lawyer, but works for an attorney with whom Mr. Kakol practiced law at one time. Mr. Kakol testified on July 17, 2007 that he now had a checking account, but that he still did not have an escrow account.

Mr. Kakol testified on July 17, 2007 that he works primarily in cash, that he opened a checking account about a month and a half ago, and that prior to that, the last checking account he had was five or six years ago. He testified that he runs his law practice on a cash basis. He also testified he had not filed a tax return for 2006 and has not sought an extension for filing a late tax return.

At the continued hearing on August 15, 2007, the Chapter 13 Trustee called Mr. Eakin as a witness. Mr. Eakin is employed by attorney Tony Sandberg and had worked with Mr. Kakol during the few months that Messrs. Kakol and Sandberg had a law partnership. Mr. Eakin testified that several months ago, Mr. Kakol called him, stating that he had met with a client and asked the client to bring him a \$1,000.00 fee which he would refund if he did not prevail. Mr. Kakol asked Mr. Eakin to cash the client's money order dated January 25, 2006 for him because he did not have a bank account. Mr. Eakin deposited the money order into the operating account of Tony Sandberg, and took \$1,000.00 in cash and placed it in an envelope with Mr. Kakol's name. He put the envelope in his desk, called Mr. Kakol, and told him he had cashed the money order and he expected Mr. Kakol to come and pick up the envelope. Time passed and Mr. Kakol did not pick up the envelope. Some time later, Mr. Eakin received a call on his cell phone from Mr. Kakol. Mr. Kakol told Mr. Eakin that his client had come for a return of the \$1,000.00 fee. Mr. Kakol found Mr. Eakin at lunch, and Mr. Eakin went back to his office and gave Mr. Kakol

the envelope. Mr. Eakin testified that this was the only time he had held money for Mr. Kakol. Mr. Sandberg testified that he first learned of Mr. Eakin holding money for Mr. Kakol in mid-July, 2007. Mr. Sandberg testified that Mr. Kakol never asked him to hold any money for him and that he had no escrow arrangement of any kind with Mr. Kakol.

Mr. Kakol also testified briefly about his previous difficulties and suspensions from law practice, both by the State Bar of Georgia in 1998 and by the bankruptcy court in 2006.<sup>1</sup> He testified that his problem is that he takes in more business than he can handle. He believes relating to debtors is his life's calling and does not want to leave the practice of law. However, he testified repeatedly that things have to change.

The Court has carefully considered the matter and agrees with Mr. Kakol that things have to change. Following the continued August 15, 2007 hearing, Mr. Kakol hand-delivered three letters to the Court. The first is a letter dated August 16, 2007, addressed to the Court, in which he states that he has now opened an escrow account. The second is a letter dated August 17, 2007, addressed to the Chapter 13 Trustee Mary Ida Townson with respect to his position that the funds he receives from clients in the form of fees and clients' filing fees do not need to be placed in an escrow account and that he is seeking guidance from the State Bar of Georgia. The third letter is dated August 20, 2007, and is addressed to the Office of General Counsel, State Bar of Georgia. In this letter to the State Bar, Mr. Kakol states that he may have inadvertently

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*See* Order of the Honorable James E. Massey entered on June 2, 2006, in the case of *Kimberly Anntoinette Smith*, Case No. 06-62445. This Order barred Mr. Kakol from filing any case in the Bankruptcy Court for the Northern District of Georgia for a period of six (6) months.

violated the Georgia Rules of Professional Conduct and he invites the State Bar to investigate the matter.

Several problems are apparent from this record.

1. Mr. Kakol cannot continue to disregard his obligations to disclose his fee agreement with debtors in bankruptcy proceedings. In each and every case in which he seeks to represent a debtor in this Court, he should promptly file a disclosure statement or supplemental disclosure statement pursuant to Bankruptcy Rule 2016(b). *See* 11 U.S.C. §329. Mr. Kakol's suggestion that he is exempt from the disclosure requirements if he is retained after a case is filed is without merit. *See Mapother & Mapother, P.S.C. v. Cooper (In re Downs*, 103 F.3d 472 (6th Cir. 1996); *Quiat v. Berger (In re Vann)*, 136 B.R. 863 (D. Colo. 1992); *In re Campbell*, 259 B.R. 615, 625 (Bankr. N.D. Ohio 2001); 9 Alan N. Resnick & Henry J. Sommers, *Collier on Bankruptcy* ¶2016.18 at 2016-24 (15th ed. rev. 2007).

Mr. Kakol is also directed to review paragraph 5 of General Order No. 6-2006, which sets forth a Chapter 13 debtor's attorney's duty to file a fee application with the Court disclosing his fee arrangement with his client after the bankruptcy case has been filed. That paragraph provides that : "Debtor's counsel is precluded from accepting fees from a debtor after a case is filed without prior application to the Court and an Order allowing the same unless such distributions are described in debtor's plan and made by the Chapter 13 Trustee." General Order No. 6-2006, numbered ¶5 at 3 (Bankr.N.D.Ga. 2006).

Mr. Kakol should develop office practices and policies for documenting and disclosing fee arrangements with clients in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. If Mr. Kakol is uncertain of what is required in a specific case, he should

confer with the Chapter 13 Trustee assigned to the case to determine what disclosure is expected. Mr. Kakol's stated policy of taking a fee, advising the client that he may return the fee, and not disclosing the arrangement to the Court or the Chapter 13 Trustee is not acceptable. In cases where Mr. Kakol adheres to his policy, he will be required to refund the fee in full to his client.

Finally, with regard to this problem, Mr. Kakol is ordered to attend a minimum of three (3) hours of continuing legal education on consumer bankruptcy law within the next six (6) months and to submit a report to the Court on or before **March 1, 2008**, confirming compliance with this directive. If available, the continuing legal education should have a component dealing with attorneys fees for debtor's counsel in consumer cases.

2. Mr. Kakol misled the Chapter 13 Trustee and the Court when he told the Chapter 13 Trustee that he put Ms. Willis' \$1,000.00 in an escrow account. He knew he did not have an escrow account, and keeping cash in an envelope in someone's desk drawer is not an escrow account as contemplated in the Georgia Rules of Professional Conduct. He is ordered to attend a minimum of six (6) hours of continuing legal education on Ethics and Professionalism within the next six (6) months and to submit a report to the Court on or before **March 1, 2008**, confirming compliance with this directive.

3. Mr. Kakol cannot continue to disregard and overlook deadlines set by court orders. Mr. Kakol needs to focus on why and how he overlooked a court-imposed deadline and he needs to develop a system within his office to track and meet deadlines. He is ordered to arrange for a consultation with the State Bar of Georgia on law firm management within sixty (60) days of this Order and to submit a report to Mary Ida Townson, the Chapter 13 Trustee, on or before

**November 15, 2007**, confirming the dates of the consultation and the systems he has implemented to keep track of both statutory and court ordered deadlines in his bankruptcy cases.

4. The Court is concerned by Mr. Kakol's testimony regarding his all-cash law practice and his failure to file tax returns. It appears from Mr. Kakol's letters written following the hearings on the Chapter 13 Trustee's motion that he has now opened an escrow account and is seeking guidance from the State Bar with respect to whether fees taken under the type of fee arrangements he employs and the bankruptcy filing fees he receives should be deposited into an escrow account. The Court will forward a copy of this Order to the State Bar for its consideration in connection with its investigation and urges the Bar to evaluate Mr. Kakol's practices carefully to be certain that the public is protected and that Mr. Kakol is practicing law in compliance with the Georgia Rules of Professional Conduct.

5. Mr. Kakol has acknowledged that he takes more cases than he can handle. At the August 15, 2007 hearing, Mr. Kakol agreed to take no more than two new bankruptcy filings a month for the next eighteen (18) months, and that if he takes any fees from clients in the future without filing a proper Rule 2016(b) statement disclosing his fee, he will promptly refund the fee. The Court agrees that Mr. Kakol should and is hereby directed not to file more than two new bankruptcy cases a month until **February 1, 2009**. Furthermore, as stated previously, Mr. Kakol will be required to refund any fees taken from clients if he fails to timely file a Rule 2016(b) statement.

As a result of the conduct described in this Order, the Chapter 13 Trustee requests that Mr. Kakol be suspended from practice in the Bankruptcy Court for the Northern District of Georgia for one (1) year. Mr. Kakol urges the Court to give him an opportunity to continue

practicing bankruptcy law, arguing that “things will change.” The Court will permit Mr. Kakol to practice in the bankruptcy court, but only if he complies with the directions set forth in this Order by limiting his caseload, attending the required legal education, conferring with the State Bar and obtaining Bar assistance in those areas where he is having difficulty, establishing operational and accounting procedures designed to meet deadlines and safeguard client money, and disclosing all fees received and all fee arrangements in timely filed Rule 2016(b) statements.

Finally, at the August 15, 2007 hearing on the Chapter 13 Trustee’s motion, counsel for the United States Trustee announced that the United States Trustee had no recommendation on the matter. However, six days later, the United States Trustee filed a motion to sanction Mr. Kakol for the conduct which is the subject of the Chapter 13 Trustee’s motion to show cause. The United States Trustee seeks to impose an additional \$1,000.00 fine on Mr. Kakol and to require him to attend twelve (12) hours of continuing legal education in “areas related to the conduct at issue.” The parties are directed to review this Order and consider whether the United States Trustee’s motion needs to be heard in view of the Court’s ruling on the Chapter 13 Trustee’s motion. If either Mr. Kakol or the United States Trustee desires an additional hearing in connection with the United States Trustee’s motion for sanctions, they should file a request for a hearing on said motion within ten (10) days of the entry of this Order. If no request for a hearing is filed, the Court will consider the United States Trustee’s motion moot.

IT IS SO ORDERED, this 29<sup>th</sup> day of August, 2007.

  
JOYCE BIHARY  
UNITED STATES BANKRUPTCY JUDGE

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Date: August 29, 2007