



IT IS ORDERED as set forth below:

Date: September 06, 2008


Paul W. Bonapfel
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE: :
: Misc. No. 06-00401
EMPLOYMENT AND COMPENSATION OF :
R. SCOTT CUNNINGHAM AS COUNSEL FOR :
DEBTORS IN PENDING CASES. : Judge Bonapfel
:

**ORDER WITH REGARD TO SANCTIONS AGAINST R. SCOTT
CUNNINGHAM AND RECOMMENDATION OF DISBARMENT**

On February 20, 2008, the Court entered its "Order and Notice of Hearing With Regard to Sanctions and Discipline Against R. Scott Cunningham" (the "Order and Notice") [Docket No. 39]. The Order contained a "Recitation of Facts Appearing from the Record" (part I, pp. 4-10) with regard to Mr. Cunningham's representation of clients in this Court and a statement of "Issues Concerning Sanctions or Discipline" (part II, pp. 10-13). The Order and Notice scheduled an evidentiary hearing on June 18, 2008, with regard to these matters. Mr.

Cunningham and Mary Ida Townson, the Chapter 13 Trustee, attended the hearing. No other party in interest appeared.

Mr. Cunningham made a statement at the hearing, which the Court accepts as admissible evidence. The Chapter 13 Trustee summarized the difficulties that Mr. Cunningham's conduct caused for her office in the cases in which he was representing the debtors and presented her request for sanctions to compensate her for the time and expense incurred in dealing with those problems. Mr. Cunningham did not contest the time expended or expenses incurred as requested by the Chapter 13 Trustee or the reasonableness of her request for compensation.

Beyond an expression of regret and what the Court accepts as a sincere apology, Mr. Cunningham did not provide any evidence to contradict in any material way the facts as recited in the Order and Notice.

Based on the Court's findings of fact and conclusions of law as announced at the conclusion of the hearing and as set forth herein, the Court will sanction Mr. Cunningham by ordering him to pay \$ 9,582.22 to the Chapter 13 Trustee and \$ 10,200 to the Clerk of this Court. In addition, the Court recommends to the District Court that Mr. Cunningham be disbarred from the bar of the District Court on account of his felony conviction in accordance with LR 83.1(F)(1), N.D. Ga.

I. BACKGROUND

On July 28, 2006, the Court entered an Order (the "July 28 Order") in this matter relating to R. Scott Cunningham's representation of chapter 13 debtors in cases in this division of the Court. [Docket No. 7]. The July 28 Order applied to, and was docketed in, each of the cases listed on Exhibit "A" attached hereto.

As set forth in the July 28 Order, Mr. Cunningham was convicted on December 8, 2005, in the District Court, No. 4:04-cr-67-2, of two counts of money laundering and one count of conspiring to launder money. On April 24, 2006, he was sentenced to 24 months of imprisonment on each count, with all sentences to run concurrently. His initial date to report for incarceration was June 5, 2006. It was extended to July 10, 2006, and he began serving his sentence on that date. The United States Court of Appeals for the Eleventh Circuit has affirmed his conviction. He has completed the imprisonment required by his sentence.

On July 10, 2006, the day that Mr. Cunningham began serving his sentence, he filed five new bankruptcy cases in this Court, four under chapter 13. These filings prompted the Chapter 13 Trustee to file her "Emergency Motion to Suspend Payment of Attorney Fees to R. Scott Cunningham in All Pending Chapter 13 Cases Wherein Mary Ida Townson Is the Appointed Chapter 13 Trustee" (the "Emergency Motion") on July 18, 2006, in the case of Elias Galvan, Case No. 06-41176. The Court directed that the Emergency Motion and other matters related to Mr. Cunningham's representation of debtors in this Court be heard and determined in this separately docketed proceeding. [Docket No. 1].

The July 28 Order determined that Mr. Cunningham's inability, due to his incarceration, to appear on behalf of clients whose cases are pending in this Court placed them in severe jeopardy for two reasons. First, their lawyer could not readily communicate with them. Second, they themselves would be unable to try to solve their own problems (assuming that, without legal representation, they could figure out what the problems are, what the solutions might be, and how to accomplish them) because opposing counsel, properly, could not communicate with them. July 28 Order, page 4. Furthermore, the Court noted that Mr. Cunningham's continued

representation of clients while incarcerated caused problems for every other participant in a client's bankruptcy case, including attorneys for creditors, the Chapter 13 Trustee, and the Court.

Id.

Because Mr. Cunningham's clients faced immediate and potentially irreparable damage, the Court determined that Mr. Cunningham's representation of clients in pending chapter 13 cases had to be terminated, effective immediately. The Court later entered orders terminating Mr. Cunningham's representation of clients in pending chapter 7 cases for the same reasons.

On May 23, 2007, the Court entered its "Order Permitting R. Scott Cunningham to Respond With Regard to Potential Sanctions and Discipline." [Docket No. 28]. In that Order, the Court notified Mr. Cunningham that it was considering the imposition of sanctions or discipline against Mr. Cunningham arising out of his filing five new cases on the day he was incarcerated and failing to take appropriate and timely action in other pending cases to advise his clients of his impending inability to represent them and of their need to obtain substitute counsel. The Order invited Mr. Cunningham to file a response to explain his conduct and to set forth what sanctions and discipline, if any, he thought were appropriate. The Order also permitted the Chapter 13 Trustee, the United States Trustee, and any debtor or creditor in any of the cases listed on Exhibit "A" to file a response to the Order setting forth their views as to what sanctions and discipline, if any, are appropriate. The Order stated that, following the receipt of any responses, the Court would enter a further Order describing potential sanctions and discipline and the potential bases therefor and providing Mr. Cunningham further opportunity to respond and notice of a hearing.

Mr. Cunningham filed a response [Docket No. 28], and the Chapter 13 Trustee sought

sanctions in the form of an application requesting compensation of \$9,412.50 and reimbursement of expenses of \$169.72 incurred in connection with the additional work her office was required to undertake on account of Mr. Cunningham's conduct. [Docket No. 37]. No one else has sought sanctions.

On February 20, 2008, the Court entered the Order and Notice [39] setting forth facts as they appeared from the record and issues with regard to the imposition of sanctions and discipline. The Order and Notice scheduled a hearing for June 18, 2008, at which Mr. Cunningham and the Chapter 13 Trustee appeared. Based on the record before the Court and in accordance with the Court's oral rulings at the hearing, the Court enters this Order.

II. FACTS APPEARING FROM THE RECORD

The Court finds the following facts:

1. Mr. Cunningham was convicted of felony offenses in District Court Case No. 4:04-cr-67-2 on December 8, 2005. His conviction was affirmed on appeal.
2. On April 24, 2006, he was sentenced to imprisonment for 24 months.
3. Mr. Cunningham's initial report date for incarceration was June 5, 2006. The date was extended to July 10, 2006, and he began serving his sentence on that date.
4. On July 10, 2006, Mr. Cunningham filed five new bankruptcy cases in this court as attorney for the debtors, four under chapter 13.
5. On July 10, 2006, Mr. Cunningham represented the debtors in each of the chapter 13 cases listed on Exhibit "A" attached hereto.
6. Mr. Cunningham did not file anything in any of the pending chapter 13 cases in which he represented the debtors to advise the Court, the Chapter 13 Trustee, creditors, or his clients

that he would not be able to appear on behalf of any client due to his impending incarceration.

7. Mr. Cunningham took no action to withdraw from representation of any debtor he represented in any case and, consequently, remained the attorney of record for the debtor in each such case until this Court effected the termination of his representation in chapter 13 cases by Order entered on July 28, 2006 [Docket No. 7] and in chapter 7 cases and adversary proceedings by Orders entered on August 23, September 15, and November 2, 2006 [Docket Nos. 12, 17, and 21]. Mr. Cunningham has offered no credible or justifiable reason for his failure to withdraw.

8. On July 18, 2006, the Chapter 13 Trustee filed her "Emergency Motion to Suspend Payment of Attorney Fees to R. Scott Cunningham in All Pending Chapter 13 Cases Wherein Mary Ida Townson Is the Appointed Chapter 13 Trustee" (the "Emergency Motion"). [Docket No. 2].¹

9. Mr. Cunningham responded to the Emergency Motion on July 24, 2006, and sought a continuance of the hearing. [Docket No. 3].² In his response, Mr. Cunningham states the following:

- a. He sent letters to his clients in May 2006 advising them that he was "closing his office" and requesting that they schedule an appointment to review the status of their

¹The Emergency Motion was originally filed in the case of Elias Galvan, No. 06-41176. On July 28, 2006, the Court directed that the Emergency Motion and other matters related to Mr. Cunningham's representation of debtors in cases in this Court be heard and determined in this separately docketed proceeding. [Docket No. 1]. The Emergency Motion was docketed in this proceeding on that date.

²The response was originally filed in the case of Elias Galvan, No. 06-41176. On July 28, 2006, the Court directed that the Emergency Motion and other matters related to Mr. Cunningham's representation of debtors in cases in this Court be heard and determined in this separately docketed proceeding. [Docket No. 1]. The Response was docketed in this proceeding on that date.

cases and to discuss “what attorney they would prefer to take over their cases.”

b. Over the next month, he met with chapter 13 clients who responded and divided matters into several categories: those who requested a specific attorney, those who requested an attorney with a local office, and those who had no preference.

c. He intended to transfer the files to substitute counsel beginning July 1, 2006, but was not able to do so. This time frame “proved insufficient” to make the transfers due to his “inability to adequately communicate with substitute counsel because of the July 4th holidays and other time constraints caused by the concluding of other personal and business commitments” prior to his surrender date.

d. He directed his staff to disseminate the active chapter 13 client files to substitute counsel based upon a case division he had prepared.

e. He intended to telephone substitute counsel to discuss the particular cases transferred during the week following his surrender, but was denied telephone access until July 20.

f. As of the time of the response, a majority of client files had been physically transferred to attorneys Michael Hurtt and Terry Haygood, and remaining files were “in the process of being transferred” to attorneys Jim McKay and Brian Cahn.

g. As of the time of the response, he intended to “make specific arrangements with substitute counsel for any transfer or sharing of unpaid fees.”

At the hearing on June 18, 2008, Mr. Cunningham offered nothing more specific with regard to this conduct.

10. The Court denied the request for a continuance [Docket No. 4] and conducted a

hearing on the Emergency Motion on July 26, 2006. On July 28, 2006, the Court entered an Order [Docket No. 7] terminating Mr. Cunningham's representation of debtors in the chapter 13 cases listed on Exhibit "A." With regard to pending client files, paragraph 3 of the July 28 Order stated, at page 15:

3. Mr. Cunningham shall cause all client files for chapter 13 debtors with cases pending in this Court (that have not previously been delivered to a client or to new counsel) to be delivered to the Trustee, Mary Ida Townson, in her capacity as Chapter 13 Trustee, within ten days from the date of this Order to her place of business. . . . Within 20 days from the date of this Order, Mr. Cunningham shall file in this proceeding an inventory of client files for the cases shown on Exhibit "A" attached hereto, showing for each the person to whom they were delivered.

11. There are 102 cases listed on Exhibit "A". On August 4, 2006, the chapter 13 Trustee filed a report [Docket No. 11], supplemented on August 25, 2006 [Docket No. 16], stating that on August 2, 2006, she had received files relating to approximately 80 of Mr. Cunningham's clients from Melanie Cunningham. The Trustee reported that a number of these files had been turned over to Ms. Cunningham by attorney Michael Hurtt, who had possession of them at the time of entry of the Order. [Docket No. 16].

12. Mr. Cunningham did not file an inventory of client files for the cases shown on Exhibit "A" as required by the July 28 Order. Mr. Cunningham did not address this at the hearing on June 18, 2008.

13. The Court entered Orders terminating Mr. Cunningham as attorney of record for the

debtors in Chapter 7 cases and parties in adversary proceedings [Docket Nos. 12, 17, 21]. In eleven of the pending chapter 7 cases in which Mr. Cunningham was representing the debtor, the debtor had failed to file a statement regarding completion of a personal financial management course as required for a discharge under 11 U.S.C. § 727(a)(11). This required the entry of an order extending the time for such filing. [Docket No. 12].

14. The July 28 Order directed the Chapter 13 Trustee to hold funds otherwise payable as compensation to Mr. Cunningham pending further Order of the Court. The Court on May 24, 2007, entered an Order [Docket No. 27] with regard to procedures for compensation of attorneys for the debtors in the cases listed on Exhibit "A". Among other things, the Order required Mr. Cunningham to file an application for compensation in any case in which he sought either to retain compensation he had received or to receive additional compensation. Mr. Cunningham did not file an application for compensation in any of the cases. The Court entered later Orders that determined that Mr. Cunningham had no interest in any of the withheld fees, established procedures for determining their appropriate distribution in the chapter 13 cases, and provided for their proper distribution in the cases.

15. Also on May 24, 2007, the Court entered an Order [Docket No. 34] with regard to the potential imposition of sanctions or discipline against Mr. Cunningham. Mr. Cunningham filed a Response [Docket No. 34] to this Order which states:

“[S]pecific and meticulous efforts were made prior to my incarceration for the transfer of all pending Chapter 13 cases to substitute counsel, and, in fact, a majority of those chapter 13 case files were transferred to Michael D. Hurtt and Terry Haygood prior to the July 26, 2006 hearing consistant [sic] with the

knowledge, permission and requests of those clients. However, the Court's Order of July 28, 2006 required that Mr. Hurtt and Mr. Haygood transmit those files to the Chapter 13 Trustee. Although I am confident that all of the pending Chapter 13 case files could have been transferred to substitute counsel pursuant to the knowledge, permission and request of those affected clients by my office staff after my incarceration, I am mindful of the Court's concerns for the potential detriment to which my clients were exposed without available counsel of record and certainly realize that the failure to timely achieve a transfer of all pending Chapter 13 cases prior to my incarceration is an unforgivable lapse in, what I believe, was a high level of competence and attention with which I have historically represented clients before this Court, for which I again apologize."

At the hearing on June 18, 2008, Mr. Cunningham offered nothing to establish that he made "specific and meticulous" efforts to transfer cases to substitute counsel. In particular, he did not produce the letters he says he sent to his clients despite the Court's specific direction that he do so.³

16. The Chapter 13 Trustee's application for compensation [Docket No. 37] seeks compensation for the time and expenses the Chapter 13 trustee and her staff incurred because of the additional responsibilities she and her staff had to assume as a result of Mr. Cunningham's conduct. The Trustee's motion sets forth the grounds for her request and itemizations of the time and expenses incurred in connection with work the Trustee claims was necessary in response to Mr. Cunningham's conduct and to comply with this Court's orders concerning same. Mr.

³Order and Notice, p. 11 & n. 7.

Cunningham does not contest the time and expenses incurred or the reasonableness of the compensation requested.

17. About three years prior to Mr. Cunningham's conviction, the State Bar of Georgia suspended Mr. Cunningham from practicing law for a year. At that time, he was representing numerous debtors in this Court. Shortly after his suspension, the United States Trustee filed a motion, and the Court conducted a hearing and entered an Order, with regard to payment of fees to Mr. Cunningham in the numerous pending chapter 13 cases in which he was representing the debtors and in which he had taken no previous action of record in connection with his suspension.⁴ The United States Trustee also filed a motion requesting authority to contact Mr. Cunningham's clients to advise them of Mr. Cunningham's suspension and to urge them to obtain new counsel because it did not appear that Mr. Cunningham had notified them of his suspension.⁵ The United States Trustee later filed motions seeking an accounting from Mr. Cunningham of retainers he had received in pending chapter 11 cases in which he represented the debtors, resulting in the entry of an Order on June 19, 2003.⁶ The June 19 Order required Mr.

⁴See Motion of the United States Trustee For Order Freezing Chapter 13 Attorneys Fees to be Paid to R. Scott Cunningham and Request for Expedited Hearing, filed April 14, 2003 [Docket No. 12], and Order entered May 2, 2003 [Docket No. 14] in *In re Angela Faith Phillips*, Case No. 03-50363.

⁵See Motion of the United States Trustee for Order Permitting the United States Trustee to Directly Contact Debtors Formerly Represented by R. Scott Cunningham and Request for Expedited Hearing, filed April 14, 2003 [Docket No. 55] in *In re Shel Sharpe*, Case No. 02-51091.

⁶See, for example, United States Trustee's Motion for Accounting by Debtor's Counsel, filed May 2, 2003 [Docket No. 58] and Order entered on June 19, 2003 [Docket No. 66] in *In re Shel Sharpe*, Case No. 02-51091. A similar motion was filed, and the Order was entered, in the following cases: *In re Lovingood*, Case No. 02-51702; *In re Serritt*, Case No. 02-51767; *In re Wilson*, Case No. 02-51802; *In re Alcoa Auto Service Center, Inc.*, Case No. 02-51818; *In re*

Cunningham to pay a total of \$13,301 into the registry of the Court as the amount of retainers he had received for which he had not been allowed compensation. Mr. Cunningham never paid \$8,301 of these funds into the registry. The matter ultimately resolved itself through conclusion of all of the cases except two, in which the appropriate parties agreed to a division of the \$5,000 Mr. Cunningham paid into the registry.⁷

III. REASONS FOR SANCTIONS

Based on the facts of these cases, as discussed above, the Court concludes that the imposition of sanctions against Mr. Cunningham is appropriate for the following reasons:

1. Mr. Cunningham's filing of five new cases on the day he was incarcerated and his failure to withdraw from representation of any client in the cases and adversary proceedings then pending in this Court before or after his incarceration was an attempt to represent clients in this Court without the ability to do so and, as such, constituted a willful contempt of this Court and the violation of his professional responsibilities as a member of the Bar of this Court.

2. Upon his conviction, and certainly no later than the time that sentence was imposed, Mr. Cunningham had a duty, as an officer of this Court, and a professional responsibility, as a member of the State Bar of Georgia, to take timely and effective action to make sure that his clients could receive competent representation in pending cases in which he obviously would no

North Whitfield Property & Development, LLC, Case No. 02-51899; *In re Pittman*, Case No. 03-50041; *In re Jordan Holdings, LLC*, Case No. 03-50054; *In re Top Notch Timber Logging, Inc.*, Case No. 03-50055; *In re Letza, Inc.*, Case No. 03-50190; *In re Pine Forest Associates, LLP*, Case No. 03-50364.

⁷See Order Approving Agreement for Disbursement of Funds in Court Registry, entered April 28, 2008, in *In Re Shel Sharpe*, Case No. 02-51091 [Docket No. 223] and *In re Serritt*, Case No. 02-51767 [Docket No. 131].

longer be able to represent them. Mr. Cunningham failed to take any action whatsoever until the Chapter 13 Trustee and this Court took action; even then, he initially sought to delay the process with a request for a continuance and took no affirmative action to deal with the problems that existed.

Mr. Cunningham has asserted, with no evidentiary support, that he made “specific and meticulous” efforts to transfer his cases to substitute counsel. [Response filed Aug. 7, 2007, Docket No. 34]. The Court rejects this contention.

Mr. Cunningham’s Response indicates that a number of client files had already been transferred to other attorneys with the client’s agreement. If this had occurred, a simple notice of substitution of counsel could have been filed. The Response further expresses Mr. Cunningham’s confidence that all of his cases could have been transferred to other counsel if the Chapter 13 Trustee and this Court had not intervened. But Mr. Cunningham did not request any of these lawyers to appear at the hearing to speak to this issue. Moreover, the fact that none of these lawyers came forward to “claim” any clients when the proceedings with regard to Mr. Cunningham’s representation in the cases began belies Mr. Cunningham’s contentions.

In any event, Mr. Cunningham could have, and should have, complied with his professional responsibilities to his clients and the Court in a simple, direct way. His clearly obvious and straightforward duty was to write clients that he had been convicted and would be imprisoned, that he would not be able to represent them, that he would be required to withdraw from their representation, and that they should seek other counsel. If he had made arrangements with other lawyers to accept his cases, that information could have been included in the communication. Following this communication to his clients, Mr. Cunningham should have

filed a request for permission to withdraw in each case. Of course, the Court would have granted the request in the circumstances.

The Court attributes Mr. Cunningham's decision not to follow such a straightforward procedure to an attempt to retain an interest in unpaid (and in many cases unearned) fees. The Court's Order and Notice asked Mr. Cunningham to answer a number of questions relevant to the question of whether Mr. Cunningham's conduct was attributable in part to a desire or attempt to participate in fees that the clients had paid or would pay under a Chapter 13 plan. Specifically, the Court asked: Why did Mr. Cunningham not withdraw from representation due to inability to represent his clients prior to his incarceration or in any event prior to entry of the July 28 Order? What written notices did Mr. Cunningham provide to his clients?⁸ Why did Mr. Cunningham not send notice of his office's impending closure to his clients prior to May 2006? Did Mr. Cunningham advise his clients of the criminal conviction or otherwise notify them that he would not be able to represent them, and if so, when? If "other time constraints" were the cause of his inability to effect substitution of counsel for clients, what were they and why did they not prevent the preparation of five new cases for filing? What discussions and communications with clients and other lawyers occurred with regard to representation of clients in Mr. Cunningham's cases and with regard to payment of compensation?⁹

Mr. Cunningham at the hearing on June 18, 2008, did not address any of these questions,

⁸The Order and Notice directed Mr. Cunningham to produce copies of the communications at the hearing. None were provided.

⁹Although the Order and Notice invited (but did not require) the lawyers identified by Mr. Cunningham as potential lawyers for his clients to attend the hearing to testify with regard to these matters, no one appeared.

other than to state that he had notified his clients of his inability to represent them.

As noted in an earlier Order, members of the bar of this Court, aware of the potential difficulties faced by Mr. Cunningham's clients when these matters came before the Court in July 2006, stated their willingness to take over representation of debtors who wished to retain them. Order entered July 28, 2006 [Docket No. 7] at 6. It is certain, therefore, that most if not all of the attorneys who regularly represent debtors in bankruptcy cases in this Court would have responded immediately and without reservation to a simple request that they take over some or all of Mr. Cunningham's cases.

The absence of answers to any of the Court's questions and the willingness expressed by members of the bar of this Court to assist unrepresented clients after these issues came to light convinces the Court that Mr. Cunningham's inability to arrange for substitute counsel to take over the cases and, more simply, his failure to timely withdraw, are attributable in substantial part to an effort to participate in fees that would be payable in the cases in which he could no longer represent the clients. The only explanations for why this did not occur are that Mr. Cunningham made no such request or that his terms for participation in fees prevented substitute counsel from accepting the cases. Mr. Cunningham's response filed on July 24, 2006 [Docket No. 3], which states that he was attempting to make arrangements for participation in fees, indicates that the reason was the latter.

Regardless of the reason, Mr. Cunningham did not provide timely and effective notice to his clients of his conviction, of his impending incarceration and consequent inability to represent them, and of the urgent need for them to obtain other counsel. Moreover, there is no indication that Mr. Cunningham made any effort to deal properly with attorney's fees in the

cases. The fees payable in these cases to Mr. Cunningham represented compensation for representation through the conclusion of the case; because he would not be able to provide representation, he did not earn all of those fees. Furthermore, Mr. Cunningham had been fully paid in a number of these cases, but had not fully earned the fees because he had not completed representation of his clients.¹⁰ Mr. Cunningham made no effort to return any of these fees.

This is not the first time that Mr. Cunningham failed to fulfill his professional duties when his conduct prevented him from doing so. The repetition convinces the Court that his conduct was willful.

For all of these reasons, Mr. Cunningham's failure to take prompt and effective action to withdraw from representation of his clients was a willful contempt of this Court and a violation of his professional responsibilities as a member of the State Bar of Georgia.

3. Attorneys practicing in this Court must comply with the Georgia Rules of Professional Conduct. LR 83.1(C), NDGa. The facts show that he has violated a number of them.

Mr. Cunningham's failure to timely withdraw from representation of his clients in these cases constituted an effort to represent them when he obviously could not do so because of his imprisonment. This is a violation of Rule 1.1 that a lawyer provide competent representation. His failure to effect a timely withdrawal from representation or otherwise make arrangements for the representation of his clients in view of his obviously unavoidable absence was a failure to act with reasonable diligence and effectively amounted to an abandonment of his clients in violation of Rule 1.3.

¹⁰The Court does not mean to suggest that an attorney cannot receive payment prior to completion of representation. The duty is to refund fees if the attorney withdraws prior to completion of the representation.

The Court notes that the most egregious violations of Rules 1.1 and 1.3 occurred when Mr. Cunningham filed five cases on the day he was incarcerated. Words are not sufficient to express how outrageous and offensive this was.

Most critically, Mr. Cunningham failed to withdraw from representation as required by Rule 1.16(a)(2), which requires withdrawal if the lawyer's "physical or mental condition materially impairs the lawyer's ability to represent the client. . . ." Incarceration for two years is an obvious condition that totally precluded Mr. Cunningham's representation of his clients.

Mr. Cunningham's obligation to withdraw triggered the application of Rule 1.16(d). This rule requires a lawyer to "take steps reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned." Mr. Cunningham complied with none of these responsibilities. Although Mr. Cunningham asserts that he provided notice to his clients, he has failed to specify when the notice was given or to provide copies of the notice. The circumstances clearly establish that it was not timely and that his clients did not have time to employ other counsel. Indeed, the Court had to undertake the tasks of removing Mr. Cunningham as counsel of record and providing notice to his clients. Similarly, the Court and the Chapter 13 Trustee were required to intervene with regard to the transmittal of client files. Mr. Cunningham did nothing to return unearned fees he had been paid in any of the cases or to deal with the problem of future fees to be paid. Again, the Court and the Chapter 13 Trustee were required to intervene to protect Mr. Cunningham's clients with no assistance from him.

4. Mr. Cunningham's conduct in violation of his responsibilities as an officer of this

Court constitutes willful contempt. A proper remedy for contempt of Court is the imposition of sanctions to provide compensation to persons who have been damaged as a result of the contemptuous conduct. Mr. Cunningham's conduct clearly has caused damage to his clients and, perhaps, to creditors and other parties in the cases in which he failed to perform his professional responsibilities, but no one except the Chapter 13 Trustee has sought sanctions.

The Chapter 13 Trustee has requested compensation for the time and expenses she and her office incurred as a result of Mr. Cunningham's conduct, and the Court in the Order and Notice advised Mr. Cunningham of its view that the Clerk's Office should be entitled to compensation for the additional costs and expenses that the United States incurred as a consequence of his conduct.

There is no question that Mr. Cunningham's contemptuous conduct caused the Chapter 13 Trustee additional time and expense. It is similarly undisputed that the amounts she has requested in compensation and reimbursement of expenses are reasonable. The Court will, therefore, award sanctions in favor of the Chapter 13 Trustee in the amount of \$9,582.22 on account of the additional time and expense that the chapter 13 Trustee, her attorneys, and her staff incurred in connection with dealing with the consequences of Mr. Cunningham's conduct.

The United States has also been damaged by Mr. Cunningham's conduct. The Clerk's office had to undertake responsibilities for docketing and serving a number of additional notices and orders with regard to proceedings in these cases that would not have been required if Mr. Cunningham had taken appropriate action to withdraw properly from representation. This required additional personnel time as well as additional expenses for postage and copies. A reasonable (and generous, in Mr. Cunningham's favor) estimate of the additional costs and

expenses occasioned by Mr. Cunningham's conduct is \$100 for each of the 102 chapter 13 cases in which the Court had to terminate Mr. Cunningham's representation. Accordingly, the Court will award sanctions in favor of the United States in the amount of \$10,200 to compensate the United States for additional costs and expenses incurred by the Clerk's Office as a consequence of Mr. Cunningham's conduct.

Separate judgments will be entered with regard to these sanctions.

5. The Local Rules of the District Court provide for disbarment of an attorney who "has been convicted of a felony or any crime involving moral turpitude." LR 83.1(F)(1), ND Ga. The Rule provides for issuance of an order of suspension, followed by an order of disbarment 30 days thereafter unless the attorney "has by motion to the court shown good cause as to why the attorney should not be disbarred or that disbarment not be imposed."

In accordance with this Rule, the Court recommends that the District Court issue an order of suspension to Mr. Cunningham and thereafter an order of disbarment.

The Clerk is directed to transmit a copy of this Order to the District Court for its review and such further action as it deems proper in appropriate further proceedings in the District Court.

6. It is appropriate that these matters be referred to the State Bar of Georgia for such proceedings as it deems appropriate. The Court, therefore, directs that a copy of this Order be mailed to the State Bar of Georgia for such further action as it deems appropriate. Upon entry of judgments as set forth above and transmission of this Order as aforesaid, the Clerk is authorized to close this proceeding.

The Clerk is directed to docket this Order only in this Miscellaneous Proceeding and to

mail copies of this Order to the persons shown on the attached Distribution List. Upon entry of judgments as set forth above and transmission of this Order as aforesaid, the Clerk is authorized to close this proceeding.

End of Order

DISTRIBUTION LIST

Office of the United States Trustee
362 Russell Building
75 Spring Street S.W.
Atlanta, GA 30303

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Chapter 13 Trustee
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Case Number	Case Title
01-42024	Billy Maurice Buchanan
01-42523	Salvador Lopez and Lorena Lopez
01-42530	Christopher H. Hartness
02-50027	Roger Lee Marcin and Peggy Sue Marcin
02-50119	Kay Elaine Fields
02-50122	Kerri Lynn Strunk
02-50289	Delvin Elmer Worley
02-50691	Jeffery Clyde Rich and Eva Caroline Rich
02-51277	Teresa Dianna Silvers
02-51386	Bobby Lynn Baker and Tammy Renae Sullivan
02-51588	Manuel Eugene Strunk
02-51835	Richard Chastain and Lisa D. Chastain
02-52028	Janet Lee Chastain
02-52094	Michael Allen Turvey
02-52119	Jamie T Goforth and Lei K Goforth
03-40687	David Gary Davenport and Susan Elaine Davenport
03-41323	Yolanda Michelle Coleman
03-42915	Phillip M Owens and Melissa R. Owens
03-50138	Delphia Bell
03-50244	Sheila Diane Reed
04-42018	William James Lackhouse
04-43354	Roberto Sergio Calandria
04-43377	Adel C. Tibbs
04-43391	Teddy Winston Allen
04-43397	Edward W. Carter and Dimple L. Carter
04-43426	Linda Marie Jones
04-43522	William A. Guthrie and Jennie Robin Guthrie
04-43605	Earl Bumette and Beverly Kaye Bumette
04-43715	Mark A. Blalock
04-44010	James Everett Cochran and Lawanda Denise Cochran
04-44012	Steven De Forrest Shaver
04-44014	Leilha M. Higgins
04-44097	Michael Fred Johnson
04-44191	David Lee Amos and Jo Ann Amos
04-44192	Anthony Neal Satterfield and Lynelle H. Satterfield
04-44193	Mary C. Terry
04-44425	Mary Ann Cochran
04-44527	Wade Norman Brown and Carolyn Sue Brown
04-44530	Sherry Lynn McDowell
04-44531	Samantha Jean Pell
04-44560	Patricia J. Cook
04-44655	John Wesley Roberson and Shelia Diann Roberson
05-40004	Danny Wynn Goswick and Anita T. Goswick
05-40006	John Allen Harris and Brenda Faye Harris
05-40197	Willie Mae Thompson
05-40198	Rex A. Dixon and Barbara Elaine Dixon
05-40199	Phillip Jeffery Bowman and Roseanna Marie Bowman
05-40271	Paula Darlene Callahan



05-40439 Chucky Ray Clark and Carolyn Marie Clark
05-40491 Donnie Joseph Cross
05-40720 George Henry Kelly and Jo Hannah Kelly
05-40846 Eric Scott Stepp and Pamela Denise Stepp
05-40847 Julio C. Salazar
05-40848 Rosa L. Maddox
05-40988 Richard L. Carnes and M. Joan Carnes
05-41253 Carol Denise Hix
05-41254 Gordon L. Robbs and Joan A. Robbs
05-41255 Anthony Shean Starks
05-41256 Dorothy White
05-41833 Paul Wayne Long and Connie Denise Long
05-41835 Michael Gerald Earley and Nancy Gail Earley
05-41836 Calvin Lee Qualls and Willie Ruth Qualls
05-41954 Roger Barry Patterson
05-41956 Brenda Lee Parks
05-42180 Roger Jerome Thomas and Melissa Faye Thomas
05-42196 Thomas Ray Barnes and Penny Denise Barnes
05-42452 Larry Dewayne Brinkley
05-42604 Guadalupe Cortez
05-42606 Steven Allen Weber
05-42909 James Wayne Weaver and Chrystal Gail Comette
05-42955 Clifford Douglas Smith
05-42956 Jason Leon Gates
05-43144 Alice Malinda Beavers
05-43145 Jeremy Steven Moss and Tonette Michelle Lea Moss

05-43147 Drew Robert McCarsky and Terianne Carol McCarsky
05-43277 Alan Wayne Holloway and Katherine Jane Holloway
05-43743 Lowell Freddie Hughes and Janice Laverne Hughes
05-43744 Kendall Edward Allen and Marsha Marie Allen
05-43745 Kathy Darlene Boran
05-43816 Robert Daniel Frisbee and Charlotte Diane Frisbee
05-43817 Jesse Lee Miller and Alisa Jean Miller
05-43818 Stephen W. Wilson and Patricia Ann Wilson
05-44589 Robin Dollar
05-44591 Vernon Shaun Campbell and Ashley Dee Campbell
05-44592 Rhonda Ilene Florence
05-44593 James Woodrow Hill and Donna Elaine Hill
05-44595 Jerry Glenn Lawson
05-44596 Charles L. Young and Kandis C. Young
05-50051 Thomas Ray Chambers
06-40127 Glenda Dale White
06-40153 William Troy Ellis and Deborah Jerrell Ellis
06-40154 Edmond David Ridley
06-40155 Tiffany Nichole Jarrett
06-40190 Marwin Lamon Gash
06-40276 Jesse Floyd Roberts and Vickie Lucille Roberts
06-40570 Jack R. Croy
06-40571 James E. Copeland and Teresa Mathews Copeland
06-40807 Patricia Lynn McDaniel

06-41176 Elias Galvan
06-41177 Gary Lynn Hawkins
06-41179 Laura Michelle Phelps
06-41180 Jeffrey Labron Holloway