IT IS ORDERED as set forth below:

Date: October 02, 2007

Paul W. Bonapfel
U.S. Bankruptcy Court Judge

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

IN RE:	:	
	:	Case No. 07-62006-PWB
PEARL ROBBINS,	:	
	:	Chapter 13
Debtor.	:	
	:	

ORDER WITH REGARD TO MELVIN ROBINSON

On February 5, 2007, attorney Melvin Robinson filed this chapter 13 case on behalf of the Debtor, Pearl Robbins. The meeting of creditors pursuant to 11 U.S.C. § 341(a) was scheduled for March 15, 2007, and the hearing on confirmation was scheduled for April 11, 2007. It appears that the primary purpose of the chapter 13 case was to cure defaults under, and reinstate the maturity of, a debt secured by a deed to secure debt on the Debtor's residence held by Countrywide Home Loans, Inc. ("Countrywide").[1] The law firm of McCalla, Raymer, LLC,

[1]It appears that Countrywide acquired the debt from Washington Mutual.

represents Countrywide in this case. [9].

The case was dismissed by Order entered on May 3, 2007 (the "Dismissal Order"). [13]. Mr. Robinson filed, on behalf of the Debtor, a "Notice to Reset Confirmation and Objection to Order of Dismissal" [15], which the Court in an Order entered on July 12, 2007 (the "July 12 Order") [16], construed as a motion to reconsider the dismissal. As such, it was timely filed as a motion for reconsideration under FED. R. BANKR. P. 9023, incorporating FED. R. CIV. P. 59, or as a motion for relief from the dismissal order under FED. R. BANKR. P. 9024, incorporating FED. R. CIV. P. 60.

On July 11, 2007, Mr. Robinson filed a "Motion to Set Aside Order of Dismissal" [18]. Because this pleading essentially sought to reopen the case (because it was filed more than ten days after the dismissal order), the Clerk's Office required the Debtor to pay the $235 fee required to reopen a case. (The Court did not consider this motion in its July 12 Order because the motion was not docketed until after the July 12 Order had been entered.)

Pursuant to an Order entered on August 29, 2007 (the "August 29 Order") [23], the Court scheduled a hearing to consider reinstatement of the case for September 12, 2007, at 2 o'clock p.m. That Order also ordered Mr. Robinson to appear at the hearing and show cause: (1) why he had not earlier scheduled a hearing as the Court had instructed him to do in its July 12 Order; (2) why he should not be required to reimburse the Debtor for the filing fee; and (3) why he should not be required to disgorge any compensation paid in the case.

At the call of the calendar, the Debtor was present but Mr. Robinson was not. The Court instructed chambers staff to telephone Mr. Robinson to repeat the Court's instruction that he appear at the hearing, and he was present when the case was reached near the end of the day's

calendar. Also present at the hearing were Ms. Brandi Kirkland, attorney for the Chapter 13 Trustee, and Mr. Richard Siegel, attorney for Countrywide.

By Orders entered on September 19, 2007, the Court reinstated the case [25] and terminated Mr. Robinson's representation of the Debtor at her request. [26].

This Order deals with the remaining issues raised by the August 29 Order. Part I reviews certain aspects of Mr. Robinson's representation of the Debtor and requires the disgorgement of fees he has received and reimbursement of the filing fee paid in connection with the motion to set aside the dismissal. Because the circumstances in these proceedings cause the Court concerns about Mr. Robinson's compliance with his professional responsibilities, Part II of this Order refers matters discussed herein to the State Bar of Georgia for its review as to whether appropriate disciplinary proceedings are warranted.

I. Resolution of Issues Raised by August 29 Order

Based on the Court's docket and the record at the hearing, the following are the undisputed facts concerning Mr. Robinson's representation of the Debtor as they directly relate to the dismissal of her case and the Court's views as to the problems with Mr. Robinson's representation.

The § 341(a) meeting originally scheduled for March 15 did not occur because Mr. Robinson said he had a conflict and could not attend. The § 341(a) meeting is a critical and essential step in the chapter 13 process and a necessary condition to confirmation of a plan; a confirmation hearing cannot take place until the § 341(a) meeting has been conducted. On

February 16, Mr. Robinson filed notice of the conflict [8],[2] but no arrangements were made for the rescheduling of the § 341(a) meeting in time to permit the confirmation hearing to go forward as originally scheduled.

Here is the first problem with Mr. Robinson's representation. He should have promptly made arrangements with the chapter 13 Trustee's office for rescheduling the § 341(a) meeting. The Court would be surprised if such rescheduling is complicated, unusual, or difficult. Competent and diligent counsel would have gotten this done. Indeed, it is possible that the confirmation hearing could have been held as originally scheduled in April if Mr. Robinson had, in February, arranged to reschedule the § 341(a) meeting when there was still time to schedule it for another date in March.

Because rescheduling had not occurred by the time of the originally scheduled confirmation hearing on April 11, the Trustee could have gone forward with a request for dismissal of the case at that time, but the Trustee's attorney, Ms. Kirkland, agreed to permit rescheduling. She and Mr. Robinson agreed that Mr. Robinson would call the Trustee's office to obtain new dates for a § 341(a) meeting, that he would prepare, file, and serve a notice to creditors of the new dates, and that the case would be put on "ten day status," pending the rescheduling and re-noticing. "Ten day status" is, essentially, a shorthand term regularly and

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[2]The "conflict" notice actually sought a leave of absence. The Local Rule with regard to leave of absence contemplates that a leave of absence may be granted only with regard to scheduling that has not yet taken place. BLR 9010-5(e), NDGa.. A continuance of a trial, pretrial conference, or other hearing requires action by the Court, BLR 5071-1, ND Ga., but a § 341(a) meeting is not a hearing. Absent the filing of a motion requesting that the Court supervise the timing of a § 341(a) meeting, the Court is not involved in its scheduling. In any event, Mr. Robinson could not, merely by filing the "conflict" letter that was actually a request for a leave of absence, relieve himself of his responsibility to appear at the § 341(a) meeting.

frequently used in chapter 13 practice in this Court to mean that, if a Debtor does not do something that the chapter 13 trustee deems necessary in the administration of the case within ten days, the case will be dismissed. So in this case, Mr. Robinson needed to obtain new dates for, and file and mail to creditors appropriate notice of, a rescheduled § 341(a) meeting and confirmation hearing within ten days to avoid dismissal of the Debtor's case.

Mr. Robinson called the Trustee's office on April 13 and obtained the dates of May 10, 2007 for the § 341(a) meeting and June 6, 2007 for the hearing on confirmation. Mr. Robinson did not file and serve notice of the meeting and the hearing as he had agreed to do and as he was required to do. Consequently, the chapter 13 Trustee on May 3, 2007 – some ten days *after* the agreed upon deadline of April 21 – filed a Supplemental Report requesting dismissal in accordance with the Court's standard practice in such circumstances. [12]. The Dismissal Order followed as a matter of course.

The Supplemental Report correctly reported that the required notice had not been given but incorrectly stated that the Debtor was delinquent in her payments to the Trustee. Ms. Kirkland acknowledged, and apologized for, the error at the hearing, and in fact confirmed that the Debtor was current in her payments at the time of the originally scheduled confirmation hearing on April 11 and at the time the report was filed on May 3. This error has no relationship to the problems in this case; it is clear that the case was dismissed because of Mr. Robinson's failure to provide the required notice, not because the Debtor had failed to make payments.

This is the second problem. Mr. Robinson, having failed to arrange for rescheduling between February 16 and April 11, effectively got a second chance to avoid a problem for his client. He actually got *more* than a second chance, because the Trustee gave him an additional

ten days to get the job done before pulling the trigger for dismissal. When he still failed to act, dismissal followed as a consequence of his failure to comply with the "ten day status" procedure.

Upon entry of the Dismissal Order, Mr. Robinson did something. On May 7, Mr. Robinson filed the "Notice to Reset Confirmation and Objection to Order of Dismissal," which sought reinstatement of the case. He did not, however, schedule a hearing on the request in accordance with the Court's self-calendaring procedures. These procedures have been in effect for at least three years,[3] and Mr. Robinson acknowledged at the hearing that he is aware of them.

At this juncture, a third problem arises: Mr. Robinson failed to schedule a hearing.[4] Because he did not, nothing happened. It is not clear whether he called chambers prior to July to inquire as to the status of the matter. If he did, he certainly would have been told to schedule the hearing in accordance with the Court's self-calendaring procedures. If he did not, he failed to follow up to protect his client's interests to call the Court's attention to the need to schedule

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[3]The instructions are available on the Court's website at www.ganb.uscourts.gov.

[4]Mr. Robinson has failed to comply with self-calendaring procedures in other cases.

In the case of Anthony Collins, Case No. 07-65320, assigned to Judge Massey, a dismissal order was entered on July 17, 2007, following submission of a Trustee's Supplemental Report. Mr. Robinson filed an Objection to the Supplemental Report on July 20 and a motion to set aside the dismissal order on July 31. As of September 27, he had not scheduled either for a hearing and they remain pending.

In the case of Elgintine Dudley, Case No. 07-62229, assigned to Chief Judge Bihary, an order dismissing the case for failure to fund was entered on April 25, 2007. Mr. Robinson filed a motion to set aside the order on April 30 and then a motion to voluntarily dismiss the case on May 14. He did not schedule either for a hearing. A chambers note on June 19, 2007, reports that Mr. Robinson on May 16 stated he would withdraw both motions. By June 28, he had not done so, requiring the court to schedule a hearing on his motion to set aside the dismissal. At the hearing on July 31, he orally withdrew both motions.

a hearing.[5] In either scenario, the question is whether Mr. Robinson failed in his duties to his client to provide competent representation and to do so with reasonable diligence.

It is clear that, in early July – some two months later, Mr. Robinson's office contacted the Court's chambers regarding the scheduling of a hearing on reinstatement of the case, and the Court then entered the July 12 Order which specifically directed Mr. Robinson to schedule a hearing in accordance with the Court's self-calendaring procedures.

The day before, Mr. Robinson had filed a "Motion to Set Aside Order of Dismissal of May 3, 2007." [18]. Because this pleading essentially sought to reopen the case (because it was filed more than ten days after the dismissal order), the Clerk's Office required the Debtor to pay a $235 fee.

Mr. Robinson did nothing to schedule a hearing on the pleading he filed on July 11. He did nothing to schedule a hearing on the one he filed on May 7, despite the clear instruction to do so in the Court's July 12 Order. At the hearing, Mr. Robinson stated that he had not seen the July 12 Order until it was called to his attention at the hearing. In this regard, the Court notes that the August 29 Order that scheduled the September 12 hearing referred to the July 12 Order in the first sentence. The Court returns to this startling admission later.

The fourth problem is that Mr. Robinson again failed to schedule a hearing despite being instructed to do so in July. At this point, some ten weeks had passed since the case was dismissed and no hearing date on reinstatement had been scheduled. The delay in getting the

[5]The Court relies on electronic case filing procedures and self-calendaring of motions that attorneys file in order to conserve scarce judicial resources. Thus, the filing of a motion by an attorney does not routinely bring it to the Court's attention for the scheduling of a hearing. The attorney must either use the self-calendering procedure or contact chambers staff with regard to scheduling.

case reinstated is now critical because the reinstatement of a case is not a matter of right. Rather, it involves the considerable exercise of discretion, and the longer a debtor waits to get a case reinstated, the more unlikely it is that reinstatement will occur. What was, in May, a possibly inadvertent error that might easily be cured with no significant prejudice to other parties if promptly done becomes, two months later in July, a significant problem in terms of putting the case in order. In any event, the delay makes it more difficult to restore the parties, more or less, to the positions in which they would have been if the case had not been dismissed. And in the meantime, of course, no case is pending and no stay can possibly exist, so a lender can proceed with foreclosure. The Court recognized this possible problem in the July 12 Order, noting that the record reflected no apparent cause for expedited consideration but inviting a request for such consideration if necessary.

Despite these shortcomings in his representation, prospects for recovering from them without undue consequences still existed as late as July 12. Mr. Robinson could have scheduled a hearing for some time in August, or he could have inquired of Countrywide's counsel as to the status of foreclosure and sought an expedited hearing if necessary. In fact, Countrywide did not start advertising until September, so an August hearing would have been timely enough, if not ideal. Even if relief had been denied at that time, the Debtor would have had time to explore other options, discussed below.

But Mr. Robinson, again, did nothing. Indeed, the continuing lack of attention to the case now goes beyond an apparent lack of reasonable diligence and begins to look like abandonment of the client.

The fifth problem is that Mr. Robinson filed an unnecessary motion on July 11 that cost

the Debtor a $235 filing fee. Either the filing of the pleading on May 7 was sufficient to bring the issue of reinstatement before the Court or it was not. If it was not, Mr. Robinson failed in not doing it properly to begin with. If it was, the July 11 motion was not necessary. The Court observes that neither paper met minimal standards of competence expected of a lawyer handling a chapter 13 case. A proper pleading would have been a motion to set aside the dismissal and to reinstate the case, seeking reconsideration under FED. R. BANKR. P. 9023, incorporating FED. R. CIV. P. 59, or relief from the order under FED. R. BANKR. P. 9024, incorporating FED. R. CIV. P. 60. The Court's construction of the pleading as essentially seeking that type of relief should not have been necessary; the Debtor should not have been put at risk of a contrary determination being made. Even without regard to the question of proper drafting of a pleading for the requested relief and the citation of authority to support it, the point here is, simply, that Mr. Robinson's actions resulted in his client having to pay an unnecessary fee to seek relief that she would never had to seek if Mr. Robinson had not created the problem.

In response to a letter from the Debtor, docketed on August 15, 2007 [22], the Court entered the August 29 Order [23] scheduling a hearing on reinstatement of the case for September 12 at 2 o'clock p.m. In the meantime, Countrywide had commenced foreclosure proceedings, and was advertising the Debtor's residence for foreclosure sale under its power of sale on the first Tuesday in October, October 2, 2007.

This brings us to the call of the case in the Court's calendar on September 12. The August 29 Order specifically directed Mr. Robinson to appear at that hearing to show cause why he had not scheduled a hearing with regard to the May 7 pleading; why he should not be required to reimburse the Debtor for the filing fee; and why he should not be required to disgorge

compensation he had received. Beyond those matters which, in the Court's judgment, should have caused any competent lawyer to make sure that he was at the hearing to respond to the Court's concerns,[6] Mr. Robinson had a client who was facing foreclosure, the prevention of which might be determined by the outcome of the hearing on the pleading he filed to reinstate the case. He had an important duty to be at the hearing, prepared to advocate his client's position.

Mr. Robinson did not appear at the hearing when the case was called. He came only in response to telephonic communication to his office from chambers staff that the Court required his presence. These circumstances demonstrate that he had no intention of appearing at the hearing and had not prepared for it. The sixth problem, then, is that, when the hearing on his request for reinstatement of the case was finally scheduled through no effort of his own, he was not prepared to be there and represent his client.

Mr. Robinson's response to these six problems boils down to a defense of inadvertence. With regard to his attendance at the hearing, in particular, he claims that, somehow, it did not get on his calendar. Were that the only problem, the Court might be somewhat sympathetic; everyone makes mistakes from time to time. But this failure occurred in the context of repeated previous failures, not one but two Court orders addressing the problem, and a critically important issue for his client. The Court cannot excuse this type of behavior that goes beyond mere inadvertence and constitutes reckless disregard of the consequences of his actions.

Mr. Robinson's startling admission that he was unaware of the July 12 Order until it was

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[6]Indeed, the Court would hope that any lawyer adhering to minimum standards of professionalism would take seriously an order from a court that questioned the lawyer's handling of the matter and would have responded in writing in advance of the hearing.

referred to at the September 12 hearing provides telling evidence of his approach to the representation of his client in this case. The August 29 Order, which Mr. Robinson acknowledged he had received, referred to the July 12 Order in the first paragraph. The Court is at a loss to understand how a competent lawyer could appear at a hearing on an issue dealt with in a previous Order without having read the previous Order. If Mr. Robinson had not seen the July 12 Order shortly after its entry, competent and diligent representation in the case would require that he have it in his hands shortly after entry of the August 29 Order and in any event before the September 12 hearing. The only conclusions that the Court can draw are that Mr. Robinson paid little, if any, attention to the August 29 Order and that he did not intend to prepare for the September 12 hearing. These circumstances lead to the further conclusions that Mr. Robinson acted in this case, at best, with reckless indifference to the consequences of his conduct, that he failed to provide competent and diligent representation to the Debtor, and that he abandoned the Debtor by paying no effective attention to her case that she entrusted to him.

When all of this is coupled with the fact that the hearing was also scheduled for Mr. Robinson to respond to the Court's concerns about his professional conduct, Mr. Robinson's inadvertence defense reflects a cavalier attitude toward the Court that borders on contempt.

Fortunately for the Debtor, the circumstances of the case permitted the Court to fashion relief that prevented the disaster, from the Debtor's standpoint, of foreclosure.[7] Mr. Robinson agreed that it was appropriate for him to refund the $235 filing fee and the fees he had received for representing the Debtor in this case. The Rule 2016 statement he filed with regard to his

[7]The Court entered an Order that reinstated the case and imposed a stay of foreclosure pursuant to 11 U.S.C. § 105(a) subject to certain conditions. [25].

compensation shows that he received $600 prior to the filing of the petition for services in connection with this case, and the Trustee's records reflect that he received an additional $100 upon dismissal of the case. In view of the reinstatement of this case, the Court at the hearing directed that Mr. Robinson pay $935 to the chapter 13 trustee. This Order confirms that direction and orders Mr. Robinson to return the fees and expenses to the chapter 13 trustee in accordance with 11 U.S.C. § 329(b).

Mr. Robinson at the hearing provided his explanation as to why he did not schedule a hearing on the request for reinstatement. As discussed above, the Court concludes that his reasons are inexcusable and insufficient. It appears to the Court that the six problems with his representation identified above, alone, demonstrate his repeated failure to provide competent and diligent representation and that, collectively, they amount to an effective abandonment of his client. Because the Court in the August 29 Order did not identify the possibility of any adverse consequences to Mr. Robinson beyond the refund of the filing fee and the disgorgement of fees, it is not appropriate to impose any further sanctions or discipline with regard to Mr. Robinson's conduct. Accordingly, the issues raised by the show cause order are resolved by the terms of this Order.

Issues with regard to additional monetary sanctions or other remedies against Mr. Robinson remain open for consideration in further proceedings, however. Simply put, at the very least, Mr. Robinson created a problem because he chose not to attend the originally scheduled § 341(a) meeting; did nothing to solve the problem by taking diligent action to arrange for its timely rescheduling; caused the dismissal of the Debtor's case by his failure to reschedule the meeting and the confirmation hearing as he had agreed to do; failed to take prompt action to

rectify that failure by promptly scheduling a hearing, even after being instructed by the Court to do so, on the request for reinstatement of the case; and, finally, did not even bother to plan to attend the hearing when it was finally scheduled, much less prepare for it. Mr. Robinson's conduct obviously put his client's case in severe jeopardy and his client's residence on the brink of foreclosure. At a minimum, the Debtor was entitled to a fair chance to avoid the very situation she found herself in and the still precarious status of her case. It appears that Mr. Robinson's lack of competence and diligence effectively prevented that fair chance.

The disgorgement of fees and reimbursement of an unnecessary filing fee provides some compensation for the damages that the Debtor has suffered, but they may not make her whole. Indeed, it is quite possible that this case could have been on a track for confirmation, the commencement of payments on the arrearage to Countrywide, and preservation of the Debtor's residence if Mr. Robinson had: (1) timely arranged for the rescheduling of the § 341(a) meeting when he sent the conflict notice in February; (2) timely sent notice of the rescheduled § 341(a) meeting and confirmation hearing in April as he told the Trustee's office he would do; (3) timely taken action to correct the problem in May after entry of the dismissal order; or (4) done something in response to the Court's July 12 Order, such as simply scheduling a hearing on the pleadings he filed, which he should have done in May.

Instead, the Debtor now, at a minimum, faces a claim for additional fees and expenses from Countrywide, even if she is ultimately successful in keeping her residence, as a result of the foreclosure proceedings. When a lender properly commences postpetition foreclosure and for some reason it is stopped because of developments in the bankruptcy case, the remedy almost always includes the debtor's payment of the advertising costs for foreclosure and the lender's

attorney's fees. Furthermore, rather than having a fair chance to propose and obtain confirmation of a chapter 13 plan in an orderly fashion, the Debtor found herself with her residence on the brink of foreclosure and her case dismissed. Extraordinary relief has temporarily addressed those problems, but the course of events in this case has made it more difficult for the Debtor to obtain a final resolution of them.

Because Mr. Robinson failed to provide the required notice of the rescheduled meeting and hearing, because the Debtor did not have a lawyer, and because it is important that, upon reinstatement of the case, a § 341(a) meeting and confirmation hearing be promptly scheduled, the Court imposed the duty of providing notice on the chapter 13 Trustee's office. This is a burden that the Trustee does not normally have and would not have in this case if Mr. Robinson had done what he was supposed to do. The Chapter 13 Trustee may, therefore, be entitled to seek reimbursement of her costs and attorney's fees as a sanction for Mr. Robinson's omissions.

These matters were not before the Court on September 12, and Mr. Robinson thus has not had a proper opportunity to respond to them. The purpose of reciting them here is not to determine these issues but to note that they exist and to provide, specifically, that the disgorgement of fees and reimbursement of the filing fee do not resolve all issues arising from Mr. Robinson's representation of the Debtor in this case and that the relief provided in this Order is without prejudice to any rights of the Debtor, the Trustee, Countrywide, or any other party to seek sanctions or to assert additional remedies against Mr. Robinson.

Although the Court will not initiate any further action at this time with regard to the matters in this case, the Court emphasizes its concern that Mr. Robinson's representation of the

Debtor in this case, absent further explanation, does not come close to the level of professional competence and diligence to which a chapter 13 debtor is entitled and on which the Court, the chapter 13 Trustee, and creditors rely in the proper administration of chapter 13 cases in this Court. In this regard, it is appropriate to advise Mr. Robinson that inattention to his responsibilities to his client and to the Court in this case does not meet the professional requirements for practice in this Court and that such conduct in the future may lead to sanctions or discipline including suspension or disbarment from practice in this Court. A copy of this Order will be circulated to all other Bankruptcy Judges in the Northern District of Georgia.

Referral to the State Bar of Georgia

The Court's duty does not end with resolution of issues under the August 29 Order. Rules 1.1 and 1.3 of the Georgia Rules of Professional Conduct (the "Georgia Rules") require competent and diligent representation. Although the circumstances of the six problems addressed above demonstrate that Mr. Robinson failed to provide competent and diligent representation as Georgia Rules 1.1 and 1.3 require, the August 29 Order did not expressly demand that Mr. Robinson answer to charges of violation of the Georgia Rules, which also govern the professional conduct of attorneys in this Court, BLR 9010-3. The Court, therefore, stops short of a conclusion that Mr. Robinson violated those Rules. At the same time, the circumstances as discussed above cause the Court grave concern and require further inquiry as to whether professional discipline is warranted. Accordingly, the Court will refer the foregoing matters to the State Bar of Georgia for such disciplinary proceedings as it deems appropriate.

The circumstances set forth below related to the foregoing conduct also give rise to concern. Accordingly, the Court will also refer them to the State Bar of Georgia for its

consideration of whether disciplinary action is appropriate.

The Debtor's letter docketed on August 15, 2007 [22] indicates that she may not have understood why her case was dismissed and why she had to pay a filing fee. This raises the question of whether Mr. Robinson, at the time of dismissal of her case and at the time of imposition of the filing fee, communicated with the Debtor about the reasons for the dismissal and the filing fee, including the fact that both occurred due to his repeated neglect, in compliance with Georgia Rule 1.4, which requires a lawyer to keep the client "reasonably informed about the status of matters."

Countrywide's commencement of foreclosure proceedings while the case was dismissed raises questions concerning Mr. Robinson's communication with the Debtor and his competence and diligence in representing her in accomplishing her primary objective of keeping her home. If the objective of preventing foreclosure is to be achieved, one of three things must happen in the context of this case. The Debtor must work something out with the lender, the Debtor must succeed in having the current bankruptcy case reinstated and having a stay in effect to prevent the foreclosure before it happens, or a new chapter 13 case must be filed. There is a complication with regard to the third option. Due to the fact that the Debtor's previous case and this case were pending within the past year, the automatic stay would not be effective upon the filing of a new case under 11 U.S.C. § 362(c)(4) unless the Debtor obtained an order in the new case directing that it take effect.

In this regard, an initial issue of professional responsibility under Rules 1.1 and 1.3 is whether Mr. Robinson was aware that Countrywide had begun foreclosure proceedings. Related issues of professional responsibility under Georgia Rules 1.1, 1.3, and 1.4 are whether he

considered the foregoing alternative strategies to try to prevent foreclosure or discussed them with the client and, if he did not, whether he had a professional responsibility to do so. The Court cannot say, based on the record, that the alternative strategies should have been pursued, or that Mr. Robinson would have been obligated to file a new case on behalf of the Debtor. But competent representation would include sufficient discussion of the alternatives so that the Debtor would know about them and, if Mr. Robinson would not represent her if she wanted to pursue them, she would have sufficient time to try to find someone who might or to represent herself if necessary. Another fundamental question of whether Mr. Robinson was aware that reinstatement of the case alone would not have prevented the foreclosure is discussed below.

The Court's review of the record in connection with this matter gives rise to three additional possible concerns about Mr. Robinson's compliance with the Georgia Rules that go beyond the specific problems relating to dismissal discussed above. The Court also refers them to the State Bar of Georgia for its consideration of whether disciplinary action is appropriate.

First, Mr. Robinson represented the Debtor in the second of her two previous bankruptcy cases. In this second case, filed on July 31, 2006, and dismissed on January 12, 2007,[8] Citifinancial Auto, Ltd., and Ford Motor Credit Company filed claims for deficiency balances totaling approximately $17,700 remaining due after the repossession of automobiles. In the second case, the Trustee filed a motion for the reduction of Mr. Robinson's attorney's fees by $500 because of errors and omissions in the Debtor's petition, plan, and schedules.[9] Included among the 19 deficiencies that the Trustee listed was the failure to list deficiency claims on the

[8]Case No. 06-69085.

[9]Case No. 06-69085, Docket No. 15.

schedule of unsecured creditors. In the Debtor's first case,[10] unsecured claims were filed by Arcadia Financial, Ltd., Capital One, Capital One F.S.B., and Ford Motor Credit Company. In this third case, however, her schedules reflect no unsecured claims. Unless the Debtor somehow managed to pay all of these debts between the time she filed the first case and the time she filed this one – highly unlikely in the Court's view – the schedules in this case are obviously inaccurate. According to the record in this case, the Debtor signed them under penalty of perjury. Submission of inaccurate or misleading information in connection with the filing of a chapter 13 case may constitute grounds for denial of confirmation for lack of good faith under 11 U.S.C. § 1325(a)(3).

Given his prior representation of the Debtor in the previous case, it would seem that Mr. Robinson knew or should have known of the existence of these claims. Even if he did not, a lawyer filing a subsequent case for a debtor has an affirmative obligation to review the papers in the previous cases. These circumstances raise concerns as to whether Mr. Robinson failed to conduct a reasonable inquiry and whether he submitted materially inaccurate papers in this case in violation of FED. R. BANKR. P. 9011, 11 U.S.C. § 526(a)(2), and a lawyer's duties of honesty and candor set forth in Georgia Rule 3.3. And because full and accurate disclosure is a duty of a debtor in a bankruptcy case and may adversely affect a debtor's rights to relief in the case, the submission of inaccurate information to the detriment of the client would also appear to be a failure to provide competent and diligent representation that Georgia Rules 1.1 and 1.3 require.

The Court has observed that the Trustee found 19 problems in the papers the Debtor filed in the previous case after the § 341(a) meeting. If the § 341(a) meeting occurs in this case and

[10]Case No. 03-66141.

the Trustee finds deficiencies here, the Court requests that the Trustee forward any paper she files with regard to them to the State Bar of Georgia for its consideration.

Second, the Court is concerned as to whether Mr. Robinson provided competent representation as Georgia Rule 1.1 requires to the Debtor with regard to a critical issue in this case, the applicability of 11 U.S.C. § 362(c)(4). As stated above, § 362(c)(4) provides that no automatic stay comes into effect in a bankruptcy case if, within the previous year, two or more bankruptcy cases of the Debtor were pending that were dismissed. The Debtor's first bankruptcy case was pending from its filing on May 1, 2003 until its dismissal on February 28, 2006.[11] The second case was pending from its filing on July 31, 2006, until its dismissal on January 12, 2007.[12] This case was filed on February 5, 2007. Because, clearly, § 362(c)(4) applies in this case, no automatic stay came into effect upon its filing.

Section 362(c)(4) permits the court to impose the automatic stay upon a debtor's motion filed within 30 days of the filing of the petition if the court finds that the debtor filed the case in good faith. No such motion was filed in this case. Consequently, the automatic stay has never been effective as a result of the filing of this case, and Countrywide could have commenced foreclosure proceedings at any time. In this regard, the potential professional issue is whether Mr. Robinson provided competent and diligent representation as Georgia Rules 1.1 and 1.3 require and communicated with the Debtor about the status of her case as Georgia Rule 1.4 requires.

As things have turned, the absence of the automatic stay has not resulted in prejudice to

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[11]Case No. 03-66141.

[12]Case No. 06-69085.

the Debtor, at least insofar as foreclosure of her residence is concerned. The Court determined that cause existed to impose a stay based on the circumstances of the case under 11 U.S.C. § 105(a). But the consequences could have been disastrous if Mr. Robinson had been successful in getting the case reinstated but had done nothing to prevent foreclosure and Countrywide had decided to proceed. The apparent absence of disastrous consequences to the client so far, however, does not eliminate the professional issue of whether Mr. Robinson provided competent representation to this client with regard to these matters.

Third, the circumstances of the filing and dismissal of the previous case[13] cause the Court concern. At the hearing, both the Debtor and Mr. Robinson stated that the reason they decided not to oppose its dismissal was that the Debtor was ineligible to be a chapter 13 debtor under 11 U.S.C. § 109(h) because she had not received a prepetition credit briefing. Indeed, the docket in that case does not reflect the filing of the required certificate to evidence that the Debtor received the briefing. The absence of the required credit briefing could potentially doom the case from the outset, subjecting the debtor, the Trustee, and creditors to a meaningless exercise in futility.

The Trustee's Supplemental Report,[14] however, stated that the second case should be dismissed because the Debtor had not requested conversion of the case to chapter 7. The Debtor stated at the hearing that she had never considered conversion. It is possible that the Trustee's office erred in stating the reason for dismissal; the Court left this issue at the hearing without further inquiry once the Debtor and Mr. Robinson seemed to agree on their rationale for not

[13] Case No. 06-69085.

[14]Case No. 06-69085, Docket No. 18.

opposing dismissal.

These circumstances raise questions with regard to whether Mr. Robinson's representation in the previous case complied with his duties of competence, honesty and candor and communication with his client set forth in Georgia Rules 1.1, 3.3, and 1.4: whether Mr. Robinson knew of the requirements of § 109(h) and the consequences of failure to meet the requirement when he filed the petition; whether he discussed the credit briefing requirement with the Debtor prior to the filing of the earlier case; whether he made a decision that filing of the case should proceed in the absence of a credit briefing and, if so, whether that decision reflected the exercise of competent professional judgment based on the circumstances of the case; whether the Trustee's office erred in the Supplemental Report or whether Mr. Robinson requested time to consider conversion of the case; and whether, if the Trustee did not err, Mr. Robinson consulted with the Debtor with regard to conversion?

Mr. Robinson has not had the opportunity to be heard with regard to any factual or legal issues other than those directly related to the scheduling of a hearing on the motion and the disgorgement of fees and reimbursement of the filing fee. Accordingly, the Court does not make any findings of fact or conclusions of law with regard to whether Mr. Robinson has complied with the Georgia Rules or whether any discipline should be imposed. The Court intends its recitation of circumstances giving rise to its concerns to be an indication of matters that, in its judgment, warrant consideration by the State Bar of Georgia, but not a determination of factual or legal issues.

Conclusion

Based on, and in accordance with, the foregoing, it is hereby **ORDERED and**

ADJUDGED as follows:

1. Within 20 days from the date of entry of this Order, Mr. Robinson shall pay the sum of $935 to the Chapter 13 Trustee for the benefit of the estate in this case. Mr. Robinson shall file a certification that such payment has been made to the Court within five days after the payment is made. This Order is without prejudice to any other rights or remedies that the Debtor, the Chapter 13 Trustee, Countrywide, or any other party in interest may have arising out of or related to Mr. Robinson's services as attorney for the Debtor in this case.

2. The Court refers the matters set forth above to the State Bar of Georgia for its consideration of such inquiry and proceedings as it deems appropriate as to whether Mr. Robinson in the course of the representation of the Debtor violated any of Rules 1.1, 1.3, 1.4, and 3.3 of the Georgia Rules of Professional Conduct and for the imposition of such appropriate professional discipline that any violations warrant. Chambers staff is directed to mail a copy of this Order, together with copies of the July 12 Order, the August 29 Order, and the Order Reinstating Case and Imposing Stay, to the State Bar of Georgia.

End of Document

NOT INTENDED FOR PUBLICATION

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All creditors in the case