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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 11
	)	
RICHARD C. MATTISON, M.D., LLC,	)	CASE NO. 09-87487 - MHM
d/b/a TUXEDO AESTHETIC	)	
SURGERY CENTER,	)	
	)	
Debtor.	)	

SUSPENSION ORDER

This case is before the court on the U.S. Trustee's motion for review of fees and for contempt. Hearing was held July 15, 2010. In untimely compliance with a prior order entered May 27, 2010 (Doc. No. 105), Debtor's attorney has disgorged to the remitter all fees paid to him in connection with this case.

This Chapter 11 case commenced October 16, 2009, and was dismissed April 15, 2010.[1] From the very beginning of this case, Debtor's attorney has failed to competently handle his obligations as Debtor's attorney. This case was filed on behalf of a debtor that was a dissolved professional corporation.[2] The case was filed apparently primarily to prevent eviction from business premises leased from Calvert, LLC, but Debtor was not the entity that executed the lease.

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[1] Dismissal of a bankruptcy case does not deprive the bankruptcy court of authority to consider a motion for sanctions. *In re Whitney Place Partners,* 123 B.R. 117, 121 (Bankr. N.D. Ga. 1993) (J. Murphy); *In re Berger Industries, Inc.,* 298 B.R. 37 (Bankr. E.D. N.Y. 2003) .

[2] The status of a corporation is quickly and easily determined by visiting the excellent website maintained by the Georgia Secretary of State.

Debtor filed a skeletal petition[3] and failed to file the mailing matrix required by the local rules. Inadequate schedules and a Bankruptcy Rule 2016 disclosure statement were filed November 2, 2010. No application to approve the employment of Debtor's attorney was filed, despite directions from the court to do so, until after dismissal. Even then, however, the application was deficient.[4] Additionally, paragraph 4 of the application contains a statement that a prior incomplete application had been filed, but review of the docket shows that statement to be untrue. Debtor failed to comply with requests by the U.S. Trustee made at the initial debtor interview, including establishing a DIP bank account,[5] amending the Bankruptcy Rule 2016 disclosure statement, and filing all the information required by §521 and §1116.

To excuse his actions or lack thereof, Debtor's attorney cited his personal medical problems[6] and his attention to relocating his home and offices. This case appears to have been filed as a doorstop to prevent eviction from the business premises by a debtor who did not legally exist, but even if the legally existing iteration of Debtor or the individual who was the professional/principal of the corporations had been named as the debtor, Debtor's attorney failed to show any likelihood that Debtor could propose a successful reorganization. A more experienced and diligent bankruptcy attorney, however, might

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[3] Bankruptcy Rule 1007 and 11 U.S.C. §521 require a debtor to file with the petition certain schedules, statements, and other documents (the "Schedules"). When the bankruptcy petition is not accompanied by the Schedules, it is termed a "skeletal" petition.

[4] The deficiencies are detailed in the U.S. Trustee's motions and need not be repeated here.

[5] An account established in the name of the debtor-in-possession (DIP)

[6] Debtor's attorney did file two emergency motions for medical leave, one of which was granted, the other supplanted by appointment of a Chapter 11 Trustee.

have been able to use the tools available in the Bankruptcy Code to achieve the desired relief.

An attorney owes a duty of diligence to the court, to his or her clients and to opposing counsel. Bankruptcy proceedings must be prosecuted with vigilance and speed.

> The purpose of the bankruptcy laws is to quickly and effectively settle bankrupt estates....Under the Bankruptcy Code and Rules...[the parties]...play a zero-sum game in which a failure to navigate effectively through various intricate procedures can mean total defeat. Moreover, because such procedures are thought to be necessary to protect the bankrupt and the creditors, exceptions cannot be made every time a...[party]...claims hardship.

In re Robintech, Inc., 863 F.2d 393, 397-398 (5th Cir. 1989), *cert. denied*, 493 U.S. 811 (1989). *See also, In re DN Associates*, 144 B.R. 195 (Bankr. D.Me. 1992).

In addition to the ethical duties an attorney owes to the court, clients and the public, an attorney representing a debtor-in-possession or trustee has a fiduciary duty to act in the best interest of the entire estate, including secured and unsecured creditors. *Commodity Futures Trading Commission v. Weintraub,* 471 U.S. 343 (1985); *In re Doors and More, Inc.,* 126 B.R. 43 (Bankr. E.D.Mich. 1991).

Bankruptcy Rule 9011 imposes an affirmative duty on an attorney to conduct a reasonable investigation of the law and facts prior to signing a pleading or other litigation document, and a duty to file all pleadings and documents with a good faith belief that the relief requested may be granted, and without an improper purpose. Bankruptcy Rule 9011, incorporating a 1983 amendment to Rule 11, eliminated the prior standard under which the relevant inquiry was the subjective good faith of the attorney at the time the pleading was signed. The rule now requires an objective standard based upon what a

competent attorney would have believed after making a reasonable inquiry. *Eastway Construction Corp. v. City of New York*, 762 F.2d 243 (2d Cir. 1985), *modified*, 821 F.2d 121 (2d Cir.), *cert. denied*, 484 U.S. 918 (1987); *Trehan v. Von Tarkanyi,* 85 B.R. 920, 930 (S.D. N.Y. 1988).

The civil contempt power is derived from the inherent power of any court to administer and control proceedings within its jurisdiction. The U.S. Supreme Court recognized the inherent power of courts in *Chambers v. Nasco, Inc.,* 501 U.S. 32 (1991):

> It has long been understood that "[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution," powers "which cannot be dispensed with in a Court because they are necessary to the exercise of all others." (Citations omitted.) For this reason, "Courts of justice are universally acknowledged to be vested, by their very creation, with the power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." (Citations omitted.) These powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of their cases." (Citation omitted.)
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> Prior cases have outlined the scope of the inherent power of the federal courts. For example, the Court has held that a federal court has the power to control admission to its bar and to discipline attorneys who appear before it. (Citations omitted.) While this power "ought to be exercised with great caution," it is nevertheless "incidental to all Courts."
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> In addition, it is firmly established that "[t]he power to punish for contempt is inherent in all courts." (Citations omitted.) This power reaches beyond the court's confines, for "[t]he underlying concern that gave rise to the contempt power was not...merely the disruption of court proceedings. Rather it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial."

Id. at 43.

The other possible source for the bankruptcy court's contempt power is 11 U.S.C. 105(a), cited as creating a statutory basis for contempt power because the statute authorizes the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *In re Courtesy Inns, Ltd.*, 40 F. 3d 1084 (10th Cir. 1994). Bankruptcy courts have inherent power, *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F. 3d 278 (9th Cir. 1996), to sanction attorneys by suspending them from practice. *Price v. Lehtinen*, 564 F. 3d 1052 (9th Cir. 2009). *See also Ginsberg v. Evergreen Security, Ltd.*, 570 F. 3d 1257 (11th Cir. 2009).

An attorney is governed by standards of ethics and professionalism, as well as by specific requirements in the Bankruptcy Code and Rules, and the local rules. An attorney's obligations to his client, to opposing counsel, to the court, and to the legal system do not abate because the attorney has personal problems that affect his capacity to fulfill his obligations. In this case, Debtor's attorney failed to take any steps to protect his client, opposing counsel, the court and the bankruptcy system from his inability to perform. He could have declined to accept employment for which he was not competent. Many attorneys who are expert in other legal specialties, such as commercial litigation, tax law or securities law, mistakenly assume they can enter the bankruptcy arena with little experience or preparation and still perform competently; however, malpractice is not uncommon. He could have associated competent bankruptcy counsel or, when he began to experience the personal problems that deprived him of the capacity to devote sufficient attention to this case, he could have referred the case to competent bankruptcy counsel. As noted above, bankruptcy attorneys are expected to be able to quickly and effectively

administer bankrupt estates. The practice of bankruptcy law does not lend itself to holding a case in abeyance for any significant period of time while an attorney either works out his personal problems or learns bankruptcy law.

The undersigned readily accepts Mr. Wadsworth's assurances that the deficiencies in the handling of this case were not the result of bad faith. Lack of capacity and incompetence, however, can be just as damaging to clients and the legal system; accordingly, it is hereby

ORDERED that Joel S. Wadsworth is suspended indefinitely from practice in the Bankruptcy Court for the Northern District of Georgia. Within 14 days of the date of entry of this order, Mr. Wadsworth must file a certificate listing all the bankruptcy cases currently pending in this district in which he is the debtor's attorney and certifying that he has obtained new counsel for each such debtor. It is further

ORDERED that, upon completion of 30 hours of continuing legal education in Chapter 11 bankruptcy law, Mr. Wadsworth may move to lift the suspension as to Chapter 11 cases. Upon completion of 20-25 hours of continuing legal education in consumer bankruptcy law (Chapter 7 and 13), Mr. Wadsworth may move to lift the suspension as to Chapter 7 and 13 cases.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, the Chapter 11 Trustee, and the U.S. Trustee.

IT IS SO ORDERED, this the 30th day of September, 2010.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE