IT IS ORDERED as set forth below:

Date: October 15, 2015

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 15-61378-WLH
SHEHNAZ ALI VERANI, a/k/a Shehnaz Alivirani, Debtor.	CHAPTER 7
	JUDGE WENDY L. HAGENAU
GIRISH MODI, Movant.	
v.	
SHEHNAZ ALI VERANI, a/k/a Shehnaz Alivirani, Respondent.	

ORDER DENYING MOTION FOR SANCTIONS

The Motion of Girish Modi for Sanctions against Debtor's Attorney Pursuant to Rules 9011(b) and 9011(c), as amended [Docket Nos. 25 and 30] (the "Motion"), came before the Court for hearing after notice on September 21, 2015. Girish Modi ("Mr. Modi") appeared *pro*

se, and Evan Altman appeared on his own behalf as Debtor's attorney. For the reasons stated on the record, as supplemented herein, Mr. Modi's Motion is DENIED.

The background of this matter is described in full in this Court's Order Denying Motion to Dismiss at Docket No. 53, so will not be restated here. The grounds enumerated by Mr. Modi for sanctioning Evan Altman, as attorney for the Debtor, are the same grounds enumerated in the Motion to Dismiss and focus primarily on allegedly incorrect information provided in the Debtor's petition and schedules. Additionally, the evidence showed that Mr. Altman assisted the Debtor in preparing her *pro se* bankruptcy filing. He stated he did so as part of his representation of Mr. Virani. Mr. Altman signed Mr. Virani's petition, but did not sign Mrs. Virani's petition. It appears that Mr. Virani paid for Mr. Altman's representation at the time his petition was filed, but Mrs. Virani had not. Mr. Altman filed a notice of appearance in Mrs. Virani's case on July 6, 2015.

Sanctions under Rule 9011

An attorney who represents a party is required to sign "[e]very petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto". Fed. R. Bankr. P. 9011(a). Moreover,

> By presenting to the court (whether by signing, filing, submitting or later advocating) a petition, pleading, written motion, or other paper, an attorney … is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,–
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Fed. R. Bankr. P. 9011(b). Finally, Rule 9011(c) requires that a party seeking sanctions against an attorney for violation of Rule 9011 provide the attorney with 21-days notice of the intent to file such a motion to give the attorney an opportunity to withdraw or appropriately correct the pleading. However, the 21-day "safe harbor" period is not required if the allegation is that the filing of the petition itself violated Rule 9011(b).

Here, the alleged errors by Mr. Altman primarily appear in the petition and therefore 21-days notice was not required. In particular, Mr. Modi alleges the Debtor's name is misspelled, the petition omits the information that the Debtor had a prior bankruptcy filing, and the petition omits information that her husband also had a pending bankruptcy petition. As discussed in this Court's Order Denying Motion to Dismiss, the petition did in fact contain the errors complained of. The question, though, is whether Mr. Altman violated Rule 9011 in connection with the filing of the petition.

Rule 9011(b) provides for sanctions against an attorney who files, signs, submits or advocates certain pleadings. The petition here was filed by the Debtor *pro se* on June 19, 2015. From the face of the petition, the Court can ascertain it was not filed electronically such as by an attorney but rather was hand filed at the Clerk's office. It was not signed, filed or submitted by Mr. Altman. Mr. Altman filed a notice of appearance on July 6, 2015, and the petition was amended on July 24 and July 27 to correct the enumerated errors. From July 6 until the petition was corrected, Mr. Altman took no action to "advocate" the petition. When Mr. Altman filed his notice of appearance, he corrected the petition. Although such corrections could have been made sooner, the Court does not find that Mr. Altman "advocated" the petition.

Even if Mr. Altman's actions could be considered "advocating" the *pro se* petition until it was corrected, it was not advocated for any improper purpose. The Court noted in its Order

Denying Motion to Dismiss that the spelling of the Debtor's name as filed on the petition was consistent with the Debtor's pay stubs. Moreover, the Debtor's Social Security number was correct so that a prior bankruptcy filing could be identified by the Clerk's office. The failure of the petition to disclose that the Debtor's spouse had also filed a bankruptcy petition that day led to the two bankruptcy cases being assigned to different judges, but otherwise did not harm any parties or creditors at this initial stage. The Court concluded in its Order Denying Motion to Dismiss that the Debtor's filing of the bankruptcy petition was not in bad faith and that she was entitled to be a debtor under Chapter 7 of the Bankruptcy Code. For those reasons, the Court does not find that the errors in the petition, even if advocated by Mr. Altman, are sufficient to justify sanctions under Rule 9011.

Mr. Modi contends in his Motion for Sanctions that, although there is no attestation of attorney on the petition, Mr. Altman's "company Easy-Filing had prepared and filed a voluntary petition on June 19, 2015 (same day her husband's petition was filed), charged $1,750 cash for his services on July 19, 2015 … for representation and still failed to thoroughly review the documentations and schedules". The Court notes that Easy-Filing is not Mr. Altman's company but is bankruptcy software used by Mr. Altman and other attorneys. Mr. Altman admitted that he assisted Mrs. Virani in preparing her *pro se* petition. There was no dispute that no fees were paid to Mr. Altman for any representation of Mrs. Virani until after the bankruptcy petition was filed. The testimony at the hearing was that Mr. Virani's business paid the fees for Mrs. Virani's bankruptcy filing.

The issue of whether an attorney can "ghostwrite" a bankruptcy petition was addressed by the Eleventh Circuit in In re Hood, 727 F.3d 1360 (11th Cir. 2013). There, the issue addressed by the court was whether a fraud was committed when an attorney prepared a bankruptcy petition, without schedules, for a debtor for no fee, but did not sign the petition as

attorney for the debtor. The Eleventh Circuit stated, "A chapter 13 petition stands in stark contrast to a ghostwritten pro se brief … a legal brief is a substantive pleading that requires extensive preparation; much more than is necessary for the completion of a basic, fill-in-the-blank bankruptcy petition". Id. at 1364. The court held further,

> We see no fraudulent intent in this record by Appellants. Rather, they were attempting to assist Hood with the completion of a straightforward pro se chapter 13 petition for which there was no unfair advantage to be gained. Who, within the firm, filled out the petition is a distinction without a difference. A chapter 13 petition is a publicly available form that is designed in a manner that lends itself to a pro se litigant.

Id. The Eleventh Circuit, though, made it clear that the ruling was based strictly on the facts of that case.

Subsequently, the Bankruptcy Court for the Middle District of Florida considered whether the actions of an attorney who did not appear in the bankruptcy case violated Rule 9011 and the court's local rule. In re Ruiz, 515 B.R. 362 (Bankr. M.D. Fla. 2014). There, counsel received a fee in advance to represent the debtor both before and after the bankruptcy case. Counsel assisted the debtor in filing the petition and schedules but the debtor agreed that counsel would not sign the petition, attend the meeting of creditors or perform many of the other minimal duties required of attorneys representing debtors. In this case, the court analyzed the attorney's actions as whether an attorney could "unbundle" or limit services to a debtor. The court held that the attorney could not evade his responsibilities under Rule 9011 and the court's local rule "by doing all the work and then giving the debtor the papers to file falsely pretending he is acting pro se." The Court noted that, because it and other courts typically review the pleadings of *pro se* litigants with more leniency, '"the failure of an attorney to sign a petition he or she prepares potentially misleads the court, the trustee and creditors, and distorts the bankruptcy process.'" Id. at 366 (cites omitted).

The actions of Mr. Altman here fall more in line with the behavior of the attorney in Hood, than the attorney in Ruiz. This Court does not believe that the practice of assisting debtors to file *pro se* petitions, while not signing the petition as the representing attorney, is a good one. As the Ruiz court recognized, such a behavior can be misleading to a court even if it is not fraudulent under Hood. This Court strongly discourages attorneys from this practice. Nevertheless, in this case, on these facts, the Court concludes that Mr. Altman's actions are not sanctionable. Mr. Altman received no fees from the Debtor prior to the filing of the petition and when he did receive compensation from her he promptly filed a notice of appearance. The petition filed was only that, and included no schedules or Statement of Financial Affairs. No evidence was presented that Mr. Altman provided legal advice to Mrs. Virani, but only that his office provided the administrative assistance to complete her petition. Therefore, the Court concludes Mr. Altman did not violate Rule 9011(a) by failing to sign the petition.

The remaining complaints Mr. Modi raises with regard to the schedules and the Statement of Financial Affairs do not justify sanctions for several reasons. First, the schedules and Statement of Financial Affairs were not required to be signed by an attorney under Rule 9011(a). Secondly, although Mr. Altman filed and advocated the schedules and Statement of Financial Affairs, this Court has held in its Order Denying Motion to Dismiss that they were not substantially erroneous and do not form a basis for dismissal of the bankruptcy case. The Court finds no evidence to show the schedules and Statement of Financial Affairs were submitted for any improper purpose or the facts stated therein were not supported by the evidence. Further, sanctions under Rule 9011 for errors in the schedules and Statement of Financial Affairs would be subject to the safe harbor provision of Rule 9011(c)(1), which was not provided to Mr. Altman.

Sanctions on Other Grounds

The Court has authority to sanction attorneys who practice before it on grounds other than Fed. R. Bankr. P. 9011. The Eleventh Circuit has held that "courts have inherent contempt powers in all proceedings including bankruptcy, to 'achieve the orderly and expeditious disposition of cases.'" Chambers v. Nasco, Inc., 501 U.S. 32, 43 (1991). In Chambers, the Supreme Court explained that courts possess inherent powers which "necessarily result … from the nature of their institution … [and] cannot be dispensed with in a Court, because they are necessary to the exercise of all other [powers]." 501 U.S. at 43. Similarly, the bankruptcy court has inherent authority to impose sanctions upon attorneys practicing before it. In re Reeves, 372 B.R. 525 (Bankr. N.D. Ga. 2007). In addition to the court's inherent authority to sanction attorneys, the court has statutory authority under 11 U.S.C. § 105(a) which permits the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provision of this title."

Due process considerations require that, if an attorney is subject to possible sanctions, the attorney be given adequate notice, not only of the possibility of sanctions, but the grounds on which the sanctions will be issued. Mr. Modi did not ask the Court to exercise either its inherent authority or its authority under 11 U.S.C. § 105 to sanction Mr. Altman. The Court possesses the right to *sua sponte* issue a notice to show cause as to why sanctions should not be issued on either or both of those grounds. Based on the evidence presented at the hearing on the Motion for Sanctions under Rule 9011, however, the Court finds insufficient grounds to issue a notice to show cause as to why sanctions should be issued against Mr. Altman on any other basis.

For the foregoing reasons, the Court DENIES Mr. Modi's Motion for Sanction under Rule 9011 and also declines to issue a show cause notice as to why Mr. Altman should be sanctioned under either the Court's inherent authority or 11 U.S.C. § 105.

END OF ORDER

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