

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re	:	Chapter 7
	:	
KIM BERRY,	:	Bankruptcy No. 02-37203DWS
	:	
Debtor.	:	

ORDER

RE: ATTORNEY CONDUCT IN SERIAL CHAPTER 13 FILING

AND NOW, this 3rd day of September 2003, the United States trustee (“UST”) having filed a Motion for the Imposition of Sanctions against Debtor’s Counsel for Violation of Fed.R.Bankr.P. 9011(b);

And the Court having held a hearing thereon at which the Debtor provided testimony concerning her serial Chapter 13 cases;¹

¹ I shall take judicial notice of the docket entries in this case as well as certain documents in the file that evidence prior proceedings in this case. Fed.R.Evid. 201, incorporated in these proceedings by Fed.R.Bankr.P. 9017. See Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1200 n.3 (3d Cir. 1991); Levine v. Egidi, 1993 WL 69146, at *2 (N.D. Ill. 1993); In re Paolino, 1991 WL 284107, at *12 n. 19 (Bankr. E.D. Pa. 1991); see generally In re Indian Palms Associates, Ltd., 61 F.3d 197 (3d Cir. 1995). While a court may not take judicial notice sua sponte of facts contained in the debtor’s file that are disputed, In re Augenbaugh, 125 F.2d 887 (3d Cir. 1942), it may take judicial notice of adjudicative facts “not subject to reasonable dispute ... [and] so long as it is not unfair to a party to do so and does not undermine the trial court’s factfinding authority.” In re Indian Palms Assoc., 61 F.3d 197, 205 (3d Cir. 1995) (citing Fed.R.Evid. 201(f) advisory committee note (1972 proposed rules).

And the Court finding that (1) the instant case filed on December 2, 2002 was Debtor's 5th case since 1998 in all of which she was represented by Zachary Perlick, Esquire ("Perlick");² (2) Perlick met with Debtor four or five times; (3) Perlick reviewed her income and expenditures with her before this case was filed; (4) Debtor advised Perlick that it was her desire to save her house and she would be able to do so with the anticipated overtime from her job; (5) in December 2003 her son, his girlfriend and their twins moved in with her and she began to support them; (6) in January 2003 she filed an Amended Plan increasing her payments from \$500 to \$778 per month, Exhibit D-2, which she reviewed with Perlick; (7) at that time she acknowledged to Perlick that she could not make the additional required payments but she would try; (8) while her Schedule I reports monthly income of \$2,926, Exhibit D-1, her testimony is that her income is \$1,300-\$1,400; (9) in March 2003 she lost her job as did her companion and she contacted Perlick to get rid of the house; (10) her Schedules were not amended; (11) Debtor made one payment of \$500 to the Chapter 13 trustee in February 2003, Exhibit D-3;³ (12) Debtor contemplated making payments outside the plan, telling Perlick she would make payments of \$5,000 and \$3,000 based on contributions from her grown children; (13) her daughter, who has access to money, made no contributions (other than paying her own phone and cable charges) and her son rather than help, required support; (14) in May 2003 the UST filed a Motion to Dismiss with Prejudice and the Motion for Sanctions against Perlick; (15) the Debtor responded by filing a motion to

² All prior cases were disclosed as required on the petition initiating this case.

³ Debtor testified that she stopped making payments in January when she realized her children would not help her.

convert her case to Chapter 7, and that relief was granted on June 16, 2003 along with a consensual bar on filing for bankruptcy relief under any chapter without prior leave of court; (16) on July 3, 2003 Perlick amended Debtor's Statement of Financial Affairs but not her Schedules; and (17) on July 18, Perlick filed an Amended Disclosure of Compensation evidencing an agreement to accept \$500 whereas on December 9, 2002, Perlick filed a Disclosure of Compensation agreeing to accept \$1,500 and acknowledging receipt of \$515;

And the Court finding that serial filings of hopeless Chapter 13 cases are a serious problem in this district as in many other districts, obstructing creditors from their bargained for state law remedies, burdening the Court and the Chapter 13 trustee with papers to review and hearings to hold and often exacerbating the filers' financial problems by giving them a false sense of the relief legitimately available to them under the bankruptcy law;

And the UST having a proper and welcomed role in addressing this problem to ameliorate this burden on the bankruptcy system and the integrity of bankruptcy proceedings;

And serial filings representing a range of conduct from the bad faith filer who never has any intention of performing his duties under the Bankruptcy Code and Bankruptcy Rules, merely filing to stay a sheriff sale and allowing the case to be dismissed for failure to file the required documents or pay the filing fee to the filer who has been unsuccessful before but has had a change of circumstances that indicates that bankruptcy relief might now succeed;

And this case representing neither extreme but nonetheless a case with questionable validity given the Debtor's prior failed bankruptcies and apparent inability to fund a confirmable plan;

And while an attorney is not an insurer of the Debtor's information,⁴ he nonetheless

has an obligation to ensure that the information is accurate and not misleading;⁵

And in violation of Fed.R.Bank.P. 9011(b), Perlick having signed and presented to the Court documents for an improper purpose based on factual contentions that are lacking in evidentiary support;⁶

And absent notice to Perlick that practices which have become prevalent among certain members of the consumer bar would be the subject of sanctions motions against counsel, the UST's request for additional monetary sanctions will not be granted in this instance;⁷

It is hereby **ORDERED** as follows:

1. The UST's Motion is **GRANTED**.
2. The Court finds that Perlick has violated Fed.R.Bankr.P. 9011(b) for the reasons stated above.
3. As Perlick has reduced his requested compensation from \$1,500 to \$500 (presumably in response to this contested matter), he shall disgorge to the Debtor \$15 (representing the excess fee collected), the Court finding that he provided services valued at \$500 by representing the Debtor in her fully administered Chapter 7 case.
4. Perlick shall undertake a review of all his open Chapter 13 cases (contacting his clients as may be necessary) and file such amended documents as are consistent with the Court's admonitions herein.
5. The Clerk shall electronically file this Order in this case and post it on the Court's web site to provide notice to all attorneys of my expectation of attorneys handling Chapter 13 cases.

DIANE WEISS SIGMUND
United States Bankruptcy Judge

cc: Chief Judge Bruce Fox
Judge Thomas M. Twardowski
Judge Stephen Raslavich
Judge Kevin J. Carey
Joseph Simmons, Clerk

Courtesy copies from
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