

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

**MEMORANDUM ON DEBTOR'S MOTION TO DISQUALIFY  
ATTORNEYS AND MOTIONS TO WAIVE COSTS**

**APPEARANCES:** Donald A. Tangwall  
642 Wears Valley Road  
Townsend, Tennessee 37462  
145 Santiago Road  
Turner, Michigan 48765  
Debtor, *Pro se*

BRABSON, HAMILTON & STAPLETON  
Joseph P. Stapleton, Esq.  
Post Office Box 5260  
Sevierville, Tennessee 37864-5260  
Michael Jablonski, Esq.  
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Flint, Michigan 48501  
Attorneys for Mark and Linda Ploe

HODGES, DOUGHTY & CARSON, PLLC  
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Attorneys for Dean B. Farmer, Trustee

**RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE**

The court has before it the Motion to Bar Attorneys Joseph Stapleton, and Michael Jablonski from Representing Interested Parties Mark Ploe and Lynn Ploe,<sup>1</sup> the Request for Transcripts as a Pauper at No Cost, and the Petition to Waive Motion Fees and Cost, Transcript Cost all filed by the Debtor, Donald A. Tangwall, *pro se*, on May 19, 2000. A Response to Motion of Debtor to Bar Attorneys Stapleton and Jablonski from Representing Interested Parties, Mark and Lynn Ploe<sup>2</sup> was filed by Mark and Linda Ploe on May 25, 2000. A hearing was held on June 8, 2000, at which time the court heard argument from the Debtor and the Ploes's attorney, Joseph P. Stapleton.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (O) (West 1993).

## I

The Debtor, acting *pro se*, filed a Voluntary Petition under Chapter 7 on February 11, 2000. In Schedule B to his petition, he states that he owns an equitable interest in real property by virtue of a \$20,000.00 down payment, which he describes as a “money advance on behalf of Butch Family Preservation Trust.” The property is located at 642 Wears Valley Road in Townsend, Tennessee, and is owned by Mark and Linda Ploe. The Debtor also states in his schedules that he has a mechanic's lien against the property which he describes as securing an \$80,000.00 debt owed to him by Mark Ploe for excavation.

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<sup>1</sup> Mrs. Ploe's correct name is Linda and not “Lynn.”

<sup>2</sup> See *supra* note 1.

On March 20, 2000, the court granted a motion for relief from the automatic stay filed by the Ploes which permitted them to pursue state court remedies in order to regain possession of the Wears Valley Road property. On April 10, 2000, the court held a hearing on the Debtor's Emergency Motion to Vacate the Order Lifting the Stay. The Debtor's motion was denied on April 12, 2000.

On May 19, 2000, the Debtor filed the three motions presently before the court. By the first motion, the Debtor seeks to disqualify the Ploes's attorneys. He asserts that at the April 10, 2000 hearing Joseph Stapleton, one of the Ploes's attorneys, "admitted to entering Debtor Tangwall residence at 642 Wears Valley Rd and removing Tangwalls personal property and property of employees of Tangwalls without any legal authority whatsoever." He also asserts that "[l]egal documents were taken on 1-21-00 by Stapleton and Jablonski which greatly prejudice the Debtor's position in this case and other cases." The Debtor argues that both attorneys should be disqualified from representing the Ploes in these bankruptcy proceedings because they "are material witnesses and will shortly be defendants in a trover and conversion actions." The Ploes deny that any documents belonging to the Debtor were removed when they took possession of the premises.

## II

Tennessee Code of Professional Responsibility, Rule 8, Disciplinary Rule 5-102 governs the withdrawal of counsel when a party's attorney becomes a witness and provides as follows:

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a lawyer in the lawyer's firm ought to be called as a witness on behalf of the client, the lawyer shall withdraw from the conduct of the trial and the firm, if any, shall not continue representation

in the trial, except that the lawyer may continue the representation and the lawyer or a lawyer in the lawyer's firm may testify in the circumstances enumerated in DR 5-101(B)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a lawyer in the lawyer's firm may be called as a witness other than on behalf of the client, the lawyer may continue the representation until it is apparent that the testimony is or may be prejudicial to the client.

Pursuant to DR 5-102(A) an attorney should withdraw from the trial if it is necessary for the attorney to testify on behalf of the client regarding a disputed issue. *See Whalley Dev. Corp. v. First Citizens Bancshares, Inc.*, 834 S.W.2d 328, 330 (Tenn. Ct. App. 1992). Pursuant to DR 5-102(B), an attorney may continue representing the client if opposing counsel plans to call the attorney as a witness. *See id.* In that situation, the attorney may continue the representation until it is evident that the testimony may be prejudicial to the client. *See id.*

The purpose underlying DR 5-102 is “not to protect adversaries from the opposing party’s attorney but is to protect the attorney’s client in the event his attorney’s testimony is needed at trial.” *Coakley v. Daniels*, 840 S.W.2d 367 (Tenn. Ct. App. 1992). Ultimately, the determination is left to the court’s discretion. *See Whalley Dev. Corp.*, 834 S.W.2d at 331. In making that determination, “courts should be reluctant to disqualify a litigant’s counsel of choice and should grant disqualifying motions sparingly.” *Id.* at 331-332.

In the present matter, disqualification of the Ploes’s attorneys is not appropriate. The Debtor has not demonstrated that he plans to call the attorneys as witnesses in these bankruptcy proceedings or that their testimony may be prejudicial to the Ploes. The Debtor’s only action has been to state his intention to file future actions against the attorneys in state court for trover and

conversion. That statement does not provide a basis for disqualifying the attorneys in the Debtor's bankruptcy case under DR 5-102.

### III

The Debtor also asks this court to waive the fees required for filing a motion and to provide him with a copy of the transcript of the April 10, 2000 hearing at no cost on the ground that he is a pauper.<sup>3</sup> A debtor may request permission to participate in his bankruptcy case as a pauper, or *in forma pauperis*, by submitting a statement that satisfies the requirements set forth in 28 U.S.C.A. § 1915(a)(1) (West Supp. 2000), which provides:

Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

28 U.S.C.A. § 1915(a)(1).

On May 19, 2000, the Debtor filed what purports to be his certification under oath that he "has no liquid assets whatsoever to pay fees [and] transcript cost." Substantively, the statement is insufficient because it does not include a "statement of all assets" that the Debtor possesses. Rather, it states only that the Debtor has no liquid assets. In addition, the statement is not an affidavit nor does it contain an unsworn declaration filed under penalty of perjury. See 28

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<sup>3</sup> The Debtor does not reference any specific motion for which a filing fee has been requested. However, at the June 8, 2000 hearing on his various motions, the Debtor advised the court that the clerk has requested a \$20.00 filing fee associated with an amendment to his schedules adding additional creditors.

U.S.C.A. § 1746 (West 1994). The document does not satisfy the requirements of § 1915(a)(1). The court must accordingly deny his request to waive the filing fee for motions.

The court must also deny the Debtor's request for a transcript. Parties to civil actions are not entitled to receive a transcript at no cost. See *Clanton v. Michigan 54B Judicial District Court*, No. 95-1867, 1996 WL 272378, at \*1 (6th Cir. May 21, 1996) (Finding that there was no federal statute at issue that required the court to give a free transcript to a party in the civil action before it and that "the Federal Constitution does not forbid the charging of a fee for a transcript of a civil matter.") (citing *Hill v. Michigan*, 488 F.2d 609 (6th Cir. 1973)); *McClure v. Salvation Army*, 51 F.R.D. 215, 216 (N.D. Ga. 1971) ("[T]here appears to be an abundance of authority that a copy of a transcript in a civil action is not to be furnished at government expense."); *Lester v. Lester*, 330 N.Y.S.2d 190, 194 (N.Y. Sup. Ct. 1972) (refusing to find that a free copy of a transcript must be provided to parties in civil litigation).

No exception is made for a party that has been granted permission to proceed *in forma pauperis*. See, e.g., *Wright v. United States*, 948 F. Supp. 61, 62 (M.D. Fla. 1996) ("[T]he majority of the courts that have addressed the issue of payment of court reporter and costs of transcription have found that section 1915 does not give the trial court authority to direct the government to pay for such costs.") (collecting cases); *McClure*, 51 F.R.D. at 216; *Lester*, 330 N.Y.S.2d at 194.

#### IV

There is no basis for disqualifying the Ploes's attorneys and therefore the Debtor's Motion to Bar Attorneys Joseph Stapleton, and Michael Jablonski from Representing Interested Parties Mark Ploe and Lynn (sic) Ploe will be denied. The court cannot waive motion filing fees for the Debtor without his compliance with the requirements of 28 U.S.C.A. § 1915(a)(1). In addition, the court may not provide a free copy of a transcript to the Debtor. Accordingly, the Debtor's Request for Transcripts as a Pauper at No Cost and his Petition to Waive Motion Fees and Cost, Transcript Cost will be denied.

An appropriate order will be entered.

FILED: June 14, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

**ORDER**

For the reasons stated in the Memorandum on Debtor's Motion to Disqualify Attorneys and Motions to Waive Costs filed this date, the court directs that the Motion to Bar Attorneys' [sic] Joseph Stapleton, and Michael Jablonski From Representing Interested Party Mark Ploe and Lynn Ploe in These Proceedings, the Request for Transcripts as a Pauper No Cost, and the Petition to Waive Motion Fees and Cost, Transcript Cost, all filed by the Debtor, *pro se*, on May 19, 2000, are DENIED.

SO ORDERED.

ENTER: June 14, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE