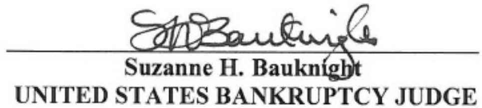
SO ORDERED.
SIGNED this 7th day of July, 2022



Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

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

In re

AMY ELIZABETH HECKER

Debtor

Case No. 3:21-bk-31938-SHB
Chapter 7

MEMORANDUM AND ORDER

The Court entered an Order on May 27, 2022 ("May 27 Order") [Doc. 46], that, *inter alia*, directed Debtor's former counsel, Christopher Shawn Roberts, to appear and show cause why he should not be held in contempt and sanctioned pursuant to 11 U.S.C. § 105(a) and the Court's inherent powers, including but not limited to (A) requiring him to self-report his conduct to the Tennessee Board of Professional Responsibility and (B) suspension from filing cases or representing clients before the Northern Division of the United States Bankruptcy Court for the Eastern District of Tennessee until further order of the Court following an investigation of his conduct before this Court by the Tennessee Board of Professional Responsibility for violations of 11 U.S.C. § 526(a)(3) and the following Tennessee Rules of Professional Conduct:

- RPC 1.1: Competence;

- RPC 1.2(d): Scope of Representation and Allocation of Authority Between Client and Lawyer;
- RPC 1.3: Diligence;
- RPC 1.4: Communication;
- RPC 3.2: Expediting Litigation;
- RPC 3.3(a)(1), (b) and/or (c): Candor Toward the Tribunal;
- RPC 3.4(a) and/or (c): Fairness to Opposing Party and Counsel;
- RPC 4.1(a) and/or (b): Truthfulness in Statements to Others; and
- RPC 8.4(c) and/or (d): Misconduct

[Doc. 46.] The Court incorporates here the relevant facts recited in the May 27 Order, none of which Mr. Roberts disputed at the hearings on June 22, 2022 ("June 22 Hearing"), and July 1, 2022 ("July 1 Hearing").[1]

The May 27 Order also directed Tyler Davis, managing attorney of Davis Law Firm, PLLC, which employed Mr. Roberts during all relevant periods, to appear and show cause why he should not be sanctioned, including but not limited to an order to self-report to the Tennessee Board of Professional Responsibility for his failure to monitor and properly supervise Mr. Roberts and for Mr. Davis's failure to create measures to prevent further misconduct in light of this Court's previous admonitions to Mr. Roberts,[2] both of which would appear to be a violation of Tennessee

[1] Both hearings were attended by Mr. Roberts; either Nick Foster or Tiffany DiIorio as counsel for the United States Trustee; Debtor's counsel, Cynthia T. Lawson; and John P. Newton, the Chapter 7 Trustee. Debtor was present for and testified at the June 22 Hearing, and Mr. Davis appeared at the July 1 Hearing.

[2] The Court previously sanctioned Mr. Roberts for failures to adequately represent his clients and for overcharging clients, and on September 30, 2021, the Court expressly counseled Mr. Roberts that his law firm partners also would be held responsible for any future misconduct. *See* Order, First Case, ECF No. 53 (Bankr. E.D. Tenn. May 7, 2021); Order, *In re Harwell*, No. 3:21-bk-30164-SHB, ECF No. 44 (Bankr. E.D. Tenn. Mar. 30, 2021); Order, *In re Pierce*, No. 3:20-bk-32062-SHB, ECF No. 51 (Bankr. E.D. Tenn. Nov. 5, 2020). Since Mr. Roberts began appearing before this Court in 2019, the Court has issued approximately nine show-cause orders to Mr. Roberts for, *inter alia*, his failures to file documents timely, to appear at hearings, or for charging excessive fees.

Rule of Professional Conduct 5.1: Responsibilities of Partners, Managers, and Supervisory Lawyers. At the Court's direction, the Clerk's office mailed a copy of the May 27 Order to Mr. Davis at his law firm's address; however, as represented by Mr. Davis in his court filing seeking a continuance on June 16, 2022 [Doc. 53], and at the July 1 Hearing, he learned of the May 27 Order only when he received an email from counsel for the United States Trustee on June 15, 2022, because Mr. Roberts took the mailed order directed to Mr. Davis and concealed from Mr. Davis the May 27 Order with the requirement for Mr. Davis to appear on June 22, 2022.[3] The Court granted Mr. Davis's motion to continue on June 17, 2022, but continued the hearing to July 1 only as to Mr. Davis. [Doc. 55.]

At the June 22 Hearing, Mr. Roberts expressly agreed to admission of Exhibit 1 tendered by counsel for the United States Trustee, consisting of text messages between Debtor and Mr. Roberts from March 31, 2022, to May 10, 2022 [Ex. 1; Doc. 51], within which Mr. Roberts was untruthful with Debtor concerning the following:

- that he had filed a motion to convert her case to Chapter 13 when he had not;
- that the supposed motion to convert had not been assigned a hearing date and could not be expedited; and
- that the Court had not ruled on the purported motion to convert[4] at the hearing held on May 5, 2022, at which the Court, in fact, granted the Chapter 7 Trustee's motion to compel Debtor to allow the Chapter 7 Trustee's realtor access to Debtor's house at Chestnut Court (the "Property") and to require anyone living with Debtor to vacate by May 31, 2022, which

[3] Mr. Roberts admitted at the June 22 Hearing that he had taken the mail directed from the Court to Mr. Davis and concealed the information from Mr. Davis.

[4] Debtor also testified, and Mr. Roberts admitted, that Mr. Roberts also informed Debtor that he had made an oral motion to convert at the May 5, 2022 hearing.

was memorialized in an order entered on May 5, 2022 ("May 5 Order") [Doc. 35]. Mr. Roberts admitted at the June 22 Hearing that he repeatedly advised Debtor to ignore and be untruthful to the realtor about gaining access to the Property, even after the May 5 Order that *compelled* Debtor's cooperation with the realtor within two days.

Debtor testified that she learned the truth about the status of her case on May 10, 2022, when she and her brother looked up her case through Pacer, read the May 5 Order, and found that Mr. Roberts, in fact, had not filed a motion to convert her case, which led Debtor to terminate Mr. Roberts on that same day. Debtor explained that she filed her bankruptcy case simply to receive the fresh start.

As to damages, Debtor testified that she had missed 12 hours of work at her $22.00 hourly rate, had paid $20.00 total for parking, had mileage of 64 miles one-way[5] between her home and the courthouse and also between her home and Ms. Lawson's office. She also testified that she paid the $338.00 filing fee in her first case, which had been filed on February 2, 2021,[6] and dismissed on May 7, 2021, because the Statement Regarding Payment Advices was not filed as required by 11 U.S.C. § 521.[7]

At the close of the June 22 Hearing, the Court advised Mr. Roberts that the matter would be under advisement pending the July 1 Hearing and detailed the sanctions that might be imposed against him, instructing him to be prepared to respond at the July 1 Hearing. The Court also directed Mr. Roberts to do the following, as memorialized in the Order entered June 23, 2022

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[5] The Court notes that Debtor lives in Crossville, Cumberland County, Tennessee, for which proper venue is the Middle District of Tennessee, Cookeville Division.

[6] Case No. 3:21-bk-30162-SHB ("First Case").

[7] Debtor paid Mr. Roberts a fee of $1,300.00 for filing the First Case, which the Court ordered Mr. Roberts to disgorge for failing to properly represent Debtor. The Court also ordered Mr. Roberts to re-file a Chapter 7 case for Debtor without payment of additional compensation, including payment of the $338.00 filing fee. [First Case, Doc. 53.]

(“June 23 Order”):

(1) to self-report his conduct to the Tennessee Board of Professional Responsibility and present documentary proof thereof at the July 1 Hearing;

(2) to take actions as to three identified potential clients that he was prohibited from representing, including returning any fees paid and providing each with the names and contact information for at least three bankruptcy attorneys; and

(3) to take action to ensure that any subsequent documents or actions required in five open bankruptcy cases in this district were completed.

[Doc. 61.] Also, at the June 22 Hearing, the Court directed Ms. Lawson as Debtor’s counsel to submit a good-faith estimate of the time she has expended in Debtor’s case, along with her hourly rate and any actual expenses, and directed the Chapter 7 Trustee to submit (1) an itemized statement of the attorneys’ fees and expenses he has incurred in this case concerning the sale of the Property; (2) an estimate of his statutory commission based on potential sale of the Property; and (3) the number of hours spent by the realtor in her efforts to gain access to the Property and a reasonable hourly rate for her. [Doc. 61.]

As directed, on June 28, 2022, Ms. Lawson filed her Good Faith Estimate of Legal Services (“Good Faith Estimate”), reflecting estimated time of 11.3 hours, translating to $2,825.00 at her standard hourly rate of $250.00, plus expenses of $27.84 for her representation of Debtor between May 11 and June 24, 2022. [Doc. 63.] In his Notice of Filing, filed on June 29, 2022, the Chapter 7 Trustee included a statement of services and expenses for his firm in its capacity as trustee counsel, reflecting fees and expenses as of June 30, 2022, in the amount of $2,220.00 (5.0 hours for John Newton at his $300.00 hourly rate and 3.2 hours for Kevin Newton at his $225.00 hourly rate) plus expenses totaling $36.64. [Doc. 64.] The Notice of Filing also reflects calculations of

the Trustee's statutory commission for an actual sale of the Property ($8,417.93) and for no sale if the case had been filed after January 1, 2022 ($987.91), as well as a good-faith estimate of 4.0 hours at a $100.00 hourly rate for time expended by the realtor, Cissy Turner, in connection with this case. [Doc. 64.][8]

On June 23, 2022, Mr. Davis filed a Brief in which he made the following relevant statements:

- Mr. Roberts began accepting bankruptcy cases in early 2020, after Mr. Davis's previous firm dissolved.
- Mr. Roberts was trained by Kaitlin Justus before she left the firm.
- Mr. Davis has not practiced bankruptcy, but he believed that Ms. Justus's training was appropriate to allow Mr. Roberts to handle bankruptcy cases, given Ms. Justus's bankruptcy experience.
- Mr. Davis instructed Mr. Roberts to review many bankruptcy-related treatises and online resources and to participate in as many bankruptcy-related CLEs as possible to properly prepare him for filing cases.
- There were no obvious issues with Mr. Roberts's bankruptcy cases before the Court issued a show cause order in Case No. 3:20-bk-30162-SHB[9] on March 16, 2021, related to Mr.

[8] Notwithstanding that Mr. Roberts did not contest the information contained in the Good Faith Estimate of Legal Services or the Notice of Filing filed by Ms. Lawson and the Chapter 7 Trustee, respectively, the Court, exercising its obligation to review the appropriateness of requested fees, has reviewed the statements of services attached thereto and finds that all services reflected therein are reasonable and compensable.

[9] The docket number reflected in Mr. Davis's brief is not the correct case number for the First Case. In Debtor's First Case, an order was entered [First Case, Doc. 23], directing Mr. Roberts to appear and show cause why compensation in the amount of $1,300.00 did not exceed the reasonable value of services under 11 U.S.C. § 329(b). Because documents required by 11 U.S.C. § 521 were not filed within the statutory deadline, even after two extensions of time, after a second show-cause order was issued [First Case, Doc. 39], Debtor's case was dismissed, and Mr. Roberts was ordered to disgorge the $1,300.00 paid to him by Debtor for the case and to re-file a case for Debtor free of charge. [First Case, Doc. 53.]

Roberts's compensation. Mr. Davis subsequently directed Mr. Davis to lower his retainer amount and refunded the directed amount to the debtor.

- Mr. Davis believed, and Mr. Roberts indicated when specifically asked by Mr. Davis, that the show-cause order and hearing were solely fee-related and not performance-related and that there were no other issues before the Court.
- Mr. Davis was unaware of any further issues until his firm was served with a malpractice complaint on December 13, 2021, related to a bankruptcy case handed by Mr. Roberts.[10]
- Mr. Davis initially terminated Mr. Roberts from the firm on December 13, 2021, but decided to work with Mr. Roberts, who had had two immediate family members pass away within four months of each other and who was taking new medication to assist with his mental health.
- After receiving the malpractice complaint, Mr. Davis reviewed every retained bankruptcy case in the firm's system, verified via Pacer whether they had been filed with the Court, and instructed Mr. Roberts to get every case filed, moving forward, and/or resolved or he would be terminated.
- During early 2022, Mr. Roberts filed eight bankruptcy case, and the fees were refunded in the remaining outstanding bankruptcy client files.
- In January 2022, Mr. Davis hired a legal assistant for the sole purpose of resolving any issues related to Mr. Roberts's bankruptcy cases. The legal assistant reported directly to

[10] The bankruptcy case was *In re Harmon*, No. 3:20-bk-32296-SHB. In that Chapter 7 proceeding, the debtors' residence was sold by the Chapter 7 Trustee after their motion to convert to a Chapter 13 case was denied. [*In re Harmon*, Docs. 89, 95.] The *Harmon* case bore remarkable similarities to this case concerning the sale of the debtors' residence that might have been avoided had Mr. Roberts competently represented the debtors.

Mr. Davis multiple times each week.[11]

- The firm also purchased new bankruptcy software to make filings easier and more streamlined.[12]
- Mr. Davis believed that he put proper safeguard measures in place and began to highly monitor all bankruptcy cases to prevent further issues and that between the new software, additional staff assistance, and his new medication, Mr. Roberts would get back on track with his cases.
- Specifically in this bankruptcy case, Mr. Roberts did not give information to staff and assured him that it was filed and on course.
- Mr. Davis verified through Pacer that Debtor's case was filed.
- Mr. Roberts made numerous misrepresentations to Mr. Davis concerning his bankruptcy cases and clients. Mr. Roberts did not inform Mr. Davis that Debtor had terminated his representation in her case.
- Even though on September 30, 2021, the Court expressly instructed Mr. Roberts to inform Mr. Davis of the problems in Case No. 3:21-bk-30164-SHB,[13] Mr. Roberts did not do so.

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[11] The Court is perplexed that after receiving a malpractice complaint, Mr. Davis would consider the hiring of a legal assistant with no bankruptcy experience as the solution for what should have been evident as a defect in Mr. Roberts's substantive (not merely procedural) bankruptcy practice.

[12] Indeed, notwithstanding the problems with Mr. Roberts's bankruptcy practice evidenced by the malpractice complaint against him, the pace of his case filings increased significantly after the complaint was received, with eight cases filed in the first four months of 2022 when only six cases had been filed by Mr. Roberts in all of 2021.

[13] Mr. Roberts filed that case on behalf of Debtor Rebecca S. Harwell and was directed through an Order entered March 30, 2021 [Doc. 44], to disgorge $450.00 of the fee paid to him by Debtor because it exceeded the reasonable value of services under § 329(b). Mr. Davis's reference to the *Harwell* case is irrelevant because it was not the subject of the referenced September 30, 2021 hearing. The September 30, 2021 hearing was the culmination of numerous problems in the Chapter 7 case of Tina K. Thompson, Case No. 3:21-bk-30195-SHB. Mr. Roberts and his firm had overcharged Ms. Thompson [*see In re Thompson*, Doc. 42]; he had missed a hearing on July 8, 2021, without communicating with the Chapter 7 Trustee or the Court [*see In re Thompson*, Doc. 62]; and the debtor and Mr. Roberts had failed to appear at a Rule 2004 exam and Mr. Roberts had failed to communicate with the Chapter 7 Trustee, resulting in a motion for contempt against the debtor [*see In re Thompson*, Doc. 82]. At the September 30, 2021 hearing, Mr. Roberts told the Court that he had been out for two weeks with COVID-19, followed immediately by his

- Mr. Davis does not have access to Mr. Roberts's personal cell phone, from which the text messages between Mr. Roberts and Debtor occurred.
- Mr. Roberts received a telephone call from the United States Trustee's office on December 15, 2021, requesting that Debtor's case be refiled.
- Mr. Roberts concealed the May 27 Order that was received by mail at their office on May 31, 2022.
- The May 27 Order is the only other show-cause order that Mr. Davis was made aware of; he learned about the order after receiving it by email from counsel for the United States Trustee. Once it was received, Mr. Davis took immediate action in attempts to resolve the underlying issues and participate in the evidentiary hearing.
- Mr. Davis does not condone Mr. Roberts's actions with Debtor, which have put Mr. Roberts's employment with the firm in peril pending the Court's determination.

[Doc. 60.]

At the beginning of the July 1 Hearing, Mr. Roberts advised the Court that he had self-reported his conduct to the Tennessee Board of Professional Responsibility [*see* Ex. 2] and that he had complied with the remaining directives of the June 23 Order concerning existing and potential bankruptcy clients. At the Court's inquiry, Mr. Roberts informed the Court of the specific status for each open bankruptcy case, and he represented that he had complied with the Court's directives concerning the "three" clients who were awaiting the filing of a bankruptcy case.

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assistant being out after her daughter's daycare closed for COVID; that his father had passed away on July 19, 2021; and that he had been with his father who was in the hospital on July 8, 2021, when he missed the July 8 hearing without communicating with the Chapter 7 Trustee or the Court. The Court acknowledged Mr. Roberts's personal issues but admonished him about not properly assisting his clients and advised him to let the attorneys in his firm know what was going on and share his files with them so that they could step in and assist him by showing up in court, asking for a continuance, and/or calling opposing counsel, irrespective of whether they practice in bankruptcy. The Court also advised Mr. Roberts that if there were any additional issues in his cases, he would be sanctioned and the firm would also be called to account for his problems. The Court has not ordered Mr. Roberts to obtain a transcript of the September 30 hearing; however, the Court maintains the audio record.

Mr. Roberts told the Court that when fees were repaid at the Court's direction in prior cases, the law firm had refunded the fees to clients, with Mr. Roberts then repaying the law firm but that he and Mr. Davis had no discussion that some of the fees were disgorged because of problems with Mr. Roberts's representation of firm clients. Mr. Roberts also stated that he had no opposition to the Good Faith Estimate and Notice of Filing filed by Debtor's counsel and the Chapter 7 Trustee, nor did he oppose the imposition of sanctions against him for his misconduct and violations of the ethical rules.

For his statement at the July 1 Hearing, Mr. Davis acknowledged that he was Mr. Roberts's supervising attorney but stressed that he knew nothing about bankruptcy law. He told the Court that Mr. Roberts initially worked with Ms. Justus, who was also an associate for approximately six months after Mr. Roberts joined the firm that was the predecessor to Mr. Davis's current firm, and that Ms. Justus later left the firm.[14] Concerning his knowledge about Mr. Roberts's issues with his bankruptcy clients and the various show-cause orders from the Court, Mr. Davis stated that his firm refunded Debtor's fees in her First Case but (notwithstanding Mr. Roberts's statements at July 1 Hearing), it had not refunded fees in any other bankruptcy cases, and he had been unaware that Mr. Roberts was required to disgorge or refund fees in any other cases. Mr. Davis also stated that Mr. Roberts assured Mr. Davis that he was keeping up with bankruptcy law but admitted that he did not follow up on the CLE topics taken by Mr. Roberts and the firm had not paid for any bankruptcy-related CLEs for Mr. Roberts. When questioned by the Court about what steps he took after receiving the malpractice complaint, Mr. Davis stated that he (1) ran a Pacer search to verify

[14] The Court takes judicial notice from the Tennessee Board of Professional Responsibility's website that Ms. Justus was licensed in 2017, Mr. Roberts was licensed in 2014, and Mr. Davis was licensed in 2015. Per a search on CM/ECF, Ms. Justus has filed a total of 16 cases in this Court, all between December 3, 2018, and August 14, 2020, and all while she was practicing at Mr. Davis's former firm, Griffin & Davis, PLLC. Mr. Roberts began filing cases on March 26, 2019, which was approximately three months after Ms. Justus filed her first and only case in this Court at that time.

that Mr. Roberts had filed the cases for clients who had already engaged the firm; (2) hired a legal assistant who reported directly to him about the status of Mr. Roberts's cases but acknowledged that the legal assistant had no bankruptcy experience; and (3) took away the other types of cases that Mr. Roberts was working on, such as probate cases, to allow Mr. Roberts more time to devote to his bankruptcy cases but did not provide or require additional bankruptcy-related training for Mr. Roberts.

Mr. Davis also advised the Court that the firm did not file Chapter 13 cases and, instead, referred them out, but he had no answer for the Court's questions concerning whether Mr. Roberts or anyone in the firm was properly counseling clients when they might need to file a Chapter 13 case rather than a Chapter 7 case. It appears that Mr. Roberts simply filed only Chapter 7 cases for clients without any discussion or consideration of the implications of Chapter 7 versus Chapter 13.

I. SANCTIONING AUTHORITY

A. 11 U.S.C. § 526

The Bankruptcy Code defines a debt relief agency as "any person[[15]] who provides any bankruptcy assistance to an assisted person[[16]] in return for the payment of money or other valuable consideration[.]" 11 U.S.C. § 101(12A). Restrictions on debt relief agencies are outlined in 11 U.S.C. § 526 as follows:

> (a) A debt relief agency shall not–
>
> (1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

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[15] "The term 'person' includes individual, partnership, and corporation[.]" 11 U.S.C. § 101(41).

[16] "The term 'assisted person' means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $204,425[.]" 11 U.S.C. § 101(3).

(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to--

(A) the services that such agency will provide to such person; or

(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer a fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

11 U.S.C. § 526(a).

A debt relief agency's failure to comply with the provisions of subsection (a) are subject to the following provisions of subsection (c):

(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, . . . shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have--

(A) intentionally or negligently failed to comply with any provision of this section . . . with respect to a case or proceeding under this title for such assisted person;

(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

> . . . .
>
> (4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).
>
> (5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may--
>
> (A) enjoin the violation of such section; or
>
> (B) impose an appropriate civil penalty against such person.

11 U.S.C. § 526(c).

B. 11 U.S.C. § 105(a)

In addition to the authority granted by § 526(c), this Court is authorized to sanction abusive or bad faith conduct by 11 U.S.C. § 105(a), which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]," including taking sua sponte action "to enforce or implement court orders or rules or to prevent an abuse of process[,]" and through the "'inherent power' [possessed by the federal courts], not conferred by rule or statute, 'to manage their own affairs so as to achieve the orderly and expeditious disposition of cases . . . [including] 'the ability to fashion an appropriate sanction for conduct which abuses the judicial process.'" *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186-87 (2017) (holding that a court may sanction bad faith conduct based on the "but-for test" by ordering payment of the fees that the innocent party would not have incurred "but for" the misconduct); *see also Law v. Siegel*, 571 U.S. 415, 420-21 (2014) (recognizing the statutory authority provided by § 105(a) to carry out the Bankruptcy Code's provision as well as the court's co-existing but separate inherent sanctioning powers to further uphold the provisions of the Code).

II. FINDINGS AND SANCTIONS

Unquestionably, Mr. Roberts and Davis Law Firm, LLC fall within the Bankruptcy Code's definition of debt relief agency and, thus, are subject to the restrictions of § 526(a) and the sanction provisions of § 526(c). The record before the Court clearly reflects, at a minimum, the following violations of § 526(a) in Debtor's First Case and this case:

- Mr. Roberts did not advise Debtor in either her First Case or this case that her home could be sold in a Chapter 7 bankruptcy case;
- Mr. Roberts did not file the Statement Regarding Payment Advices required by 11 U.S.C. § 521(a)(1)(B)(iv) and Federal Rule of Bankruptcy Procedure 1007(b) within the time required by § 521(i), resulting in dismissal of Debtor's First Case on May 7, 2001;
- Mr. Roberts did not advise Debtor that her basic statutory homestead exemption would increase from $5,000.00 to $35,000.00 if she waited to file this case until after January 1, 2022;
- Mr. Roberts told Debtor that the Chapter 7 Trustee was merely doing due diligence after the Trustee advised Debtor at her 2004 examination on March 29, 2022, that he was going to sell her home;
- Mr. Roberts repeatedly directed Debtor to avoid communication with and to provide false information for such avoidance to the Chapter 7 Trustee's realtor;
- Mr. Roberts repeatedly promised to communicate with Debtor without following up;
- Mr. Roberts expressly told Debtor that he had filed a motion to convert this case to Chapter 13 when he had not;
- Mr. Roberts misrepresented information concerning the Court's calendar with respect to the non-existent motion to convert; and

- Mr. Roberts did not advise Debtor that the Court had granted the Chapter 7 Trustee's motion to compel her cooperation with the realtor as directed in the May 5 Order.

Mr. Roberts has not refuted or contested any of the testimony at either the June 22 Hearing or the July 1 Hearing, and he advised the Court at the July 1 Hearing that he agrees with the sanctions that the Court intended to impose against him.

Mr. Davis, however, did not agree that he or his firm violated any ethical rules or obligations or that he or the firm should be sanctioned for Mr. Roberts's violations and misconduct. The Court, however, disagrees and finds that Mr. Roberts's repeated conduct together with Mr. Davis's and Davis Law Firm, LLC's failure to properly ensure that their clients were being represented competently and ethically reflect "a clear and consistent pattern or practice of violating [§ 526]" as well as a violation of the Tennessee Rules of Professional Conduct.

Rule 5.1, entitled Responsibilities of Partners, Managers, and Supervisory Lawyers, and its Comment provide:

> (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
>
> (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
>
> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
>
>> (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
>>
>> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. *See* RPC 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* RPC 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members, and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. *See also* RPC 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in a negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension. This duty is

> in addition to the lawyer's RPC 8.3(a) duty to report professional misconduct to the Office of Disciplinary Counsel. The obligation to take reasonable remedial action, however, does not require the lawyer to take any action that would violate these Rules, e.g., disclosing information related to the representation of a client in violation of RPC 1.6. Nor does the duty to mitigate harm require the lawyer to compensate a person for losses suffered by virtue of the misconduct the lawyer knows has occurred.
>
> [6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.
>
> [7] Apart from this Rule and RPC 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules. This Rule is only intended to provide a basis for professional discipline and is not intended to alter the legal rights and responsibilities of partners or supervisory lawyers with respect to the conduct of other lawyers with whom they are associated.
>
> [8] The duties imposed on managing and supervising lawyers by this Rule do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct.

Tenn. Sup. Ct. R. 8, RPC 5.1.

At the July 1 Hearing, Mr. Davis acknowledged that he was Mr. Roberts's supervising attorney at all relevant times. Nevertheless, Mr. Davis did not monitor Mr. Roberts before the malpractice claim was filed in December 2021, and even thereafter, his safeguarding measures were insufficient. It was not enough for Mr. Davis to verify through a Pacer search that Mr. Roberts was filing cases for clients who had engaged the firm. Nor was it enough for Mr. Davis to hire a legal assistant (wholly inexperienced in bankruptcy law) to report directly to Mr. Davis as to Mr. Roberts's cases. Likewise, it was not enough to remove from Mr. Roberts's responsibility other types of cases to allow him additional time to devote to bankruptcy cases because Mr. Davis's actions did not ensure that Mr. Roberts was competently representing the firm's bankruptcy clients through numerous possible options, including additional education or requiring Mr. Roberts to find a mentor experienced in bankruptcy law. Indeed, Mr. Davis failed to ensure that Mr. Roberts

received any sort of actual instruction in bankruptcy law beyond the initial training provided in 2019 by Ms. Justus, who been licensed for only two years and had filed only one case in this Court a mere three months before Mr. Roberts filed his first case.

Additionally, although some of the declarations made by Mr. Davis in his Brief and at the July 1 Hearing were incorrect, such as his statement that Mr. Roberts began filing bankruptcy cases in 2020 even though Mr. Roberts filed his first case in this district on March 26, 2019, the Court does not believe that the statements were purposely inaccurate or misleading, but they do provide more evidence of Mr. Davis's lack of awareness – and his lack of regard – for Mr. Roberts's representation of bankruptcy clients on behalf of Mr. Davis's firm. The Court finds that Mr. Davis's failure to adequately supervise Mr. Roberts contributed to the substantive failures and chaos now surrounding Mr. Roberts's practice. Accordingly, the Court will require Mr. Davis to self-report this matter to the Tennessee Board of Professional Responsibility for investigation and a determination of whether Mr. Davis has violated any Rules of Professional Conduct.

For the foregoing reasons and as stated on the record at the July 1 Hearing, the Court finds and directs as follows:

1. Christopher Shawn Roberts has engaged in misconduct and misrepresentations in this case in violation of 11 U.S.C. § 526(a)(3) and Tennessee Rules of Professional Conduct 1.1, 1.2(d), 1.3, 1.4, 3.2, 3.3(a)(1), 3.3(b), 3.3(c), 3.4(a), 3.4(c), 4.1(a), 4.1(b), 8.4(c), and 8.4(d). As sanctions for his conduct, the Court directs:

   a. Mr. Roberts is suspended from accepting any new representation of clients seeking advice concerning bankruptcy or the filing of a case in the United States Bankruptcy Court for the Eastern District of Tennessee, Northern Division, pending resolution of his self-report to the Tennessee Board of Professional Responsibility. Mr.

Roberts shall immediately decline representation of any such prospective client and provide such prospective client with the names of at least three attorneys experienced in bankruptcy practice;

b. Mr. Roberts shall attend a total of 30 hours of continuing legal education, 20 of which must be ethics and 10 of which must be in bankruptcy law,[17] the completion of which must be certified to this Court before he may be reinstated from his suspension to practice before this Court;

c. Mr. Roberts shall request from the Court's transcriptionist transcripts from the court proceedings on May 5, 2022, June 22, 2022, and July 1, 2022, no later than close of business on July 22, 2022, with payment of associated fees being made within 7 days of invoicing;

d. Within 5 days after receipt of the transcripts required to be obtained above, Mr. Roberts shall file a supplemental report with the Tennessee Board of Professional Responsibility that includes a copy of this Order and the transcripts for the May 5, June 22, and July 1 Hearings;

e. Within 60 days from the date of this Order, Mr. Roberts shall pay the following:

- $771.76 as actual damages ($264.00 in lost wages; $20.00 for parking; mileage of $149.76; and $338.00 for the filing fee in her First Case) to Debtor, payable to Amy Hecker and mailed to Ms. Lawson at Cindy Lawson & Associates, P.C., 6704 Watermour Way, Knoxville, Tennessee 37912;

- $2,852.84 as actual damages for attorneys' fees and expenses

[17] To the extent that any CLE counts as dual credit for both bankruptcy and ethics, such hours may only be attributed to one or the other to achieve the total 30 hours.

incurred by Debtor's substitute counsel, payable to Cynthia T. Lawson and mailed to Cindy Lawson & Associates, P.C., 6704 Watermour Way, Knoxville, Tennessee 37912;

- $2,256.64 as actual damages for attorneys' fees and expenses incurred by the Chapter 7 Trustee, payable to Mayer & Newton and mailed to John Newton at the Law Offices of Mayer & Newton, 1111 Northshore Drive, Suite S-570, Knoxville, Tennessee 37919;

- $987.91 as actual damages for the lost statutory trustee commission, payable to John Newton, Trustee, and mailed to Mr. Newton at the Law Offices of Mayer & Newton, 1111 Northshore Drive, Suite S-570, Knoxville, Tennessee 37919; and

- $400.00 as actual damages incurred by the Chapter 7 Trustee's realtor, payable to Cissy Turner and mailed to Mr. Newton at the Law Offices of Mayer & Newton, 1111 Northshore Drive, Suite S-570, Knoxville, Tennessee 37919; and

f. Mr. Roberts shall file, within 60 days from the date of this Order, a certification under penalty of perjury, which shall comply with E.D. Tenn. LBR 5005-4(h)(2), that he has fully satisfied the payment requirements above.

2. Tyler Davis, as managing attorney of Davis Law Firm, LLC, has violated Tennessee Rule of Professional Conduct 5.1 for failing to properly monitor and supervise Mr. Roberts and for failing to establish sufficient safeguards to prevent the misconduct and incompetence of Mr. Roberts. As a sanction, Mr. Davis shall, within 15 days from entry of this Order, self-report to the Tennessee Board of Professional Responsibility by providing a copy of

this Order, the May 27 Order, and the June 23 Order.

3. Pursuant to 11 U.S.C. § 526(c)(5), the Court finds that the Davis Law Firm, LLC, is jointly and severally liable for all monetary sanctions imposed herein. Should Mr. Roberts fail to make the payments required by this Order to Debtor, Ms. Lawson, Mayer & Newton, Mr. Newton, and/or Ms. Turner within 60 days from the date of this Order, which failure will be evidenced by the failure of Mr. Roberts to file the certification under penalty of perjury as ordered herein, Davis Law Firm, LLC shall satisfy any remaining payment obligation(s) within 30 days thereafter and shall file a notice of satisfaction with the Court within two business days of such payment(s).

4. Failure of Mr. Roberts, Mr. Davis, and/or Davis Law Firm, LLC to satisfy any requirements of this Order could result in the imposition of additional sanctions.

5. Copies of this Order shall be mailed by the Clerk to Mr. Roberts and Mr. Davis individually at Davis Law Firm, PLLC, 804 West Race Street, Kingston, Tennessee 37763.

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