



AMERICAN
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“Good Enough”: When Does Sloppiness Equal Liability?

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GOOD ENOUGH?
WHEN DOES SLOPPINESS EQUAL LIABILITY?

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I. **LAWYER'S DUTY TO CONDUCT A REASONABLE INVESTIGATION AND VERIFY ACCURACY OF SCHEDULES, STATEMENTS AND PLEADINGS**

Attorneys representing debtors have both a legal and ethical duty to conduct a reasonable investigation into their client's financial affairs and the circumstances leading to their bankruptcy filing. By filing schedules and statements on a debtor's behalf, an attorney makes an affirmative certification that the representations contained therein are based on the attorney's best information and belief after a reasonable inquiry. In re Withrow, 405 B.R. 505 (1st Cir. BAP 2009). The standard applied in the First Circuit is "an objective standard of reasonableness under the circumstances. Nosek v. Ameriquest Mortg. Co. (In re Nosek), 386 B.R. 374 (Bankr. D. Mass. 2008). As one Court stated, "debtors' counsel are to exercise significant care as to the completeness and accuracy of all recitations on their clients' schedules.... The content of a debtors' petition and schedules is relied upon, and should have the quality to merit that reliance." In re Robertson, 360 B.R. 804 (Bankr. D. Minn. 2007). This duty extends to all aspects of the debtors' bankruptcy case, including the disclosure of all assets, income, expenses, liabilities and any other representations made to the Bankruptcy Court. Attorneys who fail to conduct a reasonable investigation under the circumstances do so at their peril and risk sanction, disgorgement of fees, referral to disciplinary panels and malpractice suits.

A. **In re Withrow, 405 B.R. 505 (1st Cir. BAP 2009)**

Facts: The Debtor's attorney filed a skeletal Chapter 13 petition and subsequently converted the case to Chapter 7. The Debtor's pre-petition income was above the median income and so the presumption of abuse arose under 11 U.S.C § 707(b). Debtor's counsel filed a rebuttal of the presumption of abuse, asserting special circumstances. In particular, the rebuttal asserted that the Debtor would no longer be receiving overtime income, as he had prepetition, and that he was now expending additional funds each month to care for his elderly mother. The Chapter 7 Trustee responded to the rebuttal, asserting that it was false and misleading, noting inconsistencies regarding the Debtor's income as reported on his schedules, statement of monthly income and rebuttal to the presumption of abuse, and that the Debtor's post-petition paystubs showed he was continuing to receive overtime income. The Trustee also noted that the Debtor had testified that he had "fully and truthfully" informed his attorney about all of the facts and circumstances related to his schedules and statements. The Trustee therefore concluded that the errors were the attorney's fault. The Bankruptcy Court issued an order to show cause as to why

the attorney should not be sanctioned for failure to properly prepare the schedules and statements. The attorney attempted to place the blame on the debtor and his “personal forgetfulness”

Holding: Following an evidentiary hearing, the Court held that the attorney violated § 707(b)(4)(C) and Bankruptcy Rule 9011 in preparing and filing the Debtor’s schedules and statements. The Court held that even if the Debtor’s had provided the attorney with inaccurate information, that did not explain the numerous inconsistent statements in the bankruptcy filings, or did it explain the attorney’s failure to file appropriate amendments once the inaccuracies had been brought to light by the trustee. The Court sanctioned the attorney in the amount of \$3585, or three times the fee he had received to represent the Debtor in the Bankruptcy Case. The Bankruptcy Appellate Panel affirmed the sanction finding that it served the dual purposes of deterrence and compensation under Rule 9011.

B. In re Pigg, No 14-50266, 2015 WL 7424866 (Bankr. W. D. Mo November 20, 2015)

Facts: Prior to filing her bankruptcy petition, the Debtor had received a tax refund of approximately \$10,000 which she used to pay her attorney’s fee of \$1,300, to repay a \$2,000 loan to her sister and to pay her mother’s \$3,654 debt. The debtor informed her attorney of these transfers and he advised her not to disclose them on the statement of financial affairs (“SOFA”). At the § 341 meeting, the Trustee asked the Debtor, under oath, if all of her schedules and statements were true and accurate and if any changes needed to be made. The Debtor affirmed that everything was true and accurate and the attorney did not attempt to correct her testimony. The Trustee inquired as to the Debtor’s tax refund and what had become of the proceeds. The debtor then informed the Trustee about the pre-petition transfers. The Trustee asked the Debtor to amend her SOFA to disclose the transfers, which she agreed to do. After three weeks passed without the SOFA being amended, the Trustee filed a motion to extend the deadline to object to discharge. A month later, the attorney filed the amendments to reflect the pre-petition transfers which prompted the Trustee to file adversary complaints against the Debtor’s mother and sister and ultimately obtained judgments against both of them. In the meantime, the U.S Trustee conducted a Rule 2004 examination of the Debtor to inquire about the inaccuracies. The Debtor testified that she had told the attorney about the transfers before the bankruptcy was filed. The U.S. Trustee then moved for sanctions and disgorgement against the attorney. Ultimately, the Trustee did not object to the Debtor’s discharge, having concluded that, while the debtor

deserved some blame for the false testimony, she was unsophisticated and had relied on her attorney's advice.

Holding: The Court found that the attorney had failed to conduct a reasonable investigation prior to the filing, and thus had violated Rule 9011. By filing the debtor's SOFA, the attorney certified that he had performed a reasonable investigation into the circumstances and determined that the petition was well grounded in fact and warranted by existing law. The standard for imposing sanctions under § 707(b)(4) is "an objective determination of whether a party's conduct was reasonable under the circumstances." The Court sanctioned the attorney \$1,500 which represented the Trustee's reasonable expenses and attorney's fees. The Court also ordered disgorgement of the attorney's \$1,300 fee under § 329. Disgorgement is appropriate if the compensation exceeds the reasonable value of the services provided. Even though the Debtor eventually received a discharge, the Court found that disgorgement of the entire fee was warranted as the attorney's conduct delayed the Debtor's discharge by more than four months and she had been required appear at two § 341 meetings and a Rule 2004 examination.

C. In re Seare, 515 B.R. 599 (9th Cir. BAP 2014)

Facts: The Debtor filed a frivolous lawsuit against his former employer alleging sexual harassment and wrongful termination. It was later discovered that the Debtor had embellished his allegations and the former employer moved to dismiss the case and sought to recover its costs and attorney's fees as a sanction for the Debtor's fraud on the Court. The District Court dismissed the complaint and awarded the former employer more than \$67,000 in costs and fees as a sanction. The order did not specifically include the word "fraud." The former employer then obtained a wage garnishment against the Debtor. The Debtor then hired his lawyer to file a bankruptcy petition in order to discharge the debt to the former employer. The Debtor provided the attorney with the relevant documents from the lawsuit, which the attorney "flipped through." After the bankruptcy was filed, the former employer then filed an objection to the Debtor's discharge under Sections 523(a)(4) and (6) of the Bankruptcy Code. The debtor's bankruptcy attorney, citing the provisions in his retainer agreement, sent the Debtor a letter informing him that he would not represent him in the adversary proceeding and offered to refer them to another attorney. The Bankruptcy Court entered an order to show cause as to why the attorney should not be sanctioned for failing to represent the Debtor in the adversary proceeding.

Holding: The Court found that the attorney had violated numerous ethical rules and his duties under §707(b)(4). First, the lawyer violated Rule 1.1 by failing to properly investigate the circumstances giving rise to the judgment to determine whether the claim would be non-dischargeable. It was the lawyer’s duty, not the Debtor’s, to make the legal conclusion as to the likely dischargeability of the judgment debt. Second, the lawyer violated Rule 1.1 by “unbundling” his representation from any adversary proceeding, when he should have known prior to filing that an adversary proceeding was likely to be necessary to obtain a discharge. Third, the lawyer violated Rule 1.4 by failing to properly communicate with the Debtor. The lawyer should have understood the Debtor’s objective of discharging the judgment debt and what services be required to achieve that result, or explain to the Debtor the challenges he would face in trying to obtain a discharge. A lawyer has a duty to discuss dischargeability issues and potential adversary proceedings with the client. Finally, the lawyer violated §707(b)(4) because he had not independently investigated or verified the circumstances surrounding the wage garnishment, even though the Debtor had informed him about it. Once the lawyer had been informed of the judgment and wage garnishment, the “reasonable next step should have been to investigate the judgment supporting the garnishment which could have been accomplished by asking questions or reviewing the District Court’s electronic docket.”

II. **HYPOTHETICAL: ATTORNEY SAUL GOODMAN AND THE CASE OF IN RE: DAN CONNER**

Saul Goodman is a sole practitioner in Rutland, VT where he specializes in consumer bankruptcy. His website, www.VTbankruptcybettercallSaul.com, prominently displays that he is a specialist in bankruptcy and a certified expert in consumer bankruptcy by the American Bankruptcy College. In January 2018, Dan Conner calls Saul Goodman’s office to schedule a consultation. Saul’s paralegal, Francesca Liddy, schedules an appointment for the following week. Dan comes in as scheduled to meet with Saul for an initial consultation. During the meeting, Dan explains the following to Saul:

- He is married to Roseanne Conner and they have four kids: Becky, Darlene, D.J., and Jerry Garcia Conner. Both Becky and Darlene are now adults and live on their own, but D.J (age 17) and Jerry Garcia (age 15) still live at home with Dan and Roseanne.

- Dan is a licensed electrician and has been the sole owner of Amped Up, LLC for the past 15 years. His business revenue fluctuates substantially from month to month and thus he has never been able to take a steady salary. He tries to take a monthly draw of about \$4,000 but there isn't always enough money to pay the draw in full. He has one full-time employee and one part-time secretary, who works as an independent contractor and is given a 1099 at the end of the year.
- Dan's wife Roseanne works full-time as a shift supervisor at Wellman Plastics Factory and she earns about \$40,000 per year.
- Dan and Roseanne have owned their home jointly for 20 years. He thinks the home is worth less than \$300,000. They have a first mortgage with a balance of about \$300,000, which they took out in in 2006, and a home equity line of credit with a balance of approximately \$45,000. Both mortgage obligations are current.
- Dan and Roseanne own a car worth \$3,000.
- Dan has \$150,000 in credit card debt spread out over six accounts. He started incurring credit card debt between 2009 and 2012 when his business slowed down and he needed to use credit to make ends meet. From 2012 to 2015, he was able to keep up with the minimum payments but started to fall behind on two of the accounts in 2016 and ultimately stopped paying those altogether. Those two creditors each sued him in late 2016. He never went to court and presumes there is a judgment against him, but doesn't remember. He doesn't know where the paperwork is and thinks he probably threw it away. He has been paying on the other four accounts, but only minimum payments. He can no sustain the payments and expects to default on at least one of them in the next month.
- Amped Up, LLC owns two trucks (which have no equity as the loans against them exceed their value), approximately \$20,000 worth of equipment, and accounts receivables of nearly \$50,000. Amped Up, LLC also has an unsecured credit line with a balance of about \$60,000. Dan has not personally guaranteed the credit line.
- Dan has personal income tax debts for 2014-2017 totaling about \$35,000. Rosanne is jointly liable for all of the tax debts..

After listening to Dan's tale, Saul advises Dan that a Chapter 7 bankruptcy is exactly what he needs to get his financial house in order. Saul explains that Dan will be able to

discharge all of his credit card debt while keeping his vehicle, retirement account, business and home, as long as he continues to pay the first and second mortgage. He explains that the tax debts are not dischargeable. Saul informs Dan that his fee for representing him will be a \$2,000 flat fee and that Dan must pay the additional \$335 filing fee. Saul provides Dan with a Consumer Bankruptcy Questionnaire and checklist of the documents to be provided and instructs him to return everything with the fee when he is ready. The questions on the questionnaire largely mirror the questions on the bankruptcy schedules and statement of financial affairs.

On March 15, 2018, Dan returns questionnaire, documents and fee by mail. Saul's paralegal, Francesca, reviews Dan's completed questionnaire, and the answers are consistent with Saul's notes from his initial consultation with Dan. Dan provided the deed and homestead declaration; Roseanne's last six months paystubs; profit and loss statement for Amped Up, LLC for 2017 and 2018; Dan and Roseanne's 2016 and 2017 tax returns; and a Zillow.com report stating that their home is worth \$299,000. Francesca uses all of the data from the questionnaire and prepares a draft bankruptcy petition, schedules, a statement of financial affairs and a means test for Saul to review. Schedule A/B reflects Dan's interest in the home, subject to two mortgages, his interest in Amped Up, LLC with \$0 value, a retirement account worth \$50,000, a used vehicle worth \$3,000 and used household goods and furniture. Using the Vermont exemptions, Dan claims his vehicle, retirement account, clothing and household goods and furniture as fully exempt. He did not claim an exemption in the home or business because the home is underwater and the business liabilities exceed its assets, making it essentially worthless. Saul reviews the entire draft bankruptcy paperwork, all the documents Dan provided and his notes from the initial consultation, and is satisfied that everything is in order. He emails Dan on March 28 to inform him that the bankruptcy paperwork is prepared and ready to be filed. He attaches a copy of the bankruptcy paperwork and advises Dan to review it carefully and to let him know if he has any questions or needs to make any changes. He further advises that if Dan is satisfied with everything, he can print and sign all pages and mail them back to Saul. Saul files the case electronically on April 9, and mails Dan a letter confirming the filing as well as the date, time and location of the meeting of creditors.

Shortly after the filing, Saul receives a letter from the U.S. Trustee (the "UST") indicating the UST believes there may be cause to seek denial of Dan's discharge under 11 U.S.C. §707(b) or (c). The UST requests one year of Roseanne's paystubs; YTD P&L for Amped Up, LLC; the

last 2 tax returns for Dan and Roseanne; the last 2 years of bank statements; and copies of all deeds to property owned in the last 10 years.

Also shortly after filing, Saul receives a letter from the Chapter 7 Trustee, Reinhold Daniel Fielding Elmore (the “Trustee”), requesting all documentation be sent to the Trustee at least seven days prior to the 341 meeting. Saul forwards the following to the Trustee: the deed to Dan and Roseanne’s home, paystubs, business P&L, tax returns, the Zillow report provided by Dan, and an updated Zillow report obtained by Francesca. At the 341 meeting, the Trustee examines Dan about his income and assets. Dan testifies that he has only ever owned one property with Roseanne - the home. He further testifies that they purchased it 20 years ago, but refinanced it in 2006 and took some equity out to go on vacation to Las Vegas and buy a new car in cash. In 2007, they put a large addition on the home and renovated the kitchen and bathroom. Dan explains that his brother Ed Conner, Jr., a contractor, did all the work and got a discount on materials, so it only cost them \$45,000, which they paid for by taking out a second mortgage. Dan also tells Trustee that he owns only one vehicle, his interest in Amped Up, LLC, and a retirement account.

The Trustee continues the 341 meeting and asks Dan to provide copies of all personal and business bank statements for the past year, copies of the closing documents from the purchase of the home, and copies of the titles to all vehicles in the household. Outside the 341 meeting room, Dan informs Saul that he forgot about a debt he owed to his sister-in-law Jackie and asked if that should have been included in his bankruptcy paperwork. He explains that he borrowed \$5,000 from her two years ago for some home repairs, and had started paying her \$500 each month six months ago. He intends to finish paying her back regardless of whether his obligation to her is included in his bankruptcy.

After the 341 meeting, Saul submits the documents that the UST requested to UST and UST subsequently files a complaint objecting to discharge, based on the following:

1. Chapter 7 Trustee obtained a BPO reflecting that home is worth \$550,000 and he believes Dan intentionally undervalued the home.
2. UST discovered that Dan owned a remainder interest in his parents’ home, subject to the parents’ life estate.
3. UST’s review of Dan’s household income leads UST to the conclusion that Dan had disposable monthly income and filing a Chapter 7 would be an abuse.

Meanwhile the Trustee finds problems with Dan's 341 testimony. He discovers that Amped Up, LLC was dissolved by the Secretary of State more than 3 years ago. As a result, he believes that the business's assets belong to Dan and hence, the Chapter 7 estate, and must be liquidated. He contacts Saul and informs him that he is filing motions to sell the home (with an asking price of \$550,000) and for the turnover of non-exempt business assets and Roseanne's vehicle, (which is titled in Dan's name).

At the initial hearings on the Trustee's sale and turnover motions and the UST's objection to discharge, Saul states that Dan will be filing amended schedules to accurately reflect his property ownership as the filing date. The Honorable Harry Stone, Bankruptcy Judge, also questions Attorney Saul Goodman about the travel of the case, including questions about the problems with the accuracy of the schedules. Judge Stone orders Saul to file amended schedules within 14 days. After two weeks pass and no schedules are filed, the Court issues an order to show cause as to why Dan Conner's case should not be dismissed for failure to file amended schedules and why Attorney Saul Goodman should not be ordered to disgorge fees.

After the case is closed, Dan and Roseanne sign a purchase and sale agreement for the sale of their home. During the closing process, the potential buyer's title attorney discovers a judicial lien dating back to 2016 that could have been avoided in Dan's bankruptcy case but was not. The buyer demands her earnest money deposit back and the deal falls through. Dan angrily calls Saul and Saul explains that he can get rid of the lien by reopening the case and filing a motion for lien avoidance. He tells Dan to send him \$1,275 to pay for the \$275 filing fee to reopen the case and \$1,000 legal fee to prepare the motion to avoid lien and get the orders recorded. Dan asks Saul why this wasn't done in his Chapter 7 case. Saul says Dan never informed him about the lien, and it was Dan's responsibility to provide complete answers. Dan says Saul knew that Dan was sued by creditors and thinks that the fees and costs to avoid the lien should be covered by the original \$2,000 flat fee.

Dan writes a letter directly to Judge Stone complaining about the lien and the new fees and costs sought by Saul. He does not send a copy of the letter to anyone else.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re: DANIEL CONNER, Debtor(s)	Chapter 7 Case No. 18-12345
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ORDER TO SHOW CAUSE

On February 9, 2018, the debtor's counsel indicated in open court that the debtor owned assets as of the petition date which were not listed in the debtor's schedules as required by 11 U.S.C. §521(a)(1)(B)(i). It is, therefore,

ORDERED

that the debtor shall appear before this court at 151 West St, Rutland, VT on [DATE and TIME], to show cause why this case should not be dismissed for failure of the debtor to comply with her statutory duties.

Dated: July 12, 2018

Harry J. Stone
Hon. Harry J. Stone,
U.S. Bankruptcy Judge

AMERICAN BANKRUPTCY INSTITUTE

United States Bankruptcy Court
District of Vermont

In re Daniel Conner
Case No. 18-12345

Chapter 7

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Fed. Bankr. P. 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept _____	\$	2,000.00
Prior to the filing of this statement I have received _____	\$	2,000.00
Balance Due _____	\$	0.00

2. \$ 335.00 of the filing fee has been paid.
3. The source of the compensation paid to me was:
 Debtor Other (specify):
4. The source of compensation to be paid to me is:
 Debtor Other (specify):
5. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
- I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.
6. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
- Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
 - Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
 - Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
 - [Other provisions as needed]
- All services, except those identified in paragraph 7 below, that are reasonably contemplated to achieve the debtor's bankruptcy objectives including but not limited to:
- File the certificate required from the individual debtor from an approved nonprofit budget and credit counseling agency for prepetition credit counseling;
 - Preparation and filing of all locally required forms;
 - Representation of the debtor at the § 341 meeting;
 - Motions under § 522(f) to avoid liens on exempt property;
 - Motions, such as motions for abandonment, or proceedings to clear title to real property owned by the debtor;
 - Motions under § 722 to redeem exempt personal property from liens;
 - Compile and forward to the trustee and the United States trustee any documents and information requested; and
 - File the debtor's certification of completion of instructional course concerning financial management (Official Form 423).

By agreement with the debtor(s), the above-disclosed fee does not include the following service:

- (1) Representation of the Debtor in any dischargeability action, adversary proceedings, or heavily litigated matters that are not listed in Paragraph 6 above; and

I, certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: April 9, 2018

/s/ Saul Goodman
Saul Goodman

III. RELEVANT STATUTES AND MODEL RULES

A. STATUTES

i. 11 U.S.C. § 105 (a): The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

ii. 11 U.S.C. § 329:

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to:

(1) the estate, if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or (2) the entity that made such payment.

iii. **11 U.S.C. § 707(b)(4):**

(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court—(I) grants such motion; and (II) finds that the action of the attorney for the debtor in filing a case under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and (ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and (ii) determined that the petition, pleading, or written motion—(I) is well grounded in fact; and (II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect

iv. **Fed. R. Bankr. P. 2016(b):** Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by §329 of the Code including whether the attorney has shared or agreed to share the

compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

v. **Fed. R. Bankr. P. 9011:**

(a) SIGNATURE. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party 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 non-frivolous 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.

B. ABA MODEL RULES.

- i. **Rule 1.1. Competence:** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Official Comments to Rule 1.1:

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person.

Thoroughness and Preparation: Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible.

Maintaining Competence: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

- ii. **Rule 1.3. Diligence:** A lawyer shall act with reasonable diligence and promptness in representing a client.

Official Comments to Rule 1.3

* * *

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited

to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

iii. **Rule 1.4. Communication:**

(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Official Comments to Rule 1.4:

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client:

* * *

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what

action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations — depending on both the importance of the action under consideration and the feasibility of consulting with the client — this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation. [4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters: [5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill

reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e). [6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information: [7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

iv. **Rule 1.5 (a)-(b): Fees**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional

relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Official Comment to Rule 1.5:

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

* * *

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

AMERICAN BANKRUPTCY INSTITUTE



U.S. Department of Justice

Office for United States Trustees
*Districts of Maine, Massachusetts,
New Hampshire and Rhode Island*

*John W. McCormack Post Office and Courthouse 617-788-0400
5 Post Office Square, Suite 1000
Boston, MA 02109-3934
Fax: 617-565-5601
Direct Dial: 617-788-0406
E-mail:*

Dear Attorney Goodman:

Further to our recent discussion, the United States Trustee is reviewing the above case under 11 U.S.C. 707 and 727. Please send copies of the below documents, information, and affidavit to the United States Trustee's drop box: xxx.xxxx@usdoj.gov on or before **Friday, May 4, 2018 at 12 Noon:**

1. All pay advices and evidence of all other sources of income for each Debtor, any adult member of the household, and/or any business(es), one year prior to petition date to present. Note: demonstrate calculations of all sources of income including, but not limited to, wages, bonuses, distributions, operation of business(es), rent, Social Security, pension, alimony, and/or for any other reason(s);
2. All financial account statements and checks for any account owned or accessed by either Debtor, any adult member of the household, and/or any business(es) (whether individual, joint or entity), two years prior to petition date to present, domestic or international;
3. Federal and state tax returns including all schedules, W-2s, 1099s and K-1s for either Debtor, any adult member of the household, and/or any business(es) (whether individual, joint or entity), 2016 and 2017, include most recently filed returns;
4. Most recent financial statements for any business(es), include year to date;
5. Documents evidencing each expense listed on Form 122A-1, question 5, Schedule I, question 8a and any attached statement, Schedule J, and/or any amendments. Note: Include statements re: secured claims and loan/lease/rental agreements, as well as unbundled/itemized expenses for any business(es);
6. All deeds, valuations, promissory notes, mortgages, declarations of homestead, trusts and lists of beneficiaries, from time to time, concerning any real property to which either Debtor has a direct, indirect and/or future interest, domestic or international;

2018 NORTHEAST BANKRUPTCY CONFERENCE AND CONSUMER FORUM

7. All titles/registrations and insurance binders, include home owner policy and personal articles floaters as well as vehicle policy(ies);
8. An accounting of all transfers of property (including money \$500 or more) by either Debtor as payment(s) to or for the benefit of any person or entity including an insider as well as any funds received by either Debtor concerning the sale or transfer of any property to any person or entity including an insider, two years prior to petition date to present, include supporting documents;
9. Documents that reflect the nature, timing and amount of each claim listed on Schedule F, include all credit card and/or personal loan statements, one year prior to filing to present;
10. Any amendments to petition, Schedules, SOFA, Statement of Intention, and Form 22, etc.; and
11. Documents evidencing any special (or mitigating) circumstances.
12. In addition, please provide an affidavit concerning the following:
 - A list of all real property (description and address) to which either Debtor has/has a direct, indirect and/or future interest, ten years prior to petition date to present, domestic or international;
 - A list of all financial accounts owned, controlled and/or accessed by either Debtor (institution, owner, account number, open/closed, type), four years prior to petition date to present, domestic or international;
 - A list of any business(es) owned or operated by either Debtor by name, location, type, four years prior to petition date to present, domestic or international; and
 - A discussion of any special (or mitigating) circumstances.

I have copied the chapter 7 trustee, Reinhold Daniel Fielding Elmore, on this email.

The first meeting of creditors is scheduled for May 11, 2018 at 9 a.m.

Thank you,
UST Trial Attorney