

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

DONALD F. WALTON,
United States Trustee for Region 21,

Plaintiff

vs.

LAW OFFICES OF KEITH D.
COLLIER, PLLC

Defendant.

Case No.: 6:11-mp-_____

**UNITED STATES TRUSTEE'S COMPLAINT SEEKING
DECLARATORY RELIEF AND DETERMINATION
OF SANCTIONS AGAINST
LAW OFFICES OF KEITH D. COLLIER, PLLC**

This is a miscellaneous proceeding seeking declaratory relief and to determine appropriate sanctions against the Law Offices of Keith D. Collier, PLLC ("Keith Collier") for the following reasons.

JURISDICTION

1. The Plaintiff is Donald F. Walton, the United States Trustee for Region 21.
2. The Defendant is Keith Collier.
3. This is a miscellaneous proceeding seeking declaratory relief and determination of appropriate sanctions against Keith Collier pursuant to 11 U.S.C. §§

329, 327, 362, 524, 101(5), 105, and 727(b) and Rules 2016, 2017, 4001 of the Federal Rules of Bankruptcy Procedure.

4. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

5. This is a core proceeding pursuant to 28 U.S.C. § 157.

RELEVANT FACTS

6. The Law Offices of Keith D. Collier, a Professional Limited Liability Company is a bankruptcy law firm based in Jacksonville, Florida.

7. Keith Collier has an office in the Orlando Division of the Middle District of Florida, located in Orlando, Florida.

8. Keith Collier is the managing attorney for both the Jacksonville office and the Orlando office.

9. The debtors who retain Keith Collier for legal services execute a Chapter 7 & 13 Retainer Agreement (“Retainer Agreement”). See attached UST’s Ex. 1

10. Keith Collier collects a portion of his attorney’s fees pre-petition if the client is able to pay. Keith Collier gives his clients a discount if they pay all fees pre-petition.

11. In chapter 7 bankruptcy petitions filed by Keith Collier, Statement 9 of the Statement of Financial Affairs typically discloses the payments made within a one year period for legal services related to bankruptcy.

12. In petitions that Keith Collier files, the Disclosure of Compensation of Attorney for the Debtors filed pursuant to Rule 2016 typically shows the following:

- a. the total attorney's fee, which varies in amount;
- b. the amount of the attorney's fee paid pre-petition, which also varies; and,
- c. the remainder balance due on the attorney's fees, which varies depending on the amount charged and the amount paid.

13. By way of example, the following is a list of cases filed by Keith Collier:

- a. 6:11-bk-09240-ABB, In re John R. Niedbalski, filed June 17, 2011;
- b. 6:11-bk-09241-ABB, In re Kenneth A. Yuret, filed June 17, 2011;
- c. 6:11-bk-09592-ABB, In re Christopher S. Yawn, filed June 24, 2011;
- d. 6:11-bk-06984-ABB, in re Jack R. Leonard and Linda S. Leonard, filed May 9, 2011 and discharged August 18, 2011; and,
- e. 6:11-bk-05988-ABB, In re Giuseppe Abarca, filed April 22, 2011 and discharged August 2, 2011.

14. In these cases, the Retainer Agreement calls for post-petition payment of attorney's fees. See attached UST's Ex. 1.

15. Despite this fact, the firm is not listed as a general unsecured creditor on debtors' schedules.

16. Furthermore, Keith Collier and his clients do not enter into reaffirmation agreements for these pre-petition debts.

17. Keith Collier typically gives debtors three options for payment:

- a. Option 1 is to pay the entire fee pre-petition with the understanding that the fee is non-refundable and subject to the “additional fee” section of his retainer agreement;
- b. Option 2 is the “ACH Payment Plan” under which fees are electronically collected from debtors’ accounts post-petition and requires that “[c]lients must have their source of income direct deposited into a bank account that is in good standing and clients must not owe any money to this bank.” Retainer Agreement at 1.
- c. Option 3 is immediate ACH Payment Plan. Under this payment plan, at least one ACH payment must be made prior to filing the case.

18. In the case of John R. Niedbalski, Case No.: 6:11-bk-09240-ABB, the debtor chose Option 2, the ACH Payment Plan. The debtor paid \$400.00 on June 15, 2011 prior to the filing of the bankruptcy case and agreed to make ten (10) semi-monthly payments of \$118.00 commencing July 15, 2011.

19. In the case of Kenneth A. Yuret, Case No.: 6:11-bk-09241-ABB, the debtor chose Option 2, the ACH Payment Plan. The debtor paid \$400.00 on June 15, 2011 prior to the filing of the bankruptcy case and agreed to make five (5) monthly payments of \$235.00 commencing on August 3, 2011.

20. In the case of Christopher S. Yawn, Case No.: 6:11-bk-09592-ABB, the debtor chose Option 2, the ACH Payment Plan. The debtor paid \$400.00 on June 17, 2011 and \$66.25 on June 24, 2011 prior to the filing of the bankruptcy case and agreed to make twenty (20) weekly payments of \$66.25.

21. In the case of Jack R. Leonard and Linda S. Leonard, Case No.: 6:11-bk-06984-ABB, the debtors chose Option 1, the “paid prior to filing” plan and Option 2, the ACH Payment Plan. The debtors paid \$1,425.00 on May 5, 2011 prior to the filing of the bankruptcy case and agreed to make ten (10) bi-weekly payments of \$142.50.

22. In the case of Giuseppe Abarca, Case No.: 6:11-bk-05988-ABB, the debtor chose Option 2, the ACH Payment Plan. The debtor paid \$400.00 on April 21, 2011 prior to the filing of the bankruptcy case and agreed to make twelve (12) bi-weekly payments of \$118.00.

23. Each Retainer Agreement notifies the debtors of the following: “Client(s) understands there are conflicting Court Rulings about whether attorney’s fees paid post-petition (after filing) for post-petition services are dischargeable. The client(s) understand that they are under a moral obligation and may not be legally obligated to pay these fees.” Retainer Agreement at 1.

24. The Retainer Agreement also notifies debtors of the following: “Client(s) understands there are conflicting Courts Rulings about whether attorney’s fees paid post-petition (after filing) for post-petition services are dischargeable. However, this

Firm will not collect fees except by way of voluntary payments made by the client(s).”
Retainer Agreement at 2.

Count I
VIOLATION OF THE AUTOMATIC STAY
(11 U.S.C. § 362)

25. The Plaintiff realleges paragraphs 1 through 24 inclusive, and incorporates them by reference.

26. This is an action seeking declaratory relief and to determine appropriate sanctions against Keith Collier pursuant to 11 U.S.C. §§ 105, and 362(a)(1) and (6) and Rules 2016, 2017, and 4001 of the Federal Rules of Bankruptcy Procedure.

27. Keith Collier’s attorney’s fee constitutes a pre-petition claim against the bankruptcy estate.

28. Keith Collier’s pre-petition claim against the bankruptcy estate is subject to the automatic stay. Walton v. Clark & Washington, P.C., 2011 WL 2690562, *1, *5-*6 (Bankr. M.D. Fla. July 12, 2011) (reporter citation not yet available).

29. Keith Collier’s actions to collect attorney’s fees prior to entry of discharge and without relief from the automatic stay, constitute violations of the automatic stay pursuant to 11 U.S.C. § 362(a)(1) and (6).

30. Keith Collier’s negotiation of the latter two options to pay the fees through an ACH payment plan constitute violations of the automatic stay pursuant to 11 U.S.C. § 362(a)(1) and (6) to the extent that payments are made prior to the entry of discharge.

31. Each transaction, as described in paragraphs 18 through 22, constitutes a violation of the automatic stay pursuant to 11 U.S.C. § 362(a)(1) and (6) to the extent that payments were made post-petition and before the entry of discharge.

WHEREFORE, the United States Trustee respectfully requests that the Court (i) enter a judgment declaring that Keith Collier's conduct constitutes violations of 11 U.S.C. § 362(a)(1) and (6); (ii) assess appropriate sanctions and/or injunctive relief; and (iii) grant such other relief that the Court deems appropriate.

Count II
VIOLATION OF THE DISCHARGE INJUNCTION
(11 U.S.C. §§ 524 and 727(b))

32. The Plaintiff realleges paragraphs 1 through 24 inclusive, and incorporates them by reference.

33. This is an action seeking declaratory relief and to determine appropriate sanctions against Keith Collier pursuant to 11 U.S.C. §§ 105, 524(a)(2), (c) and (k), and 727(b), and Rules 2016 and 2017 of the Federal Rules of Bankruptcy Procedure.

34. Keith Collier's attorney's fees constitute pre-petition claims against the bankruptcy estate.

35. Keith Collier's pre-petition claims for attorney fees are dischargeable debts.

36. Keith Collier's collection of his attorney's fees post-discharge violates the discharge injunction pursuant to 11 U.S.C. § 524. Walton v. Clark & Washington, P.C.,

2011 WL 2690562*1, *5-*6 (Bankr. M.D. Fla. July 12, 2011) (reporter citation not yet available).

37. Each transaction, as described in paragraphs 18 through 22, constitutes a violation of the discharge injunction pursuant to 11 U.S.C. § 524 to the extent that fees were collected post discharge.

WHEREFORE, the United States Trustee respectfully requests that the Court (i) enter a judgment declaring that the Defendant's actions constitute violations of the discharge injunction pursuant to 11 U.S.C. §524, (ii) assess appropriate sanctions and/or injunctive relief, and (iii) grant such other relief that the Court deems appropriate.

Count III
CONFLICT OF INTEREST RESULTING IN DISGORGEMENT OF FEES
(11 U.S.C. §§ 329(b) and 327; Rule 2016b and 2017, Fed. R. Bankr P.)

38. The Plaintiff realleges paragraphs 1 through 24 inclusive, and incorporates them by reference.

39. This is an action seeking declaratory relief and to determine appropriate sanctions against Keith Collier pursuant to 11 U.S.C. §§ 329, 327, and 105, and Rules 2016 and 2017 of the Federal Rules of Bankruptcy Procedure.

40. Each event, as described in paragraphs 9 through 24 creates a conflict of interest between Keith Collier and his clients.

41. Keith Collier's acceptance of an ACH payment plan gives rise to a credit transaction between the Keith Collier and the debtors.

42. The credit transactions between Keith Collier and his clients create conflicts of interest. Walton v. Clark & Washington, P.C., 2011 WL 2690562 *1, *6, *7 (Bankr. M.D. Fla. July 12, 2011) (reporter citation not yet available).

43. The conflicts of interest that exist between Keith Collier and his clients warrant denial of attorney's fees and disgorgement of fees.

WHEREFORE, the United States Trustee respectfully requests that the Court (i) enter a judgment declaring that Keith Collier's conduct creates a conflict of interest with his clients, (ii) order the disgorgement of fees and injunctive relief, (iii) assess appropriate sanctions and injunctive relief, and (iv) grant such other relief that the Court deems appropriate.

Dated: September 23, 2011.

Respectfully submitted,

DONALD W. WALTON,
United States Trustee for Region 21

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