

In the United States Bankruptcy Court

for the

Southern District of Georgia

Savannah Division

FILED

at 4 o'clock & 45 min P M
Date 4/28/00

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia

In the matter of:)
)
KATRINA YVETTE ADAMS)
)
Debtor)

Chapter 13 Case

Number 99-40695

ORDER ON SHOW CAUSE HEARING

A hearing in the above matter requiring counsel Joyce M. Griggs to show cause was conducted on March 20, 2000. The specific subjects to which Ms. Griggs was required to respond are set forth fully in this Court's February 15, 2000, Order to Show Cause, but essentially boil down to four categories:

- 1) Did Ms. Griggs act in violation of the Model Code in filing a voluntary dismissal of Ms. Adams' first case without authority from her client to do so? MODEL RULES OF PROFESSIONAL CONDUCT, Rule 1.2 (1995), provides in part:

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter.

C: Debtor
~~Debtor's Attorney~~
Chapter 13 Trustee
R. GASTAN
J. GRIGGS

Ms. Griggs represented to the Court that she believed she had permission from her client, the Debtor, to file a voluntary dismissal of the first case. Even absent specific authority, she argues that no harm was suffered by her client and that she acted in her client's best interest in filing the voluntary dismissal. The Debtor was not funding her plan, had not made Court appearances, and was facing a likely dismissal with prejudice. Accordingly, Ms. Griggs argues that in the event the Court finds insufficient evidence on which to conclude that she had specific authority, the client's interests were still best served by her actions.

I find that prior to the filing of the second case, Debtor met personally with Ms. Griggs, signed the necessary papers to initiate the filing of a second Chapter 13, and made arrangements for a payment of the unpaid filing fee remaining in her first case which was a precondition to her filing the second case. The Debtor asserts and believes that her meeting with Ms. Griggs related to the reinstatement of her earlier case. Ms. Griggs is clear that the purpose of the meeting was to file a new case. I find that the terminology used in describing the process of filing a new case may have been misunderstood by Ms. Adams. I further hold that, even if Ms. Griggs lacked specific authority to dismiss the first case, that action was ratified by her client who, in seeking reinstatement, clearly desires to prosecute this Chapter 13 case.

- 2) In her representation of Debtor Katrina Adams in the second case, did Ms. Griggs fail to comply with the applicable standards of conduct by failing to be personally

available to meet with her client or discuss her case by telephone? MODEL RULES OF PROFESSIONAL CONDUCT, Rule 1.4 (1995), provides:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

Ms. Adams testified that she repeatedly called Ms. Griggs' office, was never able to speak with her, but was assured by Ms. Griggs' staff that her request for hearing on the pending dismissal would be filed. Ms. Griggs testified that they did speak on at least one occasion by telephone prior to the dismissal of the case and that Ms. Adams informed Ms. Griggs that she wished to obtain other counsel because she was dissatisfied with Ms. Griggs' representation. Clearly, the two of them spoke on other occasions because Ms. Griggs handled two minor criminal matters on behalf of Ms. Adams and they engaged in conversations on more than one occasion concerning that representation as well. I therefore find that Ms. Griggs did not fail to communicate personally with her client, although the level of contact was unacceptable to Ms. Adams, and was not as regular and substantial as it should have been.

3) Did Ms. Griggs fail to meet the applicable standards of conduct in zealous and competent representation of her client by failing to file a timely request for hearing

prior to Ms. Adams' second case being dismissed by the Court? MODEL RULES OF PROFESSIONAL CONDUCT, Rule 1.1 (1995), provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

MODEL RULES OF PROFESSIONAL CONDUCT, Rule 1.3 (1995), provides:

A lawyer shall act with reasonable diligence and promptness in representing a client.

I find that the record is insufficient to conclude that Ms. Griggs abandoned or mishandled the Debtor's second case. Ms. Adams clearly did seek and obtain, following dismissal, representation from another firm. What is not clear, however, is whether her notice to Ms. Griggs that she intended to make a change was given prior to the dismissal. Ms. Griggs' office records do not contain any notation that Ms. Adams and Ms. Griggs spoke on any day prior to the dismissal of the case. Apparently they did speak on May 13, one day prior to Ms. Adams initially meeting with her substitute counsel for the first time. On at least one other occasion a phone call was placed early in the morning to Ms. Griggs' home by Ms. Adams, and that they spoke on another undetermined date at a time when Ms. Griggs' office records would not reflect their conversation. Because I find that Ms. Griggs testimony that Ms. Adams had discharged her as counsel is credible

I cannot find that there was any willful abandonment of the client. However, Ms. Griggs' failure to document the file on a timely basis or to ensure that substitute counsel would be retained in time to protect Ms. Adams' rights evidence carelessness or inattentiveness to her client's needs. This would be sanctionable absent the fact that, through her new counsel, the Debtor was relieved from the Order of Dismissal and was permitted to reinstate the second case.

- 4) Did Ms. Griggs make a knowing misrepresentation to this Court in order to obtain a continuance of a previously scheduled hearing in this matter? MODEL RULES OF PROFESSIONAL CONDUCT, Rule 3.3 (1995), provides in part:

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Ms. Griggs was required to show cause why she should not be sanctioned for what appeared to be a misrepresentation concerning the scheduling of a matter in Superior Court which she relied upon to obtain a continuance of the first scheduled show cause hearing. Her explanation was that because the Superior Court case had been pending longer than the bankruptcy matter, she believed that it had precedence over this Court's

scheduled show cause hearing even though this Court's hearing was scheduled first. She also contended, because the domestic relations hearing had been continued from an earlier date, that it was proper to characterize it as having been scheduled first. While the Court does not agree that a close reading of the correspondence from Ms. Griggs necessarily supports this interpretation of the facts, I accept her explanation for why the status of the matter in Superior Court was represented in the way it was, and consider her transgression on this matter to be the result of carelessness rather than any intentional effort to misrepresent matters to the Court.

Conclusion

Based on the foregoing I conclude there is no probable cause on which this Court should refer the matter to the United States District Court for possible disbarment or suspension of Ms. Griggs' license to practice in this Court or other disciplinary action. Local Rule 83.5, United States District Court, Southern District of Georgia. It is clear that the operation of Ms. Griggs' office leaves much to be desired. It is disorganized. It may also be overworked, or undertrained, or both. The responsibility for correcting these deficiencies lies with Ms. Griggs. I find her to be earnest and sincere. I also find her capable - when she is not overextended. I urged her at the hearing in this matter to reexamine her many commitments, and the breadth of her practice in order to create order out of chaos. She has subsequently filed motions seeking to have counsel substituted in her place in most of her more active bankruptcy cases. She has acted responsibly in beginning to concentrate her practice into areas where she can be more productive,

competent, and responsive to her clients' needs. Her handling of isolated bankruptcy cases in the future should not be restricted in light of her recognition that managing a high volume bankruptcy caseload is beyond her capabilities, and her career goals, at present.

In the event she seeks in the future to resume filing a substantial number of bankruptcy cases, she is directed to advise the Court of that fact. She is further directed to explore and utilize, as appropriate, the many mentoring and continuing legal education programs offered by the State Bar of Georgia and/or the Savannah Bar Association in order to fully organize and train her office to undertake that which is now beyond its capability.

I therefore hold that these proceedings should be terminated without a referral to the United States District Court.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 28th day of April, 2000.