

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:03-bk-02488-ABB
Chapter 13

CLAYTON HACKNEY and
LINDA HACKNEY,

Debtors.

ORDER

This matter came before the Court on the Order to Show Cause (Doc. No. 315) entered pursuant to Federal Rule of Bankruptcy Procedure 9011(c)(1)(B) directing John Vernon Head, Esquire (“Head”), former counsel for the Debtors Clayton Hackney and Linda Hackney (collectively, the “Debtors”), to appear and show cause why he has not violated Federal Rule of Bankruptcy Procedure 9011(b) by filing the Suggestion of Bankruptcy (Doc. No. 311). A hearing was held on May 15, 2007 at which Head and Laurie K. Weatherford, the Chapter 13 Trustee (“Trustee”), appeared. The Court makes the following findings and conclusions after reviewing the pleadings, hearing argument, and being otherwise fully advised in the premises.

An Order was entered on September 26, 2006 (Doc. No. 275)¹ directing Head to disgorge the sum of \$10,000.00 to the Trustee within fourteen days. Head executed and filed the Suggestion on February 20, 2007. The Suggestion contains the caption of the Debtors’ bankruptcy case and states: “The undersigned hereby gives notice of the filing of bankruptcy by the Firm, John Vernon Head, P.A., under the case styled above in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division, on February 20, 2007.” The Suggestion provides no case number or case name for a case filed by Head’s law firm.

Federal Rule of Bankruptcy Procedure 9011 allows for sanctions to be imposed against the attorneys, law firms, and/or the parties where a paper is presented to the Court for any improper purpose or

¹ The Order affirmed the findings and directives of the June 15, 2006 Order (Doc. No. 245), with the exception it awarded Head \$2,000.00 for fees incurred in his representation of the Debtors and allowed him to retain such fees.

the claims are unsupported. The Court has inherent powers to address wrongful conduct. In re Mroz, 65 F.3d 1567, 1575 (11th Cir. 1995) (*citing Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)).

Head certified in filing the Suggestion his firm had filed a bankruptcy case and the automatic stay provisions of 11 U.S.C. Section 362(a) had been invoked.² Those certifications were not true. Head conceded in open Court no bankruptcy case had been filed in the Middle District of Florida on February 20, 2007 by him or his firm and no case was subsequently filed.

Members of The Florida Bar and every foreign attorney authorized to practice before any court in Florida for a specific case are governed by the Florida Rules of Professional Conduct. R. Regulating Fla. Bar 1-10.1, 3-4.1.³ An attorney is to fulfill three roles: (i) a “representative of clients;” (ii) “an officer of the legal system;” and (iii) “a public citizen having special responsibility for the quality of justice.” *See* Rules Regulating the Florida Bar, Preamble. It is the lawyer’s duty, as an officer of the legal system, to “demonstrate respect for the legal system and for those who serve it, including judges . . .” Id.

Attorneys who practice in this Court are subject to the Florida Rules of Professional Conduct and subject to the discipline of this Court for violations pursuant to Local Rule 2090-2:

Any attorney who appears in this Court, including those appearing pro hac vice or pursuant to the provisions of Local Rule 2090-1(c)(1) or (2), shall be deemed to be familiar with, and shall be governed by these rules; and shall also be deemed to be familiar with and governed by the Rules of Professional Conduct and other ethical limitations or requirements then governing the professional behavior of members of

² The purpose of a Suggestion of Bankruptcy is “to provide notice to the Clerk [of the Court], as well as to all parties in interest, that the automatic stay provisions of 11 U.S.C. § 362 have been invoked . . .” In re Johnson, 336 B.R. 568, 574 (Bankr. S.D. Fla. 2006).

³ Rule 1-10.1 of the Rules Regulating the Florida Bar entitled “Compliance” provides: “All members of The Florida Bar shall comply with the terms and the intent of the Rules of Professional Conduct as established and amended by this court.” The Rules of Discipline are found in Chapter 3 and the Rules of Professional Conduct are found in Chapter 4 of the Rules Regulating the Florida Bar.

The Florida Bar and shall be subject to the disciplinary powers of the Court, including the processes and procedures set forth in District Court Local Rule 2.04.⁴

Rule 4-3.3(a)(1) of the Florida Rules of Professional Conduct provides a “lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal.” Head represented to the Court through the Suggestion his firm had filed for bankruptcy protection and was entitled to the benefits of the automatic stay when the firm had not filed a bankruptcy case. He knowingly made false statements of material facts to the Court in filing the Suggestion.

Head’s response to the Order to Show Cause fails to demonstrate why he should not be sanctioned pursuant to Rule 9011 and the Court’s inherent powers to sanction wrongful conduct. Head falsely represented his firm had filed for bankruptcy protection and the automatic stay was in effect. He willfully abused the judicial process by filing the Suggestion. He violated Rule 4-3.3 of the Florida Rules of Professional Conduct and Rule 9011(b).⁵ His actions are subject to sanctions pursuant to Rule 9011(c) and the Court’s inherent powers to issue sanctions for such conduct.

A Court has discretion to “impose an appropriate sanction,” which may include “directives of a nonmonetary nature.” Fed. R. Bankr. P. 9011(c), (c)(2). Prohibiting Head and his law firm from filing any petition, action, complaint, claim, or pleading in the United States Bankruptcy Court for the Middle District of Florida for a ninety-day period, without leave of Court, is an appropriate sanction.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that John V. Head and John V. Head, P.A., and their legal representatives, administrators,

successors and assigns, are hereby prohibited from filing any petition, action, complaint, claim, or pleading in the United States Bankruptcy Court for the Middle District of Florida without leave of Court for a period of ninety (90) days from the date of entry of this Order.

Dated this 26th day of July, 2007.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

⁴ District Court Local Rule 2.04(a) provides: “Any member of the bar of this Court, admitted generally under Rule 2.01 or specially under Rule 2.02, may, after hearing and for good cause shown, be disbarred, suspended, reprimanded or subjected to such other discipline as the Court may deem proper.”

⁵ *In re Finkelstein*, 901 F.2d 1560, 1564 (11th Cir. 1990) (“The state codes of professional responsibility do not by their own terms apply to sanctions in the federal courts and any standards imposed are a matter of federal law . . . The sanctioning court must, however, hold attorneys accountable to recognized standards of professional conduct.”).