UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

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VEXING ISSUES IN CONSUMER CASES

Judge Robert L. Jones

Judge Robert L. Jones
U.S. Bankruptcy Court
Northern District of Texas
Abilene, Amarillo, Lubbock,
and San Angelo Divisions
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Internet-Based Law Firms and Use of Appearance Counsel – Is this a Good Model?

- *In re Pearson*, No. 20-30077, ECF No. 69 (Bankr. N.D. Tex. Sept. 22, 2020).

Judge Jernigan issued the *Order Resolving Matters Set Forth in April 9, 2020 Show Cause Order by: (A) Requiring Disgorgement of Fees; and (B) Prescribing Certain Limitations on Use of "Appearance Attorneys" by Attorney Nicholas M. Wajda*. Debtor's counsel was identified as operating an internet-based law firm, doing business as both Wajda & Associates, APC and Recovery Law Group.

Judge Jernigan set a show-cause hearing in this chapter 13 case because of her concerns "regarding the professional conduct of the Debtor's attorney." The conduct included:

- accepting a $1,500 post-petition retainer without leave of court in violation of the court's standing order for chapter 13 cases;
- failing to amend debtor's petition, schedules, SOFA, and creditors matrix, which were "grossly incomplete and inaccurate";
- filing a nonsensical plan;
- not appearing at debtor's § 341 meeting or at a contentious hearing on a stay motion (for which he sent an ill-prepared "appearance counsel" who had never met the debtor).

After the show-cause hearing, Judge Jernigan made the following findings:

- though counsel had filed 52 cases in the Northern District, he never actually appeared in court in the Northern District of Texas or attended a § 341 creditors meeting;
- counsel has a registered office address in Dallas, but he is never there; instead, he offices in Culver City, California;

- counsel failed to check for any prior bankruptcy cases filed by the debtor (which there were);
- counsel failed to explain why debtor's case deficiencies were never addressed; this included deficiencies with the debtor's schedules, SOFA, petition, and creditors matrix;
- counsel used ill-informed appearance counsel at the § 341 creditors meeting.

The court concluded that counsel's regular use of "appearance counsel" is "improper and signifies a conscious disregard of his clients." The "routine, regular delegation of duties to a third-party counsel . . . does not reflect proper adherence to [counsel's] fiduciary duties to his clients; does not satisfy the requirements imposed on counsel by Texas Disciplinary Rules of Professional Conduct 1.01(b)(1), (2) and 1.04(f); and does not meet the spirit of paragraph 21(e) of the Standing Order Concerning All Chapter 13 Cases regarding standard fees in a Chapter 13 bankruptcy case."

The court ordered counsel to disgorge the $1,500 unauthorized post-petition retainer and that he be barred from using "appearance attorneys" as a routine matter in cases in the Northern District.

Judge Jernigan provided a definition of an "Internet-Based Law Firm" as a law firm that solicits clients through its internet presence or advertising (without regard to location), prepares bankruptcy paperwork for the client, and then largely refers a client to a local attorney for appearing at § 341 meetings and hearings. *Citing* Stephen W. Sather, *Ethics and the Internet Law Firm*, 35 Am. Bankr. Inst. J. 38 (December 2016).

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