UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	**Case No. 98-2048-CH**
	:	
KURT BALES and	:	
BRIDGET BALES,	:	**Chapter 7**
	:	
Debtors.	:	

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ORDER—ORDER TO SHOW CAUSE

The Order to Show Cause came on for hearing on September 30, 1998. Debtors appeared in person and with their attorney of record, Donald F. Neiman. The court having heard the evidence and the arguments took the matter under advisement. The court, upon review of the pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

JURISDICTION

This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the order of the United States District Court, Southern District of Iowa. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

FACTS

1. Debtors filed a chapter 7 petition on May 5, 1998. This was a short form filing which included the petition and a summary of schedules. The schedules and statements were filed on May 15, 1998.

2. Debtors were represented by counsel, Donald F. Neiman, Bradshaw, Fowler, Proctor & Fairgrave, P.C., at all material times herein. Mr. Neiman signed the petition as the attorney for the joint debtors.

3. The petition stated that Debtors were formerly doing business as Selab Corporation, Inc.

4. The petition stated that Debtors' street address was as follows: P.O. Box 1163, Ames, IA 50014-1163.

5. Debtors' true street address was at all times material herein 3609 Kingswood Place, Waterloo, Iowa. Waterloo, Black Hawk County, Iowa is located in the Northern District of Iowa.

6. The petition stated that Debtors' county of residence or the principal place of business was Story County, Iowa. Ames, Story County, Iowa is located in the Southern District of Iowa.

7. Debtors' true county of residence and principal place of business was at all times material herein Black Hawk County, Iowa.

8. The petition stated that Debtors' mailing address was "same."

9. Debtors established the P.O. Box in Ames, Iowa, for the purposes of filing their bankruptcy petition in Des Moines, Iowa, which is located in the Southern District of Iowa.

10. Debtors rented the P.O. Box in Ames approximately one month before they filed their chapter 7 petition.

11. The petition stated that Debtors had been domiciled or had a residence, principal place of business, or principal assets in the Southern District of Iowa for 180

days immediately preceding the date of the petition or for a longer part of such days in any other district.

12. Debtors have continuously lived in Waterloo and conducted their business in Waterloo, Black Hawk County, Iowa, since 1989.

13. Debtors have never resided in Ames or Story County, Iowa, and have never conducted their business in said city or county.

14. Debtors have not lived in or conducted their business in the Southern District of Iowa since 1989.

15. Debtors intentionally located counsel in the Southern District of Iowa and filed in this district for the stated reason that they wished to avoid publicity in Waterloo, their place of residence and place of doing business.

16. Their attorney knew that their residence and domicile were in Waterloo and that their business was conducted in that city and county when he signed the petition and filed it in this court.

17. Debtors revealed that their true mailing address was 3609 Kingswood Place, Waterloo, Iowa at the time of the meeting of creditors on June 12, 1998. The minutes of the section 341 meeting reveal that Kurt Bales filed a bankruptcy petition in 1984 but Bridget Bales had never filed a previous bankruptcy petition.

18. None of the addresses of the secured creditors are located in the Southern District of Iowa. Counsel for one of the secured creditors is shown with a Des Moines, Iowa address.

19. There are 35 scheduled unsecured nonpriority debts. The majority of these creditors are credit card companies with various places of business. Three of these creditors are shown with Des Moines, Iowa addresses.

20. Schedule G, Executory Contracts and Unexpired Leases, schedules a creditor with a Waterloo address.

21. Schedule H, Codebtors, schedules a codebtor, Selab Corporation, Inc., with a Waterloo address.

22. Schedule I schedules Selab Corporation, Inc. as the name of the employer for both Debtors. The address of the employer is shown as Waterloo, Iowa.

23. The Statement of Financial Affairs, Paragraph 4a, schedules one lawsuit, which was a pending foreclosure proceeding in the Iowa District Court, Black Hawk County.

24. Debtors scheduled their business as Selab Corporation, Inc., Waterloo, Iowa. The books and records of this corporation were shown as being located in Waterloo, Iowa. The Statement of Financial Affairs states that Kurt Bales is the president of this corporation and he owns 100% of the stock.

25. Debtors, individually, signed the following oath on their petition:

> I declare under penalty of perjury that the information provided in this petition is true and correct. (If petition is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7) I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

26. A scheduled creditor, Iowa Community Credit Union, filed its Motion to Transfer venue to the Bankruptcy Court for the Northern District of Iowa on June 4, 1998. Iowa Community Credit Union is a business located in Waterloo.

27. Debtors objected to the motion on July 14, 1998. (DN22). The basis of this objection was that Debtors have done business in both the Northern and Southern District of Iowa; the major creditor of the Debtors, Greentree Financial Service Inc., was represented by counsel located in West Des Moines, Iowa, and it would be inconvenient for said creditor and the debtors to transfer this case to the Northern District; the first meeting of creditors had already been held and the trustee had already filed the report of abandonment of property in a no-asset case; and judicial economy would indicate that this case was a no-asset case and the interest of justice would be best served by allowing the case to continue to finalization in the Southern District of Iowa.

28. The motion for change of venue was set for hearing on September 3, 1998 by order entered August 5, 1998.

29. Debtors' discharge was entered on August 12, 1998.

30. The Order To Show Cause was entered on September 17, 1998. This order is incorporated by reference herein.

DISCUSSION

Federal Rule of Bankruptcy Procedure 9011 provides, as relevant herein, as follows:

> (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. . .

(b) REPRESENTATION 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 herein are warranted by existing law or by a nonfrivolous 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. . .

(c) SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. . .

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanction may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the

> claims made by or against the party which is, or whose attorneys are, to be sanctioned.
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> (3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed..
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> (d) INAPPLICABILITY TO DISCOVERY. . .
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> (e) VERIFICATION. . .
>
> (f) COPIES OF SIGNED OR VERIFIED PAPERS. . . .

Fed. R. Bankr. P. 9011.

All bankruptcy cases are begun by the filing of a petition by or against a debtor. 11 U.S.C. §§ 301-303. The filing of the petition automatically stays most actions against the debtor or the debtor's property, 11 U.S.C. § 362(a), and creates a bankruptcy estate. 11 U.S.C. § 541(a). All petitions, lists, schedules, statements and amendments thereto must be verified or contain an unsworn declaration, under penalty of perjury, as provided in 28 U.S.C. § 1746. Fed. R. Bankr. P.1008.

Fed. R. Bankr. P. 9011 requires that the petition be signed by at least one attorney of record in the attorney's individual name. The signature of an attorney or a party to the petition constitutes a certification that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the document 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. The signature additionally certifies that the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

It is important to note that the bankruptcy petition is treated differently than all other documents by Fed. R. Bankr. P. 9011. There is a "safe harbor" provision in Rule 9011(c)(1)(A) which provides that if a challenged paper, claim, defense, contention,

allegation, or denial is withdrawn within 21 days after service of the motion for sanctions, the motion for sanctions may not be filed with or presented to the court. This limitation does not apply if the conduct alleged is the filing of a petition in violation of Rule 9011(b).

The Advisory Committee Note to Rule 9011(c)(1)(A) (1997) reads as follows:

> The "safe harbor" provision contained in subdivision (c)(1)(A), which prohibits filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under § 362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and hearing.

Rule 9011 requires that the petition be read by the signer before signing. The defense of personal ignorance of defects in the document is thereby eliminated by the rule. Thornton v. Wahl, 787 F. 2d 1151, 1154 (7th Cir. 1986), cert. denied, 479 U.S. 851, 107 S. Ct. 181, 93 L. Ed. 2d 116 (1986). Rule 9011 also creates an affirmative duty to investigate the law and facts before any paper may be signed. Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 253 (2nd Cir. 1985).

Fed. R. Bankr. P. 9011 is the counterpart to Rule 11 of the Federal Rules of Civil Procedure. The law interpreting Rule 11 is applicable to Rule 9011 cases. In re Coones Ranch, Inc., 7 F.3d 740, 742 n.4 (8th Cir. 1993).

The established standard for imposing sanctions is an objective determination of whether a party's conduct was reasonable under the circumstances. In re Mahendra, 131 F.3d 750, 758 (8th Cir. 1997), cert. denied, Snyder v. DeWoskin, 118 S. Ct. 1678, 140 L. Ed. 2d 815 (1998). An attorney's good faith is not a defense against sanctions under Rule

9011, In re Braun, 152 B.R. 466, 472 (N.D. Ohio 1993), and a finding of bad faith or malice is not a prerequisite to the imposition of Rule 11 sanctions. In re Anderson, 128 B.R. 850, 857 (D. R.I. 1991).

An objective standard is applied to determine whether a "reasonable inquiry" into fact and law was made. What constitutes a reasonable inquiry depends on the circumstances. The Court considers the totality of the circumstances, including: the amount of time available for investigation; the extent to which the attorney had to rely on the client for the factual foundation underlying the pleading, motion, or other document; whether the case was accepted from another attorney; the complexity of the facts in the case; the feasibility of the prefiling investigation; and the knowledge, experience, and expertise of the signer. Brown v. Federation of State Medical Boards of U.S., 830 F.2d 1429, 1435 (7th Cir. 1987); Donaldson v. Clark, 819 F.2d 1551, 1556 (11th Cir. 1987). Baseless misrepresentations and deception are not excused and may produce sanctions imposed by the court. Thornton v. Wahl, 787 F.2d 1151 (7th Cir. 1986); Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531 (9th Cir. 1986); Perkinson v. Gilbert/Robinson, Inc., 821 F.2d 686 (D.C. Cir. 1987).

Debtors deliberately sought out counsel who would be willing to file a petition in a district other than the one in which they lived and conducted their business. This led them to Des Moines where they retained Mr. Neiman to accomplish their goals. The facts and circumstances surrounding their residence and place of doing business were furnished to Mr. Neiman prior to the preparation and filing of the petition. A mailing address was established in Ames, Iowa, so that the petition would show a contact with this district. However, this was a false statement.

A reasonable attorney could not form a reasonable belief that the factual allegations of the petition were true, and Rule 9011 was violated. Debtors and counsel maintain that the petition was filed in this district for convenience. It is evident that "convenience" as used here means the convenience of counsel for the debtors. It certainly was not convenient for the debtors to travel to Des Moines, a distance of approximately 100 miles.

Debtors and counsel perceive this matter as merely a matter of filing a case in the wrong district. That is not the case. The gravamen of this matter is that materially false information was placed on the petition to create the impression that this district was the proper district in which to file the petition. Fed. R. Bankr. P. 1014 provides for a change of venue which includes transfers in the interest of justice and for the convenience of the parties. There is no question that cases are filed in both districts of this state by residents of the other district and such cases are subject to motions under Rule 1014. However, when false and misleading information is used on the petition to buttress the filing in the wrong district, a different matter results. The petition was filed in this district to avoid embarrassment to the debtors. This is an improper purpose.

Debtors and counsel maintain that their true residence and place of doing business were given at the meeting of creditors on June 12, 1998, over a month after the petition was filed and after the bankruptcy processes were commenced in this district. This disclosure is too late. Rule 11 compliance is evaluated at the time the petition was signed and filed with this court. Oliveri v. Thompson, 803 F.2d 1265, 1274 (2nd Cir. 1986), cert. denied; Suffolk County v. Graseck, 480 U.S. 918, 107 S. Ct. 1373, 94 L. Ed. 2d 689 (1987); Greenberg v. Sala, 822 F.2d 882, 887-89 (9th Cir. 1987).

In imposing sanctions under Rule 9011 the court should impose the least severe sanction to serve the rule's principal goal of deterrence. In re Cedar Tide Corp., 164 B.R. 808, 818 (E.D. N.Y. 1994); In re Braun, 152 B.R. 466, 473 (N.D. Ohio 1993). Debtors have deliberately misrepresented essential facts in their petition in an attempt to manipulate the judicial system. Debtors have displayed bad faith as they sought the protection offered by the community in the bankruptcy code and rules. This type of conduct merits a harsh response by the court in sanctioning this type of conduct and deterring others from the same type of conduct.

Dismissal of the petition is appropriate where the filing in an improper venue evidences bad faith. In re Hall, Bayoutree Associates, Ltd., 939 F.2d 802, 805 (5th Cir. 1991). The court is mindful of the fact that a discharge was entered on August 12, 1998, and that the revocation of a discharge is normally governed by 11 U.S.C. § 727(d) and (e) and Fed. R. Bankr. P. 7001(4). However, this proceeding is one of sanctions under Rule 9011 for abuse of judicial process and a proper sanction is the revocation of the discharge granted in this district and dismissal of the petition without prejudice.

The imposition of a sanction upon counsel for the debtors presents a different problem. Counsel for the debtors has performed in a professional manner for many years and, to the best information and belief of this court, has never engaged in this type of practice on any prior occasion. In this case, counsel failed to conduct himself within a reasonable standard of professionalism by engaging in conduct which would circumvent the procedures established by our legal system. This is detrimental to the legal system and tends to undermine public confidence in our legal system. As an officer of this court, Mr. Neiman is expected to act in a manner other than as shown in this case.

Considering all the aspects of counsel's past practice in this court, this court believes that an admonition is the proper sanction to be imposed as this will be sufficient to prevent a repetition of this type of practice in the future.

IT IS ACCORDINGLY ORDERED, as follows:

(1) The discharge entered on August 12, 1998 is revoked, and this case is dismissed without prejudice.

(2) Mr. Donald Neiman is admonished that this type of conduct constitutes a clear violation of Fed. R. Bankr. P. 9011, and this is an unacceptable practice in this court or in any other court.

Dated this _____ day of February, 1999.

_____
RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT