

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re: ) Case No. 03-23759  
)  
REGINA ANN MILEO, ) Chapter 7  
)  
Debtor. ) Judge Arthur I. Harris

ORDER DECLINING, AT THIS TIME, TO IMPOSE CIVIL CONTEMPT  
SANCTIONS AGAINST NICK MILEO

A hearing was held on December 21, 2004, on the order on Nick Mileo to appear and show cause (“Show Cause Order”)(Docket #14) why he should not be held in civil contempt for failure to comply with an earlier order of this Court to appear for examination and produce documents (Docket #10). Virgil Brown, the trustee, appeared at the hearing. Nick Mileo did not appear at the hearing, despite being ordered to do so by this Court. For the reasons that follow, the Court declines, at this time, to impose civil contempt sanctions against Nick Mileo.

BACKGROUND

On July 9, 2004, the trustee filed a motion pursuant to Bankruptcy Rule 2004 for examination and request to produce documents on Nick Mileo (Docket #9). Nick Mileo is the debtor’s ex-husband. The Court entered an order setting the examination for August 30, 2004, at 10:00 a.m. at the Examination Room in the BP America Building, 200 Public Square, 2nd Floor - U.S. Department of Justice, Cleveland, Ohio 44114 (Docket #10). Both the trustee’s motion and the order

were served on Mr. Mileo (Docket #9 & 11). Mr. Mileo did not file a response to the trustee's motion or order. Mr. Mileo also failed to appear at the August 30, 2004, examination or produce the requested documents.

Thereafter, the trustee filed a motion for Mr. Mileo to appear and show cause why he should not be held in civil contempt for his failure to comply with the earlier order requiring his appearance to be examined and to produce documents (Docket #12). Both the trustee's motion to show cause and notice of the hearing on the trustee's motion (Docket #13) were served on Mr. Mileo.

Mr. Mileo did not file a response to the trustee's motion or appear at the November 23, 2004, hearing.

The Court then issued the Show Cause Order directing Mr. Mileo to appear in Court for a hearing on December 21, 2004 (Docket #14). Notice of the Show Cause Order and hearing was served on Mr. Mileo (Docket #15). Mr. Mileo failed to file a response to the Show Cause Order or appear at the hearing.

## DISCUSSION

The procedure to compel the attendance of an entity for examination and for the production of documents is contained in Rule 2004(c) of the Federal Rules of Bankruptcy Procedure. Rule 2004(c) provides

*(c) Compelling Attendance and Production of Documents.*

The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

Rule 9016, in turn, incorporates by reference Rule 45 of the Federal Rules of Civil Procedure. Pursuant to Rule 45(b), subpoenas are to be served in person, and, if the person's attendance is commanded, should also include tendering of the witness fee for one day's attendance and the mileage allowed by law.<sup>1</sup>

Personal service is required when serving a subpoena to insure that the witness receives actual notice of the examination and the request to produce documents. Further, personal service impresses upon the witness the importance of the examination and the necessity to attend and comply with the document request. If a subpoena is not personally served, and instead, only a court order regarding a 2004 examination is served on a witness by regular mail, there is a chance the witness may not receive the order. Without the guarantee of actual notice provided by personal service, there is always the possibility the witness may

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<sup>1</sup> The Court's Bankruptcy Fee Schedule, located on the Court's website, [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov), provides that the witness fee, per day is \$40.00 and the witness mileage, per mile is \$.405.

not appear at the examination and produce documents. When proper personal service of a subpoena is made and the witness does not appear at the examination, contempt remedies are available under Rule 45(e).

In this matter, it is unclear whether a subpoena was served. There is nothing in the record to indicate that a subpoena was personally served on Mr. Mileo regarding the August 2004 examination and request to produce documents. Accordingly, the Court declines to impose civil sanctions at this time. The Court reserves the right to consider contempt sanctions against Mr. Mileo, should the trustee file a renewed motion for contempt under Rule 45(e) and provide evidence that Mr. Mileo has failed to comply with a subpoena personally served on him pursuant to Rule 45.

#### CONCLUSION

For the foregoing reasons, the Court declines, at this time, to impose civil contempt sanctions against Nick Mileo.

IT IS SO ORDERED.

/s/ Arthur I. Harris     03/02/2005  
Arthur I. Harris  
United States Bankruptcy Judge