

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:	)	Chapter 13
)	
ANDRE FARRIER	)	Case No. 04-25097
JOHIRA MADDOX	)	Case No. 04-25727
PAUL JOHNSON	)	Case No. 04-25728
BARBARA BROWN	)	Case No. 04-25730
SHIRLEY LONG	)	Case No. 05-10003
SONJA MORTON	)	Case No. 05-10795
LINDA PRITCHETT	)	Case No. 05-12608
KAI WINGO	)	Case No. 05-13437
HISAMI JOHIRA	)	Case No. 05-13810
DAVID ROWE	)	Case No. 05-14267
DAVID ROWE	)	Case No. 05-14268
)	
Debtors.	)	Judge Arthur I. Harris

ORDER FOR ATTORNEY DEA L. CHARACTER
TO APPEAR AND SHOW CAUSE

The Court's review of cases recently filed by attorney Dea L. Character and assigned to the undersigned judge reveals what appears to be a disturbing pattern of deficiencies that may warrant the imposition of sanctions on counsel. These deficiencies include: incomplete plans, schedules, and statements; the failure to file fee disclosure statements, creditor matrices, and declarations authorizing the electronic filing of petitions; and nonpayment of filing fees. Accordingly, for the reasons that follow, attorney Dea L. Character is ordered to appear at an evidentiary hearing at 9:00 A.M. on July 18, 2005, in Courtroom 1A of the Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio,

and show cause why she should not be sanctioned for the filing deficiencies in the above-captioned cases.

DISCUSSION

This Court has inherent authority to impose sanctions on offending parties and counsel. *See, e.g., Mapother & Mapother, PSC v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996) (“Bankruptcy courts, like Article III courts, enjoy inherent power to sanction parties for improper conduct.”); *In re French Bourekas, Inc.*, 175 B.R. 517, 525 (Bankr. S.D.N.Y. 1994) (noting that bankruptcy court possesses power to impose sanctions as inherent authority and by virtue of 11 U.S.C. § 105(a)). A Court must be careful when considering whether to impose sanctions. “When a court metes out a sanction, it must exercise such power with restraint and discretion. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). The sanction levied must thus be commensurate with the egregiousness of the conduct.” *In re Downs*, 103 F.3d at 478.

Rule 9011

Rule 9011 of the Federal Rules of Bankruptcy Procedure was amended in 1997 to conform to the 1993 changes to Rule 11 of the Federal Rules of Civil Procedure. Rule 9011 provides in pertinent part:

(b) *Representations 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 therein 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 on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) *Sanctions*. . . .

(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.

28 U.S.C. § 1927

Section 1927 of Title 28, United States Code, provides:

Counsel's liability for excessive costs

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings

in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

The Court is aware of a split among the circuit courts as to whether bankruptcy courts may impose sanctions pursuant to 28 U.S.C. § 1927. *Compare In re Cohoes Indus. Terminal, Inc.*, 931 F.2d 222, 230 (2d Cir. 1991) (“A bankruptcy court may impose sanctions pursuant to 28 U.S.C. § 1927.”), with *In re Courtesy Inns, Ltd.*, 40 F.3d 1084, 1086 (10th Cir. 1994) (“[T]he bankruptcy court may not impose sanctions under § 1927.”). In the absence of controlling precedent in the Sixth Circuit, and absent persuasive argument to the contrary, this Court is inclined to agree with those courts holding that a bankruptcy court may indeed impose sanctions pursuant to 28 U.S.C. § 1927. *See, e.g., In re Volpert*, 186 B.R. 240, 242-45 (N.D. Ill. 1995) (explaining that bankruptcy courts are not a separate court from the district court but “still fall within the ambit of [28 U.S.C. §§ 451 and 1927] by virtue of their status as units of the district courts, which clearly are ‘courts of the United States.’ ”), *aff’d*, 110 F.3d 494 (7th Cir. 1997). *See also* 28 U.S.C. § 151 (“[T]he bankruptcy judges in regular active service shall constitute a unit of the district court.”); 28 U.S.C. § 152(a)(1) (“Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.”); David S. Kennedy & Tisha L. Federico, *If the*

United States Bankruptcy Court Is Not a “Court of the United States,” Then What Is It?, 28 U. MEM. L. REV. 859 (1998).

11 U.S.C. § 105

Section 105 of the Bankruptcy Code provides in pertinent part:

Power of court.

(a) The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Specific Conduct That Appears to Merit Sanctions

The specific conduct that appears to merit sanctions includes the following:

<u>Case Name</u>	<u>Case Number</u>	<u>Deficiencies</u>
Andre Farrier	04-25097	no plan, schedules, or statements; no compensation statement of attorney for debtor; no declaration authorizing electronic filing; no timely-filed creditor matrix; nonpayment of filing fees (\$134 in fees remains unpaid)
Johira Maddox	04-25727	no plan, schedules, or statements; no compensation statement of attorney for

		debtor; no declaration authorizing electronic filing; nonpayment of filing fees (\$83 in fees remains unpaid)
Paul Johnson	04-25728	no plan, schedules, or statements; no compensation statement of attorney for debtor; no declaration authorizing electronic filing; nonpayment of filing fees (\$134 in fees remains unpaid)
Barbara Brown	04-25730	no plan, schedules, or statements; no compensation statement of attorney for debtor; no declaration authorizing electronic filing; nonpayment of filing fees (\$134 in fees remains unpaid)
Shirley Long	05-10003	no declaration authorizing electronic filing; nonpayment of filing fees (\$134 in fees remains unpaid)
Sonja Morton	05-10795	no plan, schedules, or statements; no compensation statement of attorney for debtor; no declaration authorizing electronic filing; no timely-filed creditor matrix; nonpayment of filing fees (\$134 in fees remains unpaid)
Linda Pritchett	05-12608	plan, schedules, and statements not timely-filed; no compensation statement of attorney for debtor; installment fee application is inconsistent with debtor's statement in court on April 14 that she paid her attorney \$700
Kai Wingo	05-13437	no plan, schedules, or statements; no timely-filed creditor matrix; no declaration

authorizing electronic filing; nonpayment of filing fees (\$134 in fees remains unpaid)

Hisami Johira	05-13810	no plan, schedules, or statements
David Rowe	05-14267	no plan, schedules, or statements
David Rowe	05-14268	duplicate filing; nonpayment of filing fees (\$134 in fees remains unpaid)

Range of Potential Sanctions

Among the sanctions that the Court is considering are:

- ordering debtors' counsel to satisfy personally all filing fees that remain unpaid in these case;
- disgorgement of fees previously paid to debtors' counsel in each of these cases;
- prohibiting counsel from filing any new petitions in this district until (1) she has paid all outstanding filing fees in the above-captioned cases, and (2) counsel has returned attorney's fees received in connection with each of these case;
- referral of debtors' counsel to relevant disciplinary authority such as the Office of Disciplinary Counsel of the Supreme Court of Ohio or the Committee on Complaints and Policy Compliance of the United States District Court for the Northern District of Ohio.

CONCLUSION

For the foregoing reasons, attorney Dea L. Character is ordered to appear at an evidentiary hearing at 9:00 A.M. on July 18, 2005, in Courtroom 1A of the Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio, and show cause why she should not be sanctioned for the filing deficiencies in the above-captioned cases

IT IS SO ORDERED.

/s/ Arthur I. Harris 6/24/2005
Arthur I. Harris
United States Bankruptcy Judge