

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 03-22867
)
FRANK CEASOR, JR.,) Chapter 13
Debtor.)
) Judge Arthur I. Harris
)

MEMORANDUM OF OPINION

This matter is before the Court on the Chapter 13 Trustee's motion for an order of civil contempt (Docket #30) against debtor's counsel, Donald Nance, as well as attorney Nance's application for compensation (Docket #35) in the amount of \$1,200. For the reasons that follow, attorney Nance is ordered to pay \$600 to the Chapter 13 Trustee on or before November 4, 2005, and to file a notice of such payment with the Court on or before the same date. If such payment and notice are made on or before November 4, 2005, the Court will approve counsel's fees in the amount of \$600, without further order. If such payment and notice are not made on or before November 4, 2005, then counsel's continued noncompliance will be the subject of further orders of this Court.

BACKGROUND

Debtor filed his petition on September 26, 2003. At the confirmation hearing on November 20, 2003, the Court indicated that the Chapter 13 plan would be confirmed, but attorney Nance did not timely submit a proposed confirmation

order. A confirmation order prepared by the Chapter 13 Trustee was eventually entered in January 2005. Because counsel did not timely submit a proposed confirmation order, the Court disallowed attorney's fees and ordered attorney Nance to file a detailed fee application in 30 days or be subject to disgorgement (Docket #22).

On February 24, 2005, the Chapter 13 Trustee moved for disgorgement of fees (Docket #24). Attorney Nance did not respond, and the motion was granted. In an order entered on May 19, 2005 (Docket #28), the Court ordered attorney Nance to turn over \$1,200 to the Chapter 13 Trustee "forthwith." On September 6, 2005, the Chapter 13 Trustee moved for an order holding attorney Nance in civil contempt (Docket #30) for failure to obey the May 19 order. Attorney Nance responded (Docket #34) and filed an application for attorney's fees (Docket #35).

DISCUSSION

This Court has authority to order disgorgement of fees paid to debtor's counsel under 11 U.S.C. §§ 105 and 329, as well as the Court's inherent authority. Furthermore, although the Court's Administrative Order 03-6 permits a \$200 fee reduction for failure to timely submit a confirmation order, counsel's noncompliance goes beyond the mere failure to timely submit a confirmation order. Counsel also failed to submit a detailed fee application within the 30 days

required under the January 31, 2005, confirmation order and failed to comply with the May 19, 2005, order to disgorge \$1,200 to the Chapter 13 Trustee for the benefit of the debtor's estate "forthwith." Such noncompliance merits a reduction beyond \$200.

CONCLUSION

For the foregoing reasons, attorney Nance is ordered to pay \$600 to the Chapter 13 Trustee on or before November 4, 2005, and to file a notice of such payment with the Court on or before the same date. If such payment and notice are made on or before November 4, 2005, the Court will approve counsel's fees in the amount of \$600, without further order. If such payment and notice are not made on or before November 4, 2005, then counsel's continued noncompliance will be the subject of further orders of this Court.

IT IS SO ORDERED

/s/ Arthur I. Harris 10/24/2005
Arthur I. Harris
United States Bankruptcy Judge