

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 05-15113
)
GWENDOLYN HAYWOOD,) Chapter 13
Debtor.)
) Judge Arthur I. Harris
)

ORDER

Before the Court are the Chapter 13 Trustee's motion for an order holding Marcus L. Poole in civil contempt and Mr. Poole's response. The Chapter 13 Trustee ("the Trustee") seeks an order holding Mr. Poole in civil contempt for his failure to attend a Rule 2004 examination as ordered by the Court (Docket #25). For the reasons that follow, the Trustee's motion is denied without prejudice.

On August 10, 2005, the Court entered an order directing Mr. Poole and the Debtor to appear for examination on August 22, 2005, pursuant to Bankruptcy Rule 2004. Neither Mr. Poole nor the Debtor appeared at the examination. At the hearing on the Trustee's motion, the Trustee stated that Mr. Poole also failed to notify the Trustee that neither he nor his client would be attending the examination. In response Mr. Poole stated that his failure to attend the meeting was a simple oversight and was not intentional. Mr. Poole also stated that the Debtor was unavailable for the examination due to health issues.

In contempt proceedings, “the basic proposition is that all orders and judgments of the court must be complied with promptly.” *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 590 (6th Cir. 1987). “The bankruptcy court’s contempt powers flow from Bankruptcy Code section 105(a) and the inherent power of a court to enforce compliance with its lawful orders.” *In re Walker*, 257 B.R. 493 (Bankr. N.D. Ohio 2001) (citations omitted). A bankruptcy court’s inherent powers and its powers under section 105(a), while broad, are not limitless and must be exercised in a manner consistent with the Code. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988).

Bankruptcy Rule 2004 provides in pertinent part:

(a) *Examination on Motion*. On motion of any party in interest, the court may order the examination of any entity.

. . . .

(c) *Compelling Attendance and Production of Documents*. The attendance of an entity for examination . . . may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial.

(d) *Time and Place of Examination of Debtor*. The court may for cause shown . . . order the debtor to be examined under this rule

Rule 9016 makes Rule 45 of the Federal Rules of Civil Procedure applicable to bankruptcy cases, including Rule 2004 examinations. Under Rule 45, a subpoena must be issued in order to compel attendance at an examination. Under Rule 45(e), “[f]ailure by any person without adequate excuse to obey a subpoena served upon

that person may be deemed a contempt of court from which the subpoena issued.”

While only a court order is necessary to compel attendance of the debtor under Rule 2004(d), a subpoena is required to compel attendance of a non-debtor under Rule 2004(c). *See* FED. R. BANKR. P. 2004 advisory committee’s note; 9 COLLIER ON BANKRUPTCY ¶ 2004.03[1] (15th ed. rev. 2005).

In the present case, the Court issued an order for the debtor and her counsel, Mr. Poole, to appear for examination. The Trustee’s motion seeks an order holding only Mr. Poole in civil contempt. There is no indication that a subpoena was served on Mr. Poole to compel his attendance under Rule 2004(c). While all counsel appearing before this Court ought to obey diligently and promptly the Court’s lawful orders, an order of civil contempt is not appropriate here since the Bankruptcy Rules provide for a specific procedure to compel attendance of a non-debtor at a Rule 2004 examination. Since that procedure was not followed here, the Trustee’s motion is denied without prejudice.

IT IS SO ORDERED.

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