

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re:	)	Chapter 7
	)	
WAYNE MENEFEЕ,	)	Case No. 05-96287
Debtor.	)	
	)	
In re:	)	Chapter 7
	)	
NOELLE HODGE,	)	Case No. 05-96742
Debtor.	)	
	)	Judge Arthur I. Harris

ORDER FOR ATTORNEY CHARLES WAGNER  
TO APPEAR AND SHOW CAUSE

The Court's review of cases filed by attorney Charles Wagner and assigned to the undersigned judge reveals deficiencies in two cases that may warrant the imposition of sanctions on counsel. These deficiencies include the failure to file schedules timely and the failure to file Declarations re: Electronic Filing within the time frame required by General Order 02-2. Accordingly, for the reasons that follow, attorney Charles Wagner is ordered to appear at an evidentiary hearing at 2:30 p.m. on April 18, 2006, in Courtroom 1A of the Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio, and show cause why he 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.

### *11 U.S.C. § 329*

Section 329(a) of the Bankruptcy Code requires that “[a]ny attorney representing a debtor” to disclose any fee arrangements. *In re Koliba*, No. 05-74612, \_\_ B.R.\_\_, 2005 WL 3729398, at \*1 (Bankr. N.D. Ohio Jan. 20, 2006) (quoting *In re Big Rivers Electric Corp.*, 355 F.3d 415, 428 (6th Cir. 2004)); *see also* FED. R. BANK. P. 2016. This section vests upon the bankruptcy courts the authority to review all professional fees paid to the debtor’s attorney. *See In re*

*Koliba*, 2005 WL 3729398, at \*1. Inherent in this authority is the power of a bankruptcy court to issue sanctions, including the disgorgement of fees, both in full and in part, when an attorney fails to satisfy the requirements of the Bankruptcy Code. *Id.* (citing *In re Kisseberth*, 273 F.3d 714, 721 (6th Cir. 2001) and *In re Downs*, 103 F.3d 472, 478 (6th Cir. 1996)).

### *Bankruptcy Rule 2017*

If review of a case shows that the attorney fee arrangement is not reasonable, “the court may cancel the agreement or order a refund of payments made. 11 U.S.C. § 329. Bankruptcy Rule 2017 implements this provision.” *In re Campbell*, 259 B.R. 615, 625 (Bankr. N.D. Ohio 2001). Read together, section 329 and Rule 2017 “furnish the court with express power to review payments to attorneys for excessiveness and restore the status quo when assets have improvidently been bartered for legal services.” *Id.* at 626.

### *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>
Wayne Menefee	05-96287	failure to file declaration re: electronic filing within required time frame
Noelle Hodge	05-96742	failure to file schedules timely, failure to file declaration re: electronic filing within required time frame

Pursuant to General Order 02-2, the Court has issued an Electronic Case Filing (ECF) Administrative Procedures Manual. Under Section II. B. 2 of the Administrative Procedures Manual, a signature declaration form (“Declaration re: Electronic Filing of Documents and Statement of Social Security Number”) is to be filed with the clerk’s office within five working days of the electronic filing of the petition. The purpose of the filing of the signature declaration form is to assure that the debtor’s handwritten signature and Social Security number are on file with the Court. The Declaration re: Electronic Filing is essentially an obligation of the debtor’s counsel as opposed to that of the debtor. The declaration authorizes the attorney to file a petition and other documents electronically on the debtor’s behalf. Counsel’s failure to file the signature declaration form resulted in dismissal of the debtors’ cases with no apparent

benefit to the debtors.

*Potential Sanction*

The potential sanction that the Court is considering is the disgorgement of fees previously paid to the debtors' attorney in each of the above-captioned cases. In case number 05-96287 the amount received by the attorney was \$600. In case number 05-96742 the amount received was \$400.

CONCLUSION

For the foregoing reasons, attorney Charles Wagner is ordered to appear at an evidentiary hearing at 2:30 p.m. on April 18, 2006, in Courtroom 1A of the Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio, and show cause why he should not be sanctioned for the filing deficiencies in the above-captioned cases.

IT IS SO ORDERED.

/s/ Arthur I. Harris                      3/22/2006  
Arthur I. Harris  
United States Bankruptcy Judge