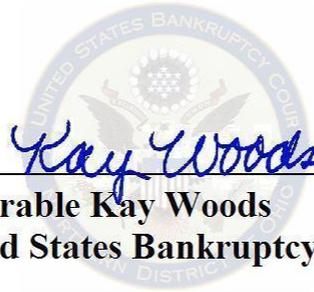


IT IS SO ORDERED.



Dated: September 17, 2009  
04:09:41 PM

Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
RALPH W. SWEGAN,	*	
	*	CASE NUMBER 03-45698
Debtor.	*	
	*	
*****	*	
	*	
BUCKEYE RETIREMENT CO.,	*	
LLC, LTD.,	*	
	*	
Plaintiff,	*	ADVERSARY NUMBER 04-4256
	*	
vs.	*	
	*	
RALPH W. SWEGAN,	*	
	*	
Defendant.	*	HONORABLE KAY WOODS
	*	

\*\*\*\*\*  
ORDER DENYING REQUEST FOR SANCTIONS  
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Before the Court are Motion to Quash Subpoena and Request for Sanctions ("Debtor's Motion") (Doc. # 120) filed by Debtor/Defendant Ralph W. Swegan ("Debtor"), and Objections, Motion to Quash Subpoena

and Request for Sanctions ("Mr. Walker's Motion") (Doc. # 123) filed by Keith Walker, Esq., former legal counsel for Debtor (collectively, "Motions to Quash").

On July 27, 2009, Debtor's counsel Michael Buzulencia, Esq., identified Mr. Walker in Amended Defendant's Witness List (Doc. # 109) as potentially testifying at the trial in this Adversary Proceeding about "bankruptcy schedules, motor vehicle issues and litigation regarding Debtor's exam." (Amend. Def. Witness List at 1). Based upon the identification of Mr. Walker as a trial witness, Buckeye served Messrs. Buzulencia and Walker with trial subpoenas to obtain the complete file of Debtor's case transferred by Mr. Walker to Mr. Buzulencia.

Debtor's Motion sought to quash the trial subpoena served on Mr. Buzulencia on the grounds of untimeliness, privilege, and that Mr. Buzulencia had not been identified as a trial witness. Mr. Walker's Motion sought to quash the trial subpoena served on Mr. Walker on the grounds that the requested documents were protected from disclosure by the attorney-client and/or attorney work product privileges, and that such documents were prepared in anticipation of litigation. He further argued that the subpoena was not timely and contrary to the Court's Trial Order (Doc. # 96). Based on the assertion of attorney-client privilege in the Motions to Quash, it appeared that Debtor did not intend to call Mr. Walker as a witness. As a consequence, the Court granted the Motions to Quash by Orders dated August 7, 2009 (Doc. ## 121 and 127). Indeed, at the start

of the trial, Mr. Buzulencia withdrew Mr. Walker as a possible witness.

Buckeye filed (i) Plaintiff's Opposition to Defendant's Motion to Quash Subpoena and Request for Sanctions (Doc. # 126) on August 7, 2009, which opposed Debtor's Motion; and (ii) Plaintiff's Opposition to Motion to Quash Subpoena and Request for Sanctions by Attorney Walker (Doc. # 131) on August 19, 2009, which dealt with Mr. Walker's Motion (collectively, "Buckeye's Opposition Briefs"). Buckeye's Opposition Briefs note that the Court had already granted the Motions to Quash, so the briefs concentrated only on the requests for sanctions. Buckeye argues that the subpoenas were proper trial subpoenas and that neither movant established any undue burden or expense related to the subpoenas to warrant sanctions.

This Court agrees that neither Debtor nor Mr. Walker has established any undue burden or expense that would warrant imposition of sanctions against Buckeye for issuing the trial subpoenas. Moreover, because Debtor failed to state that Mr. Walker would not be called as a trial witness until after Buckeye issued the subpoenas, Buckeye had a basis to request the documents - even though they were privileged. As a consequence, this Court finds that there is no basis for imposition of sanctions upon Buckeye for issuing the two trial subpoenas.

The requests for sanctions in the Motions to Quash are hereby denied.

# # #