

Attorney's fees reduced by \$500.00 after attorney failed on multiple times to properly serve the Chapter 13 plan

Case: *Turner*; 14-10577

Docket: Debtor's Motion to Allow Late Filed Chapter 13 Plan filed on 12/17/14

Facts: *Debtor's* Counsel normally practices bankruptcy law in the Southern District of Texas but has had prior experience in filing cases in the Eastern District of Texas. In filing this case in the Eastern District, Debtor's counsel filed a series of three Chapter 13 plans in this case, with the first plan being filed timely and the last two plans being filed late. The first two plans were struck by the Court for failure to give proper notice in accordance with the Court's Local Bankruptcy Rules. Debtor's Counsel also filed a Motion to Allow the Filing of a Late Filed Plan for the second late filed plan (with the Motion being dismissed as moot upon the Court's striking the second plan) and the third late filed plan. In the Motion to Allow Late Filed Plan filed for the third plan, Debtor's counsel alleged that he did not receive the ECF notices of the Order Striking the Plan or of the resulting Trustee's Motion to Dismiss, complaining further that this is the Eastern District is the only district that he practices in in which he purportedly has problems with notice. Finally, Debtor's counsel alleged that he had corrected the prior actions by filing the new (third) plan with proper service and a certificate of service.

Ruling: Judge Parker granted the Motion to Allow the third Chapter 13 Plan but also reduced the Debtor's Counsel's attorney's fees by the amount of \$500.00. In so doing, the Court noted the history of the Debtor's counsel of filing a series of Chapter 13 Plans with the first two being stricken by the Court for failure to give proper notice. The Court concluded with the following:

This repetitious failure [of giving proper notice of Chapter 13 plans] by Debtor's counsel is of concern to the Court. It repeatedly requires additional work by the Court and by the Chapter 13 Trustee. While the Court is hesitant to prejudice the rights of a particular debtor due to the habitual errors of her attorney, at some point the client bears the responsibility of selecting a lawyer who is apparently unconcerned about compliance with applicable service rules. As a last instance, the Court will grant the motion for the benefit of the Debtor but only with a corresponding reduction of \$500 in the amount of compensation to be paid to Debtor's counsel in this case, which will hopefully act as an inducement to such counsel to correct his repeated errors.

Order Allowing Late Filing of Chapter 13 Plan Under Specified Conditions (Court Docket #30).

Trustee's Comments: It is important for debtors' counsel to be familiar with the Court's Local Rules in order to competently practice bankruptcy law in the Eastern District of Texas. In particular, the relevant portion of LBR 3015(b) states as follows:

A debtor filing an original or modified Chapter 12 or 13 plan must serve such plan upon *the master mailing list (matrix) as constituted by the Court on the date of service*, including the standing

trustee. A certificate of service evidencing the proper service of the plan on the matrix must be filed with the Court or such plan will be stricken.

(emphasis added)

In this case, it was obvious to the Trustee (and apparently to the Court) that the Debtor's counsel had not read LBR 31015(b) concerning giving notice of Chapter 13 plans. In failing to follow the Court's LBR 3015(b), the Debtor's counsel was sanctioned by the Court by the reduction of his attorney's fees in the amount of \$500.

Additional Trustee's Comments: The Trustee filed his Amended Motion to Dismiss wherein the Trustee alleged that this case should be dismissed with prejudice for 120 days based upon the Debtor's failure to file a Chapter 13 Plan and upon the Debtor's failure to make Chapter 13 plan payments. The filing of the third Chapter 13 Plan and the granting of the Debtor's Motion to Allow Late filed Plan has cured one of the basis for the dismissal of this case. However, the case may be dismissed based upon the Debtor's failure to make Chapter 13 plan payments.