IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

IN THE MATTER OF	§	
	§	MISC. PROCEEDING NO. 02-303
BARRY RENO	§	
	§	
	§	

MEMORANDUM OPINION AND ORDER

On July 19, 2002, the Office of the Chief Disciplinary Counsel for the State Bar of Texas informed this court that Barry Reno had been suspended from the practice of law in the State of Texas since September 1, 2001. By order entered July 24, 2002, this court directed that Reno show cause on August 26, 2002, why he should not be suspended from the practice of law before this court for a period of time following the reinstatement of his license by the Supreme Court of Texas.

Thereafter, the Standing Chapter 13 Trustee filed a motion for a show cause order concerning Reno's activities in a particular case and Reno filed a motion for relief from this court's July 24, 2002, order. The court set hearings on those motions on August 26, 2002. The United States Trustee filed a motion to review certain debtors' transactions with Reno. The court set a hearing on the United States Trustee's motion on September 4, 2002.

The court conducted hearings on the motions on August 26, 2002, and September 4, 2002, following which the court entered its memorandum opinion and order on September 20, 2002.

For the reasons stated in the memorandum opinion, the court ordered:

> [T]hat, effective September 24, 2002, the suspension of Barry Reno from the practice of law before this court shall terminate, subject to the following terms of probation:
>
> Barry Reno shall maintain and properly use an IOLTA trust account. Barry Reno shall timely comply with all State Bar of Texas licensing requirements. Barry Reno shall retain Garner & Cooper, LLP, to perform the services discussed in the above memorandum opinion. Barry Reno shall further maintain a law office staff consisting of, at least, an office manager, a clerical assistant and a paralegal. Barry Reno shall complete his law office flow chart for case procedures through case closing, with instruction and training for his law office staff, to assure attention to client detail. Barry Reno shall continue to obtain professional assistance for personal matters and shall endeavor to participate in an appropriate State Bar of Texas mentoring program.
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> Barry Reno shall obtain a hearing before this court every six months for two years beginning September 24, 2002, with notice to the United States Trustee and the Standing Chapter 13 Trustee. At each hearing, Reno shall demonstrate compliance with the terms of probation. His demonstration shall include proof of payment of his state bar dues and the occupation tax, as well as compliance with continuing education requirements. Reno must also demonstrate with books and records his use of the trust fund.
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> Failure to comply with the terms of probation will result in a minimum one year suspension from the practice of law before this court with this court recommending that the United States District Court revoke his license to practice in the United States District Court for the Northern District of Texas, including this court.

Pursuant to this order, Reno was to obtain a hearing in late March 2003 to demonstrate compliance with the terms of probation. Although Reno requested a hearing date from the court on March 3, 2003, he did not pursue the process. On April 8, 2003, the United States Trustee filed a motion to review compliance by Reno with the court's order. The court thereupon assigned a hearing date of April 25, 2003, at 1:30 p.m. Reno served and filed a notice of that hearing.

On April 25, 2003, the court conducted the hearing on Reno's compliance with the terms of probation. The United States Trustee had been monitoring Reno's cases. On December 26, 2002, the United States Trustee provided Reno with a list of cases with deficiencies. In addition, the United States Trustee monitored meetings of creditors on March 4, 2003, in Reno cases, and noted five cases with deficiencies. By letter dated April 3, 2003, the United States Trustee informed Reno that of the nine cases he filed in the Eastern District of Texas during 2001 to 2002, five involved prior filings in the Northern District of Texas. At the hearing, Reno addressed these matters. The Standing Chapter 13 Trustee stated that his review of Reno's Chapter 13 cases reflected an inattention to detail, but that Reno attended hearings. The United States Trustee and the Standing Chapter 13 Trustee opined that these deficiencies notwithstanding, Reno has adequately represented most of his clients during the September

2002 to March 2003 period. The Standing Chapter 13 Trustee suggested that Reno's inattention to detail be addressed by reduced Chapter 13 compensation. The court concludes, however, that inattention to the details of his clients' cases remains a deficiency in Reno's practice. His clients pay Reno fees to attend to these details, which are usually necessary requirements to the successful prosecution of a bankruptcy case.

Reno is current with State Bar of Texas licensing requirements. He stated that he has established an IOLTA trust account. He submitted charts showing filing fees deposited into an IOLTA account then paid to the U.S. Bankruptcy Clerk; unfiled cases with filing fees deposited in an IOLTA trust account; and filing fees paid in cash to attorney then paid directly to U.S. Bankruptcy Clerk. Reno did not, however, demonstrate with books and records his use of the IOLTA trust account, as required by the court's order. Charts prepared by Reno do not constitute books and records of an IOLTA trust account.

Reno has failed to comply with other probation requirements. He did not retain Garner & Cooper, LLP, to perform the services discussed in the memorandum opinion entered September 20, 2002. He explained that he could not afford the accountant's services and did not want to accept *pro bono* services.

At the September 4, 2002, hearing, Reno informed the court that he had retained the services of Garner & Cooper, certified

public accountants. Tom Garner of that firm informed the court that the firm would provide bookkeeping and accounting services for Reno's law practice. Garner would monitor and certify to Reno's handling of all client trust fund monies, and would implement a trust fund verification process. Garner's firm also agreed to process all of Reno's operating bills, including tax deposits, payroll and operating expenses. Garner would calendar and verify that Reno's state bar fees and occupation taxes are timely paid and that Reno timely completes his continuing education requirements. For his part, at the September 4, 2002, hearing, Reno pledged to retain the Garner firm to perform those functions.

On that record, the court adopted Reno's proposals and ordered that Reno retain the Garner firm to perform those services. The court understood from the September 4, 2002, hearing that the Garner firm's role had already been established by Reno and that Garner was prepared to so perform. On April 25, 2003, Reno informed the court that he never pursued the Garner firm's role, the September 4, 2002, hearing and the court's order notwithstanding. Reno did not seek relief from the court's order. The Garner firm's role would have assured the elimination of various problems Reno has had in the running of a law office. It would have also assured the proper use of the IOLTA account, and the preservation of clients' money. It would have assured

the elimination of Reno's use of his clients' money to pay his law firm's operating expenses.

In addition, Reno did not maintain a law office staff consisting of, at least, an office manager, a clerical assistant and a paralegal. Reno explained that he could not afford that size of a staff. Once again, the court adopted the requirement based on the September 4, 2002, record. At the hearing on September 4, 2002, Reno proposed to hire a staff consisting of an office manager, a clerical assistant, a paralegal and a receptionist. To assist that staff, Reno developed a flow chart for case procedures from initial client interview through the meeting of creditors. The court accepted Reno's proposal.

However, Reno never implemented his own proposal and never requested relief from the court's order. Reno apparently fails to understand the significance of making a representation to a court, which the court then accepts. As recounted in the memorandum opinion entered September 20, 2002, Reno has a pattern of making representations to the court, which he later fails to implement.

Reno stated that he fired his office manager shortly after the September 2002 hearing. He ran the office himself in December and January. He hired his present receptionist in February. He explained that he cut his operating expenses in

half. With his reduced staff, he says that he does all the case work himself, doing the work at night.

With regard to the use of the accountant and the structure of his law firm, the United States Trustee assumed that Reno had been operating pursuant to his proposals as adopted by the court. The United States Trustee objected to Reno's misleading the court. Reno had no explanation of why he did not seek relief from the court's probation order.

Reno has developed position descriptions for his employees. He employs a receptionist and a person to enter Chapter 7 and Chapter 13 information. He also employs a person to sort papers for two hours a day. He has not developed work flow charts for his office following a case filing to completion. Additionally, as addressed above, he still does not have a check system to eliminate or minimize deficiencies and to attend to case details.

Indeed, immediately following the April 25, 2003, hearing, one of Reno's clients called the court because the client could not reach Reno and had an urgent need for a court hearing to authorize the sale of property, which was set for closing. The court directed the client to come to the court and ask for a hearing. Given the exigencies, the court considered the request and drafted an order authorizing the sale. The judicial assistant to the Honorable Harlin D. Hale then faxed a copy of the order to the title company, informing Reno by fax as well.

This event demonstrates the hardship to clients and the response of the court to Reno's inability to attend to the details of a case.

On May 1, 2003, Reno filed an adversary proceeding on behalf of a client, seeking a temporary restraining order. The case was assigned to the undersigned judge. The judge's courtroom deputy assigned a hearing date of May 5, 2003, at 1:30,and called Reno on May 2, 2003, to give him the setting. In the meanwhile, another judge of this court had already given Reno a hearing on May 2, 2003. That judge denied the TRO request. Even though the temporary restraining order request had been denied before this judge's courtroom deputy called Reno, Reno did not inform the courtroom deputy that the TRO request had already been heard and denied by another judge. He apparently intended to appear on May 5, 2003, but the court cancelled the hearing upon learning of the decision on May 2, 2003. This instance is a further example of either Reno's inattention to detail or, even more troubling, Reno's lack of candor with the court.

Reno did not continue his psychotherapy. At the September 4, 2002, hearing Reno committed to the court that he would continue to address his personal problems. On April 25, 2003, he told the court that for most of the prior six months he could not afford the psychotherapy. He did not request *pro bono* or deferred billing from his therapist.

Reno has not complied with the court's order. The order provides that "failure to comply with the terms of probation will result in a minimum one year suspension from the practice of law before this court." While the court appreciates Reno's reluctance to request *pro bono* services from the Garner firm, Reno represented at the hearing on September 4, 2002, that the accountant's services had already been implemented. The accountant's services were designed to minimize Reno's office management problems while assuring the use of an IOLTA account and proper and accurate bookkeeping for his practice. Similarly, while the court appreciates that Reno's practice revenue may not support the level of office management required by the court, the court merely adopted Reno's proposals for addressing his office management problems. His office management is directly related to his inattention to client details. Reno never sought relief from the court's order, and, thus, never represented to the court that he could not afford to implement the office management requirements.

The court must implement its orders if they are to have any effect. The court has the inherent authority to enforce compliance with its orders. Shillitani v. United States, 384 U.S. 364, 370 (1966). The court has the inherent power to regulate the conduct of attorneys who practice before the court and to discipline or disbar attorneys who engage in

unprofessional conduct. Howell v. Texas, 843 F.2d 205, 206 (5th Cir. 1988). An attorney owes a duty to the court that exceeds that of lay citizens. Id. at 207. Justice Cardozo once said that "like the court itself, [the lawyer is] an instrument or agency to advance the ends of justice." People ex rel. Karlin v. Culkin, 248 N.Y. 465, 470-71 (1928). Reno had an obligation to comply with the court's order, or to appeal or request relief from that order. Celotex Corp. v. Edwards, 514 U.S. 300 (1995). The administration of justice requires that courts protect the finality of final orders by applying stringent standards. See Knapp v. Dow Corning Corp., 941 F.2d 1336, 1338 (5th Cir. 1991) (analyzing Fed. R. Civ. P. 60(b)). Indeed, the court must enforce its orders, even by contempt, if necessary, to "vindicat[e] the majesty of law." Offutt v. United States, 348 U.S. 11, 14 (1954). As the Seventh Circuit has stated in a discussion of the collateral-bar rule, "no reasonable lawyer could believe [himself] entitled to disregard judicial decisions that bind [him]." In re Mann, 311 F.3d 788, 790 (7th Cir. 2002). Reno could have avoided the sanction of the court's order by complying with the order or seeking relief from the order. Id.

The order was designed to address Reno's law practice deficiencies, while assuring that Reno met his licensing requirements. Yet, Reno did not retain the Garner firm to perform the designated services. Reno did not maintain the law

office staff as required. Reno did not complete the law office work flow chart, with instruction and training for his law office staff, especially with regard to attending to client detail. Reno did not maintain his psychotherapy. Reno did not produce actual books and records of his IOLTA trust account.

For the non-compliance with the court's order, Reno is suspended from the practice of law before this court for one year from the date of entry of this order.

The court recognizes the economic impact that this order may have on Reno. Yet, the court returns to the fundamental principal that Reno, as a lawyer, had to address, namely, that he had an obligation to comply with the court's order or seek relief from the order. Ultimately, clients and the public look to the court to supervise the practice of law before the court. The court's order had been designed to assure that Reno could maintain his license to practice law and operate a law practice that would attend to the needs of his clients and the details of their cases. Non-compliance with the court's order yields the conclusion that Reno cannot attend to the needs of his clients through a sole law practice. Should Reno affiliate with another established law practice, the deficiencies caused by his sole practice may be remedied. By remedying those deficiencies, Reno may be able to focus on the vigorous and thorough representation of his clients. Reno has told this court that he desires to

serve the needs of consumer debtors. Affiliation with a law firm may relieve Reno of the difficulties of maintaining a sole practice with the opportunity to focus on representing clients. The court will therefore consider an application to vacate the suspension should Reno affiliate with an established law practice.

The court also recognizes that Reno may be assisted by continuing legal education programs focused on consumer bankruptcy practice. In that regard, Reno should consider enrolling in the twelve week Consumer Bankruptcy Course to be taught by the Honorable Harlin D. Hale and Tim Truman, Standing Chapter 13 Trustee, at Texas Wesleyan School of Law, beginning September 24, 2003. In the event of an application by Reno for relief from this order, the court will favorably consider Reno's participation in this program.

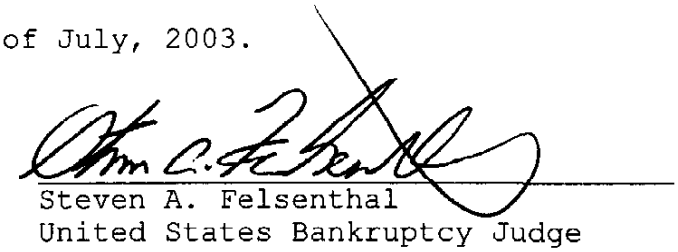
The court also notes the imperative for Reno to resume and continue psychotherapy. That assistance should provide considerable help to Reno.

The court has set a hearing on September 3, 2003, on Reno's compliance with the order entered September 20, 2002. The court shall conduct a status conference regarding Reno's situation at that time.

Based on the foregoing,

IT IS ORDERED that Barry Reno is **SUSPENDED** from the practice of law before this court for one year from the date of entry of this order.

Signed this 1ST day of July, 2003.



Steven A. Felsenthal
United States Bankruptcy Judge