U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed February 9, 2005.

United States Bankruptcy Judge

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

In re:	§	
Jeffrey N. and Chandra Massey,	§	**Case No. 04-82596-SAF-7**
Debtors.	§	**Chapter 7**
In re:	§	
MaryAnn and William Arthur Tidwell,	§	**Case No. 04-82597-HDH-7**
Debtors.	§	**Chapter 7**
In re:	§	
Ernest and Deana Olivas,	§	**Case No. 04-82604-BJH-7**
Debtors.	§	**Chapter 7**

In re:	§	
Russell and Melissa Hargrove,	§	**Case No. 04-82605-HDH-7**
Debtors.	§	**Chapter 7**
In re:	§	
Bridgett and Gene R. Johnson,	§	**Case No. 04-82606-BJH-7**
Debtors.	§	**Chapter 7**
In re:	§	
Charles E. and Christine A. Kalat,	§	**Case No. 04-82607-HDH-7**
Debtors.	§	**Chapter 7**
In re:	§	
Ivan J. & Andreea Roberts,	§	**Case No. 05-31390-HDH-7**
Debtors.	§	**Chapter 7**
In re:	§	
Jeffrey Love,	§	**Case No. 05-31426-BJH-7**
Debtor.	§	**Chapter 7**
In re:	§	
Edward Kelly Ward,	§	**Case No. 05-31442-BJH-7**
Debtor.	§	**Chapter 7**

In re:	§	
	§	
Stanley L. Skiles,	§	**Case No. 05-31444-BJH-7**
	§	
Debtor.	§	**Chapter 7**
	§	
In re:	§	
	§	
Timothy C. and Glenis Elaine Armstrong,	§	**Case No. 05-31445-BJH-7**
	§	
Debtors.	§	**Chapter 7**
	§	
In re:	§	
	§	
Stephen William & Shicaire Kay James,	§	**Case No. 05-31447-SAF-7**
	§	
Debtors.	§	**Chapter 7**
	§	
In re:	§	
	§	
Kimberly Dawn Bristow,	§	**Case No. 05-31450-SAF-7**
	§	
Debtor.	§	**Chapter 7**
	§	
In re:	§	**(FORT WORTH DIVISION)**
	§	
Joshua B. and Brandy L. Lasater,	§	**Case No. 04-91324-RFN-7**
	§	
Debtors.	§	**Chapter 7**
	§	

MEMORANDUM OPINION AND ORDER

On December 19, 2003, the Standing Chapter 13 Trustee filed a Motion for Show Cause Order in Case No 03-81172-BJH-13, asking this Court to issue a show cause order compelling Todd Phillippi ("Phillippi") to show cause why he filed that case on behalf of the debtors when they had

another active case pending before the Court, and to explain why he was inattentive, in general, to his clients' Chapter 13 cases. On December 22, 2003, the Court entered such an Order to Show Cause (the "Chapter 13 Show Cause Order"). On January 29, 2004, the Court held a hearing on the Chapter 13 Show Cause Order. At that time, the Court was advised that Phillippi had agreed not to file any Chapter 13 cases in the Northern District of Texas for six months, except for certain agreed filings. Moreover, Phillippi agreed that he was required to apply to the Court for permission to begin filing Chapter 13 cases in the Northern District of Texas after the expiration of the six month period. An Order was entered to that effect on February 18, 2004. Since that time, Phillippi has not sought permission to resume filing Chapter 13 cases in the Northern District of Texas, and has not filed any new Chapter 13 cases in the Northern District of Texas.

Similar problems became apparent with regard to Phillippi's handling of Chapter 7 cases, and on June 22, 2004, the United States Trustee filed a Motion to Review Transactions with Attorney and Disgorge Fees (the "Chapter 7 Motion") in Case No. 04-36719-BJH-7 (the "Bailey Case"), asking this Court to order Phillippi to disgorge all fees paid in the Bailey Case. The Bailey Case was the debtor's fifth filed bankruptcy case in three years, and Phillippi was counsel for the debtor in all five cases. At the time the Bailey Case was filed, the debtor had an active Chapter 13 case pending. Moreover, the Bailey Case was filed when the debtor was not eligible to receive a bankruptcy discharge, as such a discharge had been received on February 15, 2002 in his first bankruptcy case (Case No. 01-39513-BJH-7). *See* 11 U.S.C. § 727(a)(8). There were other problems with the Bailey Case documents, including the debtor's failure to list all prior bankruptcy cases in his voluntary petition. Of course, Phillippi should have been aware of the other cases and this omission, as he was debtor's counsel in each of the prior cases.

The Chapter 7 Motion was initially set for hearing on July 29, 2004. At that time, the United States Trustee announced that an agreement had been reached with Phillippi, pursuant to which he would (i) disgorge all fees paid in the Bailey Case, (ii) pay $200.00 to the United States Trustee for having to bring the motion, (iii) not file any new Chapter 7 cases for at least ninety days, and (iv) prior to filing any new Chapter 7 cases, (a) attend at least eight hours of continuing legal education related to bankruptcy and (b) certify to the Court (sitting through its Chief Judge) in writing and in detail that the required CLE courses had been taken.

This Court refused to approve the parties' agreement without Phillippi appearing in person to explain his mishandling of the Bailey Case. The Court wanted to be sure that Phillippi understood the gravity of the situation and that the agreed sanction was sufficient to insure the appropriate representation of future clients in bankruptcy matters. Thus, a further hearing was held on August 19, 2004, at which time Phillippi appeared and testified. Phillippi admitted that he had made numerous mistakes in the handling of the Bailey Case,[1] and assured the Court that he understood the gravity of the situation and had taken steps to make sure that the situation was not repeated. At the conclusion of the hearing, the Court announced that it would approve the parties' agreement, and thereafter signed an Agreed Order on the Chapter 7 Motion (the "Agreed Order").

Although Phillippi agreed in the Agreed Order that he would not file any Chapter 7 cases until he certified his completion of the required CLE by notifying "Chief Judge Felsenthal in writing of the title, date, sponsor, and location of the continuing legal education he completed," he began filing new cases in November 2004 without having done so. To date, Phillippi has not notified

[1]Initially, Phillippi attempted to blame his support staff for the numerous mistakes. Upon further questioning, Phillippi admitted that the mistakes made were either his, or were his responsibility.

Judge Felsenthal of his completion of the required CLE.[2]

As a result of Phillippi's failure to comply with the Agreed Order, the Court undertook a review of Phillippi's handling of bankruptcy cases and/or adversary proceedings in 2004 and 2005. That review has revealed a number of significant and recurring problems with Phillippi's representation of clients in bankruptcy cases pending in the Northern District of Texas. As noted previously, Phillippi has filed fourteen Chapter 7 cases in violation of the Agreed Order since November 2004. In six of those cases, the petition was signed by the debtor well in advance of its actual filing with the Court (a range of 21 days to 104 days). In several of those cases, the petition was signed by Phillippi's client before Phillippi had taken the required CLE; and thus, Phillippi was unable to file the case because of the terms of the Agreed Order. The Court can think of no legitimate reason for Phillippi to delay in the filing of his client's cases once the petitions are signed. Rather, it appears that Phillippi held his client's cases until after he had completed the required CLE, and then "batch" filed the cases when he happened to come to Court, irrespective of the potential prejudice to his clients as a result of his delay. Other problems revealed by the Court's review of the files in Phillippi's cases include: (i) the use of form answers in adversary proceedings that do not correspond to the actual allegations in the complaints; (ii) the filing of unsigned and/or undated pleadings; (iii) the failure to list previous bankruptcy cases in the voluntary petitions, even when Phillippi was counsel of record in the prior cases; (iv) the failure to respond to lift stay motions; (v) when responses are filed, the use of form responses that include misrepresentations about the

[2]It appears that Phillippi provided the CLE information to the U.S. Trustee by letter dated November 22, 2004, the date that he filed several new Chapter 7 cases. By letter dated December 17, 2004, the U.S. Trustee reminded Phillippi of his obligation in the Agreed Order to certify his completion of the required CLE to Judge Felsenthal – not the office of the United States Trustee – before filing new cases. On December 27, 2004, Phillippi caused a document entitled "Certificate of Compliance" to be filed with the Court in the Bailey Case, which was then a closed case. However, the Bailey Case was assigned to the undersigned judge, not Judge Felsenthal.

absence of information in the lift stay motion (*i.e.*, asserting that no arrearage amount was provided by the movant when such information was provided); (vi) when responses and affidavits are filed, the failure to appear at hearings on the lift stay motions; and (vii) the failure to file necessary orders to dispose of pending motions, even after being contacted by Court staff about his failure. Overall, the review reveals a general inattention to the pending cases. Based on the foregoing, and pursuant to 11 U.S.C. § 105 and FED. R. BANKR. P. 9011,

IT IS ORDERED that the Clerk of Court shall open a miscellaneous proceeding regarding Phillippi. A copy of this Order shall be filed in the miscellaneous proceeding. The Court will schedule a status conference in the miscellaneous proceeding and thereafter will schedule an evidentiary hearing at which the issues raised by this Order, Phillippi's responses to these issues, and appropriate sanctions, if any, can be fully considered.

End of Order