The following constitutes the order of the Court.

Signed July 30, 2004.

United States Bankruptcy Judge

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

IN RE:	§	
	§	
TRISHA ANN EVANS,	§	CASE NO. 04-32525-SAF-13
	§	
D E B T O R.	§	

MEMORANDUM OPINION AND ORDER

On May 24, 2004, 2004, the court entered an order for attorney Dwight E. Denman to show cause why he failed to appear at a pre-hearing conference to represent his client, Trisha Evans, the Chapter 13 debtor in the above-styled case. The court conducted a hearing on the order to show cause on July 8, 2004.

On March 1, 2004, Evans filed a petition for relief under Chapter 13 of the Bankruptcy Code. Denman signed the petition as her attorney. The petition commenced Evans' fourth bankruptcy case. The petition discloses bankruptcy case filings in "Tarrant County" on three dates but does not disclose the specific case information.

On April 21, 2004, Thomas D. Powers, the Standing Chapter 13 Trustee, filed a motion to dismiss the case with prejudice because of Evans' multiple bankruptcy petitions. Denman did not respond to the motion. The trustee noticed a pre-hearing conference on the motion for May 6, 2004, at 8:30 a.m., with a hearing on May 6, 2004, at 2:00 p.m. Evans appeared at the conference; but Denman failed to appear to represent her. Evans appeared at the hearing before the court at 2:00 on May 6; but Denman again failed to appear to represent her. Prior to the hearing, the trustee's office called Denman's office to remind him of the hearing. While Denman did not appear, he sent Lindsey Skipper, an associate with no bankruptcy experience and no knowledge of the case, and his paralegal to the hearing.

With Denman's associate present, the court proceeded with the hearing on the motion to dismiss, while issuing the order to show cause. Based on Evans' testimony concerning her prior cases and her financial situation, the court carried the motion to dismiss to a plan confirmation hearing to provide Evans with an opportunity to work through her problems with a plan in this case. As the court observed at the show cause hearing, the Evans case survived the initial hearing on the motion to dismiss because of the court's intervention, not because of Denman's representation of Evans.

At the show cause hearing, Denman testified that his office

failed to calendar the pre-hearing conference in the Evans case. He testified that he has corrected the scheduling procedure in his office. His paralegal, Marlo Green, confirmed that the office has altered its internal scheduling. Denman acknowledged that the office received a telephone call from the trustee informing him of the hearing on May 6, 2004. Denman nevertheless did not attend the hearing. He testified "I was out of the office. I wasn't dressed for court." In response to questions from the court, Denman testified "I was afraid I'd be admonished for –- for the way I was dressed."

Conceivably, Denman could have been both out of the office and not dressed for court. But, inconceivably, he placed his personal interests above those of his client, choosing to avoid the hearing rather than appear to represent his client, regardless of the court's reaction, if any, to his attire. Denman acknowledged to the court that he has charged Evans a fee for his services, claiming "we've done a lot of work too." The court observed, however, that the Evans case has not been dismissed only because of Evans' testimony and the court's intervention.

Even though Denman did not include the specific information about Evans' prior cases on her petition and did not respond to the trustee's motion to dismiss, Denman testified that he knew about the prior cases. With regard to the trustee's dismissal

motion, Denman testified “we knew this was coming.” Denman acknowledged that he knew Evans was filing her fourth case. Green, the paralegal, also testified that she knew that Evans was filing her fourth case. According to Green’s testimony, Denman discussed the prior cases with Evans in an interview before filing this case. Denman claims that he failed to disclose the specific information about the prior cases on the petition because of oversight. He could not provide the trustee with an explanation of why he did not address the motion to dismiss with the trustee. He reiterated that he failed to attend the conference and the hearing on the motion to dismiss through scheduling error. The court finds that Denman’s testimony that he failed to disclose the specific information of the prior cases on the petition because of oversight not credible. The court infers that Denman more likely deliberately did not disclose specific information about the prior cases with the hope that the trustee would not discover them. If, however, Denman did not disclose the information because of oversight, given his knowledge of the prior cases, the “oversight” would be careless because he generally listed three filings on the petition.

Green testified that the office has implemented procedures to address scheduling. She also testified that she now checks PACER regarding each debtor before filing a bankruptcy case. Denman testified that he currently represents about 200 debtors

in cases pending in the Northern District of Texas.

Skipper, the associate who appeared at the Evans hearing, has since left Denman's firm. She testified that she had no bankruptcy experience but rather had a domestic relations and probate practice. She had been working for Denman for approximately six months. She testified that, during the course of her employment with Denman, Denman employed two associates to assist with his bankruptcy practice, but that one had left. The trustee's counsel observed that she did not recognize the names of those two attorneys and could not recall seeing them on Chapter 13 cases. Indeed, the trustee's counsel observed "and Mr. Denman I almost never see," although she does see the paralegal.

On this record, the court questions whether Denman's law practice is structured to attend to the details of representing 200 debtors in this court, even assuming that the office has initiated improvements to its scheduling procedure.

Beyond the Evans case, the record reflects other issues regarding the adequacy of Denman's representation of his clients and the integrity of his representations to the court. Immediately before the hearing on the order to show cause in the Evans case, on July 8, 2004, the court held a hearing on a motion to incur debt in the case of Eusebio and Peggy Flores, case no. 00-35539-SAF-13. Denman represents the Floreses. The Floreses

filed their Chapter 13 case on September 1, 2000. They are approximately forty-six payments into a sixty month Chapter 13 plan. Through that plan, they have paid a secured creditor approximately $10,000 for a truck.

Nevertheless, pursuant to an order conditioning the motion for relief from stay entered March 2, 2004, the automatic stay terminated to allow the creditor to repossess the truck. The creditor has repossessed the truck. Denman advised the debtors to pursue a loan to purchase a replacement vehicle. The debtors followed that advice.

In his opening statement on the motion to incur debt, Denman told the court that the vehicle was in "a serious state of disrepair. And rather than try to repair the vehicle, they believe that it's in their best interest to surrender the vehicle. And they're asking the court here to allow them to incur debt . . . ."

Eusebio Flores testified. He testified that Denman did not correctly explain to the court the basis for the motion. The vehicle had to be replaced because it had been repossessed, not because it needed repairs. Flores further testified that he did not understand why it had been repossessed. He had been making his plan payments. But his attorney told him that he had to pay $50 a month for several months directly to the creditor and that he had failed to make those payments.

The court reviewed the Flores record. The order entered March 2, 2004, required six monthly payments of $50 to maintain the automatic stay. The order states that the payments covered $300 of creditor fees. The order had been styled an "agreed order" and reflected that Denman signed the order to represent his clients' agreement. Flores testified that he never agreed to those payments, had not been consulted about entering an agreement, and did not understand the reason for the payments. Flores testified that he did not "know anything about [the 'agreed' order]." He further testified that he received a letter from the creditor stating he defaulted in the $50 obligation. Flores did not understand the letter. He faxed the letter to Denman's office but received no reply. Two weeks later, the vehicle was repossessed. In response to questions from the trustee's counsel, Flores testified that he could not understand how the vehicle could be repossessed after he made four years of plan payments.

After the repossession, Flores testified that his wife finally talked to someone from Denman's office who represented that she would attempt to obtain possession of the vehicle. That did not happen, and Denman advised him to obtain a replacement vehicle. Flores testified that he would rather obtain possession of his vehicle than acquire a replacement vehicle with new debt.

Denman suggested that the payments had to be made because

the creditor filed a second lift stay motion. Flores testified that only one motion had been filed. Denman however insisted to Flores that a second motion had been filed. Rather than permit Denman to debate with his client while his client testified, the court intervened and asked Denman to refer the court to the two motions for lift stay by the creditor. Denman could not respond to the court. The record reflects one motion by the creditor, filed January 27, 2004. The motion states that the debtors had not made payments on the vehicle, even though they were making plan payments.

Denman maintains that he consults with his clients before representing to the court that his clients have entered an agreement with a creditor. The court finds Flores's testimony credible. Flores would not lose a vehicle for which he has paid approximately $10,000 through four years of Chapter 13 plan payments for $50. The court infers that Flores would know whether he agreed to pay $50 a month for six months directly to the creditor when he has paid the creditor $10,000 through a Chapter 13 plan. Furthermore, the record reflects no apparent reason why the creditor would be entitled to $300 of fees.

The court declined to act on the motion to incur debt. The court carried the motion so Denman could address the status of the repossessed vehicle with the creditor and attempt to pursue relief from the court.

In the Flores case, Denman presented an order to the court representing that it reflected the agreement of his clients, when his clients had not been consulted and had not agreed. On the motion to incur debt, Denman misstated the reason for the motion, which his client had to correct from the witness stand, and misstated the status of the record, which his client questioned from the witness stand.

When coupled with the Evans case, the Flores case raises issues of whether Denman can adequately represent his clients and whether Denman fulfills his ethical duties as an officer of the court licensed to practice in this court.

The court asked Denman whether any of the other judges in the district had questioned his practice methods. Denman stated that he had obtained a $4,000 retainer in a case pending before Judge D. Michael Lynn, but only disclosed $2,000 in his Bankruptcy Rule 2016(b) statement. The court ordered that Denman disgorge all fees in the case to his client. After the show cause hearing, Denman informed the court by letter that he had also been subject to an order to show cause in the case of George and Diane Draper, case no. 02-49020-BJH-13. By order to show cause entered March 6, 2003, the court directed Denman to explain multiple filings for the debtors, schedule inaccuracies and other deficiencies. The court held a hearing on the order to show cause on March 17, 2003. The case was dismissed on April 28,

2003.

As of June 29, 2004, Denman represented debtors in 240 cases pending in this court.

Counsel for the trustee suggested that Denman attend continuing education programs for consumer lawyers. Denman agreed to the suggestion. The court notes the following upcoming programs: Dallas bankruptcy bar section meeting on August 4, 2004, on ethics; State Bar advanced consumer bankruptcy program on September 22 to 24, 2004; and the Dallas-Fort Worth Chapter 13 program on November 10, 2004.

Based on this record, the court determines that Denman must refund fees paid by Evans to Denman. The trustee should hold any funds payable to Denman in the Evans case until further court order. The court will provide Evans an opportunity to obtain substitute counsel. The trustee should also hold any funds payable to Denman in the Flores case pending further court order. The court will establish a miscellaneous proceeding to review whether Denman adequately represents his clients and fulfills his ethical duties to this court, including a duty of honest representations of the status of the records and the positions of his clients to the court.

Based on the foregoing,

IT IS ORDERED that the clerk of court shall open a miscellaneous proceeding regarding Dwight E. Denman. A copy of

this order shall be entered in the miscellaneous proceeding. The court will schedule a status conference in the miscellaneous proceeding.

IT IS FURTHER ORDERED that Dwight E. Denman shall, within ten days from the date of entry of this order, refund to Trisha Evans any fees paid by Evans to Denman.

IT IS FURTHER ORDERED that Trisha Evans may retain the services of substitute counsel.

IT IS FURTHER ORDERED that Thomas D. Powers, the Standing Chapter 13 Trustee, shall not disburse funds to Dwight E. Denman in the Trisha Evans case or in the case of Eusebio and Peggy Flores, case no. 00-25529-SAF-13, without further order of the court. The clerk of court shall enter a copy of this order in the Flores case.

###END OF ORDER###