

CONSUMER BANKRUPTCY

Two Attorneys Get Into Serious Trouble Over E.C.F. Filings

Flouting E.C.F. filing rules has grave consequences

By Craig D. Robins

“The following is a cautionary tale of what occurs when the uninitiated attempt to practice before the bankruptcy court without a firm grasp of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.”

“Even the most well intentioned practitioners can inadvertently wreak havoc on unsuspecting clients by failing to appreciate the complexity of the bankruptcy process. It is also a prime example of how things can escalate when an attorney is less than candid with the Court about his or her mistakes.”

The preceding words were taken verbatim from a recent Massachusetts decision that severely castigated an attorney for messing up a consumer debtor’s bankruptcy filing and then lying about it to the court. This month I will discuss that case and another from one of our own courts here in the Eastern District of New York, both of which lambasted attorneys who utterly failed to abide by the rules.

Inexperienced attorney makes a mess of bankruptcy filing

In the Massachusetts case, Bankruptcy attorney Georgia S. Curtis was authorized to use E.C.F., but was grossly unfamiliar with how to do so. “E.C.F.,” which stands for Electronic Case Filing System, is the computerized court website system through which attorneys file court documents such as bankruptcy petitions *In Re: Jackquelyn D. Stallworth, 2012 Bankr. LEXIS 740 (Bankr. D. Mass 2/8/12)*.

Since 2003, every petition and other court document that I’ve filed with the court have been done through my office computer, while logged into the court’s E.C.F. website.

When Curtis filed her client’s petition, which was only the second petition that the attorney had ever filed, her inexperience got the best of her as she neglected to file the Creditor Matrix or the Statement of Social Security Number. These are mandatory requirements, and failure to

abide by them, as Curtis soon learned, is fatal. Nine days later the court dismissed the petition. Curtis also failed to file the Credit Counseling Certificate and page 3 of the petition, which is one of the petition pages that contain the attorney’s signature.

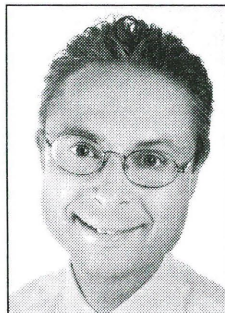
Curtis then thought she could file a motion to vacate the dismissal by e-mail (which is not the appropriate procedure for filing a motion). However, she messed this up as well by attaching the wrong PDF document. The court ordered her to correct this mistake within two days.

Did Curtis do that? No. Instead of correcting the deficient filing, two weeks later she filed a second Chapter 7 case without her client’s knowledge. The petition in the second case contained only the debtor’s name, which was spelled incorrectly, the last four digits of her Social Security number, and the county of her residence, omitting her street and mailing addresses, as well as reference to her prior filings. Additionally, the schedules accompanying the Debtor’s petition were blank or were otherwise incomplete, which, if taken literally as pointed out by the judge, reflected that she had neither assets nor any creditors.

The judge then issued a *sua sponte* order to show cause directing Curtis to show cause why the court should not sanction her and suspend her E.C.F. filing privileges. Because this petition was basically a blank, it also caught the attention of the United States Trustee who brought a motion against Curtis seeking to have her disgorge the legal fee.

Over several order to show cause hearings, Curtis testified that she did indeed file all necessary documents when that was not true. She also offered conflicting and contradictory explanations of what had happened.

The judge wasn’t happy. He suspended Curtis’s E.C.F. privileges, but indicated that Curtis could purge her “civil contempt” by becoming re-certified with



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E.C.F. (All attorneys are required to participate in an E.C.F. training course as a prerequisite to obtaining authority to file by E.C.F.). In addition, the judge stated that he had reasonable cause to believe that Curtis violated the Rules of Professional Conduct and referred the matter to the District Court for further disciplinary proceedings.

Curtis had a problem adhering to the court’s E.C.F. rules: she violated them. That led to a suspension of her E.C.F. privileges. But her problems increased exponentially when she lied to the court. That led to a most serious referral that might result in her losing her license to practice. For a legal practitioner, not knowing what you’re doing is bad enough; perjurying yourself in court is indefensible.

Suspended Attorney Files Petitions in Other Attorney’s Name

On March 22, 2012, Judge Carla E. Craig, sitting in the Brooklyn Bankruptcy Court, issued another interesting decision involving attorney ineptitude and impropriety with the E.C.F. system. *In re: Clyde Flowers, (01-12-40298-ccc, Bankr. E.D.N.Y.)*

Peter J. Mollo was a Brooklyn bankruptcy attorney who had just been suspended from practicing law in this state in January 2012 by the Appellate Division for several reasons such as endorsing a check without permission.

That left him with a bunch of bankruptcy clients whose petitions he had not filed. What he should have done was transferred the files to another attorney after first consulting with his clients. Instead, he called another local attorney, Brian K. Payne, and asked him if he would take over representation. However, no final agreement was reached.

Mollo, nevertheless quite eager to get these four cases filed, revised the petitions to indicate that the debtors’ attorney was now Payne — even though Payne never agreed. Mollo then filed these four peti-

tions under his own E.C.F. account and forged the electronic signature of Payne on each petition.

When the U.S. Trustee got wind of this after Payne sent a letter to the Chief Judge and others indicating that Mollo had filed petitions without his knowledge, consent, authority or signature, the UST immediately brought a motion to sanction Mollo, revoke his authorization to use the E.C.F. system, disgorge his fees, and compensate replacement counsel.

At the hearing, Mollo admitted that he “made terrible egregious, unbelievable errors.” The judge determined that Mollo violated Bankruptcy Rule 9011 by filing a forged document, an act that warranted sanctions. Mollo agreed to disgorge all legal fees received, which was complicated by the fact that he kept such poor records that he was not sure how much he actually did receive. He also agreed to compensate each debtor’s replacement counsel. He lost his E.C.F. privileges, not that he would have been legally able to use them in light of his suspension.

Finally, the judge thought additional sanctions were warranted given the egregious nature of Mollo’s violations and their similarity to the conduct that got him suspended in the first place (forging signatures). Judge Craig sanctioned Mollo an additional \$3,000, stating that Mollo’s conduct compromised the integrity of the court system and the electronic filing process.

Note: Craig D. Robins, a regular columnist, is a Long Island bankruptcy lawyer who has represented thousands of consumer and business clients during the past twenty years. He has offices in Coram, Mastic, West Babylon, Patchogue, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Visit his Bankruptcy Website: www.BankruptcyCan-Help.com and his Bankruptcy Blog: www.LongIsland-BankruptcyBlog.com.

Copies of both decisions are available on Mr. Robins’ blog.