

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

S.D. BENNER III, L.L.C.,

Debtor.

Case No. DG 11-08112

Hon. Scott W. Dales

Chapter 11

In re:

S.D. BENNER, L.L.C.,

Debtor.

Case No. DG 11-08113

Hon. Scott W. Dales

Chapter 11

ORDER REGARDING *EX PARTE* COMMUNICATIONS

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

This morning, Steven D. Benner, evidently without or against the advice of counsel, sent three e-mail messages (and numerous attachments) directly to the court regarding a proposed refinancing of certain obligations of chapter 11 debtors S.D. Benner, L.L.C. and S.D. Benner III, L.L.C (the “Debtors”), and related matters.¹ The court regards the emails as unauthorized *ex parte* communications, and will take curative measures immediately. *See* Fed. R. Bankr. P. 9003 (prohibiting *ex parte* communications generally); *see also* Code of Conduct for United States Judges, (“Code of Conduct”), at Canon 3(A)(4).

The applicable ethical canon provides in relevant part as follows:

A judge should accord to every person who has a legal interest in a proceeding, and that person’s lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider *ex parte* communications or consider other

¹ The court assumes Mr. Benner sent these communications in response to the court’s Order Directing Debtors to File Status Report, entered on September 4, 2014 in the above-captioned cases.

communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized *ex parte* communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested.

Code of Conduct, at Canon 3(A)(4). Mindful of these restrictions, the court reviewed the emails in order to determine a proper course of action, but has not opened or otherwise reviewed or considered the attachments.

Obviously, the emails put the court and all parties, including Mr. Benner, in a difficult position. Communicating directly with the court, especially using a judge's personal email address, is patently unorthodox, if not simply improper. Under the circumstances, the court has refrained from viewing the attachments in order to mitigate the adverse effect of the *ex parte* communication, and to protect whatever privileges the attachments might reveal or compromise, if fully disclosed. Nothing in this Order, however, is intended to resolve any such privilege or other similar issue.

The court will direct the Clerk to print each email, but not the attachments, scan, and enter each email on the docket of the above-captioned cases. This will give interested parties ample notice of the substance of the communications and an opportunity to review them to the same extent the court has reviewed them. It will also give the parties an opportunity to respond, if any of them so requests.

The court will also enjoin Mr. Benner from sending additional emails or other correspondence directly to the court. Parties copied on the offending emails should take care not to hit "Reply All" or otherwise include the court in additional electronic communications.

Finally, the court reminds Mr. Benner that the Debtors are distinct legal entities who may appear in federal court only through counsel. Mr. Benner's membership interests in the Debtors, or even his management of them, does not authorize him to speak on their behalf in federal court: "[i]t has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02 (1993); *see also* LBR 9010-2(b). Consequently, the court does not regard the emails as satisfying the Debtors' obligations under the Order Directing Debtors to File Status Report, entered on September 4, 2014.

The court will take no further action regarding the emails unless and until an interested party properly moves for relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Clerk shall forthwith: (1) enter a copy of this Order in each of the above-captioned cases; and (2) print each *ex parte* email described herein (but not the attachments), scan each printed email to produce a pdf image, and enter each scanned image separately on the docket of the above-captioned cases.

IT IS FURTHER ORDERED that Steven D. Benner is HEREBY ENJOINED from sending further email communications to the court.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon: Michael Baum, Esq., Brendan G. Best, Esq., Ryan Matthew Felber, Esq., Joseph K. Grekin, Esq., Leon N. Mayer, Esq., John J. Stockdale, Jr., Esq., Steven Roach, Esq., Melissa Brown, Esq., Michael V. Maggio, Esq., and other persons requesting notice of these proceedings.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order by electronic mail upon Steven D. Benner at the address indicated on the *ex parte* email communications described herein.

END OF ORDER

IT IS SO ORDERED.

Dated September 9, 2014



A handwritten signature in black ink, appearing to read "S. Dales", written over a horizontal line.

Scott W. Dales
United States Bankruptcy Judge