UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

ABRAHAM M. LACOURSE,

Debtor.
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Case No. DK 11-09338
Hon. Scott W. Dales

ORDER RE: MOTION TO WITHDRAW AS COUNSEL

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

I. INTRODUCTION

After attorney Nicholas Reyna's attorney-client relationship with Chapter 7 Debtor Abraham M. LaCourse (the "Debtor") broke down, he filed a Motion to Withdraw as Counsel (the "Motion," DN 25). The Debtor filed a response to the Motion, and the court conducted a hearing in Kalamazoo, Michigan on February 15, 2012. The Debtor and Mr. Reyna both appeared and made arguments.

II. BACKGROUND

There is no dispute that the Debtor retained Mr. Reyna to represent him in connection with this bankruptcy case. As reflected in the Disclosure of Compensation of Attorney for Debtor(s) filed pursuant to Fed. R. Bankr. P. 2016(b) (the "Rule 2016 Statement," DN 2), the Debtor agreed to pay Mr. Reyna $700.00 for specified services including the following:

a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;

b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;

c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;

d. [Other provisions as needed]

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

See Rule 2016 Statement at ¶ 5. The parties also agreed, however, that Mr. Reyna's fee did not include "Representation of the debtors [sic] in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding." *Id*. at ¶ 6.

According to Mr. Reyna's statements at the hearing, during the course of their attorney-client relationship, Mr. Reyna advised the Debtor that he was raising the fee from $700.00 to $900.00 because of "complications" with the case related to self-employment income, the unanticipated cost of travelling to Kalamazoo for meetings or hearings, and the Debtor's relocation to Ohio. The Debtor paid the additional $200.00 fee.

Sometime in October or November, 2011, the Debtor came to believe that Mr. Reyna had omitted several creditors from the schedules even though Mr. Reyna knew or should have known about them, based on a credit report or documents the Debtor provided to him. Mr. Reyna advised the Debtor that it would cost an additional $80.00 to cure the omission. At this point, the Debtor filed a grievance with the State Bar of Michigan, and the relationship naturally soured, prompting Mr. Reyna to file this Motion.[1]

The Debtor's response to the Motion challenged Mr. Reyna's fee as excessive, thereby implicating the court's authority under 11 U.S.C. § 329 and Fed. R. Bankr. P. 2017. At the hearing, in response to the court's questions, it became clear that the Debtor believed the

additional $200.00 in fees (which he paid) and the $80.00 (which he did not) were unreasonable because Mr. Reyna had agreed to handle the case for $700.00.

The Debtor also complained that he felt Mr. Reyna should have filed a motion or taken other action to enforce the automatic stay against one of his creditors who continued calling him post-petition. Mr. Reyna responded that the parties excluded such motions from their original agreement and the $700.00 fee reflected on the Rule 2016 Statement. This aspect of their dispute prompted the court to review the Rule 2016 Statement from the bench.

III. ANALYSIS

As the court noted during the hearing, the Sixth Circuit's decision in *Brandon v. Blech*, 560 F.3d 536 (6th Cir. 2009), requires the court to view the Motion through the lens of MRPC 1.16. As the Sixth Circuit noted, "while these rules stop short of guaranteeing a right to withdraw, they confirm that withdrawal is presumptively appropriate where the rule requirements are satisfied." *Id.* at 538. The court finds good cause for withdrawal due to the deterioration of the relationship, and certainly after the Debtor filed his grievance with the State Bar of Michigan. In addition, because the Debtor has received his discharge and because the first meeting of creditors has been adjourned presumably for the production of documents only, Mr. Reyna's withdrawal can be accomplished without material adverse effect upon the Debtor's interests. To the extent the Debtor needs to file amendments to add omitted creditors, the court concludes, based on the Debtor's in-court demeanor, that he is capable of preparing and filing the modest amendments.

Nevertheless, having reviewed the Rule 2016 Statement and the rest of the docket, it plainly appears that Mr. Reyna did not comply with his duty to supplement the Rule 2016 Statement after he asked for and received the additional $200.00 fee from the Debtor. *See* Fed.

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[1] Mr. Reyna advised the court that the State Bar promptly dismissed the Debtor's grievance.

R. Bankr. P. 2016(b) (attorney must file a supplemental statement "within 14 days after any payment or agreement not previously disclosed"). It also appears that the Debtor understandably felt aggrieved by his counsel's unilateral modification of their agreement. Counsel's non-disclosure of the change troubles the court, and the undisclosed additional fee creates the perception of a "bait and switch." It is unnecessary for the court to make any finding in this regard, but the court simply acknowledges the impression created by the record and the non-disclosure.

The court considered the possibility of holding a hearing to determine whether the $200.00 additional fee was excessive under 11 U.S.C. § 329, but rejected the idea principally because Mr. Reyna's failure to comply with Fed. R. Bankr. P. 2016(b) warranted disgorgement of the $200.00 additional fee in any event. *See In re Kisseberth*, 273 F.3d 714, 720-21 (6th Cir. 2001).

The court presumes that the Debtor used post-petition wages or exempt property to pay the additional $200.00 that Mr. Reyna required but did not disclose, and therefore the court will direct Mr. Reyna to return the payment to the Debtor rather than the estate. *See* 11 U.S.C. § 329(b)(2); *see also Kisseberth*, 273 F.3d at 722.

IV. CONCLUSION AND ORDER

It appears to the court that the break-down in the parties' relationship warrants an order permitting Mr. Reyna to withdraw as counsel, but also that Mr. Reyna did not comply with his obligations under 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016. The court takes seriously the supervisory role that Congress imposed by enacting 11 U.S.C. § 329. Debtor's counsel's full and timely disclosure is crucial to this aspect of the court's responsibilities.

Today's order reinforces the importance of those disclosure requirements while avoiding the expense and delay associated with a full evidentiary hearing regarding whether the $200.00 additional fee is "excessive" within the meaning of 11 U.S.C. § 329.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 25) is GRANTED and Mr. Reyna's representation of the Debtor is concluded.

IT IS FURTHER ORDERED that Nicholas Reyna, Esq., shall refund $200.00 to the Debtor within 28 days after entry of this Order.

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 the Debtor, Abraham M. LaCourse; Nicholas A. Reyna, Esq.; Thomas R. Tibble, Chapter 7 Trustee; and the Office of the United States Trustee.

[END OF ORDER]

IT IS SO ORDERED.

Dated February 16, 2012

Scott W. Dales
United States Bankruptcy Judge