

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**RONALD G. MCDERMITT and
ELIZABETH A. MCDERMITT,
Debtors.**

**Chapter 13 Case
05-11710**

In re:

**DIANE E. ANTCZAK,
Debtor.**

**Chapter 7 Case
05-11771**

In re:

**LEONARD J. MEKELSKI, JR. and
GRACE A. MEKELSKI,
Debtors.**

**Chapter 13 Case
05-11830**

In re:

**PHYLLIS HUMEZ,
Debtor.**

**Chapter 7 Case
05-11861**

In re:

**CINDY L. MASON,
Debtor.**

**Chapter 7 Case
05-12022**

In re:

**SANDRA NELSON,
Debtor.**

**Chapter 7 Case
05-12029**

In re:

**LORI A. DAVIS,
Debtor.**

**Chapter 7 Case
05-12120**

In re:

**BERLYN A. MARTIN,
Debtor.**

**Chapter 7 Case
05-12125**

In re:

**VERONICA D.L. MCMANIS,
Debtor.**

**Chapter 7 Case
05-12390**

In re:

**DEBRA A. WILDER,
Debtor.**

**Chapter 7 Case
05-12539**

In re: RODNEY W. SHOLAN, Debtor.	Chapter 7 Case # 05-11828
In re: THOMAS R. GUYETTE, Debtor.	Chapter 7 Case # 05-11857
In re: EDWARD J. WOODS, Debtor.	Chapter 7 Case # 05-11917
In re: NED L. DAVIS, Debtor.	Chapter 13 Case # 05-12351
In re: ALICE S. NICHOLSON, Debtor.	Chapter 13 Case # 05-11840
In re: VIRGINIA A. PAYANT, Debtor.	Chapter 7 Case # 05-12355
In re: KENNETH B. BILLINGS and SYLVIA N. BILLINGS, Debtors.	Chapter 7 Case # 05-12396
In re: BETTY J. PLANTE, Debtor.	Chapter 7 Case # 05-12416
In re: JAMES J. MANN, III, Debtor.	Chapter 7 Case # 05-12536
In re: ANNE L. DOWNING, Debtor.	Chapter 7 Case # 05-12051
In re: JOSEPH E. BELANGER, SR., Debtor.	Chapter 7 Case # 05-12416
In re: JULES R. GOKEY, Debtor.	Chapter 7 Case # 05-12123

In re: REBECCA L. HERBST, Debtor.	Chapter 7 Case # 05-12124
In re: KENNETH E. KOLOMAZNIK, Debtor.	Chapter 7 Case # 05-12168
In re: ANDREW D. BROWN, Debtor.	Chapter 7 Case # 05-12196
In re: KATHLEEN S. COBURN, Debtor.	Chapter 7 Case # 05-12437
In re: JESSICA L. MARTIN, Debtor.	Chapter 7 Case # 05-12489
In re: TROY L. PRETI and, LORI A. PRETI, Debtors.	Chapter 7 Case # 05-12434
In re: ROGER G. RODRIGUE and, TEALLA J.C. RODRIGUE, Debtors.	Chapter 7 Case # 05-12428
In re: MARILYN I. BENZIE, Debtor.	Chapter 7 Case # 05-12286
In re: ALBERT DESPINS, JR., Debtor.	Chapter 7 Case # 05-11798
In re: MELINDA CAMPBELL, Debtor.	Chapter 7 Case # 05-11800
In re: JEFFREY C. NEWBEGIN and COLLEEN M. NEWBEGIN, Debtors.	Chapter 7 Case # 05-11802

In re: JAMES R. KARASINSKI and LETA J. KARASINSKI, Debtors.	Chapter 7 Case # 05-11808
In re: RAY T. BARUP, III and REBECCA COTE-BARUP, Debtors.	Chapter 7 Case # 05-11809
In re: GEORGE E. SPONTAK, Debtor.	Chapter 7 Case # 05-11810
In re: STEVEN C. SIMPSON and JULIE A. SIMPSON, Debtors.	Chapter 7 Case # 05-11813
In re: PETER A. BEDIA, Debtor.	Chapter 7 Case # 05-11814
In re: TAMMY CARTER, Debtor.	Chapter 7 Case # 05-11819
In re: JASON H. BERRY and JENNIFER J. BERRY, Debtors.	Chapter 7 Case # 05-11829
In re: RICHARD J. LATWIS, Debtor.	Chapter 7 Case # 05-11835
In re: DALE A. LAROSE and MADELINE A. LAROSE, Debtors.	Chapter 7 Case # 05-11841
In re: DELBERT L. RICHARDSON, Debtor.	Chapter 7 Case # 05-11843
In re: RUSSELL E. SPEICHER, JR. and LAURIE A. MALABRE-SPEICHER, Debtors.	Chapter 7 Case # 05-11846

In re: GERALD T. COTE , Debtor.	Chapter 7 Case # 05-11849
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In re: DAVID FINK , Debtor.	Chapter 7 Case # 05-11850
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In re: ALFRED R. WHEELER and KIMBERLY A WHEELER, Debtors.	Chapter 7 Case # 05-11862
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In re: RICHARD B. SPARROW, Debtor.	Chapter 7 Case # 05-11867
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In re: ROBERT D. WILLIAMS and CATHY L. WILLIAMS, Debtors.	Chapter 7 Case # 05-11868
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In re: BARBARA J. SKIRRY , Debtor.	Chapter 7 Case # 05-11870
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In re: SONNI W. MARTINDALE and CHRISTINE M. MARTINDALE, Debtors.	Chapter 7 Case # 05-11875
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In re: LAURA J. BULLARD, Debtor.	Chapter 7 Case # 05-11877
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In re: PATRICK H. HAUGWITZ and DARLENE A. HAUGWITZ, Debtors.	Chapter 7 Case # 05-11894
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In re: MICHAEL P. VILLEMAIRE, Debtor.	Chapter 7 Case # 05-11897
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In re: LORI FARNHAM, Debtor.	Chapter 7 Case # 05-11900
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In re: ANNETTE A. RYDER, Debtor.	Chapter 7 Case # 05-11908
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In re: JAMES C. ATTENBOROUGH and DEBRA G. ATTENBOROUGH, Debtors.	Chapter 7 Case # 05-11934
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In re: STANLEY J. CROWE, II and DEBORAH B. CROWE, Debtors.	Chapter 7 Case # 05-11935
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In re: NATHAN D. BUCK and JENNIFER V. BUCK, Debtors.	Chapter 7 Case # 05-11936
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In re: DENNIS J. TILLOTSON and JACQUELINE M. TILLOTSON, Debtors.	Chapter 7 Case # 05-11938
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In re: BRIAN R. BOUDREAU and TONYA L. BOUDREAU, Debtors.	Chapter 7 Case # 05-11941
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In re: ANDREW A. BEAN, Debtor.	Chapter 7 Case # 05-11942
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In re: RONALD A. HUARD, III, Debtor.	Chapter 7 Case # 05-11989
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In re: MICHEAL A. MCLELLAN and LORI A. MCLELLAN, Debtors.	Chapter 7 Case # 05-11990
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In re: DAVID L. DRURY, Debtor.	Chapter 7 Case # 05-11992
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In re: ALICE G. HASKINS, Debtor.	Chapter 7 Case # 05-11994
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In re: ROBIN L. DAVIS, Debtor.	Chapter 7 Case # 05-11995
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In re: EVAN J. JACOBSEN and MELISSA L. JACOBSEN, Debtors.	Chapter 7 Case # 05-12014
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In re: RANDIE J. FOX, Debtor.	Chapter 7 Case # 05-12066
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In re: ANDRE R. SOULIGNY, Debtor.	Chapter 7 Case # 05-12080
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In re: LARRY W. KENNISON, SR. and JERI M. KENNISON, Debtors.	Chapter 7 Case # 05-12086
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In re: DONALD R. PROULX and KAREN M. PROULX, Debtors.	Chapter 7 Case # 05-12108
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In re: KEVIN M. O'CONNELL, Debtor.	Chapter 7 Case # 05-12113
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In re: BETHANY A. BATES, Debtor.	Chapter 7 Case # 05-12117
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In re: MICHELLE MERCADANTE, Debtor.	Chapter 7 Case # 05-12157
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In re: ERNEST G. MACDOUGALL and, ROSE L. MACDOUGALL, Debtors.	Chapter 7 Case # 05-12177
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In re: WAYNE L. CORCORAN and RENEEE A. CORCORAN, Debtors.	Chapter 7 Case # 05-12224
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In re: THERESA M. STEARNS, Debtor.	Chapter 7 Case # 05-12238
In re: MADELENE M. DESMARAIS, Debtor.	Chapter 7 Case # 05-12264
In re: ROBERT A. THEROUX and, CAROLYN J. THEROUX, Debtors.	Chapter 7 Case # 05-12306
In re: ROBERT E. NEAS and, DONNA J. NEAS, Debtors.	Chapter 7 Case # 05-12311
In re: MICHAEL J. WHEELER, Debtor.	Chapter 7 Case # 05-12320
In re: STEVEN J. FRENCH, Debtor.	Chapter 7 Case # 05-12324
In re: MARIJANE M. WEGLARZ, Debtor.	Chapter 7 Case # 05-12331
In re: EDUARDO RIVERA, JR. and, KENIA RIVERA, Debtors.	Chapter 7 Case # 05-12340
In re: PAULA J. PIERCE, Debtor.	Chapter 7 Case # 05-12358
In re: BRENDA L. BURKE, Debtor.	Chapter 7 Case # 05-12364
In re: JAMES A. MACFARLANE, Debtor.	Chapter 7 Case # 05-12369

In re: ELIZABETH A. WHITE, Debtor.	Chapter 7 Case # 05-12374
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In re: DARLENE L. POLEIO, Debtor.	Chapter 7 Case # 05-12377
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In re: PAUL A. MONTAGUE and, PAIGE MONTAGUE, Debtors.	Chapter 7 Case # 05-12381
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In re: ERIK R. BENNETT and, HEIDI M. BENNETT, Debtors.	Chapter 7 Case # 05-12423
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In re: FLOYD WAGNER and, BARBARA WAGNER, Debtors.	Chapter 7 Case # 05-12456
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In re: NANCY M. GADUE, Debtor.	Chapter 7 Case # 05-05-12465
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In re: PATRICIA J. SCHRICKER, Debtor.	Chapter 7 Case # 05-12478
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In re: JOHN F. HAYNES, Debtor.	Chapter 7 Case # 05-12525
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In re: TIMOTHY J. TWINAM and, SARAH E. TWINAM, Debtors.	Chapter 7 Case # 05-12005
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In re: KEVIN R. AUDET and, JEAN M. AUDET, Debtors.	Chapter 7 Case # 05-12372
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MEMORANDUM OF DECISION
RECONSIDERING PRIOR ORDER AND
DETERMINING SANCTIONS ARE NOT WARRANTED AND ATTORNEY’S FEES ARE NOT UNREASONABLE

The question before the Court is whether disgorgement of fees is an appropriate sanction against Richard Scholes, Esq., an attorney who filed 141 cases during the 16 days prior to the effective date of the new bankruptcy law and either missed the deadline for timely filing the schedules, or failed to timely file a motion to extend the deadline for schedules, in the majority of those cases. The incomplete cases were not dismissed because: (i) the Court intervened in the management of the cases, made a finding of law office failure and granted many discretionary extensions of time for the filing of the required schedules; and (ii) the case trustees granted Mr. Scholes (hereinafter the “Attorney”) extensions of time for the filing of the documents needed for § 341 meetings, and rescheduled § 341 meetings to accommodate him.¹ The record reflects that the Attorney was paid \$100,144 in connection with 99 of these cases,² an average fee of about \$1,020 per case.³ The Court has a duty under 11 U.S.C. § 329 to inquire as to whether these fees are reasonable in light of the Attorney’s failure to manage this extraordinary caseload in the manner required under the pertinent rules and statutes, and to determine whether this conduct warrants the imposition of sanctions.

I. PROCEDURAL BACKGROUND

The procedural background of the cases in which the Court is considering whether disgorgement may be appropriate as a sanction includes the following salient facts, chronology and circumstances:

1. The Attorney filed 141 consumer bankruptcy cases during the period of October 1, 2005 through October 16, 2005, the 16 day period immediately preceding the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”).
2. The Attorney filed 127 of the 141 cases as “bare bones” petitions i.e., without any of the schedules and statements required for bankruptcy relief (hereinafter these 127 cases will be referred to as the “Subject Cases”).

¹ The cases of In re Benware, # 05-12405 and In re Rodrigue, # 05-12428 were dismissed for the debtors’ failure to file schedules and statements within the extended time period. However, upon the debtors’ motion, the Court reconsidered the dismissal of In re Rodrigue and reinstated that case.

² Because no statements or schedules were ever filed in In re Benware, # 05-12405, and there is no 2016 statement on record, the Court has no information regarding the amount of the Attorney’s fee for this case; thus, it is not included in the total fees paid.

³ The fees charged by the Attorney range from \$591 to \$2,911. In over one-third of the cases filed, the Attorney’s fee exceeded \$1,000 and in all of these cases the fee was at least \$500. The amounts set forth in the Attorney’s 2016 statements include both the Attorney’s fee and the filing fee; the figure set forth herein reflects only the actual fees paid for attorney services.

3. In order to complete the bare bones petitions, and consistent with F.R.B.P. 1007(c) , the Attorney filed a motion to extend the filing deadline in all of the Subject Cases.^I

4. In 70 of the Subject Cases however, the Attorney did not file the motion to extend time until after the expiration of the 15 day time period set forth in F.R.B.P. 1007(c).^{II} Notwithstanding their tardiness, the Court granted all of the Attorney's motions to extend the filing deadline in the Subject Cases.

5. In 107 of the Subject Cases, the Attorney failed to file schedules by the deadlines set in the orders granting the Attorney's motions to extend the filing deadlines (these 107 cases are referred to herein as the "Untimely Subject Cases").^{III}

6. In 18 of the Untimely Subject Cases, this Court scheduled a hearing for November 15, 2005 to give the Attorney the opportunity to show cause why those cases should not be dismissed for failure to timely file all required schedules.^{IV} Prior to the November 15th hearing, the Attorney filed the required schedules in each of the 18 cases set for hearing,^V and the hearing was therefore cancelled.

To address the remaining Subject Cases, the Court held a show cause hearing on November 22, 2005 and a status hearing on November 29, 2005.

At the November 22nd show cause hearing, the Court addressed 29 of the Subject Cases which were still incomplete.^{VI} A troubling aspect of this hearing was that it was the court staff, rather than the Attorney , who identified most of these incomplete cases.^{VII} At the hearing, the Attorney made an oral motion for an additional extension of time to file the required documents, asserting that the deficiencies were due solely to the press of work in his office and circumstances that generally constituted excusable neglect and law office failure. Case trustees Jan M. Sensenich, John R. Canney, III, Raymond J. Obuchowski, Douglas J. Wolinsky and Gleb Glinka consented to the Attorney's motion for a further extension of time in each of the cases in which they served as trustee. Therefore, on November 23, 2005, the Court entered an order (a) extending the deadline for curing the deficiencies in each of these 29 cases and (b) rescheduling the § 341 meetings where necessary ("Order #1").^{VIII} Additionally, the Court included in Order #1 a *sua sponte* sanction directing the Attorney to remit to each of the debtors in the 29 cases 20% of the fee he had been paid as a sanction for his failure to file the required documents in a timely fashion and his failure to properly manage these cases. This sanction was intended to reduce the fee to one that the Court deemed to be reasonable in light of the

Attorney's role in delaying the efficient administration of the subject bankruptcy estates.

At the November 29 status hearing, the Attorney addressed the status of 70 of the remaining Subject Cases. At the hearing, the Attorney made an oral motion for a further extension of time to file the required documents in those 70 cases, once again asserting that all of the filing deficiencies were due solely to the press of work in his office and circumstances that generally constituted excusable neglect and law office failure.^{IX} The United States Trustee's Office and the case trustees consented to the Attorney's motion for a further extension of time in each of these 70 cases. On November 30, 2005, the Court entered an order (a) extending the deadline for curing the deficiencies in each of these 70 cases and (b) rescheduling the § 341 meetings to a new date that had been specially established by the U.S. Trustee to accommodate the Attorney ("Order #2).

At the November 29 status hearing, the Attorney requested the Court reconsider the sanction imposed in Order #1. The Court granted the Attorney's motion to reconsider the sanction and allowed him an opportunity to file a memorandum of law in support of his position that sanctions are not warranted under the circumstances presented. The Court also invited the Office of the U.S. Trustee and each case trustee a similar period of time to file a memorandum of law on the issue, but they opted not to do so. The basis of the Court's determination to grant the motion to reconsider was that "the Court [was] not aware of any reason the determination as to disgorgement should not be uniform as between the instant 29 cases that were addressed at the November 22nd hearing and the approximately 70 cases that were addressed at the November 29th hearing." Order Granting Attorney's Motion for Reconsideration, dated November 30, 2005. The Court also considered the Attorney's argument that since he had agreed to file certain of these 99 cases for a lower fee, had devoted extra time to these cases (due, as he admitted, in large part, to his failure to file schedules in a timely manner), and had ultimately filed schedules in these cases that were complete and accurate, there were grounds to support a Court determination that the Attorney had already suffered sufficient financial penalty.

Having granted reconsideration, and considered the Attorney's arguments, the Court now addresses the substantive issue of whether sanctions are warranted in the 99 cases which were the subject of Order #1 and Order #2, and whether the fees paid to the Attorney for these cases were reasonable.

II. DISCUSSION

A. Rules and Statutes Governing Attorney Conduct

The conduct of attorneys practicing before this Court is governed by the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, the Vermont Local Bankruptcy Rules, the District Court Local Rules and the Vermont Rules of Professional Conduct.

(i) The Federal Rules of Bankruptcy Procedure

Rule 1007(c) of the Federal Rules of Bankruptcy Procedure requires a debtor in a voluntary chapter 7

or 13 case to file his or her schedule of debts and assets either with the petition or within 15 days of the date the petition is filed. A debtor's attorney bears a significant degree of responsibility in assuring that the schedules are complete and accurate before they are filed. In re Roy R. Bellows-Fairchild, 322 B.R. 675, 680 (Bankr.D.Or. 2005)(citing 4 Collier on Bankruptcy ¶ 521.03[3] (15th ed. Rev. 2005)). Depending on a debtor's sophistication, he or she may complete a first draft of the schedules independently, but the debtor's attorney still has the responsibility to ensure that the schedules are complete and in compliance with the Federal Bankruptcy Rules. Id. The purpose of filing properly completed and timely schedules is to “furnish the trustee and creditors with detailed information about the debtor's financial condition, thereby saving the expense of long and protracted examination for the purpose of soliciting the information.” Bellows-Fairchild, 322 B.R. at 681; The Cadle Co. v. King (In re King), 272 B.R. 281, 293 (Bankr. N.D.Okla. 2002) (citing 4 Collier on Bankruptcy ¶ 521.09). The effective administration of a bankruptcy case depends upon the debtor's attorney guiding his or her client toward the filing of complete and accurate schedules within the prescribed time period. Regardless of the financial or personal difficulties a debtor may be facing, the Bankruptcy Code requires a debtor and his or her attorney to guarantee the schedules that are filed are complete and accurate to the best of the debtor's knowledge. In re David M. Ptasinski, 290 B.R. 16, 26-27 (Bankr. W.D.N.Y. 2003). Moreover, this requirement that debtors in a voluntary case timely file their schedules is one of the few obligations debtors must fulfill in order to obtain a bankruptcy discharge, and their “fresh start.”

(ii) The Bankruptcy Code

To ensure that cases before the court are properly administered, the Bankruptcy Code authorizes bankruptcy courts to punish procedural abuses. The court may “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The Second Circuit has recognized that a court has the power to implement sanctions to punish abuses that occur before the court. See Sakon v. Andreo, 119 F.3d 109, 113 (2d Cir. 1997). The source of a court's power to issue sanctions is governed by a number of varying standards, making it imperative for the court to explain its sanction orders “with care, specificity, and attention to the sources of its power.” Id. at 114. Furthermore, due process entitles a party to specific notice of the conduct being sanctioned and the standard the court is using to assess the sanctions. Satcorp International Group v. China National Silk Import and Export Corp., 101 F.3d 3, 6 (2d Cir. 1996). Thus, a Court imposing sanctions must have a sound legal basis for doing so and articulate the statute, rule or decision upon which it is relying. See id. at 5.

(iii) The Local Rules of the District and Bankruptcy Courts of this District

Under the Local Bankruptcy Rules for the District of Vermont, a debtor's attorney in a chapter 7 or 13 case who charges a flat fee must render services that include “preparing and filing the petition, lists, schedules

and statements.” Vt. L.B.R. 2016-1(f)(B) (2005). When an attorney fails to meet his or her responsibilities to the court or his client, this Court shall enforce the disciplinary rules set forth by the district court in Vt. LR 83.2(d) if the circumstances warrant discipline. *Id.* at 2090-2. According to the Local Rules of Procedure for the United States District Court of Vermont, misconduct occurs when an attorney’s acts or omissions violate the Rules of Professional Responsibility adopted by the Supreme Court of Vermont. Vt. L.R. 83.2(d)(4)(B) (2005).

(iv) The Vermont Rules of Professional Conduct

The Vermont Rules of Professional Conduct (“VRPC”) specifically provide that “[e]very lawyer is responsible for observance of the Rules of Professional Conduct.” Vt. Rules of Prof’l Conduct, Preamble (2005). In light of the reference from the District Court rules and the plain language of the VRPC, the Court concludes it is appropriate to assess the Attorney’s conduct, and determine whether sanctions are warranted by reference to the VRPC. If an attorney practicing before this Court fails to comply with the VRPC, and the totality of circumstances demonstrate that discipline is warranted, this Court has the duty under the District and Bankruptcy Local Rules to impose the appropriate sanction pursuant to 11 U.S.C. § 105(a).

B. Analysis of the Attorney’s Conduct under the Vermont Rules of Professional Conduct

Rule 1.3 of the Vermont Rules of Professional Conduct (“VRPC”) requires a lawyer to “act with reasonable diligence and promptness in representing a client.” Vt. Rules of Prof’l Conduct, R. 1.3 (2005). The definitions set forth in the VRPC articulate that *reasonable*, “when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.” Vt. Rules of Prof’l Conduct, Preamble, terminology (2005). Under Administrative Order 9, Rule 16(C) of the Vermont Supreme Court, the standard of proof governing charges of misconduct is clear and convincing evidence. See Vt. Prof’l Responsibility Board, Decision No. 65 (2003). Thus, to establish that the Attorney’s failure to timely file schedules in these cases constituted misconduct, there must be clear and convincing evidence that it constitutes a failure to represent his clients with “reasonable diligence and promptness.”

When reviewing an attorney’s handling of a case under Rule 1.3, the courts will determine if an attorney managed a client’s case with “reasonable diligence and promptness” on a case-by-case basis. Vt. Prof’l Responsibility Board, Decision No. 57 (2003). According to the Comments to Rule 1.3, attorneys have a responsibility to control their caseload so that each case before them can be adequately handled in a manner that avoids personal and professional inconveniences. Vt. Rules of Prof’l Conduct, R. 1.3 cmt. (2005). This is the seminal standard against which the conduct of the Attorney must be measured. Regardless of the size of an attorney’s caseload, he or she must competently handle all the matters he or she accepts despite the personal inconveniences it may create. *Id.* Here, the Court treats the series of incomplete filings in the Subject Cases as a single “case” for purposes of its case-by-case analysis. This appears to be the fairest and

most rational approach because the Attorney filed the Subject Cases during such a short window of time as to render them effectively simultaneous filings. Hence, if the Court were to determine that the totality of the circumstances demonstrated misconduct by the Attorney, it would be a single incident of misconduct.

(i) the Reasonable Diligence and Promptness Standard

The Court begins its analysis with an examination of the specific facts and unique circumstances presented in this case. The record reflects that the genesis of the Attorney's difficulty arose due to the number of cases that he felt compelled to file prior to October 17th, and that the time-frame for filing and completing the cases was inflexibly circumscribed by the BAPCPA effective date.

The record reflects that during the months following the enactment of BAPCPA (in March 2005), the Attorney met with dozens of clients who expressed an interest in filing bankruptcy before the effective date of BAPCPA, but many of those potential clients waited until as late as September of 2005 to follow through on their expression of interest. (Scholes Br. pg. 3). The Attorney asserts that the reason he filed so many cases between October 5, 2005 and October 16, 2005 was that he was attempting to get all of his clients bankruptcy relief under the pre-BAPCPA law and many of them had not completed their bankruptcy documents until mid-September. At that point in time, the Attorney was faced with the prospect of either turning away clients or taking on more cases than he could reasonably expect to process in a timely fashion (i.e., filing the petitions by October 17th and filing complete schedules for each case within the statutory time frame of 15 days after the petition was filed). Given this set of circumstances, the Attorney chose to file 141 petitions and consequently was not able to meet his professional obligation of acting with reasonable diligence and promptness in a substantial number of the cases. The record is clear that the attorney failed to timely file schedules in 99 cases. Thus, the Court finds that there is clear and convincing evidence that the Attorney failed to meet the reasonable promptness standard of VRPC 1.3.

The Court considers the Attorney's prior case filing record relevant to the instant question. The Attorney's filing of 141 cases during the subject 15 day period is dramatically higher than the number of cases the Attorney had filed for any similar time period in the past. The Clerk's Office's records indicate that the Attorney filed approximately 119 cases during the 12 months of 2003, 79 cases during the 12 months of 2004, and 50 cases during the first 9 months of 2005. The Court starts with the premises that the Attorney acted with the best of professional intentions, and was motivated to file "bare bones" petitions for 127 clients prior to October 17th by a desire to obtain the best result for his clients. However, the Attorney must have realized that this was likely to pose a tremendous logistical challenge to his small one attorney office. It was incumbent upon him, at that point, to balance his duty to represent his clients zealously against his duty to represent his clients with reasonable diligence and promptness. That is where the error in judgment occurred. Based upon the record in the Subject Cases, the Attorney's extensive consumer bankruptcy experience, and

the Attorney's prior caseload, the Court finds that the Attorney's handling of a this extraordinary number of cases during the subject period did not meet the reasonable diligence standard mandated by VRPC 1.3.

After a review of the proceedings surrounding the "bare bones" petitions the Attorney filed in the Subject Cases, the Court finds a number of circumstances where the Attorney failed to act with reasonable diligence and promptness. Federal Rule of Bankruptcy Procedure 1007 explicitly states that "in a voluntary case, the schedules and statements...shall be filed with the petition...or within 15 days thereafter..." F.R.B.P. 1007. When it first came to the Attorney's attention that he would be unable to file timely schedules in Subject Cases, he filed a motion to extend the filing deadline in each case. However, the motion was late in 70 of the Subject Cases. The Court is cognizant that debtors' records are frequently unorganized or complex, and it is therefore often difficult for attorneys to collect from their clients the information necessary to complete the schedules within the 15 day time frame the Bankruptcy Rules mandate. As the Attorney himself indicated, one of the reasons he filed so many petitions in such a condensed time frame was that many of his clients failed to complete the necessary paperwork until mid-September. When an attorney is aware that he or she will be unable to file the schedules in a timely manner, it is incumbent upon the attorney to file a request for an extension of time under F.R.B.P. 1007(c), and to file that within the 15 day period the Bankruptcy Rules set for the timely filing of schedules. If the debtor or the debtor's attorney fails to file the schedules or a motion to extend time in a timely manner, the United States Trustee or the court may move to dismiss the case after notice and a hearing and for cause shown. 11 U.S.C. §§ 707(a)(1), (a)(3). Fortunately for the debtors involved in these cases, neither the United States Trustee nor the Court initiated action for the dismissal of any of the Subject Cases. Additionally, the Court granted all 127 of the Attorney's timely and untimely motions for an extension of time because it was found that the Attorney's failure to act in a timely manner was the result of "excusable neglect" and law office failure. See F.R.B.P. 9006(b)(1). Thus, the Court finds that while the Attorney's failure to file timely motions for an extension of time in the Untimely Subject Cases was the result of law office failure, it is nonetheless also a failure to act with reasonable diligence and promptness as mandated by VRPC 1.3.

(ii) the Reasonably Prudent and Competent Lawyer Standard

Pursuant to VRPC Rule 1.3 (and the decisions of the Vermont Professional Responsibility Board applying that rule), the Court also scrutinizes the Attorney's decision to retain all of these cases in terms of whether this is what a reasonably prudent and competent lawyer would have done in these circumstances. See Vt. Rules of Prof'l Conduct, Preamble, terminology (2005). The key factors the Court considers for this purpose are: (1) the Attorney filed more cases in this 2-week period than he had filed in any 12-month period over the preceding three years, (2) the Attorney was familiar with the filing requirements and amount of time necessary to file complete schedules, and (3) the Attorney was aware that if the cases were not filed by

October 17, 2005 his clients would be permanently barred from obtaining bankruptcy relief under what was generally perceived to be the more “debtor-friendly” bankruptcy law, and there was no way to extend that date. The Court finds that a reasonably prudent and competent lawyer in this situation would have referred some of these clients to other attorneys so he or she could complete all of the cases in a timely and competent fashion⁴ and so all of the clients could be assured of relief under the pre-BAPCPA law.

C. Determining if there are Aggravating or Mitigating Factors in the Totality of Circumstances

The Vermont Supreme Court has instructed that it is appropriate to apply the ABA Standards for Imposing Lawyer Sanctions when determining sanctions against an attorney. In re Warren, 167 Vt. 259, 261 (1997). The ABA Standards provide that a court should consider the duty the attorney violated, the attorney’s mental state at the time of the violation, and the potential or actual injury caused by the lawyer’s misconduct. ABA Standard for Imposing Lawyer Sanctions § 3.0 (2005). A court should also take into account all aggravating and mitigating factors before it imposes sanctions. Id. “Aggravating factors” are those that may justify increasing the discipline to be imposed after misconduct has been established, Id. at § 9.21, and include, but are not limited to, “prior disciplinary offenses,” “dishonest or selfish motive,” “a pattern of misconduct,” “multiple offenses,” “refusal to acknowledge wrongful nature of conduct,” “vulnerability of [the] victim,” and “substantial experience in the practice of law.” Id. at § 9.22(a)-(d), (k)-(i). See In re Warren, 167 Vt. at 261; In re Blais, 174 Vt. 628, 817 A.2d 1266, 1269-71 (2002). The Court finds that while the Attorney did fail to manage his case load in a diligent and prompt fashion, as required by VRPC Rule 1.3, he did not intentionally neglect his clients’ matters. Moreover, the Attorney does not have a history of failing to diligently represent his clients; there is nothing in the record that indicates the Attorney took on these cases with the intent to disregard his obligation to meet the deadlines; and since the Court has found the subject conduct to be a single event, there is no pattern of misconduct at issue. For these reasons, the Court finds no aggravating circumstances. On the contrary, the Court notes that the Attorney has a reputation in this District for representing his clients competently, acting with integrity, meeting court and statutorily imposed deadlines, and filing timely and thorough schedules on behalf of consumer debtors.

The ABA defines “mitigating factors” as any considerations that may justify a reduction in a sanction that may be imposed, Id. at § 9.31, and include, but are not limited to, “absence of prior disciplinary record,” “absence of dishonest or selfish motive,” “personal or emotional problem,” timely effort to rectify consequences of the misconduct, “character or reputation,” “remorse,” and “inexperience in the practice of law.” Id. at § 9.32(a)-(d), (f), (g), (m). In this case, the Court finds it is appropriate to characterize the

⁴ There is no issue raised by any party or the Court with respect to the Attorney’s competence; this is solely an issue of adherence to time limits and the exercise of sound professional judgment *vis a vis* workload.

substantial substantive changes brought by BAPCPA, the looming October 17th effective date for these changes in the legal rights of persons seeking bankruptcy relief, and the extraordinary number of individuals seeking to file for bankruptcy during the 6-month period between the enactment and effective date of BAPCPA as relevant mitigating factors. The Court finds these mitigating factors justify a reduction in the sanction that would otherwise be imposed upon an attorney who fails to meet the VRPC Rule 1.3 standard.

D. Whether Monetary Sanctions Are Warranted

As a general rule, monetary sanctions are imposed to redress, compensate or punish the conduct of a professional who causes pecuniary loss. To illustrate: in the absence of pecuniary harm, the Vermont Professional Responsibility Board either imposes a public reprimand or suspends the offending attorney (with the sanction determined by the severity of the misconduct); bankruptcy courts impose monetary sanctions in cases where damages have been caused and can be remedied by a compensatory judgment. See In re MPM Enterprises, Inc., 231 B.R. 500, 506 (Bankr. E.D.N.Y. 1999) (ordering disgorgement of fees was appropriate due to attorney's misrepresentations to the Court).

The Court weighs heavily the fact that none of the above-referenced debtors' cases were dismissed and no debtor has alleged that they suffered actual pecuniary harm due to the Attorney's failure to timely file schedules. While this Court finds that the Attorney did not act with reasonable diligence in representing certain of his pre-BAPCPA clients, it is persuaded that monetary sanctions are not appropriate where, as here, there is no proof of pecuniary loss, and no allegation by either the case trustees or the U.S. Trustee, that they or their constituents suffered any burden (administratively or financially) as a result of the Attorney's procedural oversights and tardiness in connection with his filing of schedules and § 341 documents. Accordingly, the Court concludes that under the totality of the circumstances, and in particular in light of the lack of pecuniary damage, monetary sanctions are not warranted.

E. Reasonableness of Fees under § 329

The Court has examined the attorney's fee paid in each of the above-referenced cases, and, in particular, considered whether a fee reduction is appropriate in any of these cases in light of the Attorney's failure to properly attend to the filing deadlines. After looking at the totality of the circumstances, including the amount of time the Attorney has expended in each case, the ultimate conclusion in each case, and the lack of complaint from either the debtors or the case trustee in these cases, the Court finds no basis in the record to determine that the fees paid were not reasonable.

CONCLUSION

For the reasons set forth above, the Court finds that the Attorney's handling of the Subject Cases failed to comply with Rule 1.3 of the Vermont Professional Responsibility Code, and this conduct constitutes a single incident of failing to represent his clients with diligence and promptness. The Court further finds that

there were no aggravating factors, and that there were several important mitigating factors to weigh in assessing whether to impose sanctions.

After taking into account the totality of circumstances presented, including the dramatic consequences and timing of the BAPCPA, the Attorney's candid explanation for his conduct and diligent efforts to rectify his error in judgment, the Court's extension of the filing deadlines in each case, the absence of any plea for relief by either the debtors or the case trustees, the quality of the schedules ultimately filed in each case, and the Attorney's past performance in representing consumer debtors in this District, the Court finds it appropriate not to impose of sanctions against the Attorney.

The Court also finds no basis, under 11 U.S.C. § 329, to compel the Attorney to reduce the fee he charged in any of these cases.

Therefore, the Court vacates the direction in Order #1 that imposed a disgorgement sanction.

SO ORDERED.

Rutland, Vermont
May 30, 2006



Colleen A. Brown
United States Bankruptcy Judge

I

05-11661 <u>Clayton C. Carpenter and Patricia H. Carpenter</u>	05-11686 <u>Peter Nicholas Hecht</u>
05-11927 <u>Richard F. Hayden</u>	05-11666 <u>Jennifer A. Perry</u>
05-11668 <u>Francis E. Cresenzi</u>	05-11671 <u>Shawn J. Lachance and Karen Rae Lachance</u>
05-11818 <u>Katherine A. Logan</u>	05-11821 <u>Dana L. Barnett</u>
05-11832 <u>Wendy J. Bacon</u>	05-11853 <u>Susan M. Duke</u>
05-11859 <u>James G. Condict Jr. and Jeanne Zoecklein-Condict</u>	05-11865 <u>Dennis E. Doyle</u>
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05-12124 <u>Rebecca L. Herbst</u>	05-12168 <u>Kenneth E. Kolomaznik</u>
05-12196 <u>Andrew D. Brown</u>	05-12351 <u>Ned L. Davis</u>
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05-11798 <u>Albert Despins Jr.</u>	05-11800 <u>Melinda Campbell</u>
05-11809 <u>Ray T. Barup III and Rebecca Cote-Barup</u>	05-11810 <u>George E. Spontak</u>
05-11829 <u>Jason H. Berry and Jennifer J. Berry</u>	05-11835 <u>Richard J. Latwis</u>
05-11841 <u>Dale A. LaRose and Madaline A. LaRose</u>	05-11843 <u>Delbert L. Richardson</u>
05-12157 <u>Michelle Mercadante</u>	05-12177 <u>Ernest G. MacDougall and Rose L. MacDougall</u>
05-12224 <u>Wayne L. Corcoran and Renee A. Corcoran</u>	05-12286 <u>Marilyn I. Benzie</u>
05-11802 <u>Jeffrey C. Newbegin and Colleen M. Newbegin</u>	05-11819 <u>Tammy Carter</u>
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05-11666 Jennifer A. Perry

05-11668 Francis E. Cresenzi

05-11679 Jeremy P. Bolio and Kristen A. Bolio
05-11690 Randall A. Demers and Candace E. Demers
05-11695 Tanya J. Fortin
05-11805 Terri L. Farrand
05-11821 Dana L. Barnett
05-11832 Wendy J. Bacon
05-11859 James G. Conduct Jr. and Jeanne Zoecklein-Conduct
05-11929 Roland E. Cross and Margaret N. Cross

05-11683 Paula M. Judd
05-11692 Margaret L. Farrington
05-11712 Michael D. Silva Sr. and Laura L. Silva
05-11806 Jeffrey D. LaClair
05-11825 Barbara A. Hill
05-11853 Susan M. Duke
05-11920 George W. Kimball
05-11865 Dennis E. Doyle

V Id.

VI Prior to the November 22, 2005 hearing, the Attorney cured deficiencies in 12 of the cases by filling the required schedules and statements. See 05-11671 Shawn J. Lachance and Karen Rae Lachance; 05-11818 Katherine A. Logan; 05-12016 Ann S. May; 05-12121 Robert L. Williamson, Sr.; 05-12138 Francis E. Hathaway, Jr.; 05-12149 Joseph V. McCarthy and Jo-Anne McCarthy; 05-12271 John P. Ruvdich and Ardith L. Unger-Ruvdich; 05-12298 Robert A. Gosselin and Cathy B. Gosselin; 05-12302 Colleen T. White; 05-12312 John R. Fuller; 05-12353 Roger W. Pray; 05-12537 Thomas S. Girardi.

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VIII Id.

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05-11862 Alfred R. Wheeler and Kimberly A. Wheeler
05-11868 Robert D. Williams and Cathy L. Williams
05-11800 Melinda Campbell
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**RONALD G. MCDERMOTT and
ELIZABETH A. MCDERMOTT,
Debtors.**

**Chapter 13 Case
05-11710**

In re:

**DIANE E. ANTCZAK,
Debtor.**

**Chapter 7 Case
05-11771**

In re:

**LEONARD J. MEKELSKI, JR. and
GRACE A. MEKELSKI,
Debtors.**

**Chapter 13 Case
05-11830**

In re:

**PHYLLIS HUMEZ,
Debtor.**

**Chapter 7 Case
05-11861**

In re:

**CINDY L. MASON,
Debtor.**

**Chapter 7 Case
05-12022**

In re:

**SANDRA NELSON,
Debtor.**

**Chapter 7 Case
05-12029**

In re:

**LORI A. DAVIS,
Debtor.**

**Chapter 7 Case
05-12120**

In re:

**BERLYN A. MARTIN,
Debtor.**

**Chapter 7 Case
05-12125**

In re:

**VERONICA D.L. MCMANIS,
Debtor.**

**Chapter 7 Case
05-12390**

In re:

**DEBRA A. WILDER,
Debtor.**

**Chapter 7 Case
05-12539**

In re: RODNEY W. SHOLAN, Debtor.	Chapter 7 Case # 05-11828
In re: THOMAS R. GUYETTE, Debtor.	Chapter 7 Case # 05-11857
In re: EDWARD J. WOODS, Debtor.	Chapter 7 Case # 05-11917
In re: NED L. DAVIS, Debtor.	Chapter 13 Case # 05-12351
In re: ALICE S. NICHOLSON, Debtor.	Chapter 13 Case # 05-11840
In re: VIRGINIA A. PAYANT, Debtor.	Chapter 7 Case # 05-12355
In re: KENNETH B. BILLINGS and SYLVIA N. BILLINGS, Debtors.	Chapter 7 Case # 05-12396
In re: BETTY J. PLANTE, Debtor.	Chapter 7 Case # 05-12416
In re: JAMES J. MANN, III, Debtor.	Chapter 7 Case # 05-12536
In re: ANNE L. DOWNING, Debtor.	Chapter 7 Case # 05-12051
In re: JOSEPH E. BELANGER, SR., Debtor.	Chapter 7 Case # 05-12100
In re: JULES R. GOKEY, Debtor.	Chapter 7 Case # 05-12123

In re: REBECCA L. HERBST, Debtor.	Chapter 7 Case # 05-12124
In re: KENNETH E. KOLOMAZNIK, Debtor.	Chapter 7 Case # 05-12168
In re: ANDREW D. BROWN, Debtor.	Chapter 7 Case # 05-12196
In re: KATHLEEN S. COBURN, Debtor.	Chapter 7 Case # 05-12437
In re: JESSICA L. MARTIN, Debtor.	Chapter 7 Case # 05-12489
In re: TROY L. PRETI and, LORI A. PRETI, Debtors.	Chapter 7 Case # 05-12434
In re: ROGER G. RODRIGUE and, TEALLA J.C. RODRIGUE, Debtors.	Chapter 7 Case # 05-12428
In re: MARILYN I. BENZIE, Debtor.	Chapter 7 Case # 05-12286
In re: ALBERT DESPINS, JR., Debtor.	Chapter 7 Case # 05-11798
In re: MELINDA CAMPBELL, Debtor.	Chapter 7 Case # 05-11800
In re: JEFFREY C. NEWBEGIN and COLLEEN M. NEWBEGIN, Debtors.	Chapter 7 Case # 05-11802

In re: JAMES R. KARASINSKI and LETA J. KARASINSKI, Debtors.	Chapter 7 Case # 05-11808
<hr/> In re: RAY T. BARUP, III and REBECCA COTE-BARUP, Debtors.	Chapter 7 Case # 05-11809
<hr/> In re: GEORGE E. SPONTAK, Debtor.	Chapter 7 Case # 05-11810
<hr/> In re: STEVEN C. SIMPSON and JULIE A. SIMPSON, Debtors.	Chapter 7 Case # 05-11813
<hr/> In re: PETER A. BEDIA, Debtor.	Chapter 7 Case # 05-11814
<hr/> In re: TAMMY CARTER, Debtor.	Chapter 7 Case # 05-11819
<hr/> In re: JASON H. BERRY and JENNIFER J. BERRY, Debtors.	Chapter 7 Case # 05-11829
<hr/> In re: RICHARD J. LATWIS, Debtor.	Chapter 7 Case # 05-11835
<hr/> In re: DALE A. LAROSE and MADELINE A. LAROSE, Debtors.	Chapter 7 Case # 05-11841
<hr/> In re: DELBERT L. RICHARDSON, Debtor.	Chapter 7 Case # 05-11843
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<p>In re: RUSSELL E. SPEICHER, JR. and LAURIE A. MALABRE-SPEICHER, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11846</p>
<p>In re: GERALD T. COTE , Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11849</p>
<p>In re: DAVID FINK , Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11850</p>
<p>In re: ALFRED R. WHEELER and KIMBERLY A WHEELER, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11862</p>
<p>In re: RICHARD B. SPARROW, Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11867</p>
<p>In re: ROBERT D. WILLIAMS and CATHY L. WILLIAMS, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11868</p>
<p>In re: BARBARA J. SKIRRY , Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11870</p>
<p>In re: SONNI W. MARTINDALE and CHRISTINE M. MARTINDALE, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11875</p>
<p>In re: LAURA J. BULLARD, Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11877</p>
<p>In re: PATRICK H. HAUGWITZ and DARLENE A. HAUGWITZ, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11894</p>
<p>In re: MICHAEL P. VILLEMAIRE, Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11897</p>

<p>In re: LORI FARNHAM, Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11900</p>
<p>In re: ANNETTE A. RYDER, Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11908</p>
<p>In re: JAMES C. ATTENBOROUGH and DEBRA G. ATTENBOROUGH, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11934</p>
<p>In re: STANLEY J. CROWE, II and DEBORAH B. CROWE, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11935</p>
<p>In re: NATHAN D. BUCK and JENNIFER V. BUCK, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11936</p>
<p>In re: DENNIS J. TILLOTSON and JACQUELINE M. TILLOTSON, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11938</p>
<p>In re: BRIAN R. BOUDREAU and TONYA L. BOUDREAU, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11941</p>
<p>In re: ANDREW A. BEAN, Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11942</p>
<p>In re: RONALD A. HUARD, III, Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11989</p>
<p>In re: MICHEAL A. MCLELLAN and LORI A. MCLELLAN, Debtors.</p> <hr/>	<p>Chapter 7 Case # 05-11990</p>
<p>In re: DAVID L. DRURY, Debtor.</p> <hr/>	<p>Chapter 7 Case # 05-11992</p>

In re: ALICE G. HASKINS, Debtor.	Chapter 7 Case # 05-11994
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In re: ROBIN L. DAVIS, Debtor.	Chapter 7 Case # 05-11995
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In re: EVAN J. JACOBSEN and MELISSA L. JACOBSEN, Debtors.	Chapter 7 Case # 05-12014
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In re: RANDIE J. FOX, Debtor.	Chapter 7 Case # 05-12066
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In re: ANDRE R. SOULIGNY, Debtor.	Chapter 7 Case # 05-12080
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In re: LARRY W. KENNISON, SR. and JERI M. KENNISON, Debtors.	Chapter 7 Case # 05-12086
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In re: DONALD R. PROULX and KAREN M. PROULX, Debtors.	Chapter 7 Case # 05-12108
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In re: KEVIN M. O'CONNELL, Debtor.	Chapter 7 Case # 05-12113
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In re: BETHANY A. BATES, Debtor.	Chapter 7 Case # 05-12117
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In re: MICHELLE MERCADANTE, Debtor.	Chapter 7 Case # 05-12157
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In re: ERNEST G. MACDOUGALL and, ROSE L. MACDOUGALL, Debtors.	Chapter 7 Case # 05-12177
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In re: WAYNE L. CORCORAN and RENEEE A. CORCORAN, Debtors.	Chapter 7 Case # 05-12224
<hr/> In re: THERESA M. STEARNS, Debtor.	Chapter 7 Case # 05-12238
<hr/> In re: MADELENE M. DESMARAIS, Debtor.	Chapter 7 Case # 05-12264
<hr/> In re: ROBERT A. THEROUX and, CAROLYN J. THEROUX, Debtors.	Chapter 7 Case # 05-12306
<hr/> In re: ROBERT E. NEAS and, DONNA J. NEAS, Debtors.	Chapter 7 Case # 05-12311
<hr/> In re: MICHAEL J. WHEELER, Debtor.	Chapter 7 Case # 05-12320
<hr/> In re: STEVEN J. FRENCH, Debtor.	Chapter 7 Case # 05-12324
<hr/> In re: MARIJANE M. WEGLARZ, Debtor.	Chapter 7 Case # 05-12331
<hr/> In re: EDUARDO RIVERA, JR. and, KENIA RIVERA, Debtors.	Chapter 7 Case # 05-12340
<hr/> In re: PAULA J. PIERCE, Debtor.	Chapter 7 Case # 05-12358
<hr/> In re: BRENDA L. BURKE, Debtor.	Chapter 7 Case # 05-12364

In re: JAMES A. MACFARLANE, Debtor.	Chapter 7 Case # 05-12369
<hr/> In re: ELIZABETH A. WHITE, Debtor.	Chapter 7 Case # 05-12374
<hr/> In re: DARLENE L. POLEIO, Debtor.	Chapter 7 Case # 05-12377
<hr/> In re: PAUL A. MONTAGUE and, PAIGE MONTAGUE, Debtors.	Chapter 7 Case # 05-12381
<hr/> In re: ERIK R. BENNETT and, HEIDI M. BENNETT, Debtors.	Chapter 7 Case # 05-12423
<hr/> In re: FLOYD WAGNER and, BARBARA WAGNER, Debtors.	Chapter 7 Case # 05-12456
<hr/> In re: NANCY M. GADUE, Debtor.	Chapter 7 Case # 05-12465
<hr/> In re: PATRICIA J. SCHRICKER, Debtor.	Chapter 7 Case # 05-12478
<hr/> In re: JOHN F. HAYNES, Debtor.	Chapter 7 Case # 05-12525
<hr/> In re: TIMOTHY J. TWINAM and, SARAH E. TWINAM, Debtors.	Chapter 7 Case # 05-12005
<hr/> In re: KEVIN R. AUDET and, JEAN M. AUDET, Debtors.	Chapter 7 Case # 05-12372

ORDER
RECONSIDERING PRIOR ORDER AND
DETERMINING THAT, UNDER THE TOTALITY OF CIRCUMSTANCES PRESENTED,
SANCTIONS ARE NOT WARRANTED

For the reasons set forth in the memorandum of decision of even date,

IT IS HEREBY ORDERED that no sanctions shall be imposed against Richard Scholes, Esq. in the above-referenced cases, in connection with whether he met his duty to provide diligent and prompt representation of his clients under Rule 1.3 of the Vermont Rules of Professional Conduct; and

IT IS FURTHER ORDERED that the direction imposing a disgorgement sanction in Order #1 is vacated.

SO ORDERED.

May 30, 2006
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge