# APPENDIX

# APPENDIX

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## APPENDIX A

**UNITED STATES COURT OF APPEALS**
**FOR THE EIGHTH CIRCUIT**

**No. 17-1143**

**[Filed April 25, 2018]**

| | |
|---|---|
| In re: Evette Nicole Reed | ) |
| | ) |
| *Debtor* | ) |
| --- | |
| Critique Services, LLC | ) |
| Ross Harry Briggs | ) |
| *Appellant* | ) |
| | ) |
| v. | ) |
| | ) |
| Evette Nicole Reed | ) |
| Seth A. Albin | ) |
| *Trustee* | ) |
| | ) |
| Honorable Charles E. Rendlen, III | ) |
| *Interested party - Appellee* | ) |
| | ) |
| United States Bankruptcy Court | ) |
| *Interested party* | ) |
| | ) |

**No. 18-1169**

| | |
|---|---|
| In re: Ross H. Briggs | ) |
| *Petitioner* | ) |
| | ) |

Appeals from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: January 9, 2018
Filed: April 25, 2018

Before WOLLMAN, COLLOTON, and BENTON, Circuit Judges.

BENTON, Circuit Judge.

The bankruptcy court[1] sanctioned Ross H. Briggs for contempt of an order and for misleading the court. The district court[2] affirmed. Having jurisdiction under 28 U.S.C. §§ 158(d)(1) and 1291, this court affirms.

I.

Critique Services LLC was a bankruptcy-services business run by Beverly Holmes Diltz. Working with Critique were attorneys Briggs and James C. Robinson. In June 2014, the bankruptcy court suspended Robinson from practicing in the United States Bankruptcy Court for the Eastern District of Missouri. This court affirmed. ***Robinson v. Steward (In re Steward)***, 828 F.3d 672 (8th Cir. 2016).

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[1] The Honorable Charles E. Rendlen, III, United States Bankruptcy Judge for the Eastern District of Missouri.

[2] The Honorable Ronnie L. White, United States District Judge for the Eastern District of Missouri.

Briggs agreed to represent about 100 of Robinson's clients who had bankruptcy cases pending in the Eastern District. In late 2014, the bankruptcy court ordered Robinson to show cause why it should not order disgorgement of his attorney's fees in some of those cases. The bankruptcy court also ordered the trustees in these cases to provide the court with specific information about the fees.

To comply with the order, the trustees sent a letter to Critique, Robinson, and Briggs asking for documents and information. Briggs responded: "all of my legal services rendered on behalf of the debtors in question were afforded free of charge and no fee was paid to or shared with me in these cases. Accordingly, there are no checks, ledgers or account statements that relate to such non-existent fees." He added: "I . . . do not possess any document of [Critique]" or "any documents which are encompassed within [the trustees'] request to Mr. Robinson."

The trustees moved to compel Critique, Robinson, and Briggs to turn over the requested documents and information. On January 13, 2015, the bankruptcy court held a hearing on the motion. Arguing about the motion, Briggs discussed his relationship with Critique and Diltz, eventually agreeing to help obtain the documents and information. On January 23, the bankruptcy court ordered Critique, Robinson, and Briggs to turn over to the trustees specific fee-related documents and information. The bankruptcy court noted that to comply with the order, Briggs might need to seek the documents and information from third parties or "mak[e] inquiries" with Critique or Robinson.

On July 6, the bankruptcy court issued an order finding that Critique, Robinson, and Briggs "had failed to comply with the Order Compelling Turnover." The bankruptcy court explained that it was "considering the imposition of monetary sanctions and/or nonmonetary sanctions or the taking of any other appropriate action for non-compliance." The order gave Critique, Robinson, and Briggs seven days to either comply with the order compelling turnover or file a brief addressing why sanctions should not be imposed. Briggs filed a brief opposing sanctions. On July 22, the bankruptcy court ordered Briggs to show cause why he should not be sanctioned. Briggs responded by questioning the bankruptcy court's authority, also arguing that sanctions were not warranted.

On April 20, 2016, the bankruptcy court sanctioned Briggs. It reviewed at length the disciplinary records of several people associated with Critique, including Briggs. *See* ***Briggs. v. Labarge (In re Phillips)***, 433 F.3d 1068, 1071 (8th Cir. 2006) (holding Briggs violated Fed. R. Bankr. P. 9011, but vacating sanctions); ***In re Wigfall***, No. 02-32059, slip op. at 2 (Bankr. S.D. Ill. August 15, 2002) (suspending Briggs "from filing any new cases in the United States Bankruptcy Court for the Southern District of Illinois for a period of three (3) months.") It found "Briggs to be in contempt of the Order Compelling Turnover," and that he "deliberately and with deceptive intent made misleading representations to the Court regarding the true nature of his relationship with the Critique Services Business and Diltz." With some exceptions, the order banned Briggs for six months from representing new bankruptcy clients, practicing before U.S. Bankruptcy Court for the Eastern District of Missouri, and using

that court's electronic-filing system. It also required him to take 12 hours of continuing legal education in professional ethics, and permanently prohibited him "from being financially or professionally involved with or connected to, whether formally or informally or otherwise," Critique, Diltz, Robinson, and other individuals and entities affiliated with Critique.

Briggs appeals. While the appeal was pending, Briggs requested reinstatement to practice before the United States Bankruptcy Court for the Eastern District of Missouri. He directed his request first to the chief bankruptcy judge, then to the chief district judge. Both ruled that Briggs's request was improper. Briggs also appeals the chief district judge's judgment.

II.

Briggs says that as an Article I court, the bankruptcy court did not have constitutional authority to sanction him under these circumstances. This is a legal issue that this court reviews de novo. *See* ***Walton v. LaBarge (In re Clark)***, 223 F.3d 859, 862, 864 (8th Cir. 2000).

Briggs focuses on *Stern v. Marshall*, 564 U.S. 462 (2011). There, the bankruptcy court, in an adversary proceeding, entered summary judgment on a counterclaim for tortious interference. ***Stern***, 564 U.S. at 470-71. The Court explained that the bankruptcy court had statutory authority to enter final judgment on the counterclaim under 28 U.S.C. § 157(b)(2)(C). ***Id.*** at 482. As to statute's constitutionality, the Court said: "When a suit is made of 'the stuff of the traditional actions at common law tried by the courts at Westminster in 1789,' and is brought within the

bounds of federal jurisdiction, the responsibility for deciding that suit rests with Article III judges in Article III courts." ***Id.*** at 484, *quoting* ***Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.***, 458 U.S. 50, 90 (1982) (Rehnquist, J., concurring in judgment).

The *Stern* counterclaim met that standard—and could only be heard by an Article III court—because it involved "the most prototypical exercise of judicial power: the entry of a final, binding judgment *by a court* with broad substantive jurisdiction, on *a common law cause of action*, when the action *neither derives from nor depends upon any agency regulatory regime*." ***Id.*** at 494 (emphasis added on last two phrases). Even if a counterclaim is statutorily authorized, "Congress may not bypass Article III simply because a proceeding may have *some* bearing on a bankruptcy case; the question is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." ***Id.*** at 499. The Court concluded that the bankruptcy court "lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim." ***Id.*** at 503.

Briggs tries to equate the sanctions order with the counterclaim in *Stern*. According to Briggs, the bankruptcy court here conducted only "a contempt action against a third-party in an attorney ethics investigation" that "implicate[d] only state law issues [under the Missouri Rules of Professional Responsibility] not encompassed in the claims

allowance process" or "the restructuring of debtor-creditor relations."

This case does not involve an "attorney ethics investigation" or issues reserved for an Article III court. Under 28 U.S.C. § 157(a): "Each district court may provide that any or all cases under title 11 [bankruptcy] and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." The Eastern District of Missouri has implemented the full scope of § 157(a). **E.D.Mo. R. 81 - 9.01(B)**. By 28 U.S.C. § 157(b)(1): "Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title."

The show-cause orders issued in late 2014 addressed whether it was necessary to disgorge, under 11 U.S.C. § 329, Robinson's unearned attorney's fees for representing several clients in bankruptcies in the Eastern District. As for the order compelling turnover, the bankruptcy court entered it under 11 U.S.C. § 542(e) to help determine whether disgorgement was necessary. The bankruptcy court based the sanctions order on events that occurred while trying to enforce the show-cause orders to Robinson and the order compelling turnover. All the orders here are matters "arising in" a case under title 11. *See* ***Stoe v. Flaherty***, 436 F.3d 209, 216 (3d Cir. 2006) ("The category of proceedings 'arising in' bankruptcy cases includes such things as administrative matters, orders to turn over

property of the estate and determinations of the validity, extent, or priority of liens.") (citation and internal quotation marks omitted); ***In re Williams***, 256 B.R. 885, 891 (B.A.P. 8th Cir. 2001) ("The phrase 'arising in' generally refers to administrative matters that, although not expressly created by title 11, would have no existence but for the fact that a bankruptcy case was filed.").

Even so, Briggs asserts that the orders are—like the *Stern* counterclaim—only statutorily, not constitutionally, authorized. But unlike the *Stern* counterclaim, the orders here "stem[] from the bankruptcy itself" and do not implicate a common-law claim. *See* ***Stern***, 564 U.S. at 499. Nor do they implicate a fraudulent-conveyance claim like in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), which Briggs discusses. The *Stern* case "affect[s] only . . . one small part of the bankruptcy judges' authority." ***In re AFY, Inc.***, 461 B.R. 541, 547 (B.A.P. 8th Cir. 2012); *see also* ***Stern***, 564 U.S. at 502 ("the question presented here is a 'narrow' one.").

Here, the bankruptcy court had authority to enter sanctions for events that occurred while trying to enforce the order compelling turnover and the show-cause orders. *See* ***Law v. Siegel***, 134 S. Ct. 1188, 1194 (2014) (bankruptcy courts "possess 'inherent power . . . to sanction abusive litigation practices.'"), *quoting* ***Marrama v. Citizens Bank of Mass.***, 549 U.S. 365, 375-76 (2007); ***Robinson***, 828 F.3d at 686 ("Bankruptcy courts have the authority to sanction persons appearing before them, and this authority includes the right to control admission to their bar.") (citations and internal quotation marks omitted).

III.

Briggs believes that "the record does not support the contempt finding of the bankruptcy court, because there is no evidence that Briggs . . . failed to comply with the Turnover Order." "A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." ***Hornbeck Offshore Servs., LLC v. Salazar***, 713 F.3d 787, 792 (5th Cir. 2013) (citation omitted). A contempt finding requires "clear and convincing evidence." ***Chicago Truck Drivers v. Board Labor Leasing***, 207 F.3d 500, 505 (8th Cir. 2000). This court reviews contempt findings for abuse of discretion. *See* ***id.*** at 504; ***Waste Mgmt. of Washington, Inc. v. Kattler***, 776 F.3d 336, 339 (5th Cir. 2015) ("We review contempt findings for abuse of discretion, but review is not perfunctory. Facts will be accepted as true unless clearly erroneous, but questions of law concerning the contempt order are reviewed de novo.") (citation and internal quotation marks and footnotes omitted).

Briggs argues he had no access to the documents and information subject to the order compelling turnover. He concludes he could not turn over anything and thus could not be held in contempt of the order. This argument ignores that the order required Briggs to *seek* the documents and information from Critique, Robinson, and third parties:

> [I]t is proper to order that Briggs, in his capacity as counsel for certain of the Debtors, turn over all documents and information, as set forth in the turnover directive. . . . This directive may

> require him to seek documents and information from third parties—even if it places him in the (presumably) undesirable position of making inquiries to Robinson and Critique Services L.L.C. If Briggs gets "stonewalled" . . . then he can file a credible and specific affidavit detailing his efforts.

The bankruptcy court did not, as Briggs suggests, hold him in contempt for failing to turn over documents and information. It held him in contempt because he "made no real effort to obtain the information for his clients so that he could turn it over." It explained:

> Had Briggs made serious, sincere efforts to obtain the Request Information, but was unable to obtain the information because he was stonewalled, then that would be one thing. Under those circumstances, Briggs would have made a good faith effort to comply with the Order Compelling Turnover. He would have fulfilled his promise and he would not be in trouble with the Court. However, those are not the circumstances here. . . . His failure to turn over any responsive information is not due to the fact that he is not in possession of the documents; it is due to the fact that he took no actions that would allow him to comply with the turnover directive.

Briggs believes he did enough. At oral argument in this court, he emphasized a lunch meeting with Diltz on January 13, and a letter he sent Robinson and Critique on January 24 (the day after the bankruptcy court entered the order compelling turnover). The bankruptcy court found that the lunch meeting "did

nothing to 'facilitate' compliance with the Court's directives." In the letter, Briggs requested that Robinson and Critique "produce all documents encompassed within the above Order to the Trustees by January 30, 2015 at 12:00PM (Central) as required by the Order of the Court." The bankruptcy court ruled that the letter did not satisfy Briggs's obligation under the order compelling turnover, noting "[t]he letter was devoid of any sense of sincere advocacy. It was nothing more than another attempt by Briggs to *appear* to be doing something helpful, without *actually doing* something helpful."

The bankruptcy court also ruled that the letter was "followed by nothing else of any substance." On February 4, the bankruptcy court held a status conference to establish that no one had turned over the documents and information. On July 6, the bankruptcy court notified Critique, Robinson, and Briggs—all with disciplinary histories—that they had seven days to either comply with the order compelling turnover or file a brief addressing why sanctions should not be imposed. Briggs filed a brief on July 13. The brief did not detail any efforts to secure compliance from Critique and Robinson. Rather, it focused on how neither Briggs nor his clients had access to the documents and information. In response to yet another show-cause order, Briggs filed a brief on July 31, mentioning the lunch meeting for the first time.

The order compelling turnover required Briggs to make "efforts" to obtain the documents and information for his clients. But between sending the letter on January 24 and filing his brief on July 31, the record does not show that Briggs made any effort to seek

compliance from Critique or Robinson—despite knowing they had not complied with the order. Briggs never filed "a credible and specific affidavit detailing his efforts" to secure compliance from Critique and Robinson—an option in the order compelling turnover.

The bankruptcy court gave Briggs multiple opportunities to comply with the order compelling turnover, specifically outlining methods of compliance. Briggs did not comply. The bankruptcy court did not abuse its discretion in holding Briggs in contempt. *See* ***United States v. Baker***, 721 F.2d 647, 650 (8th Cir. 1983) ("Appellant was not held in contempt for refusing to answer questions on cross-examination, but rather for refusing to comply with a previous order of the district court enforcing an IRS summons against him.").

IV.

Briggs says that "the record does not support the contempt finding . . . because there is no evidence that Briggs . . . made any misleading statements." The bankruptcy court did not make a "contempt finding" on this issue. It did find that "Briggs deliberately and with deceptive intent made misleading representations to the Court regarding the true nature of his relationship with the Critique Services Business and Diltz." It then concluded that it was "proper to sanction Briggs . . . for his making of misleading statements to the Court." This court assumes Briggs is arguing that it was improper to sanction him because there is no evidence of misleading statements.

The bankruptcy court relied on statements Briggs made at the January 13 hearing. Briggs tried to

distance himself from Critique. The bankruptcy court cited several examples. Asked how he could help obtain documents and information from Critique, Briggs said, "I have no leverage. I have no knowledge." Also, "Briggs even claimed he had no personal knowledge of whom he could ask at the Critique Services Business for documents." In an exchange between Briggs and the bankruptcy court, the bankruptcy court asked, to Briggs's knowledge, "who owns and controls" Critique. Briggs answered: "Mr. Robinson may well be [the owner]. It may – it may be Beverly Diltz." The bankruptcy court asked, "What do you mean 'may be?'" Briggs answered: "That's what the Missouri Secretary of State says. I assume it's correct."

The bankruptcy court found these representations misleading because "Briggs has a long history of being closely involved with the Critique Services Business." The bankruptcy court noted that Briggs has (1) been both Diltz's profit-sharing partner and her employee, (2) employed ex-Critique employees, (3) represented Critique clients at section 341 meetings, and (3) done business as "Critique Services." The bankruptcy court concluded that "Briggs deliberately misled the Court" and "deliberately lacked candor when characterizing his relationship with the Critique Services Business and Diltz." In the bankruptcy court's view, Briggs "did whatever he could to create the façade that he was not part of the Critique Services Business. Even his physical deportment—his expressions, his blinking, his lack of eye contract—betrayed his lack of candor."

The misrepresentation issue is interrelated with a separate issue—whether the bankruptcy court denied Briggs due process by not providing an evidentiary

hearing before imposing sanctions. Briggs's due-process argument is a legal issue this court reviews de novo. ***In re Morgan***, 573 F.3d 615, 623 (8th Cir. 2009). "[B]efore a district court may impose sanctions, the individual must receive notice that sanctions against her are being considered and an opportunity to be heard." ***Plaintiffs' Baycol Steering Comm. v. Bayer Corp.***, 419 F.3d 794, 802 (8th Cir. 2005). But "the opportunity to be heard does not necessarily entitle the subject of a motion for sanctions to an evidentiary hearing." ***Schlaifer Nance & Co. v. Estate of Warhol***, 194 F.3d 323, 335 (2d Cir. 1999). "An evidentiary hearing serves as a forum for finding facts; as such, its need can be obviated when there is no disputed question of fact or when sanctions are based entirely on an established record." ***Id.***

On July 22, the bankruptcy court issued a show-cause order giving notice "to Briggs that it is considering imposing sanctions, issuing directives, and/or making referrals to the proper authorities to address his apparently false or misleading representations to the Court regarding his relationship with Critique Services L.L.C. and Diltz." The order detailed the "apparently false or misleading representations" Briggs made, focusing on those made at the January 13 hearing. Whether Briggs made false or misleading representations is a question of fact. Briggs's July 31 response to the show-cause order argued that there was "no basis for imposing any sanction." He noted that under the show-cause order, "one of the bases for the proposed [sanctions] is 'Briggs's claim that he cannot identify who owns Critique Services, LLC.'" Briggs argued that he "never made such a 'claim' or representation," quoted the

exchange on the Critique-ownership question, and asserted that his answer was accurate.

In the sanctions order, the bankruptcy court addressed Briggs's response: "Briggs first claimed that he has dealt honestly with the Court." In other words, the bankruptcy court interpreted Briggs's arguments to mean that he was factually disputing the bankruptcy court's assertion in the show-cause order that Briggs made "apparently false or misleading representations." The bankruptcy court concluded that the accuracy of Briggs's answer "is not a reason that Briggs should not be sanctioned" because "[h]e purposely mislead [sic] the Court about his personal knowledge of the fact that Diltz is the owner—in an effort to make himself look clueless and far-removed from the Critique Services business."

The bankruptcy court made this factual determination without an evidentiary hearing, despite recognizing that Briggs was disputing whether he made false or misleading representations. The bankruptcy court erred in sanctioning Briggs for "deliberately misle[ading] the Court" because it based that conclusion on disputed questions of fact without holding an evidentiary hearing. *See* ***Schlaifer***, 194 F.3d at 335.

But the bankruptcy court's error does not compel remand. It had two independent bases for sanctioning Briggs: "it is proper to sanction Briggs for his contempt of the Order Compelling Turnover *and* for his making of misleading statements to the Court." (Emphasis added.) This court ruled above that the bankruptcy court did not abuse its discretion in finding Briggs in contempt of the order compelling turnover. Briggs's

contempt is a sufficient basis for the sanctions. *See* ***Weisman v. Alleco, Inc.***, 925 F.2d 77, 80 (4th Cir. 1991) ("The district court based its decision to impose sanctions on several grounds. . . . We believe any one of these grounds would, standing alone, justify the imposition of Rule 11 sanctions.").

V.

By Rule V of the district court's disciplinary-enforcement rules, a "judge may refer [a disciplinary] matter to counsel appointed under Rule X for investigation and prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate." **E.D.Mo. Discip. Enf't R. V**. Briggs says that the bankruptcy court was "obliged" to follow Rule V and refer the matter to appointed counsel. He believes that the bankruptcy court violated his due-process rights by not doing so.

Rule V is permissive. *See* ***Robinson***, 828 F.3d at 687 n.10 ("Though Robinson and Walton attempt to rely on Rule V of the Rules of Disciplinary Enforcement, that rule simply states that a judge *may refer* disciplinary matters to counsel appointed by the district court if such a referral is warranted."). The bankruptcy court had discretion not to invoke Rule V. Briggs has not shown it was "obliged" to do so. Not invoking Rule V is not a due-process violation. *See* ***id.***

VI.

Briggs appeals the district court's[3] judgment denying reinstatement of full privileges to practice before the bankruptcy court. The bankruptcy court's sanctions order noted: "Briggs is invited to file, on October 1, 2016 or any time thereafter, a motion for reinstatement to the privilege of practicing before the Court after October 15, 2016. Evidence of completion of the required CLE should be attached to any such motion." The order does not explicitly state with whom Briggs should file for reinstatement. Briggs did not file his motion with the bankruptcy judge who imposed sanctions.

Instead, Briggs first requested reinstatement from the bankruptcy court's chief judge.[4] He argued she had two bases to hear his motion. First, the bankruptcy court's Local Rule 2094(A) says that an attorney who is disbarred or suspended by a court besides the bankruptcy court is automatically disbarred or suspended in the bankruptcy court for the same length of time as the discipline imposed by the other court. Local Rule 2094(B) says that the bankruptcy court's chief judge presides over a reinstatement proceeding for an attorney disbarred or suspended under subsection A. The chief judge ruled that Briggs "was not suspended by another court but rather was

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[3] The Honorable Rodney W. Sippel, Chief Judge, United States District Court for the Eastern District of Missouri.

[4] The Honorable Kathy Surratt-States, Chief Judge, United States Bankruptcy Court for the Eastern District of Missouri.

suspended by this Court. Therefore, Local Rule 2094(B) does not apply under these circumstances."

Second, Briggs believed that Rule VII of the district court's disciplinary-enforcement rules "provides that this Motion for Reinstatement shall be assigned to the Chief Judge of this Court, and shall not be referred to the judge upon whose complaint the disciplinary proceeding was predicated." But Rule VII says that attorneys who are disbarred or suspended by *the district court* must file a petition for reinstatement with the *district court's chief judge*. The chief judge explained that Rule VII "does not apply in this case" because Briggs "was not suspended by the U.S. District Court for the Eastern District of Missouri, nor did he file his request for reinstatement with the Chief Judge of" that court. The chief judge denied Briggs's motion because there was no procedural "basis for the relief requested."

Briggs then sought reinstatement from the district court's chief judge, relying on Rule VII and the district court's "inherent power." That chief judge denied Briggs's motion because he "ha[d] not exhausted the proper judicial channels." Instead of seeking relief in the district court, the chief judge explained, "Briggs should seek reinstatement from Judge Rendlen directly. Judge Rendlen provided specific guidance in the sanctions order regarding the filing of a motion for reinstatement."

Neither Local Rule 2094(B) nor Rule VII provide a basis for the bankruptcy court's chief judge to hear Briggs's reinstatement motion. Rule VII does not allow the district court's chief judge to resolve that motion. Briggs abandoned his argument that the chief judge's

"inherent power" lets him hear the motion because Briggs did not develop it in the district court. Briggs may file his motion with Judge Rendlen. If Judge Rendlen denies the motion, then Briggs may appeal.[5] *See* **28 U.S.C. § 158**.

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The judgments are affirmed.

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[5] While his initial appeal was pending, Briggs moved to disqualify Judge Rendlen on remand. This court has the authority when remanding to "direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances." **28 U.S.C. § 2106**; *see also* ***United States v. Tucker***, 78 F.3d 1313, 1323-24 (8th Cir. 1996) (explaining that § 2106's remand clause empowers this court to reassign a case when "in the language of 28 U.S.C. § 455(a), the district judge's 'impartiality might reasonably be questioned.'"). Because this court is not remanding, § 2106 is inapplicable and his motion is moot.

## APPENDIX B

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MISSOURI**
**EASTERN DIVISION**

**Case No.: 4:16cv633 RLW**

**[Filed January 3, 2017]**

IN RE EVETTE NICOLE REED, )
Debtor, )
)

## MEMORANDUM AND ORDER

This matter is before the Court on the appeals of Ross H. Briggs and Critique Services, LLC of the Bankruptcy Court's decision.[1]

## BACKGROUND

This is a consolidated appeal of an order and separate judgment issued on April 20, 2016 by the Bankruptcy Court in eight Chapter 7 bankruptcy cases (the "April 20, 2016 Order"). In the April 20, 2016 Order, the Bankruptcy Court issued sanctions against attorney James Robinson ("Robinson") (who is not a party to this appeal) appellant Ross H. Briggs ("Briggs"), and Appellant Critique Services, LLC ("Critique").

[1] Critique Services, LLC is also referred to herein as "Critique Services" and "Critique." Ross Briggs is also referred to herein as "Briggs". Collectively, they are referred to as "Appellants".

In June 2014, the Bankruptcy Court, Judge Charles E. Rendlen, III, suspended Attorney James Robinson from the Bankruptcy Court. *See In re Latoya Steward*, 2016 WL 3629028 (8th Cir. Jul. 7, 2016). Thereafter, Briggs volunteered to provide representation to approximately ninety-five (95) of Attorney Robinson's clients who had filed Chapter 7 bankruptcies before the Honorable Barry S. Schermer and the Honorable Kathy Surratt-States. In addition, Briggs represented debtors in cases pending before the Honorable Charles E. Rendlen, III, including six of the eight cases involved in the instant appeal.

By October 21, 2014, all of the debtors involved in this appeal had received their Order of Discharge from the Bankruptcy Court.

On November 26, 2014 and December 2, 2014, Bankruptcy Judge Charles E. Rendlen III issued two show cause orders directing Attorney Robinson to show cause why the Court should not order disgorgement of his unearned attorney's fees, ranging from $299 to $349 in each case, pursuant to 11 U.S.C. §329. Bankruptcy Judge Rendlen's Orders also directed the Chapter 7 Trustee in each case to address:

(a) To whom, specifically the fees were paid;

(b) Where the fees were held following payment, including whether such fees were held in a client trust account;

(c) Where the fees are held today;

(d) Whether any of those fees have been disbursed to Mr. Robinson, any attorney affiliated with or otherwise associated with

> (formally or informally) Critique Services, LLC or any permutation of Critique Services, LLC, to any employee, officer, or owner of Critique Services, LLC or to any other person.

The Chapter 7 Trustees filed a motion to compel, directing Briggs to produce Attorney Robinson's financial records.

On December 3, 2014, the Chapter 7 Trustees submitted a letter to Critique, Robinson, and Briggs (who had taken over the representation of six of the eight debtors following Robinson's suspension) asking that they provide documents and information that would allow the trustees to prepare accountings. On December 6, 2014, Robinson transferred to Briggs the fees he received from debtors. On December 8, 2014, Briggs wrote a letter to the Chapter 7 Trustees stating that "all of my legal services rendered on behalf of the debtors in question were afforded free of charge and no fee was paid to or shared with me in these cases. Accordingly, there are not checks, ledgers or account statements that related to such non-existent fees." Critique did not respond to the Chapter 7 Trustees' request. On December 12, 2014, the Chapter 7 Trustees filed motions to compel turnover pursuant to 11 U.S.C. §542(e) to require Briggs, Robinson, and Critique turnover the requested information and documentation.

On January 23, 2015, the Bankruptcy Court entered an Order Compelling Turnover, directing Robinson, Briggs, and Critique to participate in the process of turning over the requested discovery. The Bankruptcy Court held that none of the three made a good faith

effort to turnover documents as ordered. In addition, the Bankruptcy Court held that Briggs was discovered to have made misleading statements at the January 13, 2015 hearing on the Motion to Compel Turnover in an effort to avoid being ordered to participate in the turnover.

On February 3, 2015, Critique filed a motion to disqualify Judge Rendlen, which the Bankruptcy Court denied.

On July 6, 2015, Judge Rendlen issued an order stating that "[i]t was established that the Respondents had failed to comply with the Order Compelling Turnover," and giving notice that it was "considering the imposition of monetary sanctions and/or other nonmonetary sanctions or taking of any other nonmonetary sanctions or the taking of any other appropriate action for non-compliance." The Bankruptcy Court gave the parties seven days to comply with the Order Compelling Turnover and to file briefs stating why sanctions should not be imposed. Briggs and Critique both filed responses.

On July 22, 2015, the Court entered its order advising that it was considered suspending Briggs for six months as a sanction and giving him the opportunity to show cause why sanctions should not be imposed. The notice warned Briggs that the Court was considering sanctions because, among other things, he misled the Court about his relationship with Critique and its employees. Robinson, Briggs, and Critique were provided with an opportunity to respond to the July 2015 Orders, and each responded. Briggs responded by filing a pleading, which questioned the Bankruptcy Court's jurisdiction to enter sanctions and

requesting the matter be transferred to the District Court. Briggs also filed writs of prohibition with the District Court and the Eighth Circuit Court of Appeals, attempting to stop the Bankruptcy Court from issuing sanctions, both of which were denied. *See* District Court No. 4:15cv1204-CEJ and Eighth Circuit Court Case No. 15-2780. Briggs also filed motions for protective orders, asking another judge of the Bankruptcy Court to hold that any sanctions issued by Judge Rendlen be declared void and unenforceable. Those motions were denied.

On April 20, 2016, the Bankruptcy Court issued its Judgment and Memorandum Opinion. The Court found Briggs in contempt of the Order Compelling Turnover and found that Briggs had made deliberately misleading representations to the Bankruptcy Court regarding the nature of his relationship with Critique Services Business and Beverly Diltz. The April 20 Order suspended Briggs from using the Court's electronic filing system and from the privilege of practicing before the Bankruptcy Court for six months (until October 15, 2016). Briggs was also prohibited from soliciting new clients and from filing new cases in the Bankruptcy Court, but he was allowed to continue to represent clients he had on record as of April 20, 2016. Additionally, Briggs was ordered to take CLE classes in professional ethics and prohibited from doing any future bankruptcy-related business with Beverly Holmes Diltz (who is associated with Critique) and other persons affiliated with Critique. The April 20 Order permanently prohibited Critique from providing any goods or services to anyone in the Eastern District of Missouri regarding bankruptcy matters that would be potentially filed in this District.

Critique previously appealed an order of sanctions entered by the Bankruptcy Court. On July 7, 2016, the Eighth Circuit Court of Appeals issued its decision in *In re LaToya L. Steward*, No. 15-1857, 2016 WL 3629028 (8th Cir. Jul. 7, 2016).

## STANDARD OF REVIEW

This Court reviews the Bankruptcy Court' s findings of fact for clear error and its conclusions of law de novo. *In re Reynolds*, 425 F.3d 526, 531 (8th Cir. 2005). Reversal is appropriate if the Bankruptcy Court misunderstood or misapplied the law. *In re Usery*, 123 F.3d 1089, 1093 (8th Cir. 1997) (citing *Nangle v. Lauer (In re Lauer)*, 98 F.3d 378, 383-85 (8th Cir.1996); *Hold-Trade Int'l, Inc. v. Adams Bank & Trust (In re Quality Processing, Inc.)*, 9 F.3d 1360, 1364-66 (8th Cir.1993).

## DISCUSSION

### A. Recusal

Critique argues that Judge Rendlen should have complied with the requirements of 28 U.S.C. §455(a), which provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." (ECF No. 34 at 18). Critique argues that Judge Rendlen's recusal was compelled pursuant to 28 U.S.C. §455(a) because, when Judge Rendlen was the United States Trustee, his office pursued claims against Critique. (ECF No. 34 at 19-20).

Based upon the precedent in *In Re Steward*, the Court holds that Judge Rendlen was not required to

recuse himself in this case. The Eighth Circuit reasoned:

> Even if the motions to recuse were timely, Appellants have not demonstrated that Judge Rendlen's impartiality might reasonably be questioned. "A party introducing a motion to recuse carries a heavy burden of proof; a judge is presumed to be impartial and the party seeking disqualification bears the substantial burden of proving otherwise." [*Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 664 (8th Cir. 2003)](quoting *Pope v. Fed. Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992)). Moreover, a party is not entitled to recusal merely because a judge is "exceedingly ill disposed" toward them, where the judge's "knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings. . . ." *Liteky v. United States*, 510 U.S. 540, 551, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994). Appellants have supplied no evidence from which we could conclude that Judge Rendlen was not impartial. The only information in the record supporting such a conclusion comes from the allegations in Appellants' motions. And Judge Rendlen's orders contravene those allegations: In the orders denying the motions to recuse, Judge Rendlen explained that he was not personally involved with the United States Trustee's investigations into Critique Services and was exposed to no information relevant to Steward's motion to disgorge attorney's fees. On this record, we cannot find that Appellants "[bore] the substantial burden" of proving that Judge

> Rendlen was not impartial. Neither the bankruptcy court nor the district court abused its discretion in denying Appellants' multiple motions for recusal.

*In re Steward*, 828 F.3d 672, 682 (8th Cir. 2016). Similarly, Critique has not put forth any evidence to support a finding that Judge Rendlen was not impartial. Critique Services has not provided any evidence that Judge Rendlen was personally involved in the investigation or prosecution of the lawsuits brought by his office against Critique while he was the United States Trustee. The mere fact that Judge Rendlen previously served as the United States Trustee ten years ago and that the United States Trustee office investigated Critique is insufficient to demonstrate bias under this Eighth Circuit precedent. Accordingly the Court rejects Critique's argument that Judge Rendlen should have recused.

### B. Authority and Jurisdiction to Enter the Sanctions Order

#### 1. Subject Matter Jurisdiction

Appellants contend that the bankruptcy court lacked constitutional authority to enter the judgment against Briggs. (ECF No. 36 at 10; ECF No. 34 at 20). Bankruptcy Judges are Article I judges, not Article III judges. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1938 (2015) ("Congress has also authorized the appointment of bankruptcy and magistrate judges, who do not enjoy the protections of Article III, to assist Article III courts in their work."). Appellants argue that the Bankruptcy Court, an Article I court, only has authority to issue final judgment on claims that involve

"public rights." (ECF No. 36 at 10 (citing *Stern v. Marshall*, 564 U.S. 462 (2011); ECF No. 34 at 20). In contrast, District Courts, which are Article III courts, may adjudicate "state created private rights." *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 56 (1989). Appellants argue that the issue before the Bankruptcy Court involved a "private right" not a "public rights." (ECF No. 34 at 20). Appellants contend the right at issue was a private right because the resolution of the issue of whether Attorney Robinson complied with the Missouri Rules of Professional Responsibility had no bearing on the restructuring of debtor-creditor relations and instead involved claims arising exclusively from state law. (ECF No. 36 at 11; ECF No. 34 at 21).

Bankruptcy courts have authority to issue sanctions under 11 U.S.C. §105(a), 28 U.S.C. §1927. Bankruptcy courts have implicit authority to sanction under Fed. R. Bankr. P. 9011 or under their "inherent authority." *See In re Clark*, 223 F.3d 859, 864 (8th Cir. 2000) ("The bankruptcy court awarded sanctions against Walton by exercising its authority under section 105(a) of the Bankruptcy Code, under 28 U.S.C. § 1927, implicitly pursuant to Rule 9011, and by its inherent authority."). "Section 105 gives to bankruptcy courts the broad power to implement the provisions of the bankruptcy code and to prevent an abuse of the bankruptcy process, which includes the power to sanction counsel." *In re Clark*, 223 F.3d at 864. "This provision has been interpreted as supporting the inherent authority of the bankruptcy courts to impose civil sanctions for abuses of the bankruptcy process." *In re Clark*, 223 F.3d at 864 (citing *Jones v. Bank of Santa Fe (In re Courtesy Inns Ltd.,, Inc.)*, 40 F.3d 1084, 1089 (10th Cir. 1994). The

Eighth Circuit has also clarified, "[b]ankruptcy courts have the authority to sanction persons appearing before them, and this authority includes the right to 'control admission to [their] bar.'" *In re Steward*, 828 F.3d 672, 686–87 (8th Cir. 2016) (quoting *In re Burnett*, 450 B.R. 116, 132 (Bankr. E.D. Ark. 2011); *see also Isaacson v. Manty*, 721 F.3d 533, 538 (8th Cir. 2013) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) ("Federal courts possess certain inherent powers, including the 'power to punish for contempts,' which 'reaches both conduct before the court and that beyond the court's confines.'").

The Court holds that the Bankruptcy Court had subject matter jurisdiction over the issues presented here. As indicated, District Courts have original and subject matter jurisdiction over all cases arising under Title 11 (the Bankruptcy Code). *See* 28 U.S.C. §1334(a). "Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." 28 U.S.C. §157(a). Bankruptcy judges may hear and determine all cases "under title 11 and all core proceedings arising under title 11, or arising in a case under title 11[.]" 28 U.S.C. §157(b)(1). Under its local rules, the Eastern District of Missouri allows "[a]ll cases under Title 11 of the United States Code, and all proceedings arising under Title 11 or arising in or related to a case under Title 11, are referred to the bankruptcy judges for this district, who shall exercise the full extent of the authority conferred upon them." E.D.Mo. L.R. 9.01(B)(1).

The Court holds that the Bankruptcy Court had authority to issue sanctions because these matters were "arising in" a Title 11 case. *See* 28 U.S.C. §157(b); *In re Williams*, 256 B.R. 885, 891 (B.A.P. 8th Cir. 2001) ("The phrase 'arising under' applies to proceedings that involve causes of action expressly created or determined by title 11, such as causes of action to recover fraudulent conveyances and preferential transfers, section 544 avoidance actions, dischargeability proceedings, and similar rights that would not exist had there been no bankruptcy. . . . The phrase 'arising in' generally refers to administrative matters that, although not expressly created by title 11, would have no existence but for the fact that a bankruptcy case was filed."); *Stoe v. Flaherty*, 436 F.3d 209, 216 (3d Cir. 2006) ("Bankruptcy jurisdiction extends to four types of title 11 matters: (1) cases 'under' title 11; (2) proceedings 'arising under' title 11; (3) proceedings 'arising in' a case under title 11; and (4) proceedings 'related to' a case under title 11."). Similarly, the January 2015 Order compelling turnover arises under and arises in Title 11. *Stoe v. Flaherty*, 436 F.3d 209, 216 (3d Cir. 2006) (citations omitted) ("The category of proceedings 'arising in' bankruptcy cases 'includes such things as administrative matters, orders to turn over property of the estate and determinations of the validity, extent, or priority of liens.'"). The Court holds that, because the show cause orders and the order compelling turnover were properly assigned to the Bankruptcy Court by section 157(b) and because they were matters arising under and arising in Title 11, the Bankruptcy Court had subject matter jurisdiction.

The Court also holds that cases cited by Appellants are inapposite to the present case. Appellants rely on *Stern v. Mitchell*, 564 U.S. 462 (2011) to argue that the sanctions were issued as part of a "state law created private right" and, therefore, outside the Constitutional authority of the Bankruptcy Court. However, in *Stern v. Marshall*, the Supreme Court itself cautioned that its holding is a narrow one, affecting only this one small part of the bankruptcy judges' authority. *In re AFY, Inc.*, 461 B.R. 541, 547–48 (B.A.P. 8th Cir. 2012); *Stern*, 564 U.S. 462, 502 (2011) ("we agree with the United States that the question presented here is a 'narrow' one"). The Eighth Circuit interpreted Stem as affecting only a limited part of the bankruptcy court's authority and that "the balance of the authority granted to bankruptcy judges by Congress in 28 U.S.C. § 157(b)(2) is constitutional." *In re AFY, Inc.*, 461 B.R. at 547–48.

The Court holds that the matters before the Bankruptcy Court that gave rise to the April 20 Order of sanctions related to disgorgement and turnover of fees and property were matters that arose under Title 11 and were not private rights or private causes of action. The Bankruptcy Court clearly had Constitutional authority to rule on these matters.

**2. Criminal Contempt Power**

Briggs argues that the sanctions issued against him were criminal and that the Bankruptcy Court, as an Article I court, lacks the constitutional authority to enter a final order of criminal contempt. (ECF No. 36 at 13). Briggs notes that his suspension from filing new cases is for a definite term, with no provision for a reduction based on any action of Briggs; that is, "Briggs

has no way to purge himself of contempt." (ECF No. 36 at 13).

In *In re Steward*, the Appellants (Critique, James Robinson d/b/a Critique, and Critique's and Robinson's former attorney Elbert Walton) appealed the imposition of a sanction, arguing that the Bankruptcy Court's order was a final order for criminal sanctions. The Bankruptcy Court had entered judgment in favor of Steward; found Robinson in contempt; made final $30,000 in accrued monetary sanctions; ordered that Walton be jointly and severally liable for the $30,000 in sanctions; imposed additional sanctions on Robinson and Walton in the amount of $19,720 for attorney's fees incurred by Steward's counsel in litigating discovery; sanctioned Robinson and Walton for making false statements to the court by suspending them from practice before the United States Bankruptcy Court for the Eastern District of Missouri; and ordered that Robinson and Walton's actions be referred to the U.S. District Court for the Eastern District of Missouri, the Office of the U.S. Trustee, and the Office of the Chief Disciplinary Counsel of the Missouri Supreme Court for any appropriate investigation and disciplinary action. The Eighth Circuit noted, "Civil contempt is distinguished from criminal contempt by the presence of a purgation provision, which allows the contemnor to purge himself of the contempt by complying with the court's orders. *In re Steward*, No. 15-1857 (citing *In re Mayex II Corp.*, 178 B.R. 464, 470 (Bankr. W.D. 1995)).[2]

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[2] Although Briggs argues that the April 20 Order contains no "purgation" provision pursuant to which Briggs can reduce his six month suspension from filing new cases, Briggs was given an opportunity to avoid sanction by prior to the April 20 Judgment by

The Eighth Circuit reaffirmed that bankruptcy courts have the authority to exercise civil contempt power in order to coerce compliance with court orders or to compensate for damages associated with non-compliance. *Id.* The Eighth Circuit held that the sanctions were civil in nature and Robinson and Walton had been given multiple opportunities to purge themselves of the sanction by providing discovery. The Eighth Circuit held that the "mere fact that Appellants' failure to comply with the court's orders caused the contempt sanctions to ultimately come due does not render those sanctions criminal in nature." Thus, the Eighth Circuit agreed that the Bankruptcy Court's imposition of sanctions for civil contempt was proper. Similarly, the Eighth Circuit reaffirmed that bankruptcy courts have the authority to sanctions persons appearing before them, and this authority includes the right to control admission to their bar. *In re Steward*, No. 15-1857 (citing In re Burnett, 450 B.R. 116, 132 (Bankr. E.D. Ark. 2011); E.D.Mo. L.R. 12.02). The Eighth Circuit held that the Bankruptcy Court's suspension of Robinson and Walton from practicing in the Bankruptcy Court for the Eastern District of Missouri was a proper exercise of its authority and did not constitute an abuse of discretion.

The Court notes that the April 20 Order specifically states that it is not a criminal contempt proceeding: "There is no criminal contempt proceeding. The sanctions are imposed for the purpose of enforcing the Order Compelling Turnover and to hold accountable those who have refused to obey that order. . . . The fact

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complying with the discovery order. Under *In re Steward*, the Court holds this was a sufficient purgation provision.

that the sanctions may 'punish' in the sense that they hold a party accountable for bad behavior does not make them criminal in nature." In addition the Bankruptcy Court explained how the parties might purge themselves of sanctions. For example, the April 20 Order invited Briggs to file for reinstatement of the privilege to practice presuming he completed a required CLE provision. They were afforded multiple opportunities to redress those violations. Only after failing to comply with the Bankruptcy Court's orders mandating compliance, they were sanctioned with a monetary fine and barred from obtaining new clients for six months. The Court holds that these sanctions likely will be determined to be civil in nature and a proper exercise of the Bankruptcy Court's constitutional authority. The Court also notes that the Bankruptcy Court gave the Appellants the opportunity to purge themselves of the sanctions order. For example, the Bankruptcy Court temporarily lifted some of the sanctions against Briggs after he agreed to meet with representatives from the Missouri Attorney General's Office.

The Bankruptcy Court issued sanctions based, in part, upon the misleading statements by Briggs. While this may constitute a form of attorney discipline, the Court holds that it does not make it a criminal sanction. *Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561, 564 (9th Cir. 1990)("A lawyer disciplinary proceeding is not a criminal proceeding."). Bankruptcy courts are permitted to impose sanctions under Fed. R. Bankr. P. 9011 and prohibit attorneys from practicing before them. *See In re Young*, 507 B.R. 286, 296 (B.A.P. 8th Cir. 2014). Accordingly, the Court denies Appellants' appeal based upon their claim that

the Bankruptcy Court could not issue sanctions against them.

**C. Due Process**

Briggs argues that he did not receive due process before the sanctions against him were imposed. Briggs contends that the Bankruptcy Court had no authority to conclude a disciplinary proceeding against an attorney. (ECF No. 36 at 14-15). Briggs claims that the only recourse that the Bankruptcy Court had was to refer any discipline to the District Court for investigation under the District Court Rules. (ECF No. 36 at 15). Likewise, Briggs asserts that the Bankruptcy Court did not have the power to suspend him because it did not control the admission of Briggs to the bankruptcy bar. Briggs claims he should have received an evidentiary hearing pursuant to Rule V of the District Court Rules of Disciplinary Enforcement. (ECF No. 36 at 15).

Here, Briggs and Critique received multiple notices and opportunities to be heard. The Bankruptcy Court provided multiple notices to Briggs and Critique that it was considering sanctions against them. The Bankruptcy Court gave Briggs and Critique an opportunity to file written briefs, which they did. Briggs also sought writs of prohibition against Judge Rendlen, which were denied. The Court holds that this was sufficient due process and denies the appeal on this basis.

**D. Sufficient Factual Basis**

Appellants claim that the factual record does not support a finding of contempt. Appellants assert that there was no finding that Briggs had the requested

documents in his possession. (ECF No. 36 at 15-16). Appellants argue that the Bankruptcy Court could not hold Briggs in contempt for failing to conduct discovery because the Bankruptcy Court did not state that it was considering imposing sanctions on this basis. (ECF No. 36 at 16). Appellants assert that the Bankruptcy Court's July 6, 2015 Order failed to specify how they could comply with the discovery order; it simply stated "[a]t the status conference, it was established that the Respondents failed to comply with the [Turnover Order]." (ECF No. 36 at 16 (citing ECF No. 91 at 2)). Appellants claim that the Order fails to specify how they could comply and does not mention that Briggs failed to engage in third-party discovery. (ECF No. 36 at 16). Appellants claim that they did not have notice of the possible basis for sanctions and had no affirmative duty to engage in third-party discovery; Appellants state that they were not directed by their clients to investigate Robinson's financial records. (ECF No. 36 at 16-17). Appellants also assert that the Court's interpretation of Briggs' oral statements made at the hearing cannot support a finding of contempt. (ECF No. 36 at 17). Appellants argue that the Court made no finding that Briggs made a false statement to the Bankruptcy Court regarding his relationship with Critique. In fact, Appellants state that Briggs' statements to the Court concerning his relationship with Critique were truthful and accurate. (ECF No. 36 at 18). Appellants maintain that there is no evidence that Briggs' responses to the Court obstructed the discovery process or disrupted the orderliness of the January 13 hearing or status conference. (ECF No. 36 at 19).

The Court holds that there was no abuse of discretion in the Bankruptcy Court's factual findings that formed the basis for the sanctions. The Court notes that Briggs was not disciplined for a discovery dispute. Rather, he was disciplined for failing to comply with the Bankruptcy Court's orders compelling the turnover of information and documentation and for making misleading statements to the Court. Briggs was sanctioned for activities that occurred directly before the Bankruptcy Court. The Bankruptcy Court had sufficient factual basis to issue its order and was within its power to sanction Briggs for misleading statements. *In re Burnett*, 450 B.R. 116, 131 (Bankr. E.D. Ark. 2011) ("The bankruptcy courts have broad authority, under Federal Rule of Bankruptcy Procedure 9011, 11 U.S.C. § 105(a), and their inherent authority, to sanction the persons appearing before them." (citing Fed. R. Bankr.P. 9011; 11 U.S.C. § 105(a); *In re Clark*, 223 F.3d 859, 864 (8th Cir. 2000); *In re Brown*, 152 B.R. 563, 567 (Bankr. E.D. Ark.1993)). The Court denies the appeal on this basis.

### E. Abuse of Discretion By Bankruptcy Court's Failure to Consolidate Cases

Critique filed a Fed. R. Civ. P. 42(a) motion to consolidate the eight Chapter 7 Bankruptcy cases that gave rise to this appeal, but the Bankruptcy Court denied Critique's request. The Bankruptcy Court held (among other things) that it would not consolidate the cases because Critique's involvement with each of the eight debtors was different.

Critique argues that the Bankruptcy Court abused its discretion in denying Critique's Motion to Consolidate the eight bankruptcy cases below for

purposes of an efficient appeal. (ECF No. 34 at 29). Critique notes that this Court later consolidated the eight appeals. (ECF No. 34 at 30).

Federal Rule 42 provides that "If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." An order denying a "motion to consolidate should not be disturbed unless it is determined that the court clearly abused its discretion." *U.S. E.P.A. v. City of Green Forest, Ark.*, 921 F.2d 1394, 1402 (8th Cir. 1990) (citing *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978); *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973); 9 Wright & Miller, Federal Practice and Procedure § 2383 (1971)). Here, Critique has failed to demonstrate that the Bankruptcy Court abused its discretion. Rather, the Bankruptcy Court specifically outlined that its basis for denying the Motion to Consolidate, which this Court finds not to be an abuse of discretion.

**F. Mootness of Disgorgement**

Critique also argues that the underlying cause of action in the Bankruptcy Court became moot once Attorney Robinson returned his fee to the debtor. (ECF No. 34 at 22-28). Critique notes that there is no pleading that names Critique as liable for the fees to be disgorged. Critique argues that, "[b]y the explicit terms of 11 U.S.C. §329(b) the only remedy available under a proceeding to disgorge a fee is for the court to 'return any such [fees] to the extent excessive.'" (ECF No. 34 at 24-25 (citing 11 U.S.C. §329(b)). Critique asserts that the statute does not provide for any other remedy

including monitoring of how an attorney administers his office or what was done with the fee before being returned. Critique claims that the Bankruptcy Court improperly relied upon 11 U.S.C. §105(a) to support the disgorgement of fees in spite of their repayment. (ECF No. 34 at 25). Critique claims that §329(b) only provides for the disgorgement of a part or all of any attorneys' fees paid by a debtor and the Bankruptcy Court cannot use §105(a) to forge a remedy not provided for under the Bankruptcy Code. (ECF No. 34 at 27).

As an initial matter, the Court holds that Critique abandoned this argument because it failed to raise this issue in its statement of the issues to presented that it filed with the bankruptcy clerk. *See* Fed. R. Bankr. P. 8009(a) ("The appellant must file with the bankruptcy clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented."); *In re Bullard*, 449 B.R. 379, 382 (B.A.P. 8th Cir. 2011) ("The Creditor has abandoned [this] argument on appeal by virtue of his failure to include that issue in his statement of issues on appeal or in his brief."); *In re Freeman*, 124 B.R. 840, 841 (N.D. Ala. 1991) ("The appellant has raised on appeal several issues which are not included in the Designation of the Record on Appeal. This court declines to consider these issues in its decision."). Likewise, Critique's brief does not cite to anything in the record indicating that it raised this issue previously. Therefore, the Court denies Critique's appeal on this basis.

Moreover, even if this Court were to consider Critique's appeal of this issue, it would fail on the

merits. The Court holds that the mere turnover of some of Robinson's fees to Briggs did not moot this case before the Bankruptcy Court. Even after the turnover of fees, the Chapter 7 trustees remained obligated to monitor and fully account for the property of the estates and the Bankruptcy Court continued to be required to monitor the activities of the Chapter 7 trustees and issue any order "that is necessary or appropriate to carry out the provisions" of Title 11. *See* 11 U.S.C. §105(a). Thus, even if Robinson turned over the fees, the Chapter 7 Trustees and the Bankruptcy Court were required to monitor the estates, oversee their activities, and issue any orders resulting therefrom. Therefore, the Court holds that the issues presented were not mooted by Robinson's turnover of fees and Critique's issue on appeal is denied.

Accordingly,

**IT IS HEREBY ORDERED** that the appeals of Ross H. Briggs and Critique Services, LLC of the Bankruptcy Court's decision are **DENIED.** The April 20, 2016 Orders of the Bankruptcy Court are affirmed.

An appropriate Judgment is filed herewith.

Dated this 3rd day of January, 2017.

/s/ Ronnie L. White
RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MISSOURI**
**EASTERN DIVISION**

**Case No.: 4:16cv633 RLW**

**[Filed January 3, 2017]**

IN RE EVETTE NICOLE REED, )
Debtor, )
)

**JUDGMENT**

In accordance with the Order entered this day, both incorporated herein,

**IT IS HEREBY ORDERED, ADJUDGED and DECREED** that Plaintiffs' Appeals are **DISMISSED** with prejudice.

Dated this 3rd day of January, 2017.

/s/ Ronnie L. White
RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

## APPENDIX C

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MISSOURI**
**EASTERN DIVISION**

**Case No.: 4:16cv633 RLW**

**[Filed February 6, 2017]**

| | |
|---|---|
| IN RE EVETTE NICOLE REED, | ) |
| | ) |
| Debtor, | ) |
| | ) |

**MEMORANDUM AND ORDER**

This matter is before the Court on the Motion for Rehearing of Appellant Ross H. Briggs. (ECF No. 59).[1] An opposition was filed on January 24, 2017. (ECF No. 68). This matter is fully briefed and ready for disposition.

In the Motion for Rehearing, Appellant Briggs argues that the Court "overlooked or misapprehended that the April 20, 2016 Memorandum Opinion and Judgment of the Bankruptcy Court (the 'April 20 Judgment') failed to identify with any specificity 1) the nature of the information or documents that Briggs failed to turnover in violation of the Bankruptcy

[1] Critique Services, LLC is also referred to herein as "Critique Services" and "Critique." Ross Briggs is also referred to herein as "Briggs". Collectively, they are referred to as "Appellants".

Court's Turnover Order; 2) the statement made by Appellant Briggs to the Bankruptcy Court which was alleged to be misleading, and 3) the existence of any evidence whatsoever in support of either of the foregoing findings." (ECF No. 59).

In response, The United States Bankruptcy Court, Eastern District of Missouri and the Honorable Charles E. Rendlen III (collectively, the "Interested Parties") assert that the Motion for Rehearing has no merit. The Interested Parties note that Appellant has not identified anything in the record to demonstrate an abuse of discretion. The Interested Parties further identify that the Bankruptcy Court's April 20, 2016 Order included a section entitled "Findings that Briggs Willfully Made Misleading Statements" and contains the Bankruptcy Court's findings regarding alleged misleading statements made by Appellant.

The Court holds that the Motion for Rehearing raises no issues that were not previously addressed by this Court. Appellant argues that he never received any funds from Attorney Robinson. However, this Court previously noted that the receipt of funds was not the basis of his sanction. Rather, Briggs was sanctioned for failure to turnover information and for making misleading statements to the Court. Appellant has not cited to anything in the record to dispute the Bankruptcy Court's findings and this Court's ruling. Moreover, as noted by the Interested Parties, the Bankruptcy Court provided explicit findings regarding Briggs' misleading statements. The Court holds that there was no clear error in the Bankruptcy Court's findings.

Accordingly,

**IT IS HEREBY ORDERED** that the Motion for Rehearing of Appellant Ross H. Briggs. (ECF No. 59) is **DENIED.**

Dated this 5th day of February, 2017.

s/_____
RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

## APPENDIX D

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE EASTERN DISTRICT OF MISSOURI**

**[Filed April 20, 2016]**

**Case No. 14-44818-705**

In re:
Evette Nicole Reed,
Debtor.

**Case No. 14-44909-705**

In re:
Pauline A. Brady,
Debtor.

**Case No. 14-45773-705**

In re:
Lawanda Lanae Long,
Debtor.

**Case No. 14-43751-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Marshall Beard, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**Case No. 14-44434-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Darrell Moore, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**Case No. 14-44329-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Nina Lynne Logan, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**Case No. 14-43912-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Jovon Neosha Stewart, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**Case No. 14-43914-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Angelique Renee Shields, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**MEMORANDUM OPINION AND ORDER**

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B. The Recent and Current Critique Services Attorneys

1. James C. Robinson
2. Ross H. Briggs
3. Dean D. Meriwether
4. Dedra Brock-Moore
5. Robert J. Dellamano
6. Teresa M. Coyle

C. The Limited Liability Companies

1. Critique Services L.L.C.
2. Critique Legal Services L.L.C.
3. Genesis Advertising, Marketing and Business Services L.L.C.

D. The Other, Non-Attorney Staff Persons

1. Renee Mayweather
2. Charlotte Thomas and Bey
3. Dee
4. Korie and Shey
5. Nicky Lee

F. The 2002 Motion for Sanctions Against Briggs and Order to Show Cause Why Diltz Should Not Be Held in Civil Contempt, and the Judicial Determination that Briggs Violated Bankruptcy Rule 9011

G. The 2003 Injunction Against Briggs and the 2003 Injunction Against Diltz d/b/a Critique Services, d/b/a Critique Legal Services, and Critique Services L.L.C.

H. The 2003 Disbarment of Critique Services Attorney Leon Sutton by the Illinois Bankruptcy Court and Injunction Against Diltz, Permanently Barring Diltz from "hav[ing] anything to do with any bankruptcy case" in the Southern District of Illinois

I. The 2004 Violation of Bankruptcy Rule 9011 by Briggs While Employed as a Critique Services Attorney

J. The 2004 MOAG Action in the State Circuit Court

K. The 2004 Allegations of Threats of Violence by Persons at the Critique Services Business

L. The 2004 Suspension of Critique Services Attorney Paula Hernandez-Johnson

M. The 2006 Disbarment of Critique Services Attorney Linda Ruffin-Hudson by the Missouri Supreme Court

N. The 2006 Disbarment of Critique Services Attorney Leon Sutton by the Missouri Supreme Court

O. The 2006 Disbarment of Critique Services Attorney George Hudspeth by the Missouri Supreme Court

P. The 2007 Injunction Against (i) Diltz in her Individual Capacity and as a Member of Critique Services L.L.C., d/b/a Critique Services, (ii) Critique Services L.L.C., and (iii) Mayweather

Q. The 2014 Order Imposing Sanctions Against Robinson, Critique Services L.L.C., and their Counsel, Elbert Walton, and Suspending Robinson and Walton from the Privilege of Practicing before the Court (the *Steward* Suspension Order)

R. The 2014 Order Directing Briggs to Correct False and Misleading Statements and to File Certain Affidavits

S. The 2014 Motions Filed by the UST13 Seeking Disgorgement of Fees and the Issuance of Show Cause Orders Against Diltz, Robinson, and Critique Services L.L.C.

T. The Affirmance of the *Steward* Suspension Order

U. The 2015 Pay, Post, or Show Cause Order

V. Critique Services L.L.C.'s Efforts to Resolve the Sanctions Orders in the Steward Suspension Order

W. The Body Attachment Order and Bench Warrant

X. The 2015 Order Continuing Robinson's and Walton's Suspensions

Y. The 2015 Order Regarding Robinson's Violation of his Suspension

Z. The 2015 Order Suspending Meriwether's CM-ECF Privileges and the First Referral of Meriwether to the OCDC

AA. The First 2015 Order for Monetary Sanctions Against Meriwether and the Second Referral of Meriwether to the OCDC

BB. The 2015 Directive to Dellamano to Cease Improperly Appearing at § 341 Meetings

CC. The Second 2015 Order for Monetary Sanctions Against Meriwether and the Third Referral of Meriwether to the OCDC

DD. The 2015 Order Suspending Meriwether from the Privilege to Practice Before the Court and a Fourth Referral of Meriwether to the OCDC

EE. The 2015 Suspension of Dellamano's CM-ECF Passcode

FF. The 2015 Suspension of Dellamano's Privilege to Practice Before the Court

GG. The 2015 Order Directing Meriwether and Dellamano to Disgorge Fees

QQ. The March 10, 2016 TRO Against Critique Services L.L.C., Diltz, and Mayweather Issued in *Casamatta v. Critique Services L.L.C., et al.*

RR. The March 14, 2016 TRO in the 2016 MOAG Action

SS. The March 15, 2016 Recorded Greeting on the Telephone Line at the Critique Services Business Office

TT. The March 18, 2016 Order Setting for Hearing Another Motion to Disgorge

UU. The March 29, 2016 Preliminary Injunction Against Robinson, Issued in the 2016 MOAG Action

VV. The April 4, 2016 Bench Ruling Striking Critique Services Attorney Coyle as Attorney of Record and Ordering Coyle to Disgorge Fees

WW. The April 5, 2016 Order Directing Meriwether and Critique Services L.L.C. to Disgorge Fees

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## SECTION THREE: THE FACTS AND CIRCUMSTANCES OF THESE CASES

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### I. THE ISSUANCE OF THE SHOW CAUSE ORDERS

2. The false statement about the re-appointment of the Trustees

3. The false statements about Trustee Conwell

4. The false statement that "[t]he basis of the Order was the Judge's apparent conclusion that [Briggs] had denied knowing Beverly Diltz was the owner of Critique Services, L.L.C."

5. The false statement regarding the term of voluntary suspension

6. The false statement that the Court had no concerns about the possible violation of the state ethical rules

F. Critique Services L.L.C.'s Motion to Dismiss or to Transfer the Sanctions Determination to Chief Judge Surratt-States

G. The Informal Efforts to Resolve the Issue of Whether Sanctions Should Be Imposed Upon Briggs

H. Briggs's Two Motions for Protective Order

I. The End of Informal Efforts Between Briggs and the Court

J. The Order Allowing Critique Services L.L.C. to File Tax Documents in Support of its Assertion Regarding its Number of Employees

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SECTION FOUR:
THE LAW

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* * *

[pp.212-213]

### C. Briggs's Contempt of the Order Compelling Turnover

Briggs responded to the issuance of the Show Cause Orders and the Trustees' efforts to obtain the information they needed to make an accounting of the assets of the estates by:

- Sending the Trustees a blow-off letter in response to their attempt to obtain information about the Debtors' fees, sending the distinct message that he would in no way be helpful to them in their efforts.
- Accepting Robinson's return of the fees in violation of the Court's directive that any return be made to the Trustees.
- Forcing the Trustees to file a motion to compel in order to obtain his "agreement" to help obtain the information about his clients' fees.
- Arguing meritless technicalities in not responding to the Trustees.
- Misleading the Court and the Trustees about his relationship with Diltz and the Critique Services Business, feigning a lack of personal knowledge, and "playing dumb," when responding to questions.
- Falsely promising at the January 13 hearing he would be helpful in obtaining the information requested by the Trustees.
- Running off after the January 13 to conference with Diltz—the woman who he had just insisted

> he could not name as the owner of Critique Services L.L.C.—to give her the low-down on the hearing.

Moreover, despite his promise at the January 13 hearing to be "helpful," Briggs made no sincere effort to obtain the information that was the subject of the Order Compelling Turnover. His "help" amounted to a lame "request" letter to Robinson, followed by nothing else of any substance. He tried to create the appearance of busy "responsiveness" by filing affidavits of his clients—affidavits that were revelatory of nothing that would be responsive to the Trustees' request, as Briggs well knew. Then, he tried to hide behind his clients at the February 4 proceeding, claiming that *they* did not want him to proceed—a claim that he did not support with any evidence. Briggs has acted with one goal in mind: doing whatever he could to do nothing.

Briggs promised the Court at the January 13 hearing that he would be helpful. That is, he represented that he would do something to obtain the information, so that the information could be turned over to the Trustees. The fact that he may have nothing to turn over now is because ***he did nothing*** that would have been helpful in obtaining information to turn over. Briggs's promise at the January 13 hearing proved to be a stall tactic—a way to temporarily pacify the Court and the Trustees while he figured out how to weasel out of being helpful.

Had Briggs made serious, sincere efforts to obtain the Request Information, but was unable to obtain the information because he was stonewalled, then that would have been one thing. Under those circumstances, Briggs would have made a good faith effort to comply

with the Order Compelling Turnover. He would have fulfilled his promise and he would not be in trouble with the Court. However, those are not the circumstances here. Briggs made no real effort to obtain the information for his clients so that he could turn it over. His failure to turn over any responsive information is not due to the fact that he is not in possession of the documents; it is due to the fact that he took no actions that would allow him to comply with the turnover directive. Briggs's activities in these Cases have been a violation of his duties as an officer of the court and a direct effort to undermine the Order Compelling Turnover and the ability of the Trustees to make the accounting of the estates.

Accordingly, the Court **FINDS** that Briggs to be in contempt of the Order Compelling Turnover.

## II. FINDING THAT BRIGGS WILLFULLY MADE MISLEADING STATEMENTS

At the January 13 hearing, Briggs did not argue that the Trustees were not entitled to the requested information; he did not argue that the requested information does not exist; he did not argue that it was against his clients' interests to turn over the requested information. He argued that he could not help obtain the requested information because he is not part of the Critique Services Business.

In support of this contention, Briggs repeatedly pointed to the fact that he is not under contract at the Critique Services Business—relying on his lack of a

* * *

## APPENDIX E

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE EASTERN DISTRICT OF MISSOURI**

**[Filed April 20, 2016]**

**Case No. 14-44818-705**

In re:
Evette Nicole Reed,
Debtor.

**Case No. 14-44909-705**

In re:
Pauline A. Brady,
Debtor.

**Case No. 14-45773-705**

In re:
Lawanda Lanae Long,
Debtor.

**Case No. 14-43751-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Marshall Beard, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**Case No. 14-44434-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Darrell Moore, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**Case No. 14-44329-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Nina Lynne Logan, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**Case No. 14-43912-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Jovon Neosha Stewart, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**Case No. 14-43914-705**

| | |
|---|---|
| In re: | ) |
| | ) |
| Angelique Renee Shields, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**JUDGMENT**

For the reasons set forth in the Memorandum Opinion and Order (the "Memorandum Opinion"),[1] entered on this date, this final judgment is entered on the sanctions determination currently pending before the Court,[2] and the Court **ORDERS** as follows:

(A) the Trustees be **RELEASED** from any further obligation under the Show Cause Orders;

(B) Robinson be **SANCTIONED** as follows: the findings of fact in the Memorandum Opinion be made part of the record in any future proceeding in which Robinson may seek to be reinstated to practice before the Court, so that the full depth and breadth of his malfeasance, dishonesty and abuse will be clear when the Court considers whether

[1] Any term defined in the Memorandum Opinion has that same definition for purposes of this Judgment.

[2] Currently before the Court is the issue of whether it is proper to sanction the Respondents for the failure to comply with the Order Compelling Turnover entered on January 23, 2015. To the degree that entry of a judgment, separate from the Memorandum Opinion, is proper, the Court so enters this Judgment.

Robinson should be reinstated to practice before the Court;

(C) the issue of whether Robinson should be suspended for his activities **MAY BE REVISITED**, should the Eighth Circuit determine that his current suspension, as ordered in *Steward* Sanctions Order, be vacated, modified, altered, reversed, or otherwise made ineffective;

(D) Critique Services L.L.C. and Critique Legal Services L.L.C.—including in any "d/b/a" capacity in which either may operate, and regardless of whether the company is dissolved or operating, and regardless of who in the future may be the owner, manager, or controlling person—be permanently **BARRED** from providing any goods or services (whether for free or for compensation), in any form, to any person or entity (including, but not limited to, any law firm, lawyer, bankruptcy petition preparer, "bankruptcy services" business, or any other person), to the degree that such goods or services may involve, affect, relate to, or in any other way touch upon, or could reasonably be foreseen to involve, affect, relate to, or in any other way touch upon, any case that is, or is anticipated to be, filed with the Court. The bar does not prohibit a barred person or entity from being involved in his own bankruptcy case, should such barred person or entity file for relief, either pro se (if an individual) or through counsel. ***This bar***

***shall be effective regardless of whether Diltz continues to be the owner of the companies. This bar shall be given the broadest possible construction and effect.***

(E) Briggs be sanctioned as follows:

(I) Subject to **Exception A** listed below, effective immediately, Briggs be **SUSPENDED** from the privilege of practicing before the Court on behalf of any other person in a case that has been, or is anticipated to be, filed before the Court. Briggs shall remain suspended from the date of the entry of this Memorandum Opinion through **October 15, 2016**. Briggs's suspension includes (but is not limited to): special appearance or general appearance; representation for compensation or for free; representation in a main case or an adversary proceeding; representation inside or outside the courtroom, if such representation would in any way touch upon a case that is filed, or is anticipated to be filed, before the Court. During his suspension, Briggs is prohibited from all acts of the practice of law in any case before, or anticipated to be before, the Court, including (but not limited to): accepting representation of any person related to a case before the Court or anticipated to be before the Court (even if such case would not be anticipated to be

filed or otherwise before the Court during his suspension); filing a new case for any person other than himself; filing a document on behalf of anyone other than himself; representing any person, other than himself, before the Court in any capacity; appearing at a § 341 meeting on behalf of any debtor; serving as co-counsel or in joint representation with another attorney in a case that is filed, or is anticipated to be filed, before the Court; or fee-sharing with any attorney in any fees that he collected pre-petition, but which he had not earned as of the date of his suspension date.

(II) **Exception A:** This suspension does not suspend Briggs from (A) practicing before the Court in the representation of a person for whom he was the attorney of record according to the records of the Clerk's Office ***as of the date and time of entry of this Memorandum Opinion***; (B) assisting any person who was his client as of the date and time of entry of this Memorandum Opinion, but whose case was not filed as of the date and time of entry of this Memorandum Opinion, in finding alternate counsel—provided that he does not charge any fee for such assistance; and (C) returning unearned fees collected from a client who he cannot represent during or as a result of his suspension.

(III) This suspension from the privilege of practicing before the Court on behalf of other persons does not bar Briggs from representing himself in any matter before the Court, or from giving deposition testimony in any case before the Court, or from appearing as a witness pursuant to a subpoena issued by the Court.

(IV) Effective immediately, Briggs be **PROHIBITED** from using his CM-ECF passcode to remotely access the Court's CM-ECF system for the duration of his suspension. This means that, while Briggs can continue to represent certain clients pursuant to **Exception A**, he must file any documents on behalf of those clients at the computer banks in the Clerk's Office during regular business hours. Briggs must file any document in person and personally. All acts related to filing must be done entirely *by Briggs*. No agent, associate, or assistant may operate the computers in the Clerk's office for him. Any agent, associate, or assistant brought to the Clerk's Office with Briggs cannot be left unattended by Briggs or be permitted to do any filing for Briggs. Briggs may not submit a document for filing through any common carrier, including through the U.S. Postal Service. He may not

present a document for filing through a courier or other agent. He may not instruct or advise his clients that they must do their own filing of documents that he prepared or was obligated, as their attorney, to prepare. If Briggs violates this suspension, the document submitted may be rejected for filing and returned, and Briggs may be sanctioned $1,000.00 for each document submitted for filing in violation of the suspension. Any violation of this suspension may result in the imposition of additional sanctions upon Briggs, which may include further suspension from the privilege of practicing before the Court. At the end of Briggs's suspension from the privilege of practicing before the Court, Briggs's electronic and remote access filing privileges will be reinstated, provided that Briggs has not been further sanctioned and the facts otherwise indicate that reinstatement of the privileges is proper.

(V) Subject to **Exception B** listed below, Briggs and any law firm, or law practice, or law business of Briggs (including but not limited to, any solo "attorney at law" practice, or Firm 13, or business under any other name) be ***permanently prohibited*** from being financially or professionally involved

with or connected to, whether formally or informally or otherwise: (A) Diltz; (B) Mayweather; (C) Robinson; (D) Meriwether; (E) Dellamano; (F) Coyle; (G) Critique Services L.L.C.; (H) Critique Legal Services L.L.C.; (I) Genesis Advertising, Marketing and Business Services L.L.C.; (J) any other entity that Diltz owns, organized, or operates, or in the future may own, organize or operate; and (K) any current or former employee of or independent contractor with, Diltz, Mayweather, Robinson, Meriwether, Dellamano, Coyle, Critique Services L.L.C., Critique Legal Services L.L.C., or Genesis Advertising, Marketing and Business Services L.L.C. This prohibition will be construed as broadly as possible and will remain in effect unless and until Briggs resigns his privilege to practice before the Court.

(VI) **Exception B:** It is the Court's understanding that Briggs currently may employ a few non-attorney employees who previously were affiliated with the Critique Services Business. This bar does not prohibit Briggs from continuing to employ those specific persons, provided that such persons are not professionally involved with or connected to ***in any way*** with any of the persons who

Briggs is barred from being professionally involved with or connected to.

(VII) Briggs **COMPLETE** twelve (12) hours of CLE entirely in ***professional ethics*** prior to his reinstatement from his suspension. These hours must be taken in-person. These hours may not be accomplished by "self-study" or through attending an internet or correspondence course. Briggs has to show up, sign in, and stay for the entire duration. He shall file a Certificate of Completion of Professional Ethics CLE with the Court upon his completion of these hours, and provide to the Court such Certificate as evidence establishing that he attended and completed the CLE.

(VIII) Briggs is invited to file, on October 1, 2016 or any time thereafter, a motion for reinstatement to the privilege of practicing before the Court after October 15, 2016. Evidence of completion of the required CLE should be attached to any such motion.

s/_____
CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

DATED: April 20, 2016
St. Louis, Missouri 63102
mtc

## APPENDIX F

**UNITED STATES COURT OF APPEALS**
**FOR THE EIGHTH CIRCUIT**

**No: 17-1143**

**[Filed June 1, 2018]**

| | |
|---|---|
| In re: Evette Nicole Reed | ) |
| ---------- | ) |
| Critique Services, LLC | ) |
| Ross Harry Briggs | ) |
| Appellant | ) |
| | ) |
| v. | ) |
| | ) |
| Evette Nicole Reed and Seth A. Albin | ) |
| Honorable Charles E. Rendlen, III | ) |
| Appellee | ) |
| | ) |
| United States Bankruptcy Court | ) |
| | ) |

**No: 18-1169**

| | |
|---|---|
| In re: Ross H. Briggs | ) |
| Petitioner | ) |
| | ) |

Appeal from U.S. District Court for the
Eastern District of Missouri - St. Louis
(4:16-cv-00633-RLW)
(4:16-cv-00660-RLW)

(4:16-cv-00662-RLW)
(4:16-cv-00663-RLW)
(4:16-cv-00664-RLW)
(4:16-cv-00665-RLW)
(4:16-cv-00667-RLW)
(4:16-cv-00668-RLW)
(4:16-cv-00669-RLW)
(4:17-mc-00674-RWS)

**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 01, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

_____

/s/ Michael E. Gans