United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Jelena Dordevic

Bankruptcy No. 20 B 09807

Adversary Caption:

Adversary No.

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Judge: Donald R. Cassling

Appearance of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
	)	Bankruptcy No. 20 B 09807
JELENA DORDEVIC,	)	Chapter 7
	)	Judge Donald R. Cassling
Debtor.	)	

ORDER GRANTING UNITED STATES TRUSTEE'S MOTION TO EXAMINE FEES PAID TO ATTORNEY PURSUANT TO 11 U.S.C. § 329 (Dkt. No. 67)

I. INTRODUCTION

This matter came before the Court on the motion of Patrick S. Layng, the United States Trustee for the Northern District of Illinois (the "UST"), to examine the fees paid to attorney Anthony J. Peraica ("Mr. Peraica") under Section 329 of the Bankruptcy Code in connection with his representation of Jelena Dordevic (the "Debtor") in this case. (Dkt. No. 67.) Gus A. Paloian, the Chapter 7 Trustee for the Debtor's estate, joined the UST's motion. (Dkt. No. 72.)

For the reasons set forth below, the Court grants the motion. Although disgorgement of all fees received by Mr. Peraica may seem harsh, the Court concludes that it is appropriate here. Mr. Peraica's failure or refusal to file an appropriate fee-disclosure form as required by the Bankruptcy Code and Rules appears to have been willful and continued for months, despite the UST's repeated demands that he do so. Thousands of dollars which Mr. Peraica received from a third-party source were not disclosed to the Court or other interested parties until the hearing on the UST's motion. The requirement that debtors' counsel spread of record the amount and source of fees they receive is crucial to preserving the integrity of the bankruptcy system, even in the absence of actual harm to the bankruptcy estate.[1] Among other things, it helps to ensure that the Court and interested parties can be confident that counsel's allegiance runs to the party he purports to represent, not to some undisclosed third party.

II. BACKGROUND

On April 24, 2020, the Debtor, with the assistance of her attorney, Mr. Peraica, filed a Chapter 7 bankruptcy petition. Along with the petition, Mr. Peraica filed a Disclosure of Compensation of Attorney for Debtor (Form B-2030) wherein he disclosed that he had been paid $5,000 by the Debtor prior to filing the petition. (Mot. at p. 1 of Ex. A.)

The UST filed a complaint objecting to the Debtor's discharge under Section 727 of the Code on February 23, 2021. (Adv. No. 21 A 00032.) Through discovery in that adversary

[1] *See In re Prod. Assocs., Ltd.*, 264 B.R. 180, 186 (Bankr. N.D. Ill. 2001) ("Failure to timely file the disclosure could result in the loss of the attorney's fee or other such sanctions the court may decide to impose, whether or not the estate is harmed by the delay.").

proceeding, the UST learned that the Debtor had made several undisclosed post-petition payments to Mr. Peraica, including from an account the Debtor controlled in the name of Sprint Freight, Inc. (Mot. ¶ 5 & n.1.)

The UST sent Mr. Peraica an email on August 2, 2021 informing him that "[y]our Rule 2016 disclosures do not appear to be complete" and demanding that he "file the required disclosure reporting all sums received for your work on behalf of the debtor and the source(s) of such payment(s)." (Mot. at p. 2 of Ex. C.) Mr. Peraica did not file the required disclosure form. Instead, through his colleague, Stephen F. Boulton ("Mr. Boulton"), he sent the UST an informal document on August 3, 2021, listing $21,500 in fees received by Mr. Peraica in connection with the Debtor's case (the "Accounting"). (Mot. at p. 1 of Ex. D.)

On August 5, 2021, the UST followed up with another email to Mr. Peraica and Mr. Boulton observing that "[t]he Rule 2016 disclosures actually need to be filed with the Court. . . there's an official form." (Mot. at p. 1 of Ex. C.) Once again, Mr. Peraica failed to file the required fee disclosure form.

After two more weeks with no Rule 2016 disclosures, on August 19, 2021, the UST sent yet another email to Mr. Peraica and Mr. Boulton stating "you need to file your Rule 2016 disclosures. I appreciate that you sent the information to me, but it needs to be filed with the Court." (Mot. at p. 1 of Ex. E.) Mr. Peraica again failed to comply.

To date, Mr. Peraica's only Rule 2016 disclosure has been the one that he filed with the petition, and that disclosure was materially in error, stating that he had been paid only $5,000 before the petition date, rather than the $8,000 he admits receiving. Also, Mr. Peraica failed to supplement his initial Rule 2016 disclosure to disclose the $13,500 he received in nine separate post-petition payments.[2] (*See* Mot. at p. 1 of Ex. D.)

When this motion was initially presented in Court on October 5, 2021, Mr. Boulton appeared on behalf of Mr. Peraica and requested time to respond. The Court afforded Mr. Peraica two weeks or until October 19, 2021 to file his response, and the UST was given leave to reply by November 2, 2021. (Dkt. No. 70.) The motion was set for further hearing on November 9, 2021. (*Id.*)

Mr. Peraica failed to file a complete and corrected fee disclosure form prior to the hearing on the UST's motion. He also failed to file a written response to the motion by the October 19, 2021 deadline. On November 1, 2021, the UST filed a supplement to his motion wherein he stated that, as a result of Mr. Peraica's continued failure to file a complete and accurate fee disclosure, all fees that he had received should be forfeited to the Chapter 7 Trustee. (Supp. ¶ 4, Dkt. No. 73.)

Hours after the UST filed this supplement to his motion, Mr. Peraica filed a motion for leave to file a response to the motion instanter. (Dkt. No. 74.) He explained that his failure to timely respond was due to the fact that he agreed with the factual allegations made by the UST

[2] Based on the Accounting Mr. Peraica provided to the UST, it appears that he failed to reflect three $1,000 payments (received October 21, 2019; November 12, 2019; and April 4, 2020) in his Rule 2016 disclosure. (Mot. at p. 1 of Ex. D.)

and that he would rely solely on legal arguments he planned to present when the UST's motion would be heard on November 9, 2021. Mr. Peraica further requested that the Court consider a two-page summarization of the legal arguments he expected to make at the hearing on November 9, 2021, which he attached to his motion as Exhibit A (the "Resp.").

At the November 9, 2021 hearing, the Court granted Mr. Peraica's motion for leave to file his response and has considered the arguments made therein. (Dkt. No. 79.)[3] The Court also heard oral argument from the UST, the Chapter 7 Trustee, and Mr. Boulton.

III. APPLICABLE STANDARDS

Section 329 of the Bankruptcy Code requires a debtor's attorney to "file with the court a statement of the compensation paid or agreed to be paid . . . and the source of such compensation." 11 U.S.C. § 329(a). Bankruptcy Rule 2016(b) establishes when the statement is to be filed and includes a provision requiring such disclosure "after any payment or agreement not previously disclosed." FED. R. BANKR. P. 2016(b);[4] *accord* BANKR. N.D. ILL. LOCAL RULE 2016-1. Fee disclosure obligations of debtor's counsel are mandatory, not permissive. *See*, *e.g.*, *In re Gluth Bros. Constr., Inc.*, 459 B.R. 351, 361 (Bankr. N.D. Ill. 2011); *In re Kowalski*, 402 B.R. 843, 848 (Bankr. N.D. Ill. 2009). "Because disclosure under section 329(a) and Rule 2016(b) is 'central to the integrity of the bankruptcy process,' failure to disclose is sanctionable." *In re Jackson*, 401 B.R. 333, 340 (Bankr. N.D. Ill. 2009) (quoting *In re Andreas*, 373 B.R. 864, 872 (Bankr. N.D. Ill. 2007)). Courts enjoy broad discretion in determining appropriate remedies for violations of the fee disclosure requirements. *White v. Coyne, Schultz, Becker & Bauer, S.C. (In re Pawlak)*, 483 B.R. 169, 180 & n.13 (Bankr. W.D. Wis. 2012) (citing cases).

A failure to provide the required disclosure alone justifies the bankruptcy court's denial of any or all fees requested. *In re Griffin*, 313 B.R. 757, 764 (Bankr. N.D. Ill. 2004) (citing cases). "Coy or incomplete disclosures that force the court to ferret out pertinent information will not do[.]" *Jackson*, 401 B.R. at 339 (internal quotations omitted). "Many courts, perhaps the majority, punish defective disclosure by denying all compensation." *Andreas*, 373 B.R. at 872.

IV. DISCUSSION

It is undisputed that Mr. Peraica's initial and only Rule 2016(b) disclosure is significantly inaccurate and incomplete, failing to list many thousands of dollars in fee payments received both pre- and post-petition and also failing to disclose the source of those payments. The Accounting

[3] Mr. Peraica should have complied with the briefing schedule this Court set; it was an order not a suggestion. "Ignoring deadlines is the surest way to lose a case." *United States v. Golden Elevator, Inc.,* 27 F.3d 301, 302 (7th Cir. 1994). "Adherence to established deadlines is essential if all parties are to have a fair opportunity to present their positions." *Hill v. Porter Mem'l Hosp.*, 90 F.3d 220, 224 (7th Cir. 1996). Nevertheless, the Court decided to allow the response to be filed so that all of Mr. Peraica's arguments could be considered. The UST did not object to the motion.

[4] Under Rule 2016(b), every attorney for a debtor is required to file and transmit to the United States Trustee the statement required by Section 329(a) within 14 days after the bankruptcy petition is filed, or at another time as the court may direct. A supplemental statement is required to be filed and transmitted "within 14 days after any payment or agreement not previously disclosed." FED. R. BANKR. P. 2016(b).

Mr. Peraica provided to the UST was inadequate. It was not in the appropriate form, was not filed with the Court, and was itself incomplete in failing to disclose the source of the fee payments.

Mr. Peraica does not dispute the facts alleged in the UST's motion, but he states that his failure to comply with the disclosure requirements arose "out of a lack of experience in such matters, having no prior experience with filing for ongoing fees."[5] (Resp. at pp. 1-2.) He claims that when asked for an accounting of his fees by the UST, he "provided the full amount [he] received," although it was "incorrectly stated."[6] (*Id.* at p. 2.) But he ignores the fact that the UST never asked him for an "accounting." The UST asked him instead to file a correct and complete fee-disclosure report. And the UST made this demand not once, not twice, but three times. Mr. Peraica's submission of the Accounting neither complies with nor satisfies the requirements set forth in Section 329(a) and Rule 2016(b).

In addition, Mr. Peraica's alleged lack of familiarity with the ongoing disclosure requirements does not excuse him from his obligation to make and file those disclosures, as he himself acknowledged in his response. (Resp. at p. 1.) Ignorance of the requirements of the Bankruptcy Code and Rules does not serve as a justification for his failure to comply. *See In re Nat'l Distribs. Warehouse Co.,* 148 B.R. 558, 562 (Bankr. E.D. Ark. 1992) ("The fact that these particular attorneys were unaware of the specific requirements under the Bankruptcy Code does not excuse them."); *In re Marine Power & Equip. Co.*, 67 B.R. 643, 654 (Bankr. W.D. Wa. 1986) (An attorney's "unfamiliarity with the applicable provisions of the Bankruptcy Code cannot excuse his lack of compliance.").

Moreover, Mr. Peraica's claim that he lacks bankruptcy experience is not true. Mr. Peraica is an experienced attorney who has been practicing law in Illinois since 1984.[7] He has been involved in over 350 bankruptcy cases in the past thirty-five years in this District alone.[8] In the majority of those cases he represented Chapter 7 debtors.

But even if the Court were to accept Mr. Peraica's excuse that he lacked sufficient bankruptcy experience to know what type of fee disclosure form he was required to file, he has provided no excuse for ignoring the thrice-repeated instructions from the UST to make the statutorily required fee disclosures. In fact, to date he has still failed to rectify the incorrect disclosure he made on the Rule 2016(b) document filed with the petition and has disregarded his

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[5] Specifically, the response states the "Debtor failed to thereafter list $13,000 in fees received from the Debtor out of a lack of experience in such matters, having no prior experience with filing for ongoing fees." (Resp. at pp 1-2.) The Court points out that Section 329(a) and Rule 2016(b) require the debtor's attorney, not the debtor, to make the disclosure. Thus, any reference to the Debtor's failure to comply is incorrect; Mr. Peraica himself was required to make the disclosures.

[6] Mr. Peraica failed to explain what he meant when he said that the Accounting reflected the full amount received, but was "incorrectly stated."

[7] According to the website of the Illinois Attorney Registration & Disciplinary Commission of the Supreme Court of Illinois, Mr. Peraica was admitted to practice law in Illinois on May 10, 1984.

[8] The Court ran a report in CM/ECF and found that Mr. Peraica has been associated with 369 cases and adversary proceedings as an attorney in the Northern District of Illinois since 1986. The Court can take judicial notice of its own records. *E.g., Mottaz v. Oswald (In re Frierdich)*, 294 F.3d 864, 870 (7th Cir. 2002). The most frequent use of judicial notice of ascertainable facts is in noticing the contents of court records. *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1081-82 (7th Cir. 1997).

duty to supplement that initial Rule 2016(b) filing. Mr. Boulton's statement during oral argument on this motion that he is prepared to remedy the situation falls short of the requirements in the Code and Rules and rings hollow considering Mr. Peraica's persistent disregard of these requirements for months.

Further, Mr. Peraica maintains that there is no damage to the Debtor's estate as a result of his lack of disclosure. At the oral argument on this motion, Mr. Boulton puzzlingly referred to the harm as merely "esoteric." But, in fact, the harm to the bankruptcy-court system from the failure of Debtor's counsel to comply with fee-disclosure requirements is significant and not merely "esoteric." Those disclosures are the primary source by which the Court and interested parties may determine whether such counsel has conflicts of interest and whether he owes his allegiance to the debtor he purports to represent or instead to some undisclosed third party who is paying counsel's fees: "The objective of requiring disclosure is not so much to protect against prejudice to the estate, but to ensure undivided loyalty and untainted advice from professionals." *In re Midway Indus. Contractors, Inc.*, 272 B.R. 651, 664 (Bankr. N.D. Ill. 2001). S*ee also Kravit, Gaes & Weber, S.C. v. Michel (In re Crivello)*, 134 F.3d 831, 839 (7th Cir. 1998) ("Bankruptcy courts have neither the resources nor the time to investigate the veracity of the information submitted in 2016(b) statements and affidavits and to root out the existence of undisclosed conflicts of interest."). When Mr. Boulton dismissively argues that any harm resulting from Mr. Peraica's failure to disclose is merely "esoteric," it suggests to the Court that Mr. Peraica still does not fully comprehend or accept the significance of his dereliction of duty.

V. CONCLUSION

For these reasons, the Court grants the UST's motion and requires Mr. Peraica to forfeit all fees he received from the Debtor and pay such amounts to the Chapter 7 Trustee as a penalty for his willful failure to comply with Section 329(a) and Rule 2016(b). The Court orders Mr. Peraica to remit $21,500, plus any other undisclosed fees received in this case, to the Chapter 7 Trustee on or before November 30, 2021.

ENTERED:

DATE: _____

_____
Donald R. Cassling
United States Bankruptcy Judge