

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN THE MATTER OF:

Administrative Order

ATTORNEY DAVID G. LUTZ

No. 17-AD-064

OPINION AND ORDER IMPOSING  
SUSPENSION WITH SANCTIONS

This matter is before the Court on a formal complaint from Chief Bankruptcy Judge Scott W. Dales regarding the conduct of Attorney David G. Lutz. Chief District Judge Robert J. Jonker assigned this matter to the undersigned panel of judicial officers for hearing and decision. (Admin. Order No. 17-AD-015). On March 6, 2017, Mr. Lutz responded to the complaint. On March 17, 2017, the panel conducted a hearing on the record in Grand Rapids, Michigan, at which Mr. Lutz appeared with a witness, Lourdes E. Cano. Mr. Lutz provided the Court with a post-hearing supplemental response on March 23, 2017.

Background

Mr. Lutz testified during the March 17 hearing that he graduated from law school in 1994. (3/17/17 Hrg. Tr. 23). He did not practice law immediately after law school, choosing instead to engage in certain business ventures. (*Id.*). Mr. Lutz has been engaged in the practice of law for the past fifteen years. (*Id.*). His primary areas of practice are bankruptcy and divorce. (*Id.* at 22-23).

In his January 13, 2017, complaint, Chief Bankruptcy Judge Dales expressed concern that Mr. Lutz had “effect[ively] forged his client’s electronic signature on certain inaccurate bankruptcy schedules that he prepared and filed with the court, evidently without his client’s authority, in order to prolong the pendency of the case, to the disadvantage of other interested parties.” (C.J. Dales’s 1/13/17 Complaint (referring to the case *In re Cano*, Case No. 16-03781)). Judge Dales also cited the fact that,

in several cases within the last year, either on motion of the United States Trustee or *sua sponte*, two bankruptcy judges in the Western District of Michigan have independently required Mr. Lutz to disgorge fees, or cancelled his retainer agreements, to prevent him from collecting excessive charges from his clients or their bankruptcy estates.

(*Id.* (citing *In re Tuller*, Case No. 16-00707; *In re Scott*, Case No. 16-04706; and *In re Viterna*, Case No. 16-01041)). Chief Judge Dales noted that “a constellation of such motions involving the same lawyer suggests professional incompetence, either in disclosing, documenting, or performing legal services.” (*Id.*).

A. Irregularities Relating to the Filing of Bankruptcy Cases

The irregularities relating to Mr. Lutz’s filing of certain bankruptcy Petitions and Schedules came to Chief Bankruptcy Judge Dales’s attention during a December 14, 2016, hearing in the *Cano* case. (*See id.*). During that hearing, the United States Trustee advised the bankruptcy court that Mr. Lutz had filed the Chapter 13 bankruptcy Petition without the necessary schedules, and when he filed the schedules – two days after the court-imposed deadline – they were patently deficient. (*In re Cano*, Case No. 16-03781, 12/14/16 Bankr. Hrg. Tr. 3-5). The U.S.

Trustee noted that, based on the information in the schedules Mr. Lutz filed with the bankruptcy court, Ms. Cano was not eligible for Chapter 13 relief. (*Id.*). In response Judge Dales's questions, Mr. Lutz admitted to having filed the schedules with Ms. Cano's electronic signature, despite the fact she had not reviewed or signed them. (*Id.* at 7-9).

On December 27, 2016, the bankruptcy court issued a show-cause order to Mr. Lutz as to "why the court should not limit his authority to electronically file documents using the '/s/ Name' convention authorized under the ECF Procedures . . . , require an itemization of attorneys fees and expenses in each chapter 13 case, and impose related relief (including reprimand or censure)[.]" (*In re Cano*, Case No. 16-03781, ECF No. 34, p.3). The bankruptcy court also invited the U.S. Trustee to respond. (*Id.*).

On January 9, 2017, Mr. Lutz filed a single-page response with a number of attachments. (*Id.*, ECF No. 37). Mr. Lutz largely blamed his client for the problems in prosecuting the *Cano* case, and he blamed the inclusion of Ms. Cano's electronic signature on a "clerical error." (*Id.*).

The U.S. Trustee filed a response to the show-cause order. The Trustee noted that Mr. Lutz had admitted to "fil[ing] a number of documents (Petitions, Schedules, Statements of Financial Affairs) in a number of cases bearing the electronic signatures of his clients that his clients had not actually signed." (*In re Cano*, Case No. 16-03781, ECF No. 36, p. 2). The U.S. Trustee also provided information concerning potential misconduct on Mr. Lutz's part in other bankruptcy cases, which included the *Andres* and *Fitzgerald* cases.



1. In re Andres, Case No. 14-07490

Mr. and Mrs. Andres' home was subject to foreclosure proceedings in the fall of 2014. They received a flyer from Michigan Foreclosures Assistance Program (MFAP), a business formed by Mr. Lutz's wife, suggesting that MFAP may be able to assist them in "extend[ing] the time of occupancy" in their home while they pursued legal action against the lender and loan servicers. (*Id.* at 3-4; *see also* ECF No. 36-1 (copy of the flyer)).<sup>1</sup> The Andres advised the U.S. Trustee that they met with Mr. and Mrs. Lutz in November 2014, at which time Mr. Lutz advised them against signing a loan modification proposal they had previously obtained, telling them it was "illegal." The Andres agreed to pay MFAP \$950 up front and \$650 monthly for assistance in obtaining an acceptable loan modification. They were told that the MFAP fee included legal services to be provided by Mr. Lutz. (ECF No. 36, p.4).

On the eve of the foreclosure of their home, Mr. Lutz called the Andres and advised them that their only viable option for saving their home was to file for Chapter 13 bankruptcy protection. After taking some information from the Andres over the telephone, Mr. Lutz filed the Chapter 13 – including the Petition, Schedules,

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<sup>1</sup>Mr. Lutz testified before this panel that he and his wife were "running stuff through Michigan Foreclosure Assistance," that his wife ran the business, and that he provided legal services for its clients. (3/17/17 Hrg. Tr. at 8). He stated that he did not receive payments from his wife's business, but he acknowledged that he indirectly benefitted from them. (*Id.* at 8, 14). Mr. Lutz testified that he and his wife "shut down" Michigan Foreclosure Assistance Program after three grievances had been filed against him, and after that action had been "suggested" by the Attorney Grievance Commission. (*Id.* at 20-21). Mr. Lutz estimates having obtained at least fifty clients from the Michigan Foreclosure Assistance Program during a period of approximately eighteen months. (*Id.*).

Statement of Financial Affairs, and proposed Plan – without having the Andres review or sign any of the documents. The first time Mr. Andres saw the filed documents was in a February 5, 2015, meeting of creditors (a meeting Mr. Lutz did not attend). Mr. Andres reported having been “shocked” by the amount of the proposed Chapter 13 plan payment, as he could not afford it; he also noted that the amount of listed household expenses was “totally inaccurate.” Mr. Andres stated that Mr. Lutz had told him he “threw some numbers together” to get the bankruptcy case filed. (*Id.* at 4-5).<sup>2</sup>

The Andres Chapter 13 case was dismissed due to Mr. Andres’s inability to make the plan payments. The Andres advised the U.S. Trustee that, prior to the dismissal of their case, Mr. Lutz presented them with the same loan modification they had obtained on their own prior to his representation. (*Id.* at 6).

During the March 17, 2017, hearing before this panel, Mr. Lutz testified that he did not remember advising the Andres not to sign the loan modification they had originally obtained; he did not deny, however, that the Andres had obtained a loan modification before he began representing them. Mr. Lutz admitted that he filed the Andres’s bankruptcy Petition and Schedules without having had them review and sign them, and that Mr. Andres saw and signed the documents for the first time at the creditors meeting. (3/17/17 Hrg. Tr. 8-11). Mr. Lutz acknowledged that he did not list

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<sup>2</sup>During a February 26, 2015, meeting of the creditors, Mr. Lutz advised the Chapter 13 Trustee that the signed copies of the Petition, Schedules, and Statement of Affairs were at his office. But, when Mr. Andres advised the Trustee that he had never signed these documents, a break was taken to allow Mr. Andres to sign them. (*In re Cano*, ECF No. 36, p. 5). The Trustee reports that this is not the first case in which Mr. Lutz was unable to produce his clients’ original signatures. (*Id.*).

any of the fees the Andres paid MFAP in the bankruptcy filings, noting, “I wasn’t thinking correctly. Didn’t think to put that in there.” (*Id.* at 15).<sup>3</sup>

2. *In re Fitzgerald, Case No. 15-03571*

According to the U.S. Trustee, Mr. Lutz never filed a Rule 2016(b) Disclosure of Compensation of Attorney in the *Fitzgerald* bankruptcy case, despite the fact that Mr. Fitzgerald reported paying Mr. Lutz “upward of \$3,000.” Mr. Fitzgerald also reported that he never signed his bankruptcy petition. (ECF No. 36, p.6).

At the March 17, 2017, hearing before this panel, Mr. Lutz denied any recollection of Mr. Fitzgerald having paid him \$3,000, or of having filed the *Fitzgerald* Petition without the signature of his client. (3/17/17 Hrg. Tr. 11-12). Mr. Lutz later acknowledged the likely accuracy of Mr. Fitzgerald’s statements regarding the \$3,000 fee and the failure to obtain his signature prior to the filing of the Petition. (*Id.* at 19-20 (“I’m going to say true. I don’t recall his case at all.”)).<sup>4</sup>

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<sup>3</sup>The Rule 2016(b) Disclosure of Compensation of Attorney states that Mr. Lutz received \$1,000 from the Andres, but this disclosure makes no mention of monies paid to MFAP. (ECF No. 36, p.5).

<sup>4</sup>In his post hearing submission, Mr. Lutz advised that Mr. Fitzgerald paid him \$3,605 under a “separate Service Agreement for loss mitigation assistance,” and that he was not paid for the bankruptcy case. (3/23/17 Lutz Letter to Chief Judge Jonker at p.2). Mr. Lutz did not indicate, however, whether any of this retainer was returned after he ceased representing Mr. Fitzgerald due to a “breakdown in communication.” (*Id.* at p.3).



B. Prolonging Bankruptcy Cases to the Detriment of Creditors

The U.S. Trustee reports that Mr. Lutz “appears to be filing some Chapter 13 petitions in bad faith as a stalling tactic *vis-a-vis* the Debtor’s mortgage company.” (*In re Cano*, Case No. 16-03781, ECF No. 36, p.1). There is substantial evidence to support this assertion.

By his own admission, Mr. Lutz has filed and maintained Chapter 13 Petitions, despite the fact that he knew, or should have known, his clients did not qualify. For example, in the *Andres* case, Mr. Lutz acknowledged that he filed the Chapter 13 Petition “to stop the sheriff sale” of their home because there “wasn’t enough time to file [a] lawsuit.” (3/17/17 Hrg. Tr. at 9). When asked if the Andres were qualified for a Chapter 13 plan, Mr. Lutz admitted that “[t]heir payments were really high . . . which they couldn’t afford.” (*Id.*). The filing of the bankruptcy petition did nothing but delay the implementation of a loan modification the Andres had obtained prior to Mr. Lutz’s representation.

In the *Fitzgerald* case, Mr. Lutz filed the Chapter 13 Petition on June 18, 2015, to stop a sheriff sale of Mr. Fitzgerald’s home that was scheduled to take place that day. (3/23/17 Lutz Letter to Chief Judge Jonker, p.1). Mr. Lutz filed the Petition without having obtained any documents from his client. Mr. Lutz acknowledges that the only document he received from Mr. Fitzgerald was his declaration authorizing Mr. Lutz to file his bankruptcy petition and related documents electronically with the court. (*Id.*; see also Exhibit 1 attached (copy of the declaration)). Notably, Mr. Lutz signed the declaration, under penalty of perjury, attesting that he had reviewed his

client's Petition and Schedules, ensuring the accuracy of the information contained therein, and that his client signed the declaration *before* he submitted the bankruptcy petition. (See Exhibit 1 (Mr. Fitzgerald signed the declaration on June 24, 2015, six days after Mr. Lutz says he filed the petition)). According to Mr. Lutz's more recent statement:

Upon further review of Mr. Fitzgerald's prior Chapter 13 Case (14-05239), it was discovered that the mortgage arrears would be significantly higher than estimated, thus impacting feasibility in the new case. After discussing the case issues, it was determined that the case was in fact infeasible and unable to be confirmed. Our office also learned, via proof of claim, that Mr. Fitzgerald had not filed all income tax returns as required as well. This also would keep his case from being confirmed. It was agreed that we could not propose a feasible plan and *would thus let the bankruptcy case be dismissed by the Court*, at which time we would pursue other options to help Mr. Fitzgerald retain his property.

(3/23/17 Lutz Letter to Chief Judge Jonker, p.2) (emphasis supplied).

In his January 9, 2017, response to the bankruptcy court's show-cause order, Mr. Lutz acknowledged that Ms. Cano had advised him in September 2016 that she wanted to dismiss her case. Mr. Lutz stated that he simply "stopped working on her case and was letting the dismissal occur naturally so she would have the maximum protection of the bankruptcy stay." (ECF No. 37). He repeated that statement in his response to Chief Bankruptcy Judge Dales's complaint. (See 3/6/17 Letter to Chief Judge Jonker, p.2). During the hearing before this panel, Mr. Lutz was questioned about his statement. His response: "You know, I try and do whatever I think is in my client's best interests to keep them protected from losing their homes." (3/17/17 Hrg. Tr. 12). While he testified that he believed his actions were consistent with his duty of candor



to the court, he admitted that the benefits his clients obtained by the unnecessary delay in the dismissal of bankruptcy cases came at the expense of the creditors and, in fact, was a fraud on the creditors. (*Id.* at 12-13, 18).<sup>5</sup>

### Analysis

The Court's Electronic Case Filing Administrative Procedures require that attorneys obtain their clients' original signatures on bankruptcy petitions and related documents prior to their filing electronically. *See* ECF Administrative Procedures, U.S. Bankruptcy Court, W.D. Mich., Section II.E.1. The local rules of the Bankruptcy Court provide that affixing the "/s/ NAME" to a document indicates that the document has been signed. LBR 1008(a)(3). According to the Federal Rules of Bankruptcy Procedure, the filing of any petition, pleading or other document is a certification by the filer that, among other things, "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the document is not being presented "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation," and that the factual assertions contained therein have evidentiary support. FED. R. BANKR. P. 9011(b).

As is evident in the *Andres*, *Fitzgerald*, and *Cano* cases, Mr. Lutz has repeatedly filed bankruptcy petitions and schedules without having had his client review and sign

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<sup>5</sup>After conceding that the delay in dismissing the *Cano* case served as a fraud on the creditors, Mr. Lutz qualified his prior statements regarding the reason for the delay by asserting that it was both to gain advantage for his client at the expense of the creditor and that he was uncertain about whether Ms. Cano wanted to dismiss her case. (3/17/17 Hrg. Tr. at 18-19).

them. His use of the “/s/ Name” on these documents, indicating that his clients have signed them under the penalty of perjury, is not simply inaccurate, it constitutes a fraud on the Court. It also has placed his clients in serious potential jeopardy.

It is also evident that Mr. Lutz has filed and maintained bankruptcy actions without having a good faith basis in the viability of claims being asserted. At the very least, Mr. Lutz has demonstrated a lack of due diligence in this regard. This has resulted in needless litigation. Moreover, it is a fraud on the respective creditors.

Mr. Lutz’s actions violated Michigan Rules of Professional Conduct 1.1, 3.1, and 3.3.<sup>6</sup> Rule 1.1(b) provides, in pertinent part, that a lawyer shall not handle a legal matter “without preparation adequate in the circumstances.” Rule 3.1 prohibits a lawyer from asserting a claim “unless there is a basis for doing so that is not frivolous.” Pursuant to Rule 3.3(a)(1), a lawyer shall not knowingly “make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal.”

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<sup>6</sup>Attorneys admitted to practice in this Court are subject to the Michigan Rules of Professional Conduct. *See* W.D. MICH. LCIVR 83.1(j).

### Conclusion and Order

After weighing all the information submitted in this matter, the panel unanimously concludes that Mr. Lutz is to be suspended from practice before this Court for a period of no less than eighteen months, beginning June 1, 2017, and he is subject to the following terms:

1. Upon receipt of this Order, Mr. Lutz shall be suspended as a member of the Court, and during the pendency of this suspension, he shall accept no new clients who have pending cases or cases to be filed in the Western District of Michigan; nor shall he accept new clients who have cases pending or to be filed in state court in which it can reasonably be anticipated that the case will be removed to the Western District of Michigan.
2. On or before June 1, 2017, Mr. Lutz shall notify his current clients of the sanctions imposed by this Memorandum Decision and Order. Mr. Lutz shall inform his clients of their right to hire new qualified counsel of their choice, and Mr. Lutz shall not direct his clients to any specific lawyer or law firm. Mr. Lutz may not receive any fee or other compensation relating to his current clients' retention of new counsel.
3. Mr. Lutz shall oversee the transfer to qualified counsel of those files and clients he currently represents.
4. Mr. Lutz shall refund to Western District of Michigan bankruptcy clients who are transferred to other lawyers any fees that he has received from those clients, except that Mr. Lutz may retain the fee or portion of the fee received by him for preparing bankruptcy petitions and schedules for those cases which are currently pending before this Court.
5. Mr. Lutz shall refund, in full, fees obtained from his clients in the *Andres*, *Fitzgerald*, and *Cano* cases.
6. Mr. Lutz shall be prohibited from attorney access to this Court's electronic filing system.



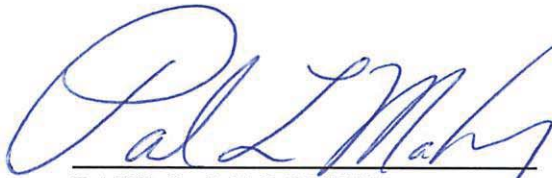
7. Mr. Lutz shall forthwith cease all advertising of his legal services relating to practice before this Court.
8. Mr. Lutz shall attend at least one bar-certified program or law school course on lawyer ethics and at least one bar-certified or law school course on bankruptcy.
9. Mr. Lutz shall find a suitable mentor – an attorney in good standing admitted to practice before this Court who has at least ten years' experience handling bankruptcy cases – and shall submit to the supervision of this mentor for a period of one year beginning with his reinstatement with this Court, should that occur. Mr. Lutz shall provide the Court, at the time of his application for reinstatement, with the name and address of the mentor.
10. Pursuant to Western District of Michigan Local Civil Rule 83.1(k)(iii), Mr. Lutz may apply for reinstatement to the bar of this Court no sooner than December 1, 2018. Should Mr. Lutz seek reinstatement, he must provide with his application a certification that he has complied with all the requirements of this Memorandum Decision and Order, along with documentary proof of his compliance with the provisions in paragraph 8, above.

Accordingly, **IT IS ORDERED** that Mr. Lutz is **SUSPENDED** from practice before the courts of the Western District of Michigan for a period of no less than eighteen months, beginning June 1, 2017, subject to the terms prescribed herein.


**IT IS FURTHER ORDERED** that the Clerk shall serve a copy of this Memorandum Decision and Order upon David G. Lutz, Esq.; Daniel M. McDermott, United States Trustee, c/o Michelle M. Wilson, in accordance with the Court's usual procedure; and the Michigan Attorney Grievance Commission.

The panel directs the Clerk of the Court or his designee to sign and file this Memorandum Decision and Order.

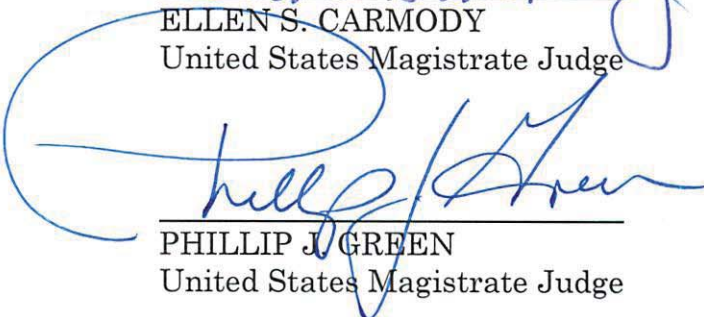
Date: May 8, 2017

  
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PAUL L. MALONEY  
United States District Judge

Date: May 15, 2017

  
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ELLEN S. CARMODY  
United States Magistrate Judge

Date: May 15, 2017

  
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PHILLIP J. GREEN  
United States Magistrate Judge