

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

IN THE MATTER OF:

Administrative Order

No. 17-AD-082

ATTORNEY DAVID G. LUTZ

SHOW-CAUSE ORDER

This matter is before the Court on a referral from Chief Bankruptcy Judge Scott W. Dales regarding Attorney David G. Lutz's alleged violations of the Court's May 15, 2017, Opinion and Order Imposing Suspension and Sanctions. Through this referral, Chief Judge Dales has provided the undersigned panel of judicial officers with credible evidence indicating that Mr. Lutz has violated several provisions of the suspension order: (1) that he cease the practice of law before this Court beginning June 1, 2017; (2) that he not accept new clients who may have cases that are reasonably likely to be filed in, or removed to, this Court; and (3) that he cease all advertising of his legal services relating to practice before this Court.

The evidence indicates that, following his June 1, 2017, suspension, Mr. Lutz filed documents with the bankruptcy court, including at least one occasion in which Mr. Lutz filed documents on behalf of a former client, after that client had obtained substituted counsel. The evidence also indicates that Mr. Lutz has, through the Michigan Assistance Foreclosure Program, LLC, continued to solicit clients whose cases would reasonably be anticipated to be filed in this Court.

Accordingly, **IT IS ORDERED** that Attorney David G. Lutz shall, within 21 days of the date of this Order, submit a written response to the Honorable Paul L. Maloney showing cause why the Court should not impose additional sanctions, up to and including disbarment, for his violations of the order of suspension. A copy of Chief Judge Dales' referral is attached hereto.

IT IS SO ORDERED.

Date: July 21, 2017

/s/ Paul L. Maloney
PAUL L. MALONEY
United States District Judge

Date: July 21, 2017

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

Date: July 21, 2017

/s/ Phillip J. Green
PHILLIP J. GREEN
United States Magistrate Judge

WED-28504 0646-1 pdf014 17-02245
Jeremy Shephard
866 3 Mile Rd NW Ste B
Grand Rapids, MI 49544

001592 1592 3 MB 0.420 49007 1 1 8333-2-1597



Hon. Paul L. Maloney
137 Federal Bldg.
410 W. Michigan Ave
Kalamazoo, MI 49007-3757

CERTIFICATE

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I, RANDEL RAISON, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my ability.

Randel Raison

June 30, 2017

Randel Raison

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

COREY M. NORD,

Debtor.

Case No. DK 17-02245

Chapter 13

Hon. Scott W. Dales

ORDER

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

By Order to Show Cause dated June 14, 2017 (the "Show Cause Order"), the court directed David G. Lutz, Esq., to appear at a show cause hearing to, *inter alia*, explain his failure (or the failure of his associates) to obey the District Court's Opinion and Order Imposing Suspension With Sanctions, Adm. Order 17-AD-064 (W.D. Mich. May 15, 2017) (the "Suspension Order"). The court issued the Show Cause Order, *sua sponte*, in response to Mr. Lutz's filing documents with the Clerk of the Bankruptcy Court on behalf of his former client, Corey M. Nord, after the Suspension Order took effect.

At the show cause hearing held on June 29, 2017 in Grand Rapids, Michigan, the court heard Mr. Lutz's explanation for the two unauthorized submissions of proposed orders in this case, and extracted from him a commitment, for himself and his associates, to discontinue further bankruptcy-related filings during the period of his suspension as a member of the bar of this court. Although it expressed doubt about the truth of at least one of Mr. Lutz's statements included within his written response to the Show Cause Order, the court believes that Mr. Lutz will cease filing documents with the court on behalf of clients, as the Suspension Order requires.

During the hearing, however, the United States Trustee tendered to the court two documents, attached to this Order as Exhibit A, evidently prepared by “Michigan Foreclosure Assistance Program,” identified as “A Division of David Lutz Law P.C., David G. Lutz, Michigan Professional License Number 53665.” These documents, both post-dating the entry of the Suspension Order by several days, are evidently intended to solicit foreclosure relief business from two mortgagors within the Western District of Michigan whose homes are at risk of foreclosure. Both mortgagors have petitioned the court for relief under the Bankruptcy Code, albeit with counsel other than Mr. Lutz, one before the entry of the Suspension Order, one after. *See In re Patrick James Davies*, Case No. 17-00624 (chapter 13 petition filed Feb. 14, 2017); *In re Dorothy I. Cumberworth*, Case No. 17-02982 (chapter 13 petition filed June 16, 2017). The relationship, therefore, between the solicitation and practice before this court is not attenuated.

The documents attached as Exhibit A raise questions about whether or to what extent Mr. Lutz is complying with the Suspension Order. Nevertheless, allegations of the post-suspension solicitation fall outside the scope of the court’s Show Cause Order, which gave no notice to Mr. Lutz of this developing concern. Moreover, it seems appropriate to defer to the District Court with respect to the enforcement of the Suspension Order. *Cf.* LBR 9010-1(a). For these reasons, the court announced its intention to refrain from taking any action regarding the alleged post-suspension solicitation, but to refer the United States Trustee’s allegations to the District Court panel that issued the Suspension Order. To assist the panel, the court will forward a transcript of the return hearing on the Show Cause Order, together with today’s Order (including Exhibit A).

The court encourages the United States Trustee, if so inclined, to bring his concerns and evidence about Mr. Lutz directly to the United States District Court.

MICHIGAN FORECLOSURE ASSISTANCE PROGRAM*
6250 ORCHARD LAKE ROAD, SUITE B
WEST BLOOMFIELD, MI 48322
248.282.6262
844.KEEPMYHOME

DATED: May 19, 2017

IN THE COUNTY OF EATON MICHIGAN
RE: FORECLOSURE ASSISTANCE PROGRAM ELIGIBILITY

FILE NO. 1315268

ELIGIBILITY TO SUSPEND FORECLOSURE

SHERIFF'S SALE: 6/22/2017

Property Address

3591 North Smith Rd
Dimondale, MI 48821

Attention: Dorothy I. Cumberworth

The Michigan Foreclosure Assistance Program does hereby conditionally offer to extend the time of occupancy for eligible homeowners while taking action against lenders and servicers that have violated homeowners' rights to a fair review for loan modification, engaged in predatory lending practices or otherwise provided defective services. Public records indicate that your mortgage may have fallen into one or more of these categories. Please contact our offices by calling 248-282-6262 or 844-KeepMyHome to arrange for an eligibility review.

The Michigan Foreclosure Assistance Program does not provide financial assistance and is not affiliated with the State of Michigan.

State of Michigan

County of Oakland

Signature: _____

DL

* A DIVISION OF DAVID LUTZ LAW P.C., DAVID G. LUTZ, MICHIGAN PROFESSIONAL LICENSE NUMBER 53665

NOW, THEREFORE, IT IS HEREBY ORDERED that (1) the court will take no further action with respect to the Show Cause Order; and (2) the Clerk shall transmit today's Order, together with Exhibit A, and a transcript of proceedings described above, to the Honorable Paul L. Maloney and the Honorable Robert J. Jonker.

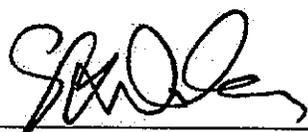
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Corey M. Nord, Jeremy Shephard, Esq., David Gerald Lutz, Esq., by first class U.S. Mail, Barbara P. Foley, Esq., chapter 13 trustee, and Michelle M. Wilson, Esq., trial attorney for the United States Trustee, by first class U.S. Mail.

END OF ORDER

IT IS SO ORDERED.

Dated June 29, 2017





Scott W. Dales
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN
GRAND RAPIDS DIVISION

IN RE: . Case No. 17-02245-swd
. Chapter 11
COREY M. NORD, .
. One Division Avenue North
Debtor. . Grand Rapids, MI 49503
. .
. June 29, 2017
. 10:09 a.m.

TRANSCRIPT OF HEARING ON ORDER TO SHOW CAUSE
BEFORE THE HONORABLE SCOTT W. DALES, CHIEF
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For David G. Lutz: David Lutz Law, PC
By: David G. Lutz
6250 Orchard Lake Road
Suite B
West Bloomfield, MI 48322
(248) 714-1650

For the U.S. Trustee: Office of the U.S. Trustee
By: Michelle M. Wilson
125 Ottawa Avenue N.W.
Suite 200R
Grand Rapids, MI 49503
(616) 456-2002

Also Present: Lisa Sharon, Paralegal

Court Recorder: Clerk's Office
U.S. Bankruptcy Court
One Division Avenue North
Grand Rapids, MI 49503
(616) 456-2693

Transcription Service: APLST, Inc.
6307 Amie Lane
Pearland, TX 77584-2601
(713) 637-8864

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Michigan Foreclosure Assistance Program*
6250 ORCHARD LAKE ROAD, SUITE B
WEST BLOOMFIELD, MI 48322
248.282.6262
844.KEEPMYHOME

DATED: May 22, 2017
SHERIFF'S SALE: 6/13/2017
FILE NO. 1293858

Patrick Davies
3734 Marlboro St NW
Grand Rapids, MI 49534-4533
|||

IN THE COUNTY OF KENT MICHIGAN
ELIGIBILITY REVIEW

Attention: Patrick Davies

A Notice of Mortgage Sale of your home was published in the public foreclosure listings for your county. If the sale took place on the above date, a sheriff's deed has been recorded. **You have a limited amount of time to pursue options to secure ownership and remain in your home.** The situation is serious - but not hopeless. **If you act now, you still have time to possibly regain ownership of your home, or extend your redemption a minimum of 6 months.**

Regardless of your circumstances, you do have options which we can help you explore:

Redemption. Once the sale has taken place, there is a statutory right of redemption, which grants homeowners a certain period of time during which they may reclaim the property by paying the foreclosure sale price, plus certain other allowable charges.

Cash for Keys/Graceful Relocation. If you are willing to leave your home before the end of the redemption period, this plan may be best for you, enabling you to leave your home without having to endure a district court eviction, and often with a few thousand dollars.

Short Sale. This is a possible option available to you if the sale is completed within the redemption period.

Post-Sale Loan Modification. We can work with your lender to potentially get it to review you for a loan modification even after the sheriff's sale. If successful and a final loan modification is entered into, the sale will be rescinded, the sheriff's deed will be voided and your loan will be reinstated.

Foreclosure Litigation. Were you tricked into foreclosure with promises of modification, only to be denied or strung along with no progress? Did your lender/servicer routinely "lose" your documents and make you resubmit them or tell you your documents were old or "stale" and it needed new ones? Did your lender/servicer fraudulently inflate escrow, wrongfully place insurance on your home or improperly charge you in other ways? Were you in a Trial Period Plan or permanent loan modification only to have an illegal sheriff's sale scheduled? **If you have been victimized by your lender/servicer - even if foreclosure has already occurred - a lawsuit may be the best option.**

We do not provide monetary assistance, but our review of your eligibility is free. If you decide to use our services, there will be fees. How can you afford a lawyer when you can't pay your mortgage? We will work out a payment plan with you. Our fees start as low as \$500, and can often be split into a payment plan for your convenience.

Please contact our offices by calling 248-282-6262 or 844-KeepMyHome to arrange for an eligibility review.

We are not associated with the government, and our service is not approved by the government or your lender. Even if you accept this offer and use our service, your lender may not agree to change your loan.

* A DIVISION OF DAVID LUTZ LAW P.C., DAVID G. LUTZ, MICHIGAN PROFESSIONAL LICENSE NUMBER 53665

1 (Time Noted: 10:09 a.m.)

2 THE COURT CLERK: Numbers 1 and 2, Corey Nord.

3 (Court Clerk calls all cases on the docket)

4 THE COURT: Appearances, please?

5 MS. WILSON: Good morning, Your Honor, Michelle
6 Wilson for the United States Trustee. And with me in Court
7 is paralegal, Lisa Sharon.

8 MS. CLARK: Elizabeth Clark on behalf of Chapter
9 13 Trustee, Brett Rogers, on four of the pending matters
10 before this Honorable Court.

11 Would the Court like the names of those cases?

12 THE COURT: Sure.

13 MS. CLARK: (Unrelated cases announced).

14 THE COURT: All right, thank you.

15 MR. LUTZ: Good morning, Your Honor. If it
16 pleases the Court, David Lutz on behalf of myself.

17 THE COURT: Okay. We have a couple of matters
18 this morning, sort of clean up after the District Court
19 suspension and then some rearrangement of relationships from
20 your former clients to new attorneys, and essentially the
21 following up request to disgorge attorneys' fees related to
22 some of the same problems that prompted me to refer your
23 admission to the United States District Court, and that
24 eventually prompted the United States District Court to
25 suspend you from membership in our Bar effective June 1.

1 Does anyone object to dealing with the order to
2 show cause first?

3 MS. WILSON: No objection, Your Honor.

4 MR. LUTZ: No.

5 THE COURT: All right. The situation is a little
6 complicated in the sense that the United States District
7 Court issued the suspension order; I did not. I don't have
8 authority to impose the ultimate sanction of suspension or
9 disbarment, or how ever you want to characterize it.

10 Nevertheless, I am a judicial officer of the
11 United States District Court as a matter of Statute, and I
12 did have my own orders that I issued in connection with the
13 case.

14 Specifically, in the Nord matter, I discovered on
15 June 1 that you had attempted to file a pretty innocuous
16 proposed order -- payroll wage order that you filed
17 incorrectly, using the wrong mechanism on May 31, and then
18 evidently, according to your response, and I think it's a
19 fair inference from the docket, in response to the notice of
20 defective filing, you re-filed the wage order, proposed wage
21 order, using the Court's order signing program which has been
22 in place now for several years, after your suspension became
23 effective.

24 In response to that, probably, you know, as a
25 practical matter, not terribly meaningful, but in response to

1 that I didn't feel that I could allow you to submit a
2 proposed order on behalf of people that you no longer
3 represented, as a matter of law given the suspension order,
4 at least in this Court.

5 And so I said that I was going to disregard that
6 order. I hoped that the Chapter 13 Trustee would re-file it,
7 because a payroll order, as you know from your experience, is
8 one of the tickets to success in a Chapter 13 case. And I
9 thought I was done with it.

10 Then about a week later, I get in the mail from
11 your office another proposed payroll order, and this is five
12 days after your suspension became effective. And that's what
13 prompted me to issue the order to show cause, because I felt
14 as if you had ignored not just my order that I entered in
15 response to your unauthorized June 1st filing, but the
16 District Court's suspension order, as well.

17 And so I issued an order to show cause dated June
18 14th, in which I recited these facts, including the fact that
19 I received a proposed payroll order from your office on June
20 5th, and I said that I would expect an explanation from you
21 for your failure, or the failure of your associates, to
22 follow the suspension order specifically with respect to the
23 June 5 proposed filing, because the June 1 I put behind us.
24 I chalked it up to the day of the transition, and, you know,
25 perhaps you could be forgiven for re-filing it at the

1 direction of a court employee, or whatever.

2 But the June 5 filing struck me as potentially
3 contemptuous, and so I directed you to appear today and show
4 cause why I shouldn't hold you in contempt, or provide some
5 other sanction, or, for that matter, refer you back to the
6 District Court for your flouting of the suspension, or
7 failure, perhaps, to take steps to get your office to comply
8 with the suspension order.

9 And your response to the order to show cause
10 explained what I had thought was the case on the June 1
11 proposed filing, but was silent on the June 5 filing.

12 So this is the time and place for you to explain
13 why you ignored my June 1 order, and, for that matter, why
14 you ignored my show cause order by omitting from your
15 response any explanation for the proposed order that I
16 received on June 5.

17 Go ahead.

18 MR. LUTZ: I was just really trying to protect my
19 client's interests and have that order stayed.

20 THE COURT: The District Court has protected your
21 client's interests by suspending you from the practice before
22 this Court, effective June 1.

23 MR. LUTZ: Okay.

24 THE COURT: Is that your response for the June 5
25 letter?

1 MR. LUTZ: It was to get it in there so that my
2 client wouldn't -- you know, I didn't know what was going to
3 happen with all of my clients' cases, so I just sent the
4 letter in without using the ECF just so that --

5 THE COURT: On June 1, or June 5, or both?

6 MR. LUTZ: Well, June 1 I filed it because of the
7 email from Deb Morse.

8 THE COURT: Right. As far as I'm concerned, the
9 June 1 is behind us.

10 MR. LUTZ: Okay. So I probably just sent a letter
11 out just to -- if I can't file it, then -- e-file it, I'll
12 just -- I was trying for my client's best interests.

13 THE COURT: Okay. And do you disagree that it's
14 inconsistent with the suspension order?

15 MR. LUTZ: It is inconsistent with the suspension
16 order.

17 THE COURT: Okay. And so what should I do about
18 that?

19 MR. LUTZ: Whatever you feel is appropriate.

20 THE COURT: Can I extract a commitment from you
21 that you will not be filing anything else in this Court for
22 the duration of your suspension?

23 MR. LUTZ: I'm not planning on filing anything
24 else.

25 THE COURT: Did you plan to file the June 5

1 letter, or was it on auto pilot? Did someone in your office
2 file it, or -- not the letter, but the proposed order.

3 MR. LUTZ: I did not file it.

4 THE COURT: Somebody in your office did it?

5 MR. LUTZ: No, I don't -- I don't recall any of
6 it.

7 THE COURT: Do you want to take a look at this?
8 Not that it will help you, but you might recognize the
9 handwriting.

10 Here's what I want to happen: First of all, --

11 MR. LUTZ: May I approach?

12 THE COURT: Yes, please. I want you to tow the
13 line, and I want you to out of the United States District
14 Court for the Western District of Michigan for 18 months.

15 And then what I want you to do is I want you to
16 take steps with your employees, if those are the ones that
17 are continuing to file these things, if it's on auto pilot, I
18 want you to sit them down and I want you to explain to them
19 that you're suspended from appearing here.

20 And that means that you will not be filing
21 anything on behalf of any of your former clients henceforth.

22 Can you commit to me that you'll do that?

23 MR. LUTZ: Yes.

24 THE COURT: Okay. Do you know who sent this in?
25 Can you tell?

1 MR. LUTZ: It would probably be Jason -- most of
2 my practice is pretty much shut down.

3 THE COURT: Okay. Well, will you commit to me
4 that you'll have a sit down with Jason and other people in
5 your office and tell them they're not going to be filing,
6 they are gone.

7 MR. LUTZ: Yes.

8 THE COURT: Okay, please be seated.

9 (Brief pause)

10 THE COURT: Let me just say I'm not going to take
11 any further action on the order to show cause.

12 Let me say that the supposed desire to assist your
13 clients following the entry of the suspension order is no
14 excuse. The suspension order couldn't be clearer.

15 And, first of all, you know, -- well, I understand
16 that you have an office, and I don't know if you still do, or
17 whatever the situation is there. And I understand that there
18 may be people working for you that are doing things. It's
19 your responsibility as the one supervising to make sure that
20 you and your associates or paralegals comply with the
21 suspension order.

22 If I see something else like this, David, it's not
23 going to be me that's going to be talking to you. It will be
24 the United States District Court.

25 MR. LUTZ: Yes, Your Honor.

1 THE COURT: All right. Anything on the show cause
2 order?

3 MS. WILSON: Thank you, Your Honor. As an officer
4 of the Court, I feel that there are a few facts that I need
5 to bring to Your Honor's attention.

6 The first is, as Your Honor may be aware from
7 prior hearings, at one time there was an LLC called Michigan
8 Foreclosure Assistance Program, LLC.

9 Based on my deposition of Mr. Lutz's wife, who was
10 the sole member of that LLC, and my conversations with Mr.
11 Lutz, I've come to understand that the LLC has been dissolved
12 and is now considered a division of David Lutz Law, PC.

13 There is a provision in the suspension order
14 issued by the District Court that limits Mr. Lutz from
15 soliciting clients whose cases would reasonably be believed
16 to end up in the Federal Courts of the Western District of
17 Michigan.

18 After the date that that order was entered, which
19 was May 15th, I am aware of at least two cases: One dated
20 May 19th and one dated May 22nd, and I'm providing copies to
21 counsel and would ask for permission to approach.

22 THE COURT: Certainly.

23 MS. WILSON: I'm providing the Court with two
24 copies of each.

25 These are flyers that were sent to debtors --

1 well, not debtors, but potential debtors, with addresses in
2 the Western District of Michigan, in Eaton County and in Kent
3 County, with foreclosure sales after the date the suspension
4 would become effective, which was June 1st.

5 You'll see in the notice regarding the property at
6 3591 North Smith Road in Dimondale, the notice says the
7 Sheriff's sale is June 22nd of 2017. And in the notice that
8 was dated May 22nd regarding a Patrick Davies at 3734
9 Marlboro Street N.W. in Grand Rapids, the Sheriff's sale date
10 was June 13, 2017.

11 The reason I'm concerned about this is what I've
12 learned through discovery is that these flyers were a
13 mechanism to generate clients and work for Mr. Lutz's firm,
14 and that Chapter 13 bankruptcies were often filed on the eve
15 of the Sheriff's sale.

16 So, my concern is that debtors in our District
17 that we would reasonably expect, if a bankruptcy is to be
18 filed, would be filed in our District, are still being
19 solicited.

20 Now, I'm not in possession of any of these flyers
21 that were sent out post-June 1st. So I cannot represent to
22 the Court if they are still going out, or not.

23 But I felt that I needed to bring that to the
24 Court's attention.

25 In addition, Your Honor, I've spoken with Jeremy

1 Shephard, who is now substitute counsel in the Nord case.
2 And we'll talk about the amended Schedules that Mr. Shephard
3 filed when we get to the issue of fees in this case.

4 But Mr. Shephard had a concern about the response
5 to the show cause that was filed by Mr. Lutz, because Mr.
6 Shephard does not believe that it accurately states the
7 situation.

8 He obtained the file from Mr. Lutz, according to
9 Mr. Shephard, on May 30, and the stipulation for substitution
10 of counsel is signed by Mr. Lutz on June 1st, and I think the
11 order was entered on June 2nd for substitution of counsel,
12 which are before the date of the June 5 payroll order being
13 submitted to the Court.

14 THE COURT: So the statement in the response to
15 the order to show cause that I wasn't aware of the
16 substitution, is false?

17 MS. WILSON: That is my position, and Mr.
18 Shephard's position. I was hoping to have him here to
19 testify today. He had an unavoidable conflict that he could
20 not get covered in Kalamazoo today.

21 The final thing that I would bring to the Court's
22 attention is actually in a case that's pending before Judge
23 Gregg. The case is Askew, A-S-K-E-W. The case number is
24 16-5584.

25 In that case, the firm of Keller and Almassian has

1 substituted in as counsel. Greg Ekdahl is representing the
2 husband. The wife has passed away.

3 And if the Court looks at document number 47 filed
4 in that case, and specifically paragraphs 6 and 7 of the
5 response filed by Mr. Ekdahl, in that case there was a
6 stipulated order denying confirmation of the debtor's
7 proposed Chapter 13 Plan that was filed.

8 And, according to Mr. Ekdahl's filing, Mr. Askew
9 was unaware of a requirement that he needed to file a Chapter
10 13 Plan within a 14-day period, and he references document
11 number 34 for that.

12 And then in paragraph 7, he states that Mr. Lutz
13 may not have had authority from the client to sign that
14 stipulation, as Mr. Askew indicated to Keller and Almassian
15 he was unaware of the document.

16 Those are the facts that I felt as an officer of
17 the Court I needed to bring to the Court's attention with
18 regard to the pending show cause.

19 THE COURT: Okay. With respect to the last one,
20 the Askew matter, --

21 MS. WILSON: Yes.

22 THE COURT: -- if you could just refer me again to
23 the docket entry to which you're referring?

24 MS. WILSON: Document number 47. And I'm
25 specifically looking at paragraphs 6 and 7 of that document.

1 And to the extent that any of the things that I
2 brought to the Court's attention changes the Court's opinion
3 on whether it wishes to consider additional action on the
4 show cause, I would ask for the opportunity to bring both Mr.
5 Ekdahl and Mr. Shephard in to testify to the facts that I've
6 stated here today.

7 THE COURT: Okay. Response? First on the
8 statement in your response to my order to show cause that
9 says you weren't aware that Jeremy Shephard was substituted
10 in.

11 MR. LUTZ: We were talking before. I didn't
12 realize it at that time. He think he asked about documents.
13 There was nothing signed in the morning when I did file that,
14 and then later on he sent those in, and we agreed, and I
15 signed the stip.

16 THE COURT: So was there any possible set of
17 circumstances under which you would continue to represent the
18 Debtor that made it reasonable for you to think that you
19 wouldn't be substituted out?

20 MR. LUTZ: It wasn't signed.

21 THE COURT: You're telling me it wasn't signed?

22 MR. LUTZ: No, Jeremy had --

23 THE COURT: Wasn't it as good as signed if you had
24 already delivered the file and Jeremy had signed his end of
25 the substitution order, and he signed your end evidently with

1 permission. Are you telling me that "No, it wasn't a done
2 deal, I might not have been substituted out, I might have
3 still represented Mr. Nord post-June 1." Is that what you're
4 telling me?

5 MR. LUTZ: I would say so, because the --

6 THE COURT: Really?

7 MR. LUTZ: -- the woman from the Court called me
8 to say "Hey, this wasn't filed correctly." I'm pretty sure
9 it all happened on the same day, and I spoke about it with
10 Jeremy.

11 THE COURT: "At the time, I did not realize Jeremy
12 Shephard represented my old client." That's what you said in
13 paragraph 6 of your response. That's accurate?

14 MR. LUTZ: Correct. When I filed that, I know he
15 was in the process of it. I don't think he signed --

16 THE COURT: You don't think in duty of candor you
17 would have said -- maybe you don't have a duty now that
18 you're suspended, which I doubt, but you don't think your
19 duty of candor would have suggested that you'd say "I didn't
20 know he was representing," Jeremy, "but I had delivered my
21 file to him and he had signed a substitution, but I hadn't
22 signed it yet."

23 I mean, don't you think that creates a misleading
24 impression?

25 MR. LUTZ: Yes, that does create a misleading

1 impression.

2 THE COURT: Yeah. Okay. And so you -- I don't
3 think you're telling me the truth. And I think, frankly, you
4 have not told me the truth a number of times.

5 And, you know, really, I couldn't -- all right,
6 please sit down.

7 All right, with respect to the order to show
8 cause, I am slightly uncomfortable. I was slightly
9 uncomfortable issuing the order to show cause to begin with,
10 because, as I said at the beginning of my remarks, it's not
11 my suspension order.

12 My order to show cause was directed at the June
13 6th filing and the June 1st filing. These are the proposed
14 orders.

15 And I indicated in my June 1 order is was a
16 harmless -- a relatively harmless act, unauthorized, and, in
17 my opinion, flouting the District Court's suspension order.

18 But I didn't, by issuing my order to show cause,
19 certainly give notice to Mr. Lutz of these other
20 irregularities, and perhaps other transgressions of the
21 District Court's suspension order.

22 And so to answer your question: Does it change my
23 mind what I'm going to do? Only slightly, in that I will
24 make a report to the United States District Court that I
25 think that there are -- that there is reason to believe that

1 he's ignoring the suspension order.

2 But I'm not going to take any action with respect
3 to these things, because I think at some point very soon, if
4 I start trying to enforce a suspension order, then I'm going
5 to be arrogating to myself the authority that belongs to the
6 United States District Court, or at least that they have
7 assumed by the three judge panel.

8 And I feel, given the Constitutional limits on my
9 authority, as well, that there isn't much left that I can do
10 to this guy. I referred you because I felt that you were
11 unfit to appear here, and my inclination was confirmed by
12 three of my colleagues at the United States District Court.

13 And as far as imposing monetary sanctions and all
14 of that, my view of my contempt power is rather limited.
15 It's coercive and compensatory. I don't think there's anyone
16 to be compensated for the two transgressions that I
17 identified in my show cause order.

18 Whether the District Court wants to take
19 additional steps based on whatever they will find out from
20 your extracurricular activities, I think it will be up to
21 them.

22 So I'm not going to change the fact that I'm not
23 imposing any penalties on him. I will request that a copy of
24 the transcript of today's hearing, at least this portion of
25 it, be referred to the United States District Court. And

1 I'll send a letter indicating why I'm making that referral.

2 I will also encourage them to take action that
3 they think may be necessary by re-opening proofs. But it's
4 up to them, not me.

5 All right. The hearing on the order to show cause
6 is concluded. I will prepare a short order, or letter. I
7 think it will be an order which will direct the Clerk to
8 prepare the transcript of this portion of the morning's
9 proceedings, and refer it to the three judge panel,
10 specifically The Honorable Paul Maloney.

11 Nothing that I've said today should limit my
12 colleagues in any way, if they feel differently about the
13 relationship between the Court and the United States District
14 Court.

15 Is there anything further on the show cause?

16 MS. WILSON: Not from the U.S. Trustee, Your
17 Honor.

18 MR. LUTZ: No, Your Honor.

19 (Time noted: 10:30 a.m.)

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