

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF)
)
MARY SUZANNE BURTON,) CASE NO. 05-12762 REG
) CHAPTER 7
)
DEBTOR.)

ORDER

At South Bend, Indiana, on October 7, 2005.

Before the court is the Request for Reinstatement filed by James E. Chovanec, Esq., attorney for Mary Suzanne Burton, debtor. Hearing on the request was held on October 6, 2005, in the United States Bankruptcy Court, Northern District of Indiana, South Bend Division, before the Honorable Harry C. Dees, Chief Judge. Mr. Chovanec appeared on his Request for Reinstatement. Alexander L. Edgar, Esq., Assistant United States Trustee, also attended the hearing.

The court summarized the procedural history of the attorney's conduct in this case. Mr. Chovanec filed the chapter 7 petition of Mary Suzanne Burton (a resident of Kokomo, Indiana) in the United States Bankruptcy Court, Northern District of Indiana, Fort Wayne Division, on June 6, 2005. Two days later, when he realized that the case should have been filed in the Southern District of Indiana, he filed a Motion to Dismiss the case mistakenly filed in the Northern District. His motion was set for hearing before the Honorable Robert E. Grant, Bankruptcy Judge in the Fort Wayne Division of the Northern District of Indiana.

On July 18, the hearing on Mr. Chovanec's Motion to Dismiss was held. The Chapter 7 Trustee David Boyer was present, but Mr. Chovanec failed to appear. He did not communicate with the court concerning his nonappearance. He did not file a motion to continue the hearing. In its first Order of July 20, the court granted the debtor's Motion to Dismiss. In its second Order of July 20, it noted the attorney's nonappearance and set a show cause hearing to consider whether Mr. Chovanec should be required to retain local counsel in any case

in which he may appear. The Order directed that Mr. Chovanec file a written response and appear at the hearing in person.

Mr. Chovanec failed to appear at the August 15 show cause hearing. He did not show cause in writing, prior to the hearing, why he should not be required to retain local counsel. Nor did he retain local counsel in his cases. In its Order of August 23, the court required Mr. Chovanec to retain local counsel in all his pending cases in Fort Wayne and Lafayette. In view of Mr. Chovanec's failure to appear at the August 15 hearing, Judge Grant set a hearing on September 13 to consider whether Mr. Chovanec should be held in contempt of court or should impose other sanctions upon him. The Order again required a written response concerning the imposition of sanctions. The Order underscored the word "shall" in requiring that "Mr. Chovanec shall appear for this hearing."

For the third time, Mr. Chovanec failed to appear at the hearing set in Fort Wayne.¹ At the hearing on September 13, Assistant United States Trustee Ellen Triebold asked the court to impose sanctions. She noted two prior suspensions of Mr. Chovanec by the Indiana Supreme Court Disciplinary Commission, in 1994 and in 1998.² In open court, the court found Mr. Chovanec in civil contempt of court. In its Order of September 20, the court memorialized its ruling. Mr. Chovanec was ordered to pay \$1,000 to the Clerk of the Court. In addition, the Order stated:

James Chovanec shall not represent any entity, whether debtor, creditor or other party in interest, in the United States Bankruptcy Court for the Northern District of Indiana, until such time as he has fully paid the amount due the clerk of this court and has successfully petitioned the chief judge of

¹ Judge Dees noted that Judge Grant's contempt hearing was scheduled for 11:00 a.m. on September 13. At 8:37 a.m., September 13, Mr. Chovanec electronically filed a Motion to Continue, asserting that he had a conflicting hearing in another court. This motion was not filed within 10 days of the August 23 Order setting the hearing. *See* N.D. Ind. L.B.R. B-5072-1.

² *See In re Chovanec*, 695 N.E.2d 95 (Ind. 1998) (ordering suspension from the practice of law for not less than 12 months for client neglect and mishandling of client funds); *In re Chovanec*, 640 N.E.2d 1052 (Ind. 1994) (ordering suspension of not less than 30 days for false statements made to Huntington Superior Court). Mr. Chovanec was reinstated to the practice of law in Indiana, following his July 1, 1998 suspension, on February 15, 2001. *See In re Chovanec*, 741 N.E.2d 1244 (Ind. 2001).

this court for reinstatement, upon such terms and conditions as the chief judge may impose. In connection with doing so, Mr. Chovanec must:

- a. provide the court with a transcript of the hearings held on August 15, 2005 and September 13, 2005 and satisfactorily explain his failure to appear for both of those hearings despite having been specifically ordered to attend them,
- b. demonstrate that he fully understands his obligations to appear for hearings in matters where he is counsel of record, and
- c. persuade the chief judge that he will not fail to appear for any future hearing where his attendance is expected.

R. 18, Order of September 20, 2005. None of the Orders in this case has been appealed by Mr. Chovanec.

The September 20 Order was issued electronically at 4:45 p.m. on that date. Mr. Chovanec is a registered user of the court's CM/ECF electronic system. Even though the September 20 Order forbade his representation of clients, on September 21 Mr. Chovanec filed nine cases in South Bend, Indiana and one case in Lafayette, Indiana. Despite the Order's clear requirement that he petition the chief judge for reinstatement, he filed a Request for Reinstatement on September 23 in the Fort Wayne Division of the bankruptcy court, rather than in South Bend, where the Chief Judge sits. On September 26, he filed his request in the South Bend Division. A hearing on the matter was set for October 6. The court required Mr. Chovanec, prior to the hearing, to have complied with the requirements set out in Judge Grant's Order of September 20, 2005.

Mr. Chovanec now appears before the Chief Judge of the United States Bankruptcy Court for the Northern District of Indiana seeking reinstatement following the September 20 finding of civil contempt. The court stated that Mr. Chovanec had complied with two of Judge Grant's requirements: On September 26, he filed the two transcripts of the hearings of August 15 and September 13, which he failed to attend. He also paid the fine of \$1,000 to the clerk of the court. However, the court noted, as of Friday, September 30, there were no entries of the appearance of local counsel in his cases. In that regard, the court noted, Mr. Chovanec is still in contempt for noncompliance with the earlier Orders of Judge Grant. Moreover, the court must consider the status of the nine cases filed by Mr. Chovanec in South Bend on September 21, after he was found to be in contempt

and was suspended from representing clients in this court. The court made clear that the finding of civil contempt is a final determination of the court that is not open for further discussion. The hearing was set to allow Mr. Chovanec to persuade the court that he should be reinstated to the practice of law in the bankruptcy court for the Northern District of Indiana.

Mr. Chovanec apologized to this court and to Judge Grant for the issues he created for the Bankruptcy Courts in South Bend and Fort Wayne, Indiana. Although he admitted that he was at fault for failing to attend hearings and for continuing to file cases after the court order of September 20, he actually blamed his secretary for his problems: (1) She misfiled this bankruptcy case in the northern rather than the southern district. (2) She did not tell him of the original hearing on the Motion to Dismiss. (3) She did not look at the mail until September 23, and for that reason he was not aware of the Order of September 20. (4) She did not put in his file the Order concerning a hearing he should have attended. He admitted that he made the wrong choice in attending the hearing in Cass County, in his role as deputy prosecutor, rather than appearing at the hearing in Fort Wayne. He believed that his \$1,000 fine was punishment for that mistake.

Mr. Chovanec's plea for reinstatement was based on practicality: He has 134 bankruptcy cases to be filed before October 17, 2005, the date of enactment of the new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. He has received payment for those cases, and has 14 more in process, with partial payments. No other attorney will take the cases for filing at this late date, he stated. He assured the court that his office now is run better: His secretary now checks ECF three times a day, and she prints out all bankruptcy entries and puts them on his desk. He stated that his secretary has filed an affidavit to explain what she had done. He asked for the opportunity to file the 134 (or more) cases he has accepted from clients and to demonstrate that he is able to obey the court.

Alex Edgar, the Assistant United States Trustee, addressed the court. He stated that he and others in his office met with Mr. Chovanec to discuss his bankruptcy practice. In his view, Mr. Chovanec is genuinely contrite and will cooperate with the United States Trustee's office. It was his understanding that Mr. Chovanec's

proposal to the court is a twofold one: (1) he asks permission to file the 134 cases prior to October 17, 2005; and (2) he agrees not to file any more cases in Indiana after October 17, 2005. The Trustee pointed out the potential harm to Mr. Chovanec's clients, if he does not file their cases now, because other bankruptcy attorneys, overburdened with clients wanting to file bankruptcy before the October 17 deadline, are not available to take his cases. His concern is that these clients will be prejudiced if Mr. Chovanec is not reinstated in a limited way.

The Trustee recommended that Mr. Chovanec be allowed to file these cases but also be required to notify those clients of the circumstances. He offered, as an assistance to the court, that his office would monitor Mr. Chovanec's cases through the system. He made clear that he was not defending Mr. Chovanec's inexplicable behavior but wanted to protect the clients who came to him to file their cases before October 17. There was discussion concerning possible sanctions, such as disgorgement of fees or reference of the case to the state disciplinary commission. In the end, the Trustee focused on the fact that Mr. Chovanec's clients are depending on him to file the bankruptcy petitions. He recommended that Mr. Chovanec be barred from future filings but be allowed to file these 134 cases.

Upon questioning by the court, Mr. Chovanec stated in open court that he will not file any bankruptcy cases after October 17, 2005, and that he only will administer the cases he presently has accepted for filing. The court told the attorney firmly that he cannot blame his secretary for his own mistakes. He must attend court hearings and must comply with the court's Orders. Attendance and compliance are not matters of discretion. The court will accept the word of the Trustee that he is genuinely contrite and cooperative. Moreover, it will accept the word of Mr. Chovanec that he will not file any bankruptcy cases after October 17, 2005. Nevertheless, Judge Dees pointed out, Mr. Chovanec has been required by Judge Grant's Order to find local counsel, and he has not complied with that directive. Further noncompliance may result in another suspension, the court warned. Chief Judge Dees then took the matter under advisement.

Having reviewed the record in this case, and having considered the Orders of Judge Grant finding Mr. Chovanec to be in contempt of court, and having weighed the attorney's reasons for requesting reinstatement,

the court now assesses the appropriate disciplinary sanction for Mr. Chovanec's misconduct. Mr. Chovanec has failed to appear at three court hearings, has failed to obey the court's orders and directions, and in an ignoble manner has placed the blame for these mistakes, for the most part, on his secretary. He intentionally chose not to appear at the scheduled hearing on September 13, 2005. Before this court, and indeed it appears throughout his legal career, he has "demonstrate[d] a lack of respect for the court's interests in fostering orderly administration of justice, and as a practical matter wasted valuable judicial time and resources." *See In re Chovanec*, 640 N.E.2d at 1053.

Nevertheless, the court must weigh the considerations of the debtors who have placed their faith and trust in Mr. Chovanec to file their cases before the enactment of the new bankruptcy act. He has accepted payment from 134 clients and partial payment from others, and the sanction of not reinstating this attorney has serious repercussions for those debtors. It is not without some trepidation that the court has considered granting reinstatement to allow Mr. Chovanec to go forward with those cases. This court is well aware of the comment made by the Supreme Court of Indiana that "the truth is that most, if not all, of [Mr. Chovanec's] troubles sprang from his own poor case management and general sloppiness." *In re Chovanec*, 695 N.E.2d at 98. However, the court is persuaded by the assurances of the Assistant United States Trustee that Mr. Chovanec will file and administer the cases he has accepted in a proper and professional manner, under the supervision of the Trustee's office. It also is confident that Mr. Chovanec understands his present and future commitment to comply with all orders of the bankruptcy court.

After weighing the commitments Mr. Chovanec has made to clients, his promises to this court, and the awareness of this court that many debtors are hoping for relief under the present Bankruptcy Code, the court now GRANTS in part and DENIES in part the Request for Reinstatement filed by James E. Chovanec.

IT IS ORDERED that James E. Chovanec is granted a limited reinstatement to practice as an attorney in the United States Bankruptcy Court for the Northern District of Indiana. He is reinstated to the extent that he may file the bankruptcy cases he has accepted from clients, and he may file those cases through October 16, 2005.

As of October 17, 2005, however, Mr. Chovanec is enjoined from filing any new cases in the United States Bankruptcy Court for the Northern District of Indiana. He may continue to manage the cases he has filed prior to October 17, 2005.

Concerning the requirement that Mr. Chovanec “shall retain as local counsel an attorney who is a resident of the Northern District of Indiana and maintains an office in the division of this court in which any such case is pending,” *See* Order of August 23, 2005, IT IS ORDERED that, in the South Bend Division, the requirement is lifted but that, in the Fort Wayne and Lafayette Divisions, the requirement remains in full force and effect.

IT IS FURTHER ORDERED that the costs associated with this hearing are assessed against Mr. Chovanec. Mr. Chovanec shall pay the Clerk of the United States Bankruptcy Court, Northern District of Indiana, the sum of \$85.80 to reimburse the United States for the expenses associated with the cost of the transcript of the hearing of October 6, 2005. Said payment is to be made within 30 days of the date of this Order.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT