IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

IN RE:	)	
AIMEE DAWN FUTREAL,	)	**CHAPTER 7**
Debtor.	)	**CASE NO. 15-70886**
IN RE:	)	
MICAH JERIMEY REPASS and	)	**CHAPTER 7**
HOLLY LEIGH REPASS,	)	**CASE NO. 15-70885**
Debtors.	)	
IN RE:	)	
ANGELA WOODWARD SPEAS,	)	**CHAPTER 7**
Debtor.	)	**CASE NO. 16-60736**
IN RE:	)	
CLIFFORD ALLEN COLLIER and	)	**CHAPTER 7**
SHIRLEY DARLENE COLLIER,	)	**CASE NO. 16-61448**
Debtors.	)	
IN RE:	)	
SHEILA MAE CASH,	)	**CHAPTER 7**
Debtor.	)	**CASE NO. 16-61249**
IN RE:	)	
CINDY D. TIPTON,	)	**Misc. Proceeding No. 16-00701**
Debtor.	)	
JUDY A. ROBBINS, UNITED STATES TRUSTEE FOR REGION FOUR	)	
Movant,	)	
	)	**MOTION FOR REVIEW OF**
v.	)	**ATTORNEY'S FEES AND CIVIL**
	)	**PENALTIES AGAINST DEBT**
BRENT BARBOUR,	)	**RELIEF AGENCY**
PRINCE LAW, LLC,	)	
PRINCE LAW FIRM, LLC,	)	
PRINCE LAW, LLP, and	)	
JASON SEARNS.	)	
Respondents.	)	

MEMORANDUM OPINION

These matters came before the Court on multiple motions of the United States Trustee ("UST") seeking review of attorneys' fees that current or prospective debtors in the Western District of Virginia paid to the self-described "national law firm," Prince Law LLC ("Prince Law")[1] and the imposition of civil penalties against the firm. In addition, the UST has filed a motion to show cause why Prince Law and two individual attorneys should not be held in contempt of this Court's Order of May 5, 2016. As will be explained below, the Court will grant the UST's motions.

PROCEDURAL BACKGROUND

The Court first addressed these matters in the Repass and Futreal cases at an evidentiary hearing held on February 17, 2016. The Court issued an Order to Show Cause for Sanctions against Prince Law LLC; Brent Barbour, Esq.; Jason Edward Searns, Esq.; and Barry Proctor, Esq. (the "Show Cause Order") following the February hearing. The Court then conducted a hearing on the Show Cause Order on April 22, 2016 (the "Show Cause Hearing"). Despite service on each of the parties by the United States Marshal's Service, proof of which was filed with the Court on March 25, 2016,[2] Mr. Proctor was the only respondent who appeared at the Show Cause Hearing. Following the Show Cause Hearing, the Court issued a Memorandum Opinion and Order on May 5, 2016, imposing the following sanctions:

> Mr. Barbour misled his clients, failed to respond to the show cause order, and failed to appear in Court to explain his actions. Mr. Barbour's privileges to

[1] Prince Law is a legal chameleon, controlled by Jason Edward Searns and David L. Prince, members of the Colorado and Florida bars, respectively. In the present cases, Prince Law has surfaced as The Law Offices of Prince and Associates, LLC; Prince Law Firm LLC; Prince Law LLC and Prince Law LLP. The latter two entities are a District of Columbia limited liability company and a Virginia limited liability partnership. The office address of each entity in these cases is 7800 Peters Road, Suite C-200, Plantation, Florida 33324. "Prince Law" has an ever-changing legal structure which has confounded those trying to police its actions through the court system, and which has confused at least one Bar disciplinary authority as well.

[2] Mr. Searns testified that he did not recall being served, but he did not deny he was served. The Court finds service on Mr. Searns was proper and effective.

> practice before this Court shall be revoked, and Mr. Barbour shall be fined $2,500.00, to be paid within sixty (60) days of the Court's order to do so. After three (3) years Mr. Barbour may apply for readmission to the bar of this Court, provided he timely pays the $2,500.00 fine set forth above. There is no evidence any of the funds paid to Prince Law actually made their way to Mr. Barbour, so no disgorgement of fees will be ordered from him.
>
> Jason Edward Searns and Prince Law, LLC, a District of Columbia limited liability company, are collectively fined $2,500.00 for the unauthorized practice before this Court. The Court finds that their solicitation of and control over the Futreal and Repass cases in this jurisdiction, and their use of non-licensed legal personnel to prepare documents filed in this case, amounts to the unauthorized practice of law before this Court. Further, the Class B Agreements are found to be insufficient to satisfy the disclosure exception to Bankruptcy Rule 2016(b), particularly in light of Mr. Searns's and Prince Law's failure to meet any of the Commonwealth of Virginia's statutory requirements to practice law in this jurisdiction. Mr. Searns and Prince Law are further ordered to disgorge all attorneys' fees paid by the Futreals and the Repasses in this matter, less any fees paid to Mr. Proctor. All fines and fees to be disgorged shall be paid within sixty (60) days of the Court's order to do so. Mr. Searns and Prince Law are further prohibited from filing or participating in, either directly or indirectly, any cases in the United States Bankruptcy Court for the Western District of Virginia now or in the future.
>
> Mr. Proctor is directed to disgorge the sum of $175.00 to Ms. Futreal and $175.00 to the Repasses for failing to make a proper Bankruptcy Rule 2016(b) disclosure in their cases. Such payment shall be made within sixty (60) days of the date of the Court's order to do so. The Court finds Mr. Proctor to have been forthright and credible in his appearances before the Court, including his testimony under oath. No further restrictions or sanctions will be placed upon Mr. Proctor given his cooperation in these cases and that the services he provided proved valuable to his clients.

In re Futreal, 2016 WL 2609644, at *13–14 (Bankr. W.D. Va. May 5, 2016). Mr. Proctor filed a letter with the Court on July 8, 2016 confirming that he had complied with the Order. No other party responded to the Court's Order. Accordingly, the UST filed motions for civil contempt against Brent Barbour, Jason Searns, and Prince Law LLC in the Repass and Futreal matters.

In addition, the UST filed motions to review attorneys' fees in three other pending cases, Speas, Collier, and Cash. The UST also filed a miscellaneous proceeding seeking review of attorneys' fees paid by a would-be debtor who was unable to file a bankruptcy petition in Tipton. On August 18, 2016, Jason Searns ("Searns") submitted a letter offering his explanation as to

why he did not attend the Show Cause Hearing, as well as explanations of his involvement in Prince Law and specifically in the Futreal and Repass matters. On October 4, 2016, Mr. Searns filed a response to the UST motions for contempt as well as his own motion for reconsideration of the sanctions imposed against him.

All of the above matters were heard at an evidentiary hearing on October 20, 2016. Counsel for the UST appeared at the hearing, as did Searns.[3] Searns appeared *pro se* in his individual capacity only, not as counsel for Prince Law or David Prince.[4] However, he did appear as a representative of Prince Law. The Court heard sworn testimony from debtors Angela W. Speas ("Speas"), Clifford and Darlene Collier (collectively the "Colliers"), and Holly Repass ("Repass"). In addition, the Court heard testimony from the Clerk of the Court John W.L. Craig II, Attorney Darren T. Delafield ("Delafield")—a former Prince Law Class B Partner who regularly practices before this Court—and Searns. The Court admitted the exhibits filed by the UST without objection and allowed counsel for the UST to proffer evidence on behalf of debtor Sheila Cash and would-be debtor Cindy Tipton without objection.

FINDINGS OF FACT[5]

I. The Active Debtors in this Court

a. *Angela W. Speas*

In 2014, Speas was travelling for her job and ended up hospitalized. As a result, she incurred substantial medical bills. She thereafter began conducting internet research into the

[3] Searns represented to the Court he did not have the financial wherewithal to travel from Colorado, where he now lives, to Virginia for the contempt hearing. With the assistance of the United States Bankruptcy Court for the District of Colorado, gratefully acknowledged by this Court, Searns was able to testify live by video from its courtroom.

[4] Searns testified that he and David Prince agreed that Searns would appear as a representative of Prince Law to comply with the Court's Order. *See infra*.

[5] Where appropriate, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact. *See* Fed. R. Bankr. P. 7052; 9014(c).

possibility of filing for bankruptcy protection to protect what assets she could. In the course of this research, Speas came across Prince Law. She filled out an on-line information request form, and was called by a Prince Law representative within several minutes. Speas entered into a fee agreement with Prince Law on May 18, 2015. UST Ex. 48. Over the course of a six-month payment plan, Speas paid Prince Law $1,893.00. During those six months, Speas testified she promptly provided all documentation Prince Law requested. After she made the final payment on December 9, 2015, Speas called Prince Law to check on the status of her filing. She testified that she was given "the run around," and after a particularly unpleasant conversation with a Prince Law representative in January, 2016, given no progress was apparently made, she decided to terminate Prince Law's services and request a refund. At that time, Prince Law indicated that no refund would be issued. Speas then retained the law firm Giles & Lambert, a local consumer bankruptcy law firm, to prepare and file her bankruptcy petition at an additional cost of $1,500.00. Her case was subsequently filed and a discharge successfully obtained.

Speas heard nothing further from the firm until March 2016, when she received a letter from Prince Law LLC dated March 11, 2016 stating that "due to financial difficulties beyond our control, Prince Law LLC, must cease operations effective immediately." UST Ex. 49. [6] A check for $368.00, which Prince Law described as a refund of costs paid to the firm, was enclosed, and Prince Law advised ". . . [we] deeply regret not being able to complete your matter." *Id*. Speas then received a letter dated July 26, 2016 from Kevin P. Tynan, an attorney representing Prince Law and David Prince in connection with ethics matters pending before the

[6] The "Bankruptcy Fee Agreement" is with "Prince Law, LLP, a National Law Firm." However, the signature line for Prince Law, which bears no actual signature, is listed as "Prince Law, LLC." The March 11, 2016 letter refers to Prince Law LLC twice and makes no reference to Prince Law LLP at all. As indicated above, Prince Law LLC is a District of Columbia limited liability company and Prince Law LLP is purportedly a Virginia limited liability partnership.

Florida State Bar, apparently initiated by Speas. UST Ex. 50. This letter explained the circumstances under which Prince Law made the decision to cease operations, including its financial difficulties, and the decision not to issue Speas a refund of the attorneys' fees she paid. Speas responded to the Florida State Bar and Mr. Tynan in a letter refuting the explanations offered by Mr. Tynan. UST Ex. 51. She did not receive a response from either Mr. Tynan or the Florida State Bar.

Speas states that she never received any benefit from Prince Law. She does not recall ever speaking with anyone at Prince Law who identified themselves as an attorney during her numerous conversations with the firm — despite asking to speak to one numerous times and also leaving a voicemail with David L. Prince, the managing partner. Through the UST, Speas requests the Court to void her contract with Prince Law, to order Prince Law to refund the attorneys' fees she paid, and to award further damages in the amount of $1,500.00, the amount of additional attorneys' fees she paid Giles & Lambert to file her bankruptcy petition.

b. *Clifford A. Collier and Shirley D. Collier*

The Colliers also discovered Prince Law by virtue of their own online research about filing a bankruptcy petition. After filling out a request for information, Mr. Collier spoke with a Mr. Gonzalez at Prince Law, who said he would handle the first stages of the intake process and arrange for them to speak with an attorney. The Colliers decided to retain Prince Law to file their bankruptcy petition. Mr. Collier testified that on the day they returned the representation agreement, they received a call from a Virginia attorney named Murphy Pepper. Mr. Pepper did not give the Colliers an address, but they testified that they understood his offices to be in

Roanoke, Virginia, where this Court is located.[7] The Colliers were not contacted by any Virginia attorney associated with Prince Law again.[8]

The Colliers paid the firm a total of $865.00 in March 2015. The Colliers understood that once this fee was paid, the firm would proceed to prepare and file their bankruptcy petition. Thereafter, the balance of the attorneys' fee would be paid in monthly installments. However, by January 2016, the petition remained unprepared and unfiled, and the firm asked for new documents to replace those the Colliers had sent earlier as they were becoming stale. On March 11, 2016, Prince Law LLC sent the Colliers a letter like the one Speas received advising that the firm would cease operations. UST Ex. 56. A check for $388.00 was enclosed with the letter, which Prince Law described as a refund of costs paid to the firm. Upon receipt of the letter, the Colliers demanded a full refund and return of their documents. While they did receive their documents in the mail, they never received a response to their request for a refund. The Colliers also proceeded to retain the firm Giles & Lambert to prepare and file their bankruptcy petition, at a cost of an additional $1,500.00. Their case was successfully prosecuted to discharge as well.

Through the UST, the Colliers ask the Court to void their contract with Prince Law, to order Prince Law to refund the attorneys' fees they paid, and to award further damages in the amount of $1,500.00, the amount of additional attorneys' fees they paid Giles & Lambert to file their bankruptcy petition.

c. *Sheila M. Cash*

Sheila Mae Cash retained Prince Law in or around November 2015. Between November 2015 and February 2016, Cash made regular monthly payments on her retainer with Prince Law

[7] Murphy Pepper is not an attorney located in the Western District of Virginia. Rather, it appears that Mr. Pepper's office is located in the Eastern District of Virginia in Midlothian, a suburb of Richmond, Virginia.

[8] The client intake letter again references Prince Law LLP.

totaling $1,050.00. Her case was never filed by Prince Law.[9] Cash has not received a refund of any of the attorneys' fees paid to Prince Law, and subsequently retained the Cox Law Group to file her bankruptcy petition at a cost of $1,200.00. Her Chapter 7 case was subsequently filed and a discharge obtained. Through the UST, Cash asks the Court to void her contract with Prince Law, to order Prince Law to refund the attorneys' fees she paid, and to award further damages in the amount of $1,200.00, the amount of additional attorneys' fees she paid Cox Law Group to file her bankruptcy petition.

d. *Micah J. Repass and Holly L. Repass*

The facts of the Repass's case were thoroughly discussed in the May 5, 2016 Opinion of this Court and need not be repeated here. Ms. Repass appeared and testified at the present hearing that she was aware she was entitled to a refund from Prince Law pursuant to the Court's Opinion and Order. However, the sums directed by the Court to be paid by Mr. Barbour, Searns, and Prince Law were not paid.

II. Prospective Debtor with Unfiled Case

Cindy D. Tipton

Cindy Tipton retained Prince Law around May 15, 2015. She paid Prince Law a total of $1,718.00 from May 1, 2015 until September 21, 2015.[10] Prince Law did not file a bankruptcy petition on her behalf, and counsel for the UST has proffered that she has not been able to afford to pay another attorney to do so.[11] Tipton has not received any refund from Prince Law, and the

[9] This Prince Law appears to be "Prince Law, LLC, a National Law Firm," based on the firm's request for documents. UST Ex. 59. Cash made her payments to Prince Law LLC.

[10] The payment confirmations that Tipton sent were to Prince Law LLC. UST Ex. 64.

[11] Delafield testified that in February 2016 he offered to represent Ms. Tipton for free as long as she would pay the filing fee, and she declined to retain him. After that point, due to Ms. Tipton's lack of willingness to meet Delafield in person and her failure to return a questionnaire to his office, Delafield decided that he would not take Ms. Tipton's case. She returned to Delafield around March 2016 to ask him to represent her, but he had decided against doing so by that point.

UST does not believe she was notified that the firm closed. Tipton is asking the Court to void her contract with Prince Law, to order Prince Law to refund the attorneys' fees she paid, and to award further damages.

The Clerk of the United States Bankruptcy Court for the Western District of Virginia testified that as of the October 20, 2016 hearing, the fines imposed by the May 5, 2016 Order had not been paid to the Court. While the Court did receive a letter from Mr. Proctor stating that he had complied with the terms of the Order and refunded the fees required to his clients, the Court had no knowledge of Mr. Barbour or Prince Law issuing the required refunds of attorneys' fees.

III. Prince Law and Its Virginia Member

a. *Darren Delafield*

Attorney Darren Delafield offered illustrative testimony as to how Prince Law operated in the Western District of Virginia. When Delafield first became involved with Prince Law, he understood that he would serve as local trial counsel to assist with filing bankruptcy petitions in Roanoke. David Prince first contacted Delafield when the firm had a client in this District, and Prince proposed that Mr. Delafield would enter into a partnership agreement with Prince Law for that case as well as for possible future cases in the District. Delafield agreed to enter into this partnership agreement to increase his case load and increase his attorneys' fees revenue. He executed a "Class B Agreement" with Prince Law LLP on October 24, 2014.[12] UST Ex. 68.

Delafield's compensation arrangement for a Prince Law Chapter 7 case would be $125.00 for meeting with the client, reviewing the petition and schedules, and getting the client's endorsement on the documents. He would be paid an additional $75.00 to represent the client at

[12] Delafield's limited partnership agreement was with Prince Law LLP. However, Delafield testified that he was under the impression that he was working for Prince Law LLC, as his checks were issued by Prince Law LLC and he held himself out as a partner of Prince Law LLC.

the required meeting of creditors. Delafield understood that this would be the extent of his role as local trial counsel for a Chapter 7 case. Prince Law would collect documents and fees from the client, process the documents, and send him "a professionally prepared Best Case file" that he could then import and print at his office. In a Chapter 13 case, Delafield would be compensated $450.00 at the time the client signed the petition, and then the remainder of the attorneys' fees would be paid by the client to the Chapter 13 Trustee and be paid to Delafield through the plan.

Delafield explicitly agreed only to accept cases that would be heard in the Roanoke division of the Western District, as that is where his office is physically located. If Delafield agreed to accept a case outside of Roanoke, he and Prince Law had an arrangement that he would also be compensated for travel expenses. Delafield was paid by check and did not know whether he received an IRS Form 1099, W-2, or 1065 (Schedule K-1) tax form from Prince Law. He estimates he is owed roughly $5,000.00 in unpaid fees from Prince Law. Delafield maintains his own separate law practice, as well as his own professional liability insurance coverage. He does not believe he was ever covered under any Prince Law professional liability policy.

The first contact Delafield would receive from Prince Law regarding a potential client would be a request for a conflicts check. If the client cleared the conflicts check, Delafield would then choose whether to accept the case, and he generally did so for cases that were in the Roanoke area. Delafield maintains that he responded by either accepting or rejecting each conflicts check request his office received from Prince Law. Once he agreed to take on a case, Prince Law would proceed to collect the documents and fees from the client, conduct initial interviews, and have the client fill out a questionnaire. Then Prince Law would prepare a "Best Case" file and send it to Delafield once a paralegal deemed it ready to send. While the transfer

of the file was not contingent upon the client having paid the attorneys' fees in full, Delafield was not permitted to file the petition by Prince Law until the client had done so.

Once Delafield received the "Best Case" file from Prince Law, he would review it and make additional notes, then return it to the paralegal staff at Prince Law for revisions. These additional notes included Delafield selecting the appropriate exemptions for the client. Delafield prepared the homestead deeds himself, and these were generally hand delivered by the clients to the appropriate Virginia circuit court for filing. The clients would pay the filing fee for the homestead deeds themselves. In all but one case,[13] Delafield met face to face with the clients and got wet-ink signatures on all documents.

Delafield described the progression of his relationship with Prince Law in four stages. The first stage began when the partnership agreement was executed and it lasted until he tendered his written resignation from the firm on September 30, 2015. The second stage consisted of completing the cases that were active at the time of his resignation. The third stage began when Delafield became aware that Prince Law would be closing and he tentatively agreed to take on five Abingdon, Virginia area cases on the condition that he could interview the clients first to determine they were appropriate candidates for bankruptcy. If appropriate, those cases would be filed at the same time so that he could consolidate travel time. As these conditions were never met, Delafield never took on the Abingdon cases. The final stage of the relationship was when Prince Law's closing became imminent. At that time, David Prince asked Delafield to close out approximately eight clients who had not yet paid Prince Law in full by taking them on

[13] Delafield testified that on one occasion he was representing a husband and wife. While he met with the husband in person, he could not meet with the wife. Instead, Delafield and the wife conducted a video meeting over Skype in which Delafield walked though her bankruptcy documents and he saw her sign the documents.

directly as clients of Delafield's firm, with a credit of the attorneys' fees paid to Prince Law towards Delafield's fees.

Delafield made the decision to resign from Prince Law because he was unhappy with the poor quality of the work product prepared by the Prince Law paralegal staff. He indicated that all of his cases with Prince Law had difficulties. His expectation upon entering into the limited partnership agreement was that Prince Law would provide him with a professionally prepared "Best Case" file and related documents such that he could audit the work product prepared by Prince Law. Delafield often sent the files back to Prince Law for review by a senior paralegal. Despite his efforts to educate the paralegal staff as to the quality of work product expected in a case to be filed in the Western District, the quality remained poor. Thus, on September 30, 2015, Delafield submitted his resignation letter to Prince Law.

Following his resignation, Delafield continued to represent Prince Law clients, including both those he had already agreed to represent as well as additional clients on a case-by-case basis. As Prince Law was winding down, David Prince approached Delafield with an offer to sell him the firm's Western District practice. Delafield declined the offer.[14]

b. *Jason Searns*

Jason Searns has been a Colorado licensed attorney for 24 years. He was also licensed in New York for a time. Searns is not licensed to practice law in Virginia or Florida. Searns last represented individual debtors in bankruptcy cases in 1999, but indicates that he has kept up with developments in bankruptcy law through continuing legal education classes over the years. Searns testified that David Prince, the managing partner of Prince Law, has never to his knowledge actually practiced bankruptcy law.

[14] Based up his testimony, the Court found Delafield to be both candid and truthful, mindful of both his professional responsibilities and his client's best interests.

Searns became involved in Prince Law in January 2014. Searns testified that David Prince reached out and asked whether he could use a model for a "national law firm" Searns had developed for other law firms across the country and apply it to Prince Law. Searns joined the firm as general counsel and obtained an ownership interest in the firm. Prince Law was at all times a consumer bankruptcy firm. The firm had a few bankruptcy attorneys working out of the home office in Florida, as well as "local partners" in other states. Searns named four bankruptcy attorneys who worked out of the Florida office, none of which were admitted to practice in Virginia.

Searns's role as co-managing partner was three-fold. He was general counsel of the firm, he maintained relationships with the "national" (local) partners of the firm, and he spoke to clients from time to time when the situation required. As general counsel, he would work with local counsel on cases in which UST offices were challenging the "national law firm" business model. David Prince handled all business aspects of the firm and was the sole signatory on all of the firm's accounts. Searns estimates he worked roughly 60 hours per week. He was not salaried and would periodically receive a draw, assuming there were funds available. Searns put all of his remaining assets into the firm to keep it running in the summer of 2015, a total of about $50,000.00. Searns testified that David Prince likewise contributed all of his remaining assets in late 2015, roughly $50,000.00, and that Mr. Prince took out a loan of $500,000.00 from his parents. Both Searns and Mr. Prince worked in the Florida office until March 11, 2016.

While Searns evidently only had limited involvement with the business aspects of the firm, he believes that the firm did its banking at Wells Fargo and Chase Bank. He did not manage or supervise the firm's client trust accounts, but believed they were also maintained at

Wells Fargo or Chase. Searns also did not know where the trust account ledgers were located, but he believed David Prince would know.

Searns testified that there were a number of Virginia partners involved with Prince Law over the course of its two-year existence. The first was Murphy Pepper, located in Midlothian, who only handled cases in the Eastern District. Searns testified it was at Mr. Pepper's suggestion that Prince Law LLP was formed as a d/b/a for Prince Law LLC, registered with the Virginia State Bar. Other Virginia partners included Edrie Pfeiffer in the Norfolk Division, the Burger Law Firm in the Eastern District, and for a short time, Brent Barbour in the Western District. To find local partners, Searns and Prince Law worked with a national law firm that provided counsel to an employee benefit program to develop the local partner criteria for Prince Law. The local partners had to have a minimum of five years of experience in consumer bankruptcy work, no disciplinary history, and their own professional liability insurance coverage. Searns usually personally researched the local partners by looking at their websites, checking with the relevant state bar, and interviewing the prospective partner to get information about the attorney's practice.

Searns testified that at Murphy Pepper's suggestion, in August 2014, Prince Law formed the sister law firm, Prince Law LLP, in Virginia. Searns states that the entity was registered with the Virginia State Bar and the State Corporation Commission. However, Searns had no explanation as to why the filings in the Western District were made by attorneys disclosed to be affiliated with Prince Law LLC. He indicated that this must have been a mistake as Virginia cases were to be filed by Prince Law LLP. Searns testified that as new Virginia partners were brought in, the relationship between the two entities was explained to them. [15]

[15] This strained explanation as to the relationship between Prince Law LLP and Prince Law LLC, one being the d/b/a of the other despite the fact they are two separate entities formed in different jurisdictions, appears to have

Searns testified Prince Law began to unwind in January 2016. The firm stopped taking on new clients in late 2015, and the firm was working with all current clients to complete as many cases as could be completed. Searns told the Court that Petty and Associates, a national law firm with a contract with the "employee benefit program,"[16] became involved with the unwinding to assure that clients were properly taken care of. Searns does not know when Prince Law stopped accepting payments from clients. After consulting Florida ethics counsel Kevin Tynan, the firm decided to notify clients of the impending closure. On advice of ethics counsel, the firm decided it had to refund costs to clients, and that refunds of attorneys' fees would be handled on a case-by-case basis based upon work performed. As the firm was running out of money, an effort was made to take care of every client they could. Searns was not involved in

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mystified the Virginia State Bar disciplinary counsel. The Court directed that its May 5, 2016 Opinion and Order be sent to the Virginia State Bar, among other disciplinary authorities. In that Opinion and Order, Prince Law LLC, a District of Columbia limited liability company, was sanctioned. In fact, the Virginia State Bar Custodian of Membership Records, Gale M. Cartwright, submitted an affidavit in *Futreal* that provided "[a]fter a diligent search of the Records no record or entry of such record was found to exist to show that Prince Law Firm, LLC nor Prince Law, LLC is or was ever registered with the Virginia State Bar as a professional entity." UST EX 32. Prince Law LLP, a Virginia limited liability company, was never involved in the *Futreal* and *Repass* cases, and was unheard of by this Court until the most recent set of pleadings was filed and hearings were held on October 20, 2016. Nevertheless, on August 22, 2016, Virginia State Bar's Senior Assistant Bar Counsel wrote Searns, in part, as follows:

> . . . you explained that you believe a key premise of the Memorandum Opinion—that Prince Law was not registered with the SCC—is incorrect.
>
> Instead, you stated that Prince Law LLP was registered with the SCC in August 2014 as an in-state entity. You also provided a copy of a May 4, 2016 Registered Limited Liability Partnership Annual Continuation Report and Fee sent to Prince Law, LLP at a Midlothian, Virginia address by the SCC. . . . I was able to confirm, through the SCC, that, consistent with your representation, Prince Law LLP was registered with the SCC as a limited liability partnership in August 2014 and remains on active status. . . .
>
> The Virginia State Bar is required to prove ethical misconduct by clear and convincing evidence. Based on the fact that Prince Law LLP is registered with the SCC; the fact that attorneys licensed to practice law in the Commonwealth of Virginia were involved in the Futreal and Repass matters, and the fact that, as a result of the services provided by Mr. Proctor and the sanctions imposed by the Bankruptcy Court, the harm to Ms. Futreal and the Repass' appears to be have been remedied, I have dismissed this matter.

See Response to Motion to Contempt filed by Jason Searns, Futreal Docket Entry No. 43 (emphasis added). Neither the pleadings nor the evidence, including testimony or exhibits, reflects that Prince Law LLP was involved in any way in the *Futreal* and *Repass* matters, nor was there any evidence that Brent Barbour or Barry Proctor were ever affiliated with Prince Law LLP.

[16] This was never adequately explained at trial.

the accounting of the firm and did not know at which point a client's fee would be moved from the trust account to the operating account. Searns testified, however, that Prince Law viewed fees as earned on receipt, and the firm would not begin work on a case until fees were paid in full.[17]

Searns's testimony was that Mr. Prince is currently employed at a call center in Florida earning a minimal salary. Searns advised Mr. Prince was aware of the Court's Order that a representative from Prince Law appear at the hearing, and Mr. Prince understood that Searns would serve as that representative. Searns advised that the Florida State Bar has an active proceeding against Mr. Prince, which Searns believes is still pending.

IV. Prince Law Discipline in Other Bankruptcy Courts

UST Exhibits 87 through 93 are copies of various orders and stipulations entered across the country against Prince Law, David Prince and/or Searns requiring disgorgement or imposing sanctions, or both. Prince Law was ordered to disgorge the sum of $1,600.00 in two separate cases by the United States Bankruptcy Court for the District of Connecticut on October 9, 2015. UST Ex. 87, 89. Exhibit 88 is an order of the same court requiring disgorgement of $1,349.25. UST Ex. 88. The United States Bankruptcy Court for the Northern District of Ohio required the The Law Offices of Prince and Associates, LLC, another Prince Law entity, to disgorge the sum of $250.00 by Stipulation and Agreement with the UST on April 22, 2014. UST Ex. 90. The United States Bankruptcy Court for the Middle District of Louisiana required Prince Law to disgorge the sums of $1,287.50 and $1,337.50 by orders entered January 22, 2016. UST Ex. 91, 92. Most recently, the United States Bankruptcy Court for the Eastern District of Virginia sanctioned Prince Law LLC, Prince Law Firm LLC, David Prince, and Searns on September 8,

[17] Searns did testify that Prince Law would take creditor phone calls and accumulate documents, but no work on the filing documents would begin until the client paid in full.

2016, by requiring them to disgorge the sums of $345.00 and $1,925.00. That court's orders also provide that the four named respondents are "permanently enjoined from filing bankruptcy cases in the Eastern District of Virginia, both individually and through any entity owned or operated by them." UST Ex. 93, 94. UST Exhibit 95 consists of copies of checks signed by Searns on an account drawn on Searns & Associates, LLC paying the Eastern District of Virginia disgorgement obligations. [18]

CONCLUSIONS OF LAW

This Court has jurisdiction of this matter by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on December 6, 1994, and Rule 3 of the Local Rules of the United States District Court for the Western District of Virginia. This Court further concludes that this matter is a "core" bankruptcy proceeding within the meaning of 28 U.S.C. § 157(b)(2).

I. Motion to Reconsider

Mr. Searns included in his response to the UST motions for contempt a motion to reconsider the sanctions imposed by the Court's Order of May 5, 2016. As the Federal Rules do not provide for a motion for reconsideration, the Court will treat the motion as a motion for a new trial made under Bankruptcy Rule 9023, which incorporates Fed. R. Civ. P. 59. Searns has presented no new issue of law or fact or any other valid or relevant grounds to warrant altering or amending the judgment under Rule 59(e). Further, such a motion must be made within 14 days of the entry of judgment. Searns filed his motion on October 4, 2016. "Timeliness is jurisdictional." *Collier on Bankruptcy*, ¶9023.02, *citing Browder v. Director, Illinois Dep't of*

[18] Searns testified Searns & Associates, LLC was an entity he formed to do "contract work," presumably legal in nature. Despite Searns not being a member of the Florida bar, the address of Searns & Associates, LLC is the same address as Prince Law in Plantation, Florida.

Corrections, 434 U.S. 257, 272-73, 98 S.Ct. 556, 565, 54 L.Ed.2d 521 (1978); *In re De Jesus Saez*, 721 F.2d 848(1st Cir. 1983). The motion is therefore denied.

The UST asks the Court to review the facts of these cases within the scope of several provisions of the Bankruptcy Code, including 11 U.S.C. §§ 329 and 526, as well as 11 U.S.C. § 105.

II. New Motions for Review of Attorney's Fees

A. 11 U.S.C. § 329(b)

The UST seeks review and disgorgement of attorneys' fees paid to Prince Law in the Speas, Collier, Cash, and Tipton matters. As to the reasonableness of attorney fees, 11 U.S.C. § 329(b) provides, "[i]f such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return on any such payment, to the extent excessive . . ." Further, 11 U.S.C. § 526(c)(2) provides that:

> Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—
>
> (A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;
>
> (B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or
>
> (C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

The Court finds based upon the record before it that Prince Law is a debt relief agency as defined in 11 U.S.C. § 101(12A). Likewise, upon review of the schedules and other information provided in connection with the Speas, Collier, Cash and Tipton cases the Court finds that each

of these debtors are "assisted persons" as defined in 11 U.S.C. § 101(3).[19] As such, Prince Law was bound to comply with the provisions of Sections 526, 527, and 528 in each of these cases. Yet, in each of these cases Prince Law failed to perform services to these assisted persons that it informed them it would provide. 11. U.S.C. § 526(a)(1). Prince Law failed to file petitions in any of these cases. The bankruptcy counsel ultimately obtained in the Speas, Collier, Cash and Tipton matters did not receive any work product from Prince Law. No evidence was presented to suggest that Prince Law even began to prepare the requisite petition, schedules, and disclosures necessary to file these bankruptcy cases. Moreover, other than returning costs paid by two of these debtors, Prince Law returned no part of the fees paid for those services. While Searns testified that Prince Law viewed debtors' attorneys' fees as "earned on receipt," this position is incompatible with Virginia professional conduct standards.[20] As no petitions were ever filed in the Speas, Collier, Cash or Tipton cases, and there is no evidence the fees were earned, the services rendered by Prince Law in each of those matters cannot be said to have any

[19] The Bankruptcy Code defines an assisted person as "any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $186,825." 11 U.S.C. § 101(3). As Tipton did not file bankruptcy, she had no schedules to produce. However, UST Ex. 63 is a personal financial statement prepared for Tipton in connection with her pre-filing credit counseling, and it listed nonexempt assets well below the threshold. The Court finds this sufficiently persuasive to demonstrate her status as an "assisted person."

[20] "Although ethics opinions are not binding on state or federal courts, they do provide guidance in resolving matters of professional responsibility." *In re Pinkins*, 213 B.R. 818, 822 n.2 (Bankr. E.D. Mich. 1997). In that light, the Virginia State Bar has addressed flat fees in Chapter 7 cases, and opined as follows:

> [treating advance fees as "earned when paid"] is as ethically impermissible in connection with a Chapter 7 bankruptcy case as it would be in any other legal matter. Such money handling by the lawyer violated Rule 1.15(a)(1) and the precepts of LEO 1606. No client funds should be applied to the lawyer's credit, when tendered, for legal services which have yet to be performed. In the event the lawyer becomes disabled, dies, is discharged by the client, terminates representation of the client, or has his license to practice suspended or revoked, any unearned legal fees, which remain the property of the client, must be in a trust account, and thus on hand for return to the client.

Va. State Bar, Legal Ethics Op. 1883, at p.4 (2015). The Ethics Opinion goes on to conclude that "[a]n attorney may ethically disburse from his trust account, to his own credit, the entirety of the advanced fixed fees tendered by the client and remaining in his attorney trust account immediately before he files the client's Chapter 7 bankruptcy petition." *Id.* at pp. 6–7.

reasonable value and the fees collected by Prince Law are excessive in their entirety. 11 U.S.C. § 329(b). The Court will direct that those fees be returned.

B. 11 U.S.C. § 526

Section 526 of the Bankruptcy Code provides an alternate ground for disgorgement of attorneys' fees. If the debt relief agency fails to perform any service that the agency informed an assisted person it would provide, the Court has the authority to declare void the contract between that agency and the assisted person. 11 U.S.C. §§ 526(a)(1), (c)(1). For the reasons stated previously in Part II(A), the Court so finds in each of the Speas, Collier, Cash and Tipton matters. As such, he Court declares void Speas's contract with Prince Law and will direct Prince Law to disgorge $1,525.00 in attorneys' fees. In Collier, the Court declares void the debtors' contract with Prince Law and will direct Prince Law to disgorge $567.00 in attorneys' fees. In Cash, the Court voids the debtor's contract with Prince Law and orders Prince Law to disgorge $1,050.00 in attorneys' fees. Finally, in Tipton, the Court declares void the debtor's contract with Prince Law and will direct Prince Law to disgorge $1,718.00 in attorneys' fees. Prince Law is directed to disgorge these attorneys' fees within sixty (60) days of the date of the Court's Order to do so. The funds shall be provided directly to the debtors in each of those cases, with evidence of timely payment provided to the office of the UST in Roanoke, Virginia. Prince Law and Searns are also directed to immediately disgorge the fees paid to them by Futreal and Repass, less any funds paid to Barry Proctor, as directed by this Court's May 5, 2016 Memorandum Opinion and Order. This payment shall also be made to those debtors and certified to the UST as above.

The UST has also moved this Court to impose civil penalties pursuant to Section 526(c)(5). 11 U.S.C. § 526(c)(5). That section permits the Court, on its own motion or on

motion of the UST, to enjoin the violation of such section or impose civil penalties on debt relief agencies that have "engaged in a clear and consistent pattern or practice of violating this section." *Id.* Prince Law has clearly demonstrated a clear and consistent pattern or practice of violating Section 526(a)(1), as demonstrated by the numerous cases before the Court. Accordingly, the Court will impose the following civil penalties: $1,500.00 in the Speas case as measured by the sum she paid to Giles & Lambert to ultimately file her bankruptcy petition; $1,500.00 in the Collier case as measured by the sum they paid Giles & Lambert to file their bankruptcy petition; $1,200.00 in the Cash case as measured by the sum she paid Cox Law Group to file her bankruptcy petition; and finally, $500.00 in the Tipton case. Prince Law is ordered to pay these civil penalties to the office of the UST in Roanoke, Virginia within sixty (60) days of the Court's order to do so.

III. Motion for Civil Contempt

The UST has moved for civil contempt in the Futreal and Repass cases because of Prince Law, Searns, and Barbour's failure to comply with the Court's Order of May 5, 2016. The Court has authority to hold a party in civil contempt under Section 105(a) of the Bankruptcy Code. 11 U.S.C. §105(a). A movant must establish civil contempt by clear and convincing evidence. *In re Roundtree*, 448 B.R. 389, 417–18 (E.D. Va. 2011). In cases where a litigant's actions are egregious, vindictive, or malevolent, punitive damages are appropriate. *In re Cherry*, 247 B.R. 176, 186–87, 189–90 (E.D. Va. 2000). As stated in the May 5th Opinion, the Court has inherent power "to control admission to its bar and discipline attorneys who appear before it," and this "includes power to suspend or disbar attorneys form practicing before the Court." *In re Futreal*, 2016 WL 2609644, at *9 (Bankr. W.D. Va. May 5, 2016) (internal quotations omitted). The UST has asked the Court to treble the sanctions imposed by the previous Order as a penalty for

the parties' civil contempt. "Civil contempt sanctions 'may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard' without a jury trial or proof beyond a reasonable doubt." *In re Gregg*, 428 B.R. 345, 348 (Bank. D. S.C. 2009) (citing *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827, 114 S.Ct. 2552, 129 L.E.2d 642 (1994)). In addition, in closing, the UST asks the Court to enter an injunction against Prince Law LLC, Prince Law LLP, Searns, David Prince, and any other associated law firm barring them permanently from practicing in both the Western and Eastern Districts of Virginia.[21] However, the UST's Amended Motion did not name David Prince as a party individually, and he has neither been served nor noticed to appear in this matter.

The Clerk of the Court testified that Prince Law, Searns, and Barbour have not paid the sanctions imposed by the Court's prior Order. Searns testified that both he and David Prince had knowledge of the Court's Order. In addition, the Court's Order was mailed to Barbour by first class mail. Accordingly, the Court holds Prince Law, Searns, and Barbour in civil contempt for their failure to comply with the Court's Order.

The Court's prior Order imposed a fine of $2,500.00 on Barbour. The Court now imposes an additional fine of $2,500.00 on Barbour because of his contempt. In addition, since Barbour did not timely pay the initial sanction against him as that Order cautioned, he shall be permanently disbarred from practicing before this Court. The Court's prior Order imposed a fine of $2,500.00 on Prince Law LLC and Searns collectively. The Court now imposes an additional fine of $2,500.00 on Prince Law LLC and Searns collectively because of their contempt. Such

[21] The UST cites as authority for this injunction two consent orders entered by Judge Phillips in the Eastern District in actions against Rachael Hammer, The Burger Law Firm LLC, Prince Law LLC, and Prince Law Firm LLC. These orders each state: "The Defendants are hereby PERMANENTLY ENJOINED from filing bankruptcy cases in the Eastern District of Virginia, both individually and through any company owned or operated by them." The Orders define "Defendants" as "David Prince, Jason Searns, Prince Law, LLC and Prince Law Firm, LLC." UST Ex. 93, 94.

fines shall be paid within sixty (60) days of the date of the Court's order to do so to the Clerk of the United States Bankruptcy Court for the Western District of Virginia.

Consistent with the rulings of the United States Bankruptcy Court for the Eastern District of Virginia, the Court will also reaffirm the prohibition contained in its prior Order to unequivocally state that Prince Law LLC, Searns, and any other related entities, now specifically including Prince Law, LLP, are permanently enjoined from practicing before the United States Bankruptcy Court for the Western District of Virginia directly or indirectly in any capacity, including through any company owned or operated by them. The Court reserves the right to explore additional monetary and non-monetary sanctions if the directives of this Court are not timely satisfied.[22]

The Bankruptcy Code provides this Court with several mechanisms to deal with issues raised here, and it may be that the United States Bankruptcy Courts must police such matters for the near future. If nothing else, these cases reflect the Pandora's Box of ethical issues opened by multi-jurisdictional practice thought the "national law firm" business model, where law firms in distant locations around the country advertise on the internet, and then seek to retain a local attorney to become a local "member"—albeit one with limited, if any, rights other than in the cases they actually take. These local counsel retentions are often nothing more than disguised independent contractor arrangements designed to increase revenue streams by attempting to evade the fee splitting prohibitions in the Bankruptcy Code and Bankruptcy Rules. These cases

[22] The Court does not wish to increase the sanctions in this case, and has sought less restrictive options to fairly compensate those harmed by the egregious conduct in these cases and to deter future misdeeds by the respondents. However, the Court takes the misconduct in these cases seriously and expects its orders to be complied with in a timely manner. The Court has other options available, which it hopes are unnecessary. Without limitation, and mindful of the Eastern District of Virginia's Orders, this Court reserves the right to impose a more expansive injunction against the various respondents in these cases. In addition, a bankruptcy court may validly exercise its civil contempt power to order coercive incarceration if certain conditions, including the ability to purge the contempt by compliance, are satisfied. See *In Re Tate*, 521 B.R. 427, 441 (Bank. S.D. Ga. 2014).

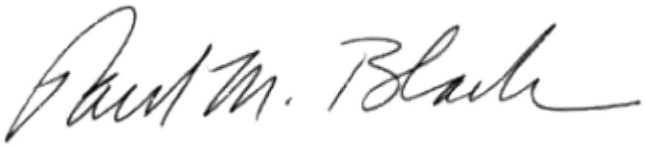
raise several questions as to who, if anybody, has oversight authority over these arrangements: Is it the state disciplinary authority where the law firm retains local counsel, or is it the authority where the law firm is physically located? If the former, when the ultimate sanction is to take a license, what power does that bar have to discipline attorneys who have no license to begin with? If the latter, does the bar have power to sanction local attorneys for actions that may have occurred in cases conducted in another state? Who has disciplinary and ethical authority over the client's fees and the attorney's trust account when the fees are paid out of state and the local attorney doing the work has no oversight or direct access to them?[23] Do disciplinary authorities in multiple states have the ability to coordinate their efforts?

Unfortunately, this Court is not the only court that has had to deal with this practice model in recent months. *See, e.g.*, *In re Banner*, 2016 WL 3251886, at *9 (Bankr. W.D.N.C. June 2, 2016) (sanctioning law firm and individual attorneys where "business plan [was designed] with the sole purpose of making money while taking no responsibility for the firm's clients and attempting to isolate the firm from any liability related to client representation by associating a local 'partner.'"). As Judge Beyer stated in *Banner*, "the actions (or lack thereof) . . . in this case are offensive to the court and to the many attorneys who uphold the high standards demanded by the legal profession." *Id.* Heeding *Banner's* caution, attorneys appearing before this Court need look no further than the present cases to remind themselves they should be most cautious in associating with law firms looking for local partners or members that are not licensed to practice law or do business in this state.

[23] This question is highlighted by Searns's position that the attorney's fees paid by clients in Virginia and to be represented by an attorney in Virginia, but paid to the law firm's business office in Florida, were earned on receipt.

A separate Order shall issue.

Decided this 15th day of November, 2016.



UNITED STATES BANKRUPTCY JUDGE