

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

MICHAEL CHRISTOPHER BURR

Attorney-Respondent,

No. 6228938.

Commission No. 2021PR00004

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Richard Gleason, pursuant to Supreme Court Rule 753(b), complains of Respondent, Michael Burr, who was licensed to practice law in Illinois on November 9, 1995, and alleges that Respondent has engaged in the following conduct, which subjects him to discipline pursuant to Supreme Court Rule 770:

FACTS COMMON TO ALL COUNTS

1. At all times alleged in this complaint, bankruptcy proceedings in the Northern District of Illinois were heard by the United States Bankruptcy Court for the Northern District of Illinois ("Bankruptcy Court"). Cases pending in the Bankruptcy Court for the Northern District were governed by the Bankruptcy Code (11 U.S.C., *et seq.* (2018)), the Federal Rules of Bankruptcy Procedure ("federal rules"), and the Local Rules of the Bankruptcy Court for the Northern District of Illinois ("local rules").

2. At all times alleged in this complaint, Chapter 7 of the Bankruptcy Code permitted individuals and businesses with limited income and without the ability to pay all or some of their debts, to liquidate their assets in order to discharge those debts.

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3. At all times alleged in this complaint, Section 362 of the Bankruptcy Code required that the Bankruptcy Court automatically issue an “Order for Relief” upon a petitioner filing a bankruptcy petition. The Order for Relief stayed any collection efforts initiated by creditors, including but not limited to repossession of a debtor’s vehicle and garnishment of a debtor’s wages, for as long as the bankruptcy petition was pending. The stay provided for by the Order for Relief applied to collection efforts that were initiated or that could have been initiated prior to the Order for Relief, but did not apply to debts incurred after the Order for Relief.

4. At all times alleged in this complaint, Section 727(b) of the Bankruptcy Code provided for the discharge of debt incurred by a petitioner prior to the Order for Relief entered in the petitioner’s bankruptcy proceeding. The Bankruptcy Code did not provide for the discharge of debt incurred by the petitioner after the Order for Relief.

5. At all times alleged in this Complaint, Bankruptcy Rule 1007 (“Rule 1007”) required a debtor to file the following documents (collectively, “schedules and statements”) within fourteen days of the bankruptcy petition being filed:

- a. a schedule of assets and liabilities (“Schedule A”);
- b. a schedule of current income and expenditures (“Schedule B”);
- c. a schedule of executory contracts and unexpired leases (“Schedule C”);
- d. a statement of financial affairs;
- e. a statement of intention;
- f. a statement of compliance with credit counseling; and
- g. a statement of current monthly income.

6. At all times alleged in this complaint, Bankruptcy Rule 1008 required that a debtor certify the accuracy of all petitions, schedules, statements, and amendments filed on the debtor’s behalf in the bankruptcy proceeding.

7. At all times alleged in this complaint, the Bankruptcy Code required that a debtor file an official bankruptcy form called a 106Dec (“106 Declaration”) whenever the debtor filed schedules or amended schedules. The 106 Declaration provided that a debtor declare, under penalty of perjury, that the debtor had read the summary and schedules filed with the 106 Declaration, and that the summary and schedules were true and correct.

COUNT I
(Directing Johnson to Commit Fraud)

8. On December 1, 2017, Tina Johnson (“Johnson”) met in person with Respondent for the first time about the possibility of discharging her consumer debt through bankruptcy. Based on Johnson’s limited income and inability to pay all or most of her debts, Respondent counseled Johnson that it would be in her interests to file for bankruptcy pursuant to Chapter 7 of the Bankruptcy Code (“Chapter 7 bankruptcy”).

9. During Respondent’s December 1, 2017 meeting with Johnson, Respondent prepared a bankruptcy petition to file on Johnson’s behalf, and Johnson signed the bankruptcy petition certifying that the information contained in the petition was true and correct.

10. Respondent also prepared incomplete drafts of Johnson’s schedules and statements, defined in paragraph 5, above.

11. Respondent was not able to complete Johnson’s schedules and statements during the December 1, 2017 meeting, because Johnson was not able to provide Respondent with a complete list of her debts and creditors.

12. During the December 1, 2017 meeting, Respondent also presented Johnson with a 106 Declaration for her to sign which purported to certify that the yet-to-be-completed schedules and statements, described in paragraph 5, above, were true and correct. At Respondent’s direction, Johnson signed the 106 Declaration without dating it, even though Respondent had not yet

completed the schedules and statements on Johnson's behalf which Johnson, by her signature, was purporting to certify as truthful and accurate.

13. On December 5, 2017, Respondent filed Johnson's Chapter 7 bankruptcy petition in the Bankruptcy Court. The clerk of the court docketed the matter *In re Tina Johnson*, and assigned the matter case number 17-82868.

14. On January 3, 2018, Respondent filed Johnson's schedules and statements, and the 106 Declaration Johnson executed on December 1, 2017, as described in paragraphs 10 through 12, above.

15. At no time prior to filing Johnson's completed schedules and statements on January 3, 2018 did Respondent provide the completed set of those documents to Johnson for her to review and certify as truthful and correct. Instead, Respondent filed the undated 106 Declaration he had directed Johnson to execute during Respondent's December 1, 2017 meeting with Johnson, as described in paragraph 12, above.

16. At the time Respondent filed the undated 106 Declaration as described in paragraph 14, above, the declaration was false, because Johnson had not reviewed the completed schedules and statements before they were filed.

17. At the time Respondent filed the undated 106 Declaration with the Bankruptcy Court as described in paragraph 14, above, Respondent knew the declaration was false, because Respondent had instructed Johnson to execute the declaration before Respondent completed Johnson's schedules and statements, and then filed Johnson's schedules and statements and Johnson's declaration without first providing Johnson the completed schedules and statements to review for truthfulness and accuracy.

18. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. Counseling and assisting a client to commit fraud, by conduct including Respondent's direction to Johnson to execute an undated declaration in which Johnson certified the truthfulness and accuracy of schedules and statements filed with the Bankruptcy Court which Respondent had not yet completed at the time Johnson executed the declaration, and which Johnson had not reviewed, in violation of Rule 1.2(d) and of the Illinois Rules of Professional Conduct (2010); and
- b. Making a false statement to a tribunal, by conduct including Respondent's representation to the Bankruptcy Court, through Respondent's filings, that Johnson had certified the truthfulness and accuracy of documents Respondent filed on Johnson's behalf, knowing that the representation was false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(False Statements to Bankruptcy Trustee)

19. The Administrator realleges the allegations contained in paragraphs one through 17 above.

20. On January 3, 2018, Respondent filed with the Bankruptcy Court a disclosure of his fees, pursuant to Bankruptcy Rule 2016(b). On January 30, 2018, Respondent filed an amended disclosure of his fees.

21. On February 9, 2018, the United States Bankruptcy Trustee ("the Trustee") filed a motion to compel against Respondent, seeking Respondent's production of time records reflecting the time spent by Respondent pertaining to his work on Johnson's bankruptcy case, as well as any record of fees paid by Johnson. The Trustee explained in the motion that it was seeking the information in order to assess the reasonableness of Respondent's fees, pursuant to the Trustee's statutory duties in Section 344 of the Bankruptcy Code.

22. In response to the Trustee's motion, Respondent personally prepared an itemization of his and his staff's time records.

23. On February 16, 2018, Respondent emailed the Trustee the itemization Respondent personally prepared, described in paragraph 22, above.

24. The itemization said that on December 10, 2017, December 29, 2017, and December 30, 2017, Respondent emailed Johnson to remind her that her signature was required on certain documents related to the bankruptcy. The itemization further said that on January 2, 2018, Respondent reviewed a fax of Johnson's final signed papers, and that Respondent approved of filing the remaining papers following his review of the papers.

25. Respondent's description in the itemization of his time spent on December 10, 2017 was false and intentionally misleading because Respondent's email described in the entry for December 10, 2017 did not pertain to Respondent's requests for any schedules or statements or certifications from Johnson. Rather, Respondent's email to Johnson asked that Johnson return to Respondent Johnson's executed fee agreement and payment authorization.

26. Respondent knew that the description in the itemization of his time spent on December 10, 2017 was false and intended it to be misleading, because at the time of his December 10, 2017 email to Johnson, Respondent already possessed the 106 Declaration from Johnson purporting to certify the accuracy of the schedules and statements.

27. Respondent's description in the itemization of his time spent on December 29, 2017 was false and intentionally misleading because Respondent's email to Johnson on December 29, 2017 did not pertain to Respondent's requests for any schedules or statements or certifications from Johnson. Rather, Respondent's email to Johnson asked that Johnson return to Respondent Johnson's executed fee agreement and payment authorization.

28. Respondent knew that the description in the itemization of his time spent on December 29, 2017 was false and intended it to be misleading, because at the time of his December 29, 2017 email to Johnson, Respondent already possessed the 106 Declaration from Johnson purporting to certify the accuracy of the schedules and statements.

29. Respondent's description in the itemization of his time spent December 30, 2017 was false and intentionally misleading because Respondent's email to Johnson on December 30, 2017 did not pertain to Respondent's requests for any schedules and statements or certifications from Johnson. Rather, Respondent's email to Johnson asked that Johnson return to Respondent Johnson's executed fee agreement and payment authorization.

30. Respondent knew that the description in the itemization of his time spent on December 30, 2017 was false and intended it to be misleading, because at the time of his December 30, 2017 email to Johnson, Respondent already possessed the 106 Declaration from Johnson purporting to certify the accuracy of the schedules and statements

31. Respondent's description in the itemization of his time spent on January 2, 2018 was false and intentionally misleading because Respondent was not reviewing papers to be filed in Johnson's bankruptcy case. Rather, Respondent was reviewing Johnson's executed fee agreement and payment authorization.

32. Respondent knew that the description in the itemization was false and intended it to be misleading, because on January 2, 2018 Respondent already possessed all of the completed schedules and statements he intended to file on Johnson's behalf the following day, and on January 3, 2018 filed the undated 106 Declaration he previously directed Johnson to sign on December 1, 2017, before Respondent had completed Johnson's schedules and statements.

33. By providing the false and intentionally misleading itemization, Respondent

intended to convince the Trustee that Respondent's work preparing Johnson's schedules and statements was performed after the bankruptcy petition had been filed on Johnson's behalf December 5, 2017. Respondent intended that upon review of the itemization, the Trustee would believe that Respondent's fees were generated after the bankruptcy petition was filed and were thus not dischargeable debt pursuant to Section 727(b) of the Bankruptcy Code, as described in paragraph four, above.

34. Respondent knew the itemization described in paragraphs 23 through 26, above, was false and intentionally misleading because he personally participated in the communications with Johnson described in the itemization, personally prepared the itemization, and then provided the itemization to the Trustee.

35. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including Respondent's dishonest preparation of an itemization of his time spent on case no. 17-82868 and providing the false and intentionally misleading itemization to the Trustee, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Richard Gleason
Richard Gleason

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