STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE GRIEVANCE COMMITTEE OF THE NORTH CAROLINA STATE BAR 24G1077
IN THE MATTER OF TRAVIS P. SASSER, RESPONDENT ATTORNEY AT LAW	ORDER OF RECIPROCAL DISCIPLINE

Pursuant to the authority vested in me as Chair of the Grievance Committee of the North Carolina State Bar by 27 N.C. Admin. Code 1B §§ .0105(a)(12) and .0120(b)(3) of the North Carolina State Bar Discipline and Disability Rules, and based upon the record in this matter, the undersigned finds as follows:

1. Respondent, Travis P. Sasser, was admitted to the North Carolina State Bar on August 21, 1999 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

2. On March 14, 2023, United States Bankruptcy Judge Pamela McAfee entered an Order Determining Professional Misconduct and Setting Further Hearing (the "Misconduct Order") in the case captioned*, In re Stephen D. Beasley*, Case No. 21-02322-5-PWM, United States Bankruptcy Court for the Eastern District of North Carolina (the "Beasley Case"). The Misconduct Order is attached here as "**Exhibit A**" and is incorporated by reference.

3. In the Misconduct Order, the court determined to a clear, cogent, and convincing standard that Respondent engaged in professional misconduct in the Beasley Case in that Respondent:

a. Made a misrepresentation to the court in violation of Rule 3.3(a)(1) of the Rules of Professional Conduct by failing to disclose his client's unauthorized transfer of property; and

b. Violated Rule 3.3(b) of the Rules of Professional Conduct by failing to take reasonable remedial measures despite knowing that his client engaged in fraudulent conduct related to the bankruptcy proceedings.

4. On April 20, 2023, the court entered an Order on Sanctions for Professional Misconduct and Reprimand (the "Dispositional Order") in the Beasley Case. The Dispositional Order is attached here as "**Exhibit B**" and is incorporated by reference.

5. In the Dispositional Order, the court issued Respondent a reprimand and a monetary sanction of $1,000.00 as discipline for his professional misconduct in the Beasley Case.

6. On September 18, 2024, the North Carolina State Bar served Respondent with a Notice of Reciprocal Discipline under the above-referenced file number. The Notice advised Respondent that the North Carolina State Bar was considering imposing identical discipline based upon the reprimand issued by the bankruptcy court in the Misconduct and Dispositional Orders in the Beasley Case. The Notice informed Respondent of his opportunity to object within 30 days and show why imposition of the identical discipline by the North Carolina State Bar would be unwarranted. The Notice further advised Respondent that the Grievance Committee would impose identical discipline to that imposed by the bankruptcy court, unless Respondent objected and one or more of the grounds enumerated in 27 N.C. Admin. Code 1B § .0120(b)(3) were established.

7. On October 16, 2024, Respondent responded to the Notice by objecting to the imposition of reciprocal discipline.

8. On January 23, 2025, the Grievance Committee considered the reciprocal discipline proceedings in this matter at its next regular quarterly meeting.

9. The Grievance Committee concluded that none of the grounds listed in 27 N.C. Admin. Code 1B § .0120(b)(3) existed.

BASED UPON THE FOREGOING the Chair of the Grievance Committee concludes:

1. The North Carolina State Bar has jurisdiction over the subject matter of the proceeding and over the person of the Respondent, Travis P. Sasser.

2. The North Carolina State Bar has complied with the procedure for imposition of reciprocal discipline set forth in 27 N.C. Admin. Code 1B § .0120(b) of the North Carolina State Bar Discipline and Disability Rules.

3. The conduct found by United States Bankruptcy Judge Pamela McAfee in the Beasley Case constitutes conduct in violation of Rules 3.3(a)(1) and 3.3(b) of the North Carolian State Bar Rules of Professional Conduct and justifies the imposition of reciprocal discipline by the North Carolina State Bar.

4. The discipline imposed by the bankruptcy court in the Beasley Case should be imposed upon Respondent by the North Carolina State Bar.

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THEREFORE, IT IS ORDERED THAT:

1. TRAVIS P. SASSER is hereby REPRIMANDED in North Carolina.

2. In accordance with the policy adopted July 23, 2010, by the Council of the North Carolina State Bar regarding the taxing of administrative fees and investigative costs to any attorney issued discipline by the Grievance Committee, and in accordance with 27 N.C. Admin. Code 1B § .0105(a)(15), an administrative fee in the amount of $350.00 is hereby taxed to Respondent Travis P. Sasser.

This the 20th day of February, 2025.

Charles Gordon Brown, Chair
Grievance Committee

SO ORDERED

SIGNED this 14 day of March, 2023.

Pamela W. McAfee
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

EXHIBIT
A

IN RE:

STEPHEN D. BEASLEY	**CASE NO. 21-02322-5-PWM** **CHAPTER 11**
COLORTEK COLLISION & CUSTOMS, INC.	**CASE NO. 22-01178-5-PWM** **CHAPTER 11**
DEBTORS	

ORDER DETERMINING PROFESSIONAL MISCONDUCT AND SETTING FURTHER HEARING

These matters came before the court on the Applications for Compensation filed by the Sasser Law Firm in the cases of Stephen D. Beasley, D.E. 123, and Colortek Collision & Customs, Inc. (Colortek), Colortek D.E. 92,[1] the Motion Requesting Entry of an Order to Appear and Show Cause filed by the Bankruptcy Administrator (the BA) in Mr. Beasley's case, D.E. 152 (the Show Cause Motion), and the resulting Show Cause Order issued by the court, D.E. 155. A hearing took place in Raleigh, North Carolina on January 24, 2023. For the reasons that follow, the court concludes that Mr. Sasser's failure to meet his obligations of candor to the court constitute professional misconduct, the sanctions for which the court will address after further hearing.

[1] References to the docket in the Stephen D. Beasley case herein will be noted as D.E. __, while ferences to the docket in the Colortek case will be noted as Colortek D.E. __.

Stephen D. Beasley filed a voluntary petition for relief under chapter 13 of title 11 (the Bankruptcy Code) on October 18, 2021. On motion of the debtor filed on June 2, 2022, the case was converted to one under chapter 11 of the Bankruptcy Code on June 29, 2022. At all times while his case was pending under chapter 13, the Sasser Law Firm (the Firm) represented Mr. Beasley. Travis Sasser, on behalf of Mr. Beasley, filed an application to employ Travis Sasser and the Firm in the chapter 11 case along with the motion to convert on June 2, 2022, and the court allowed the application by order dated July 1, 2022. D.E. 58, D.E. 72.

Colortek, an entity owned and controlled by Mr. Beasley, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on June 1, 2022. On June 2, 2022, Mr. Sasser and the Firm filed an application to be employed as attorney for Colortek, which the court allowed by order dated July 5, 2022. Colortek D.E. 8, Colortek D.E. 34.

As a result of events that transpired during the cases as detailed in full below, the Firm filed motions to withdraw as counsel in both cases on October 28, 2022, D.E. 124 and Colortek D.E. 93, which were allowed by orders dated October 31, 2022, D.E. 125 and Colortek D.E. 94. The Applications for Compensation now before the court were also filed on October 28, 2022, and the BA filed objections to both on December 2, 2022, D.E. 146 and Colortek D.E. 104.

Also stemming from the events leading to the withdrawal of counsel, the BA filed the Show Cause Motion, contending, among other things, that Mr. Sasser took actions in violation of his responsibilities under the Rules of Professional Conduct adopted by the Supreme Court of North Carolina for which he should be sanctioned and for which the requested fees should be denied. The court issued its Show Cause Order on December 13, 2022, D.E. 155. The only objection to the Applications for Compensation stems from the alleged misconduct, and the court will address the fee requests in conjunction with its consideration of sanctions.

JURISDICTION

This bankruptcy court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a statutorily core proceeding under 28 U.S.C. § 157(b)(1) that this court is authorized to hear and determine. The United States District Court for the Eastern District of North Carolina has referred this case and this proceeding to this court under 28 U.S.C. § 157(a) by its General Order of Reference entered on August 3, 1984. This proceeding is constitutionally core, and this court may enter final orders herein. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Bankruptcy courts, like Article III courts, have an inherent power to impose sanctions against parties or attorneys that appear or practice before them. *See In re Lewis*, No. 14-1881, 611 F. App'x 134 (4th Cir. June 9, 2015) (unpublished). This power is derived from the court's need to "'manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases,'" and includes "the power to control admission to its bar and to discipline attorneys who appear before it." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link v. Wabash R.R. Co.,* 370 U.S. 626, 630-31 (1962)). "The federal courts may and should hold attorneys appearing before them to recognized standards of conduct in their jurisdictions." *In re Computer Dynamics, Inc.*, 252 B.R. 50, 64 (Bankr. E.D. Va. 1997) (citing *In re Finkelstein,* 901 F.2d 1560, 1564 (11th Cir. 1990)).

This district has adopted a Local Rule incorporating the Rules of Professional Conduct of the North Carolina State Bar (as adopted by the Supreme Court of North Carolina), and providing that for misconduct as defined in the Local Rules, after notice and an opportunity to be heard, any attorney practicing before the court may be disbarred, suspended from practice, reprimanded, or

subjected to such other disciplinary action as the circumstances may warrant. *See* E.D.N.C. LBR 2090-2.

The January 24, 2023 hearing was preceded by adequate notice and an opportunity to prepare a defense as required by the Fourth Circuit under *United States Trustee v. Delafield*, 57 F.4th 414, 419-20 (4th Cir. 2023), and *Nell v. United States*, 450 F.2d 1090, 1093 (4th Cir. 1971). The Show Cause Motion clearly set forth allegations of attorney misconduct and the sanctions sought, and Mr. Sasser's response addressed those issues specifically. There was adequate time between the filing of the Show Cause Motion and the hearing to allow Mr. Sasser to prepare a defense and to retain counsel, which he elected not to do.

PROCEDURAL HISTORY

A detailed history of the individual case prior to conversion to chapter 11 gives context to the matters before the court, which, in a nutshell, stem from Mr. Sasser's failure to take appropriate action after he became aware that Mr. Beasley had undertaken a secret transaction with an insider in violation of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and the local rules of this district. As noted above, Mr. Beasley filed a voluntary petition under chapter 13 on October 18, 2021. His schedules were filed on November 1, 2021, and among his assets was a 2015 Chevrolet Corvette 2D Z06 3LZ (the Corvette) with a scheduled value of $45,000 and approximate mileage of 5,500. D.E. 11 at 5. The Corvette is the subject of Mr. Beasley's secret transaction. Among his listed creditors was an ex-spouse, Ms. Brenda Beasley, with a scheduled domestic support obligation (DSO) in the amount of $82,000. D.E. 11 at 18. His Statement of Financial Affairs indicated that he was married.[2] D.E. 11 at 34. In total, the schedules identified secured

[2] The court's understanding is that Mr. Beasley was married to Ms. Alisha Beasley (now Alisha arefoot) at the time of filing, but that Mr. Beasley and Ms. Barefoot are now separated or divorced. To oid confusion among the parties, the court refers to Ms. Brenda Beasley as Ms. Beasley, and Ms. Alisha

claims in the amount of $439,039.00 and unsecured claims in the amount of $416,807.40. D.E. 11 at 1. On December 22, 2021, Ms. Beasley filed a proof of claim in the amount of $131,700, Claim No. 19-1, pushing Mr. Beasley's unsecured debts above the debt limit of $419,275 then in effect for chapter 13 eligibility. *See* 11 U.S.C. § 109(e).

Along with the schedules, Mr. Beasley filed his chapter 13 plan on November 1, 2021, D.E. 12. The plan proposed to pay the total amount of $168,786, D.E. 12 at 2, including Ms. Beasley's DSO in the estimated amount of $82,000. D.E. 12 at 3. The plan indicated that the "liquidation value" of the estate was $68,129.50. D.E. 12 at 2.

On December 30, 2021, the standing chapter 13 trustee filed an Objection to Confirmation, D.E. 17, and a Motion to Dismiss, D.E. 18. Both were grounded on the failure of Mr. Beasley to provide copies of tax returns and his exceeding the debt limits; the Objection to Confirmation also asserted a number of other bases including miscalculation of the liquidation value of the estate, understatement of income, failure to disclose prepetition transfers, and improper treatment of the DSO owed to Ms. Beasley. On January 11, 2022, Ms. Beasley filed an Objection to Confirmation, D.E. 23, echoing some of the bases raised by the chapter 13 trustee in his objection. On January 21, 2022, Mr. Beasley filed a response to the trustee's Motion to Dismiss, D.E. 28, contending that several of the unsecured claims were contingent or unliquidated and should not be counted toward the chapter 13 debt limit.[3]

On February 2, 2022, Mr. Beasley filed an amended chapter 13 plan, D.E. 32. The amended plan provided for total payments in the amount of $168,996, D.E. 32 at 2, including the DSO to Ms. Beasley in the amount of $131,700. *Id.* at 3. It recalculated the liquidation value of the estate

Beasley as Ms. Barefoot, notwithstanding that she may have been referred to as Alisha Beasley in the proceedings.

[3] Mr. Beasley also provided his tax returns to the trustee, resolving that issue.

as $18,429.49. *Id.* at 2. The amended plan further included non-standard provisions seeking to except Mr. Beasley from requirements imposed by statute, federal rules, local rules, or local orders regarding the use, sale or lease of property outside the ordinary course.

On February 11, 2022, Ms. Beasley filed a Motion to Convert to Chapter 7 and Motion to Dismiss, D.E. 34, asserting, among other things, that Mr. Beasley had not made any postpetition DSO payments, that he was ineligible for chapter 13 because the claims he regarded as "contingent" were either joint and several or guarantees on defaulted debt, and noting that he intended to retain a sports car (the Corvette) with a value in excess of $45,000. On February 17, 2022, the chapter 13 trustee filed an Objection to Confirmation of the Amended Plan, D.E. 36, noting that Mr. Beasley's unsecured debt exceeded the statutory debt limits and further objecting to the nonstandard plan provisions.

The hearing on confirmation of the amended plan was scheduled for February 24, 2022, but was continued to April 14, 2022 on motion of the debtor filed on February 22, 2022, D.E. 38. On March 4, 2022, Mr. Beasley filed a response to the motion to convert filed by Ms. Beasley, D.E. 46, admitting that he was behind on the postpetition DSO, contending that he was eligible for relief under chapter 13 but adding that he was considering converting the case to one under chapter 11, and denying that conversion to chapter 7 would be in the best interest of any parties.

At the April 14, 2022 hearing, counsel for Mr. Beasley asked for a continuance, indicating they were "working diligently to reach an agreement that may resolve the issues" with Ms. Beasley that might also resolve the issues raised in the trustee's objection to confirmation. The trustee noted that a part of his motion to dismiss related to the debt limits, and he did not know how the parties could overcome that by agreement. The court likewise indicated from the bench that the debt limit

was the court's concern, commenting that "I don't think there's a way to settle around debt limits; the debtor is either eligible or not." The confirmation hearing was rescheduled to June 9, 2022.

On April 28, 2022, Ms. Beasley filed a motion under Rule 2004 of the Federal Rules of Bankruptcy Procedure seeking an order for production of documents and examination of Mr. Beasley, D.E. 51. Among the documents requested were several items related to the Corvette, including a copy of the vehicle registration. The court allowed the motion on May 2, 2022, D.E. 52.

On May 11, 2022, the chapter 13 trustee filed an Amended Motion to Dismiss, D.E. 54, seeking dismissal because Mr. Beasley was ineligible for chapter 13 relief and because Mr. Beasley was behind in his plan payments.

On June 2, 2022, Mr. Beasley filed a motion to convert the case to one under chapter 11, D.E. 59, stating as the reason that Mr. Beasley was ineligible for relief under chapter 13 pursuant to 11 U.S.C. § 109(e). On June 3, 2022, Mr. Beasley filed a response to the trustee's motion to dismiss, D.E. 60, asking that the motion to convert to chapter 11 be heard before consideration of the motion to dismiss the chapter 13 case.

The court conducted a hearing on the objections to confirmation, motions to dismiss, and motion to convert to chapter 7 on June 9, 2022.[4] Because the time to respond to the motion to convert to chapter 11 had not yet expired, the court continued the hearing to June 23, 2022, but required Mr. Beasley to make one month's postpetition DSO payment in the amount of $3,000 to Ms. Beasley before the continued hearing.

A few minutes before the scheduled hearing on June 23, 2022, Ms. Beasley filed an objection to the motion to convert to chapter 11 based on Mr. Beasley's failure to pay the

[4] Meanwhile, on June 1, 2022, Colortek filed its voluntary petition under chapter 11 of the Bankruptcy Code. The first day hearings were also conducted in that matter on June 9, 2022. At the June 9, 2022 hearing, Mr. Sasser represented Mr. Beasley, while his law partner, Mr. Philip Sasser, represented Colortek.

postpetition DSO, failure to timely file tax returns, and failure to disclose certain prepetition assets, and also because, postpetition, Mr. Beasley transferred the Corvette to a different former wife (Ms. Barefoot) and withdrew funds from his retirement account, both without court permission. D.E. 63.

At the June 23, 2022 hearing on the motion to convert to chapter 11, Mr. Beasley's counsel (Mr. Philip Sasser) stated that the case "was improperly put into a chapter 13 because of debt limit issues."[5] There was further discussion about the failure to make the postpetition DSO payments to Ms. Beasley, and the parties agreed that if the case were to be converted to chapter 11, the funds on hand with the chapter 13 trustee could be paid to Ms. Beasley toward the postpetition DSO obligation.[6] In short, conversion to chapter 11 was the best opportunity for Ms. Beasley to receive any of the outstanding postpetition DSO, and as a result she supported conversion to chapter 11. However, her counsel advised the court at the hearing that he had discovered during the Rule 2004 exam that, postpetition, without court authority, Mr. Beasley liquidated or transferred assets including the Corvette (potentially valued at $75,000) to his third ex-wife, Alisha Barefoot – raising the question whether Mr. Beasley would sue Ms. Barefoot to recover the Corvette. The BA questioned how Mr. Beasley would be able to fund the postpetition arrearage owed to Ms. Beasley, cautioning that Mr. Beasley would then be a chapter 11 debtor-in-possession who could not simply liquidate assets without court authority. At that time, the court observed that upon conversion, Mr. Beasley would be a debtor-in-possession expected to take all required action to investigate and recover transfers. No other detail regarding the transfer of the Corvette was discussed, but Mr.

[5] Beginning with the June 23, 2022 hearing, Mr. Philip Sasser represented Mr. Beasley at all hearings. The fee application in the Beasley case reflects only time billed by Mr. Philip Sasser during the chapter 11. No time entries were submitted with respect to the Firm's representation of Mr. Beasley in the chapter 13 case because the Firm charged the district's "no-look" flat fee, rendering time records unnecessary.

[6] Those funds would otherwise be returned to Mr. Beasley or paid to the Firm for its outstanding fees for the chapter 13 representation.

Philip Sasser did suggest that avoiding the transfer and liquidating the Corvette could be a way to bring the postpetition DSO current.

Based on the consensus that creditors would be better served by giving Mr. Beasley an opportunity to reorganize in chapter 11, the court entered an order converting the case to one under chapter 11 on June 29, 2022, D.E. 66. After the conversion, the BA filed a motion pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for an order requiring Mr. Beasley to appear for examination and to produce documents regarding any transfers of assets of a value greater than $1,000 from January 1, 2021, to June 30, 2022, including but not limited to the Corvette, as well as documentation supporting the valuation of the Corvette and any obligation owed to Ms. Barefoot, D.E. 80. The Rule 2004 motion was allowed by order dated July 26, 2022, D.E. 82. After the examination, on August 2, 2022, the BA filed a motion for show cause alleging, among other things, that Mr. Beasley testified that he had additional bank accounts that were not disclosed in his schedules, D.E. 85.

On August 5, 2022, Mr. Beasley filed the complaint in an adversary proceeding to avoid and recover the transfer of the Corvette to Ms. Barefoot. *See Stephen Beasley v. Alisha [Barefoot] Beasley (In re Stephen Beasley)*, Adv. Pro. No. 22-00114-5-PWM. The Complaint, which is signed by Mr. Philip Sasser as counsel for Mr. Beasley, recites that the parties entered a property settlement agreement on December 4, 2020 that included a "Provision[] for Support" as follows:

> It is understood and agreed between the parties that the Wife shall continue her employment as Office Manager/Estimator for Colortek Collision & Customs, LLC. That during her employment Wife shall receive her normal weekly pay which should be made by the Husband to the Wife in a timely manner as an employee of said business.

Complaint, Adv. Pro. No. 22-00114-5-PWM, D.E. 1 at ¶ 8. According to the Complaint, Ms. Barefoot worked for Colortek from December 2020 through October 2021, but did not receive any

compensation. *Id.* at ¶ 10. The Complaint further alleges that on February 23, 2022, Mr. Beasley and Ms. Barefoot entered an Amendment to Property Settlement Agreement stating that the unpaid wages would be satisfied by the transfer to her of the Corvette. *Id.* at ¶ 11. Mr. Beasley's Complaint acknowledges that the Corvette was property of the estate, and the actual value of the vehicle (valued in the petition at $45,000) may be as high as $75,000. *Id.* at ¶ 12. The Complaint then alleges that a certificate of title was issued to Ms. Barefoot on March 3, 2022. *Id.* at ¶ 13. The Complaint seeks recovery pursuant to 11 U.S.C. §§ 542, 549, 550, and 551, as Mr. Beasley neither sought nor received authorization to make the postpetition transfer, and nothing in title 11 would authorize a postpetition transfer to satisfy a prepetition debt. *Id.* at ¶¶ 15-19.

On August 31, 2022, Mr. Beasley filed amended schedules, adding the bank accounts referenced in the BA's motion for show cause, D.E. 93. As a result, that show cause motion was withdrawn. D.E. 94. On September 27, 2022, Mr. Beasley filed a motion to extend time to file his chapter 11 plan, contending that the terms of his plan were dependent upon confirmation of the plan in the Colortek case, D.E. 98. The court set the motion to extend for hearing on October 11, 2022.[7]

On October 6, 2022, Ms. Barefoot filed her Answer and Counterclaim in the adversary proceeding, Adv. Pro. No. 22-00114-5-PWM, D.E. 8, as well as a Motion to Join Colortek as a Party, Adv. Pro. No. 22-00114-5-PWM, D.E. 9. The allegations of the Counterclaim include, as relevant to this matter, the following:

> 8. On or about February of 2022, Beasley, on behalf of himself and Colortek negotiated a settlement of this amount with Ms. Barefoot that involved the transfer of the vehicle.
>
> 9. Beasley, his bankruptcy counsel, and Ms. Barefoot met to discuss the matter. Mr. Cooke, Ms. Beasley's state court counsel, appeared via Zoom.

[7] At the hearing on October 11, 2022, Mr. Beasley testified that he was then current on his prepetition DSO payments to Ms. Beasley.

> 10. Upon information and belief, the Parties agreed to memorialize this settlement as an amendment to the Property Settlement Agreement.
>
> 11. Upon information and belief, Ms. Barefoot and her counsel inquired about Beasley's authority to transfer the vehicle and Beasley's counsel confirmed Beasley's authority to do so.
>
> 12. Upon information and belief, after this meeting, Mr. Cooke contacted bankruptcy counsel again to confirm that they could proceed with the amendment and commit the transfer and was assured of Beasley's authority to do so.
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> 13. Based on these assurances by Beasley through his counsel, Ms. Barefoot accepted the vehicle in satisfaction of her claim under the contract and with her employers.

Adv. Pro. No. 22-00114-5-PWM, D.E. 8 at ¶¶ 8-13.[8]

Based on the combined allegations in the Complaint and the Counterclaim, the BA filed a Motion to Disqualify Attorney for Debtors in the individual case of Mr. Beasley and in the corporate case of Colortek on October 11, 2022. D.E. 103, Colortek D.E. 72 (the Motion to Disqualify). A hearing on that motion was conducted on October 25, 2022, and it is the evidence from that hearing upon which the parties rely to support their respective arguments on the matters now before the court.

Specifically, the BA's Motion to Disqualify contended: first, that as a chapter 13 debtor, Mr. Beasley was prohibited from transferring the Corvette without court approval pursuant to 11 U.S.C. § 363(b), E.D.N.C. LBR 4002-1(g)(4), and the court's Order and Notice to Debtor dated

[8] A few days after filing her Answer and Counterclaim, Ms. Barefoot filed identical proofs of claim in both cases, asserting a total claim of $238,000 including a priority wage claim of $15,150. Claim No. 25-1, Colortek, Claim No. 14-1. There was no supporting documentation attached, but the court surmises based on other filings in the case that this amount was intended to reflect the unpaid wages for the approximately 11 months prior to Mr. Beasley's filing. The court notes further (1) that the wages were an obligation of Colortek, not Mr. Beasley; (2) that the testimony at the Colortek first-day hearings was that she received $1,000 per week, or an amount significantly less than the claim amount; and (3) the wages were not earned during the 180 days prior to the Colortek filing based on the terms of the settlement greement, and thus could not have been a priority claim in that case. Ms. Barefoot was not a scheduled reditor in either case.

October 20, 2021, D.E. 7 (which instructs debtors that they may not sell property with a value greater than $10,000 without court approval). Second, that if the allegations in the Counterclaim are supported by the evidence, then the Firm was involved in or had contemporaneous knowledge of the unauthorized transfer of the Corvette, which could result in the bankruptcy estates of Mr. Beasley and Colortek holding an interest and/or claim adverse to the Firm; and, finally, that if the allegations in the Counterclaim are supported by the evidence, then the Firm may be rendered "not disinterested." D.E. 103, Colortek D.E. 72. A Rule 2004 motion seeking documents related to the transfer of the Corvette and advice regarding the same was allowed by order dated October 14, 2022, D.E. 114.

The Firm filed a response to the Motion to Disqualify on October 20, 2022, D.E. 115, Colortek D.E. 82, denying that Mr. Sasser communicated to Ms. Barefoot and/or her counsel that the Corvette could be transferred in violation of the Bankruptcy Code and/or local bankruptcy rules. The response further indicated, among other things, that Mr. Sasser was "not informed that there were any disputes or indebtedness" between Ms. Barefoot and Mr. Beasley, as was "evidenced by [Ms. Barefoot] not being scheduled as a creditor but merely a codebtor," and by Ms. Barefoot's not filing any claim despite having knowledge of the bar date. The response indicated further that Mr. Sasser understood that Mr. Beasley wanted to retain possession of all of his assets, which is why the chapter 13 plan did not include liquidating components.

On October 24, 2022, the BA filed a motion to convert Mr. Beasley's case to one under chapter 7 based on the unauthorized and undisclosed transfer of the Corvette, inexcusable delay in seeking recovery of the Corvette, and substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation, D.E. 116. The same day, the BA also filed a motion to convert the Colortek case to one under chapter 7, Colortek D.E. 83, because,

among other things, the monthly reports showed that the proposed plan was not feasible and there was no reasonable likelihood of rehabilitation.

On October 25, 2022, prior to the hearing on the Motion to Disqualify, the BA filed an adversary proceeding to deny Mr. Beasley's discharge based on the unauthorized and undisclosed transfer of the Corvette with intent to hinder, delay or defraud a creditor or an officer of the estate and in violation of the court's order dated October 20, 2021. *Brian C. Behr, Bankruptcy Administrator E.D.N.C. v. Stephen D. Beasley (In re Stephen D. Beasley)*, Adv. Pro. No. 22-00143-5-PWM.

After hearing evidence as described below, the court took the Motion to Disqualify under advisement. While the matter was under consideration, on October 28, 2022, the Firm withdrew from representation in both cases for the stated reason that Mr. Sasser was likely to be a witness in the pending adversary proceedings. D.E. 124; Colortek D.E. 93. At the same time, the Firm filed the Applications for Compensation now before the court in both cases, to which the BA objected based solely on the issues now before the court.[9]

After Mr. Beasley retained new counsel, Mr. Beasley sought to enjoin Ms. Barefoot from driving the Corvette due to its depreciating value, given that its value was in part related to its extremely low mileage. Adv. Pro. No. 22-00114-5-PWM, D.E. 14. Within days, the adversary proceeding against Ms. Barefoot was resolved by the parties. The settlement, which the court approved by order dated January 4, 2023, D.E. 23, provided that in exchange for retaining title to the Corvette, Ms. Barefoot agreed to pay Mr. Beasley the amount of $45,000, execute a quitclaim deed to the former marital residence, and relinquish her claim against both Mr. Beasley and the chapter 11 estate. Based on the scheduled value of the residence and the mortgage against it, the

[9] The Colortek case was dismissed on November 18, 2022, with the consent of its principal, Mr. Beasley. Colortek D.E. 98.

monetary value of the quitclaim deed would be approximately $25,000; in addition, on March 6, 2023, Mr. Beasley filed a motion to approve postpetition financing to be secured by a second deed of trust on the residence in which he asserts there is $173,000 of equity in the house, *see* D.E. 202 – suggesting that the monetary value of the quitclaim deed is as much as $86,500. Without regard to the waiver of the asserted prepetition wage claim for which the Corvette was allegedly transferred, the documents of record support a value ranging from $70,000 to $131,500 for the consideration given to the estate for the Corvette in settlement of the adversary proceeding.[10]

On December 12, 2022, the BA filed the Show Cause Motion, and the court issued its Show Cause Order on December 13, 2022. The Show Cause Motion asserts that, upon learning of the transfer of the Corvette, Mr. Sasser had an obligation to disclose the transfer to the court and to the chapter 13 trustee, and that his failure to do so violated the standard of conduct for an attorney practicing in this court. D.E. 152 at 5. The BA asserts that a minimum sanction should include denial of all fees in the Colortek and Beasley cases, disgorgement of any fees previously received in the two cases, a monetary sanction of at least $500 payable to the Clerk of Court, and reprimand. Mr. Sasser filed a response to the Show Cause Motion on January 3, 2023, D.E. 164, requesting that the relief requested by the BA be denied. The substance of his response will be discussed in more detail below.

At the hearing on January 24, 2023, the parties relied upon evidence already presented to the court in conjunction with prior matters, including the testimony and documents presented at the October 25, 2022 hearing on the Motion to Disqualify, as well as documents of record on the court's docket.

[10] As of the filing of this order, the settlement amount and quitclaim deed have been delivered to Mr. Beasley's counsel, but Ms. Barefoot's claim has not been withdrawn. It is unknown to the court whether Ms. Barefoot also relinquished any claim with respect to Colortek since that case has been dismissed.

EVIDENCE AND ARGUMENT PRESENTED AT HEARING

At the October 25, 2022 hearing, the court heard the testimony of Mr. Sasser, admitted into evidence two exhibits, and considered opening and closing arguments. In his opening statement, the BA contended that the Firm should be disqualified from both chapter 11 cases (1) if the evidence showed that the Firm advised Mr. Beasley that he could transfer the Corvette without court authority, (2) because Mr. Sasser would be a witness in both the motion to convert Mr. Beasley's case to chapter 7 and in the adversary proceeding seeking denial of Mr. Beasley's discharge regardless of what advice was given, (3) because the bankruptcy estates may have a claim against the Firm, and (4) because the Firm's lawyers were aware of the unauthorized transfer of the Corvette and failed to disclose it to the court or to the chapter 13 trustee in violation of the Rules of Professional Conduct, creating an interest adverse to the estate.

At the conclusion of Mr. Sasser's testimony, during which Mr. Sasser vehemently (and credibly) denied advising Mr. Beasley, Ms. Barefoot, or her counsel that the Corvette could be transferred to Ms. Barefoot without court authority, the BA asked the court to base its ruling on the Motion to Disqualify solely on the failure to disclose. Accordingly, and as agreed at the October 25 hearing, the court specified that it would not make any findings as to what Mr. Sasser did or did not advise any party prior to the transfer of the Corvette, and no evidence was presented to contradict Mr. Sasser's testimony with respect to his lack of knowledge of – much less advice regarding – the transfer of the Corvette prior to February 24, 2022. Tr. 57:5-13 (Oct. 25, 2022). Similarly, the court limits its review in the matters now before the court to the evidence before it with respect to what actions were taken by counsel *after* the uncontested evidence shows that he became aware that the Corvette may have been transferred, and whether those actions, or the lack thereof, constitute a basis for sanctions, including the denial of fees.

Mr. Sasser testified that he first consulted with Mr. Beasley by telephone on October 4, 2021 to discuss the legal entanglements between Mr. Beasley and Colortek and Colortek's debt. Tr. 15:10-16 (Oct. 25, 2022). A second, in-person meeting took place on October 5, 2021, with Mr. Beasley and Ms. Barefoot both present and with Ms. Barefoot's domestic counsel attending via Zoom. Tr. 15: 22-25, 16:1-4 (Oct. 25, 2022). Mr. Sasser testified that Ms. Barefoot attended as the bookkeeper for Colortek, and that while he was aware that Mr. Beasley and Ms. Barefoot were in the process of divorcing, he was not aware of any other problems between them or that Colortek had not been paying Ms. Barefoot. Tr. 17:4-22 (Oct. 25, 2022). Mr. Sasser understood that Mr. Beasley wished to retain his assets, Tr. 18:1-3 (Oct. 25, 2022), which weighed in favor of a chapter 13 case over chapter 7, and that Mr. Beasley's primary issues were with Ms. Beasley due to the arrearage in her support payments and his contention that the existing obligation was excessive. Tr. 16:5-25 (Oct. 25, 2022).

With respect to the Corvette, Mr. Sasser did not recall any discussion with Ms. Barefoot or her attorney about a transfer of the Corvette to her. Tr. 18:16-25, 19:1-22 (Oct. 25, 2022). He noted that he received a voicemail message from Ms. Barefoot's domestic counsel on February 18, 2022, which was played at the hearing. The audio was not officially transcribed, but essentially stated:

> This is Jim Cooke, I talked to you a couple days ago for Alisha [Barefoot]. She called me again this morning . . .. She had a question about some money that Steve had to come up with next week and was asking me about a way she could turn over the money, try to get it for Steve, which I don't understand but I guess I do, she's trying to help him. Could you call me please I just have a couple of questions to ask you about the bankruptcy itself and about what is going on, if you know, with the domestic case, the property distribution and the alimony case, and what the impact of this chapter 13 is going to be on that case. Then maybe I can advise her whether she needs to go out and get the money or not, uh, she really wants to help him out, and I think she can get it, but I think she needs to be guaranteed that what he may turn over to her that she can keep. So, give me a call please . . ..

Recording played during T. Sasser testimony, Tr. 48:5-24 (Oct. 25, 2022). Mr. Sasser testified that he understood that Ms. Barefoot was going to help Mr. Beasley with some type of payment, Tr. 49:5-13 (Oct. 25, 2022), but he was vague about what he thought the message meant with respect to what Ms. Barefoot could "keep." And, while he testified that his normal practice would be to return a phone call from an attorney, he did not have any specific recollection of speaking with Mr. Cooke or the substance of a return voicemail. Tr. 50:3-10 (Oct. 25, 2022).

Rather than any conversation with *Ms. Barefoot* or her counsel about the Corvette, Mr. Sasser recalled the Corvette being an issue for *Ms. Beasley*: that she wanted the Corvette to be sold so that she could be paid her outstanding DSO. Tr. 20: 15-25, 21:1-6 (Oct. 25, 2022). It was Mr. Sasser's view that the Corvette was not central to the case, but he acknowledged that it was an important issue to Ms. Beasley. Tr. 21:7-22 (Oct. 25, 2022). He testified that he believed that the proposed plan met the liquidation test, and that chapter 13 debtors are entitled to keep their assets – including sports cars. Tr. 21: 13-18 (Oct. 25, 2022). Mr. Sasser suggested that issues with the Corvette were more about "optics." Tr. 20:21 (Oct. 25, 2022).

As noted above, Ms. Beasley was actively opposing Mr. Beasley's chapter 13 case from January through June 2022. In addition to the filings with the court, the evidence showed behind the scenes negotiations between Ms. Beasley and Mr. Beasley through their counsel. In an email dated February 3, 2022 at 9:56 a.m., Ms. Beasley's counsel stated, among other things,

> She is seriously considering the offer to get paid the priority arrears but she does not like him keeping the corvette – is he willing to sell it within 60-90 days[?]

Ex. 1 at 2. An email dated February 24, 2022 at 7:59 a.m. from Mr. Sasser to Mr. Beasley read as follows:

> Steve, I know I sent this to you before but do you have any thoughts about selling the corvette? Is it something you would consider or not? Travis

Id. In an email dated February 24, 2022 at 4:58 p.m., Mr. Beasley wrote:

> Corvette is off the table … don't own it anymore… I know you have been talking to Alisha's lawyer (Mr. Cooke) … He can explain that one better than I…

Id. at 1-2.

In an email dated March 1, 2022 at 5:24 p.m., Ms. Beasley's attorney, Mr. Billy Braziel, emailed Mr. Sasser, in part:

> Do you have a response from Beasley on a proposed 2004 depo date and whether he is willing to sell the corvette?

Ex. 2 at 1. In an email dated March 2, 2022 at 6:33 a.m., Mr. Sasser replied,

> Billy, Mr. Beasley is not willing to sell the Corvette. I haven't heard back from him about a depo date yet. Travis.

Id.

In an email dated March 2, 2022 at 6:38 a.m., Mr. Sasser wrote to Mr. Beasley, in part:

> Ok. For future reference you have to file a notice with the court [to] sell or transfer property outside the ordinary course up until the plan is confirmed (which it isn't yet) and then after that if you want to transfer property with a value of more than $10,000.00.

Ex. 1 at 1. On March 2, 2022 at 10:19 a.m., Mr. Beasley responded to Mr. Sasser in all capital letters, in part:

> THE CORVETTE WAS NOT SOLD AND I DON'T HAVE TO GO THROUGH ANYONE FOR PROPERTY I OWN THAT I OWE A DEBT TO. IF YOU HAVE ANY QUESTIONS PLEASE FEEL FREE TO CONTACT ALISHA BEASLEY AND JAMES COOKE IN REFERENCE TO THE CORVETTE.

Id.

Mr. Sasser testified that after these email exchanges, he believed that it was possible for the transaction to be "unwound," and he and/or his law partner, Mr. Philip Sasser, suggested to Mr. Beasley that Mr. Beasley pressure Ms. Barefoot to transfer the Corvette back to him. Tr. 24:22-25, Tr. 25:1-15, Tr. 26: 5-25 (Oct. 25, 2022). There is no evidence as to when these discussions

took place, and there is no evidence as to when Mr. Sasser learned further details about the transaction beyond the email exchange cited above, including when he first saw the agreement documenting the transaction and reciting the purported consideration for the transfer.[11] No other action was taken with respect to the transfer of the Corvette until the adversary proceeding was filed on August 5, 2022. Mr. Sasser testified that he believed the chapter 13 plan would be confirmed in February 2022, that Ms. Beasley would be paid, and that the Corvette was not material to the case. Tr. 26:5-25. Tr. 27: 1-22 (Oct. 25, 2022). He also testified that he did not believe Mr. Beasley had standing to take action with respect to the Corvette until the case was converted to chapter 11, Tr. 29:17-19, Tr. 29:22-24 (Oct. 25, 2022), but also acknowledged that he did not recall notifying the chapter 13 trustee, the party he believed had standing while the chapter 13 case was pending, of the transfer. Tr. 29:25, Tr. 30:1 (Oct. 25, 2022).

At the January 24, 2023 hearing, no witnesses were called and no additional evidence was presented beyond matters of record on the court's docket. As a result, the court has not heard testimony from any of the witnesses who were subpoenaed and sequestered during the October 25, 2022 hearing (Ms. Barefoot and her counsel, Ms. Beasley and her counsel, and Mr. Beasley). However, Mr. Sasser's argument on January 24, 2023, which by necessity addressed the nature of and reasons for his own actions, frequently was testimonial in nature and included legal argument as to why it was proper. Discerning which portions of Mr. Sasser's presentation constitute pure argument and which portions veer into something akin to testimony is complicated, not only

[11] With no evidence one way or the other, it is possible that Mr. Sasser had no additional detail ut the transaction until the Rule 2004 document production three months after the transfer, in late May 2, in which case he could not have known of any purported "consideration" for the transfer until May 2.

because Mr. Sasser represented himself[12] but also because his presentation included a markedly high number of incomplete sentences that drifted from one thought or topic to the next without resolution.[13]

In addition to reiterating some of his October testimony in his argument at the January 24, 2023 hearing, Mr. Sasser represented to the court:

- In that email exchange, we believed a 2004 examination was imminent, we were going to do it in like the next few weeks . . . and when the exam did come, Mr. Beasley talked about [the transfer] almost immediately, because we knew that it was going to come up, it was no big secret, we knew this was going to be a problem. Brenda Beasley raised this issue in mid-February, she filed a motion to convert the case, and the day before we were supposed to have a confirmation hearing, Steve Beasley decided to get together with Alisha Beasley and her lawyer and draft this document and do this transfer without talking to me about it, the day before we were supposed to have a confirmation hearing. Jan. 24, 2023 Hrg. Audio at 0:50-0:51.

- I don't think it's a big secret that Mr. Beasley and Alisha Beasley have a pretty robust relationship with each other. And so having a lawyer get involved and say hey, will you give the Corvette back, when they see each other 5 times a week if not more, I mean, I felt like, I said that would be a good thing to do because this is not a good look. Jan. 24, 2023 Hrg. Audio at 1:04.

- We had hearings that were upcoming, and my plan (and I testified to this before) was yeah, it's going to get disclosed, it's going to come out, it's going to look bad and we're still going to try to confirm your plan just the way it is because we didn't provide that the Corvette was going to be sold . . .. Jan. 24, 2023 Hrg. Audio at 1:05-1:06.

- The burden is on the debtor. The burden is not on me. Jan. 24, 2023 Hrg. Audio at 1:31.

[12] The court is concerned about Mr. Sasser's decision not to seek outside counsel in this matter (beyond having his law partner conduct his examination at the hearing on October 25, 2022) for a number of reasons, not limited to the less effective presentation of evidence and argument.

[13] The court makes specific note of the fragmented nature of Mr. Sasser's presentation at this hearing because it matters. Differentiating between Mr. Sasser's argument, his recitations of evidence, and his frequent informal proffers while explaining his own actions was extremely difficult because these qualitatively different forms of content overlapped. Sentences were left unfinished or one blended into another. The limited evidence and the lack of clear delineation between testimony and argument are party-created obstacles to a clear and precise assessment of the matters before the court. Nonetheless, the record is sufficient to support the court's findings.

- . . . if you look at the way that Mr. Beasley and I interacted with each other, he was very difficult to deal with, he's sending me all caps, you know, emails all prickly about things, and like that's not the client that I exactly want to be like, well the next minute after I have this communication with him, I want to say, I need to call the trustee right away. Jan. 24, 2023 Hrg. Audio 1:31-1:32.

- [I could have explained that] the Corvette had been transferred, of which I knew nothing about the underlying details of, and didn't really know, I knew very little about why it had happened and you know I had a sense that maybe it happened when it did because of the confirmation hearing that was about to happen and the fact that this motion had been filed, but other than that I did not know . . .. Jan. 24, 2023 Hrg. Audio 1:35-1:36.

In short, Mr. Sasser maintains that he was not involved in the actual transfer of the Corvette, and that he knew very little about it, but he also acknowledged that it was problematic, would eventually "come out," and would need to be dealt with. As to this post-discovery-of-transaction period, Mr. Sasser argued that his actions after learning about it (specifically, not disclosing it to opposing counsel, the trustee, or the court) were based in large part on the attorney-client privilege. His legal arguments on that point, are set forth in more detail, below.

ADDITIONAL FINDINGS OF FACT

Based on the pleadings of record and the court's careful review of the transcript from October 25, 2022 and the audio recording from January 24, 2023, the court makes the following additional findings of fact. The court reiterates that the question before it pertains to actions that were taken by counsel *after* he undeniably became aware that the Corvette may have been transferred, and whether those actions, or the lack thereof, constitute professional misconduct. At a minimum, Mr. Sasser knew the following when he received the emails from Mr. Beasley on February 24 and March 2, 2022:

- Mr. Beasley had previously indicated to Mr. Sasser that it was important to him to keep the Corvette;
- A motion to convert the case was filed 12 days before the transfer;

- The transfer took place the day before what Mr. Beasley had been told was the scheduled confirmation hearing; [14]
- No potential claim owed to Ms. Barefoot by either Colortek or Mr. Beasley was discussed at the meeting with Mr. Beasley and Ms. Barefoot in October 2022;
- Ms. Barefoot was not a scheduled creditor of Mr. Beasley;
- Ms. Barefoot did not file a claim in the chapter 13 case and the bar date expired on December 27, 2021;
- Mr. Beasley had a "robust" relationship with Ms. Barefoot;
- The transfer was not disclosed to the trustee or the court;
- Mr. Beasley rejected the instruction that court authority was required, as conveyed in his all-caps email; and
- The transfer of the Corvette somehow involved Ms. Barefoot and was purportedly based on "a debt" Mr. Beasley owed.

At some point, Mr. Sasser learned that the transaction was ostensibly to satisfy unpaid wages owed by Colortek to Ms. Barefoot for the hours worked in the approximately 10 months prior to the filing of Mr. Beasley's petition, but the court has no evidence as to when the details of the transaction were shared with Mr. Sasser. No matter when he learned this information, however, the very fact of the transfer was notably inconsistent with what Mr. Sasser understood to be the situation based on his testimony that Mr. Beasley wanted to keep the Corvette and that the pre-filing meeting revolved around the intertwined Colortek and Beasley debts, with no discussion about or indication that Ms. Barefoot was owed money by either.

Mr. Sasser acknowledged that, "I had a sense that maybe it happened when it did because of the confirmation hearing that was about to happen and the fact that this motion [to convert] had been filed." Yet, with this "sense," Mr. Sasser failed to ask any questions to clarify what Mr. Beasley meant when he said he "did not own" the Corvette anymore or that he "did not sell" the Corvette. Mr. Sasser did not correct Mr. Beasley's assertion that he did not need permission to transfer property he owned to satisfy debts that he owed. Mr. Sasser did not advise Mr. Beasley

[14] The all-caps email from Mr. Beasley suggests that Mr. Beasley was not aware until after the transfer that the confirmation hearing scheduled for February 24, 2022 was continued.

that because he was in chapter 13, the transfer needed to be disclosed; he did not ask Mr. Beasley for consent to disclose the transfer; and, rather than explain that the fact of the secret transfer in no way negated the fact that court authority was required for it, Mr. Sasser simply said the equivalent of, "Don't do that again." Instead, Mr. Sasser commented that "[Y]ou might say I facilitated the disclosure because I certainly never would encourage them to do anything but just be truthful about that and I think he was." Jan. 24, 2023 Hrg. Audio at 1:19-1:20. The court does not agree that not counseling a client to lie under oath is a sufficient substitute for counsel's own responsibilities.

Mr. Sasser's explanation that he thought the secret transfer would somehow resolve itself – either through the "imminent" Rule 2004 exam or because the plan would quickly be confirmed without the need for disclosure – is disingenuous. As noted in the Complaint against Ms. Barefoot, there is no authority in the Bankruptcy Code to do what Mr. Beasley did: it is not only the matter of transferring an asset, but doing so either to satisfy an unscheduled prepetition debt for which no claim was filed, or to remove the asset from the estate when a motion to convert was pending. In addition, Mr. Sasser's testimony that he did not think disclosure was important because he believed the case would confirm in February is not consistent with the history of the case: Mr. Sasser learned about the transfer the afternoon of February 24, 2022, *after* the hearing was originally to have taken place, and two days after Mr. Sasser's own office sought and obtained a *seven week* continuance of the confirmation hearing to April 14, 2022. Further, confirmation at that point was not likely, as Mr. Beasley had made no postpetition DSO payments to Ms. Beasley and his chapter 13 eligibility was substantially in question.

The BA has established by clear, cogent, and convincing evidence the following facts in support of a finding of misconduct: on February 24, 2022, Mr. Sasser knew that the Corvette had been transferred. While he may not have known the specifics, he knew enough to be aware that

the transfer violated the Bankruptcy Code and applicable rules,[15] and demonstrated that understanding by sending an email to Mr. Beasley advising him that he could not transfer any further assets without court approval. The BA has also established and the court finds by clear, cogent, and convincing evidence that by March 2, 2022, Mr. Sasser was aware, based on the "all-caps" email, that Mr. Beasley was not interested in following the prohibitions against unauthorized disposal of assets. Further, the BA has established and the court finds by clear, cogent, and convincing evidence that Mr. Sasser took no appropriate action after learning of the transfer: he failed to counsel Mr. Beasley that disclosure of the Corvette transfer was necessary, failed to seek Mr. Beasley's consent to disclosure by Mr. Sasser, and failed to disclose the transfer to the trustee or the court. At no time did Mr. Sasser advise the court or the trustee of the transfer; instead, it was discovered and revealed to the court by counsel for Ms. Beasley.

The court notes Mr. Sasser's testimony that the Firm undertook efforts to "unwind" the transaction, but the court has no evidence as to precisely what those efforts encompassed or when they occurred, and in any event, an effort to "unwind" could not possibly satisfy Mr. Sasser's professional obligations as an officer of the court. Accordingly, because there is no clear, cogent, or convincing evidence regarding these aspects of the transaction, the court does not consider the following in connection with finding professional misconduct: any evidence of the substance and timing of further discussion with Mr. Beasley with respect to the transfer, "undoing" the transfer, or inquiring about or learning the purported basis for the transfer. None of these factors are essential for establishing misconduct, but had these facts been more fully developed, they might

[15] The transfer may further have constituted a violation of criminal statutes, including without limitation 18 U.S.C. § 152(5). For the reasons stated below, the court does not address this issue. Nevertheless, its potential relevance emphasizes the seriousness with which Mr. Sasser was obligated to take his responsibilities to the court under the circumstances.

have been helpful to Mr. Sasser to show that he took some appropriate and responsive action that is not apparent to the court.

ANALYSIS

I. THE NATURE OF THE LEGAL DISPUTE

As noted above, the Show Cause Motion alleges that upon learning of the transfer of the Corvette, Mr. Sasser had an obligation to disclose the transfer to the court and to the chapter 13 trustee, and that his failure to do so violated the standard of conduct for an attorney practicing in this court. D.E. 152 at 5. The BA's argument hinges on both Mr. Beasley's obligations under the Bankruptcy Code and the potentially criminal or fraudulent nature of the transfer. Mr. Sasser's argument in response can be distilled to two points, one of which necessarily must follow the other: first, he contends that there is no requirement under the Bankruptcy Code for a chapter 13 debtor to obtain authorization to transfer property of the estate, and that instead, Mr. Beasley violated only a local rule that Mr. Sasser believes cannot be the basis for any real consequence. Second, and as a result of the first, Mr. Sasser maintains that he had no obligation to disclose the unauthorized transfer. In other words, if Mr. Beasley had no obligation to seek court approval, then Mr. Sasser had no duty to disclose his failure to do so. The court will address both arguments in turn.

II. THE DEBTOR'S LEGAL OBLIGATIONS

A. The Bankruptcy Code and Rules

It is undisputed that the Corvette was at all times property of the bankruptcy estate, that the Corvette was not subject to any exemption, that the Corvette was unencumbered, that Mr. Beasley did not seek court authority to transfer the Corvette, and that the transfer was not disclosed to any party in interest or the court until Ms. Beasley's counsel conducted a Rule 2004 examination in

late May 2022. The BA contends that the transfer violated both § 363(b) and the related rules. Responding, Mr. Sasser contends that Mr. Beasley had no obligation under the Bankruptcy Code to seek authorization to transfer the Corvette or to disclose the transfer after the fact; instead, Mr. Sasser maintains that Mr. Beasley violated only a local rule that Mr. Sasser believes exceeds the authority of this court and therefore cannot subject Mr. Beasley (and, by extension, Mr. Sasser) to any penalty.

Specifically, Mr. Sasser maintains that § 363(b) of the Bankruptcy Code does not apply to chapter 13 debtors; that if § 363(b) does apply, it requires only "notice" and not a court order; that this court's Local Rule requiring court authority to sell property of the estate exceeds that which is required by the Bankruptcy Code and is therefore invalid; that this court's Local Rule is inconsistent with § 363(b), and because attorneys routinely comply with the Local Rule, "no one" in this district complies with § 363(b); and that the failure to seek authorization and to disclose the transfer was "not material" to the case and would have been approved in deference to Mr. Beasley's business judgment had it been noticed to parties in interest under § 363(b).

Section 363(b)(1) provides, in relevant part, that the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." A chapter 13 debtor has "the rights and powers of a trustee under section[] 363(b)." 11 U.S.C. § 1303.[16] There is no authority to support the contention that § 363(b) does not apply in chapter

[16] Mr. Sasser maintains that the debtor has the "rights and powers" but not the "obligations" of a trustee under § 1303. However, even if that is so, § 363(b) is written in the permissive: the trustee *may* use, sell, or lease after notice and a hearing, and thus grants a "right," rather than creating an "obligation," of the trustee. Regardless, the right to use or sell property is only granted to the trustee (or the chapter 13 debtor) "after notice and a hearing." Without notice, neither the trustee, nor the debtor, has the right to transfer property of the estate. *See In re Revels*, 616 B.R. 675, 681-83 (Bankr. E.D.N.C. 2020) (noting that unlike a chapter 11 debtor, a chapter 13 debtor is not required to perform all the functions and duties of a trustee, but also holding that a chapter 13 debtor is required to provide notice and an opportunity for hearing to use property of the estate outside the ordinary course of business pursuant to § 363(b)).

13 cases. Instead, "[i]t is universally accepted that the terms of a proposed sale not in the ordinary course must be disclosed to the Court and to all creditors and parties in interest." *In re Corum*, Case No. 11-16929-BFK, 2012 WL 5514790, *7 (Bankr. E.D. Va. Nov. 14, 2012) (emphasis added) (citing multiple supporting decisions).

To implement § 363(b), Federal Rule of Bankruptcy Procedure 6004(a) provides that "[n]otice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i) and (k) and, if applicable, in accordance with § 363(b)(2) of the Code." Paraphrasing, the applicable portions of Rule 2002 provide for 21 days' notice and require the notice to include the terms and conditions of any private sale and the deadline for filing objections.

This court's Local Rule 4002-1(g)(4) gives further guidance to chapter 13 debtors, providing, "DISPOSITION OF PROPERTY. After the filing of the petition and until the plan is completed, the debtor shall not dispose of any non-exempt property having a fair market value of more than $10,000 by sale or otherwise without prior approval of the trustee and an order of the court." Likewise, the Order and Notice to Debtor entered on October 20, 2021, D.E. 7, provides "(10) **Disposition of Property:** You must not dispose of any non-exempt property having a fair market value of more than $10,000.00 by sale or otherwise without prior approval of the trustee and an order of this court." In short, the Order and Notice directly advises debtors of their obligation under Local Rule 4002-1(g)(4).

Mr. Sasser maintains that even if § 363(b) does apply in chapter 13, it requires only notice, and not an order of the court authorizing the sale of property.[17] Consequently, he contends, Local

[17] Mr. Sasser suggests that this court is somehow rogue in its requirement that chapter 13 debtors obtain a court order before transferring property. A non-comprehensive review of other courts' local rules and form plans demonstrates that many courts require court authorization for the transfer of personal property valued at more than a delineated minimum amount – some through local rules, some in their local

Rule 4002-1(g)(4) exceeds this court's authority because it requires more than is required by the Bankruptcy Code.[18] In addition, he notes that debtors and their attorneys in this district comply with the Local Rule, and not § 363(b), and therefore if § 363(b) applies in chapter 13, everyone must be in violation of it.

The court need not reach the issue of whether Local Rule 4002-1(g)(4) somehow exceeds what is required by the Code, because in this instance, Mr. Beasley did nothing. Had he complied with Local Rule 4002-1(g)(4), he also would have complied with the plain requirements of § 363(b). The fact that Local Rule 4002-1(g)(4) also may require more than Mr. Sasser believes § 363(b) mandates does not mean that both may be ignored. In short, the trustee and creditors, at a minimum, were entitled to notice and the opportunity to object to the transaction involving the Corvette, and they received no notice at all until several months after the transfer was consummated, and then, significantly, only because Ms. Beasley's counsel requested the right documents and asked the right questions at a Rule 2004 examination.

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form plans, some in standing orders, and others in their confirmation orders, or in a combination thereof. These courts include, but are not limited to, the United States Bankruptcy Courts for the Middle District of North Carolina, the Southern District of New York, the Northern District of New York, the District of Massachusetts, the Eastern District of Michigan, the Western District of Michigan, the District of Kansas, the District of Arizona, the District of Nevada, the Eastern District of California, the District of Hawaii, the District of Rhode Island, the Northern District of West Virginia, and the Southern District of West Virginia. Other courts underscore that notice is required or that § 363(b) applies, including the District of the District of Columbia, the Western District of Pennsylvania, the Middle District of Alabama, the Northern District of Texas, the District of Oregon, the Northern District of Florida, and the Western District of North Carolina.

Mr. Sasser also notes that the local rule number does not correspond with the Federal Bankruptcy Rule number applicable to § 363(b), Federal Rule of Bankruptcy Procedure 6004. A non-exhaustive survey of bankruptcy courts shows that while some courts do include their requirements for sales of property of the estate in their local rule numbered 6004, others include those procedures in local rules numbered 4001, 2084, 3015, and 4002, while many simply include the requirements in their local form chapter 13 plans, form confirmation orders, or standing orders.

[18] For several years, Mr. Sasser has challenged this and other Local Rules on the same or similar basis – that the Local Rules exceed this court's authority and impose obligations on chapter 13 debtors that are not in the Bankruptcy Code. To date, no bankruptcy or district court has agreed with him.

Finally, Mr. Sasser contends that the transfer of the Corvette was not "material" to the case, presumably because its liquidation value was already accounted for in the proposed plan and because the plan provided that Mr. Beasley intended to retain the Corvette. Mr. Sasser further contends that the transaction would have been readily approved because the standard under § 363(b) is the debtor's "business judgment." He is mistaken on all counts. First, he assumes that the plan would have been confirmed, which was unlikely, and ultimately did not occur. If the case were converted to a case under chapter 7, the creditors would have lost the ability to recover the value of this unencumbered, nonexempt asset. As noted in the Complaint, there is nothing in the Bankruptcy Code that allows the transfer of property of the estate to satisfy a prepetition debt. There is also nothing in the Bankruptcy Code that allows the transfer of property of the estate to satisfy a prepetition debt *of someone else* (i.e., Colortek). And, there is ample information before the court to demonstrate that reasonably equivalent value was not given for the transfer. The facts of this case indicate that the transfer could not have been justified by the debtor's business judgment.

In short, the debtor transferred a valuable, unencumbered, nonexempt asset of the bankruptcy estate in secret to satisfy an unsupported, undocumented, undisclosed and unscheduled prepetition debt to an insider, at a time when chapter 13 eligibility was in question, confirmation was unlikely, and conversion to chapter 7 was sought by the largest priority creditor. The court cannot improve on the *Corum* court's conclusion, which applies equally to this transaction:

> The problem, for which this case is a paradigm example, is that in a bankruptcy case, the rules still apply. The Debtors' property in this case was unquestionably property of the estate. 11 U.S.C. § 541(a)(1). The sale was not a sale in the ordinary course of the Debtors' business, so Court approval of the sale was required. 11 U.S.C. §§ 363(b)(1) and 1303. . . . In this case, the sale suffers from two fundamental defects: (a) it was never approved by the Court, and (b) the terms of the sale . . . were never disclosed to the Court, nor to the creditors and other parties in interest.

Corum, 2012 WL 5514790, *7.

Like the debtors in *Corum*, Mr. Beasley is "not charged with knowing the intricacies of the Bankruptcy Code and Rules. Rather, [he is] charged with dealing with property of the estate in an open and honest manner, and with full disclosure to the Court, the creditors and other parties in interest (including the Chapter 13 Trustee). This [he] failed to do." *Id.* at *8. In summary, the court finds, based on uncontroverted evidence in the record and its review of the applicable law, that Mr. Beasley transferred the Corvette in violation of his obligations and duty of disclosure under the Bankruptcy Code, and while Mr. Beasley may not be charged with the intricacies of the Bankruptcy Code and Rules, Mr. Sasser is.

B. Statutes Addressing Criminal Activity and Fraudulent Transfers

The BA also maintained that Mr. Beasley may have violated the bankruptcy crime provisions of 18 U.S.C. § 152, and that a review of the "badges of fraud" in the North Carolina Uniform Voidable Transfers Act strongly suggests that the transfer was fraudulent, either of which would impose additional ethical obligations of counsel. The court cannot and will not make any conclusive findings as to Mr. Beasley with respect to whether he committed a crime or engaged in fraud, as Mr. Beasley is not a party to this proceeding and the evidence before the court is limited to the documents described in this opinion and the testimony of Mr. Sasser. Further, this court does not have jurisdiction over criminal matters. The court will observe, however, that the criminal and fraudulent conduct described in these two statutes may be at issue here, and – particularly in conjunction with Mr. Sasser's acknowledgement that "I had a sense that maybe it happened when it did because of the confirmation hearing that was about to happen and the fact that this motion [to convert] had been filed" – Mr. Sasser had a duty to take certain measures to ensure that he did

not assist with or provide services in furtherance of fraudulent or criminal conduct and/or to remediate fraudulent conduct related to Mr. Beasley's bankruptcy proceeding.

North Carolina recognizes factors traditionally referred to as "badges of fraud" to ascertain actual intent to hinder, delay, or defraud creditors. *See* N.C. Gen. Stat 39-23.4(b). Some of those badges of fraud are plausibly implicated in this situation, including:

> (1) The transfer . . . was to an insider;
>
> (3) The transfer . . . was . . . concealed;
>
> (4) Before the transfer was made . . . the debtor had been sued or threatened with suit;
>
> (5) The transfer was of substantially all of the debtor's assets;
>
> (7) The debtor . . . concealed assets;
>
> (9) The debtor was insolvent or became insolvent shortly after the transfer was made . . . ;
>
> (12) The debtor made the transfer . . . without receiving a reasonably equivalent value in exchange for the transfer . . . , and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due[.]

N.C. Gen. Stat 39-23.4(b).

Here, the evidence before the court shows that the Corvette was transferred to Mr. Beasley's former spouse, with whom Mr. Sasser testified Mr. Beasley had a "robust" relationship; the transfer was not disclosed to parties in interest for several months; Mr. Beasley was facing legal actions related to his unpaid DSO including a motion to convert his case to chapter 7; the Corvette was a substantial unencumbered asset; Mr. Beasley failed to schedule bank accounts in his bankruptcy schedules until after they were discovered by the BA; Mr. Beasley was insolvent; and the terms of the ultimate settlement of the adversary proceeding against Ms. Barefoot demonstrate that Mr. Beasley did not receive reasonably equivalent value for the transfer of the

Corvette. Again, the court does not have Mr. Beasley or Ms. Barefoot's conduct squarely before it, and is not making findings as to Mr. Beasley's intent. It is possible that Mr. Beasley may have valid defenses or evidence contradicting fraudulent intent. Instead, the court notes that this conduct may be characterized as "fraud" or "fraudulent" under the substantive law of North Carolina, which is relevant to the court's analysis of Mr. Sasser's obligations under the Rules of Professional Conduct. *See* N.C. R. Prof. Conduct R.1.0, Comment 5 ("When used in these Rules, the terms 'fraud' or 'fraudulent' refer to conduct that is characterized as such under the substantive or procedural law of North Carolina and has a purpose to deceive.").[19]

Having determined that under the Bankruptcy Code Mr. Beasley could not have transferred the Corvette without – at a minimum – having first provided notice and an opportunity for a hearing, and that the transfer has the appearance of fraud as defined by North Carolina law, the court turns to whether Mr. Sasser violated the Rules of Professional Conduct by not taking any action after learning of the transfer.

[19] In addition, 18 U.S.C. § 152 provides for criminal fines or imprisonment for a person who "(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11; (6) knowingly and fraudulently gives . . . any . . . property . . . for acting or forbearing to act in any case under title 11; [or] (7) in a personal capacity . . . with intent to defeat the provisions of title 11, knowingly and fraudulently transfers . . . any of his property . . . [.]" 18 U.S.C. §§ 152(5)-(7). Again, without making any preclusive findings as to Mr. Beasley or Ms. Barefoot, one could plausibly contend, as the BA has suggested, that the transfer of the Corvette to Ms. Barefoot was, in part, in exchange for her not filing a claim in Mr. Beasley's chapter 11 case, and thus falls within subsection (6), and that the transfer of the Corvette after Ms. Beasley filed her motion to convert the case to chapter 7 was made with intent to defeat the provisions of title 11 – specifically, the ability of a chapter 7 trustee to liquidate the unencumbered, nonexempt Corvette for the benefit of creditors as contemplated in subsection (7). One could also contend that Ms. Barefoot received the Corvette with the intent to defeat the provisions of the Bankruptcy Code. It also occurs to the court that if, as Mr. Beasley and Ms. Barefoot have recorded in their agreement, the transfer of the Corvette was for the purpose of satisfying unpaid wages, there may be wage and hour law and payroll tax implications – and possibly criminal tax evasion.

III. MR. SASSER'S PROFESSIONAL AND ETHICAL OBLIGATIONS

There are two primary areas in which Mr. Sasser may have breached his responsibilities under the Rules of Professional Conduct: his own duty of candor to the tribunal (regardless of whether the transfer of the Corvette was criminal or fraudulent), and his obligations in light of the potentially fraudulent or criminal conduct of Mr. Beasley and Ms. Barefoot. Because each bears its own analysis and is an independent basis upon which the court could find misconduct, the court will address them in turn. Underlying this analysis is this court's Local Rule 2090-2, which provides:

> Rule 2090-2 ATTORNEYS - DISCIPLINE AND DISBARMENT
>
> (a) STANDARDS OF CONDUCT. Acts or omissions by an attorney practicing before this court (that violate the Rules of Professional Conduct adopted by this court) shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Rules of Professional Conduct adopted by this court are the Rules of Professional Conduct of the North Carolina State Bar adopted by the Supreme Court of North Carolina, as amended from time to time by that state court, except as otherwise provided by a specific rule of this court.
>
> (b) DISCIPLINARY ENFORCEMENT. For misconduct as defined in these Local Rules, and after notice and an opportunity to be heard, any attorney practicing before this court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

The court turns first to Mr. Sasser's own duty of candor.

A. Duty of Candor

1. Duty of Candor Toward the Tribunal

The specific issue before the court is whether Mr. Sasser's failure to disclose the transfer to the court within a reasonable time violates his duty of candor to the tribunal, as that duty is set forth in RPC 3.3: [20]

> RPC 3.3 Candor Toward the Tribunal
>
> (a) A lawyer shall not knowingly:
> (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
> ***
>
> (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
> ***
>
> *Comment 3 to RPC 3.3*
>
> . . . There are circumstances where ***failure to make a disclosure is the equivalent of an affirmative misrepresentation.***

(emphasis added).

Mr. Sasser maintains that it was Mr. Beasley's responsibility, not Mr. Sasser's, to disclose the transaction. While Mr. Beasley certainly should have done so, there is a troubling absence of any evidence that Mr. Sasser counseled Mr. Beasley of this obligation. Moreover, there is a separate duty of candor that falls directly on Mr. Sasser.

In a case with analogous facts, an attorney was found by the disciplinary committee of the United States District Court for the District of Maryland to have violated the duty of candor to the court under Maryland's RPC 3.3, which is the same as RPC 3.3 in North Carolina. In *In re Gulczynski*,

[20] To avoid confusion with other referenced rules, the court will refer to the Rules of Professional Conduct as RPC ___. Those references are to the versions adopted in North Carolina unless otherwise specified.

Case No. 05-21435-RAG (Order that Debtors' Counsel Show Cause) (Bankr. D. Md. Dec. 19, 2007) (unpublished disposition), the bankruptcy court issued an Order That Debtors' Counsel Show Cause upon the following coming to light: postpetition, the chapter 13 debtors entered a timber sale contract in March 2007. In July 2007, they contacted their counsel to request a payoff statement for their chapter 13 plan. On August 27, 2007, the debtors notified counsel that they received the proceeds upon the execution of the contract and that they had been using the money to pay their living expenses and to fund their plan payments. Counsel then filed a motion to sell the timber on August 28, 2007, *without* disclosing that the contract had been executed and the proceeds received in March – nor that a substantial portion of the proceeds had been spent. A preliminary hearing was conducted on October 3, 2007, and counsel still did not disclose that the debtors had received and spent the sale proceeds. It was not until a hearing in November 2007 that the relevant details of the transaction were disclosed. The show cause order noted that counsel should have recognized much earlier that court approval of the sale was required under §§ 1303 and 363(b), and that the failure to seek approval until August and continued failure to disclose the receipt and spending of the sale proceeds "potentially makes this violation of the duty of candor all the more egregious." *Gulczynski*, Case No. 05-21435-RAG, Order that Debtors' Counsel Show Cause at 4-5.

As the court explained:

> A debtor can only seek resort to the powerful tools wielded by the Bankruptcy Court as a court of equity if the debtor comes with clean hands and with the upmost honesty. In this instance, it was grossly unfair to essentially require the Trustee to discover that the Debtors were not in possession of the full amount of sale proceeds after the Trustee had spent some amount of time reviewing the sale and proposed [plan] modification. It was equally suspect to spring this disclosure on the Court more than two months after Counsel became aware of the Debtors' predicament.

Id. at 5.

After conducting a hearing on the order to show cause, the court issued a Memorandum Opinion and Order Sustaining Order that Debtors' Counsel Show Cause, *In re Gulczynski,* No. 05-21435-RAG, 2008 WL 906816 (Memorandum Opinion) (Bankr. D. Md. April 3, 2008) (unpublished disposition). The debtors' attorney contended that he did not "advise the Debtors to commit either a fraud or a crime, and therefore had no augmented duty of disclosure;" that he did not advise the debtors to spend the proceeds on personal expenses; and that the improper use of the sale proceeds was not material. Memorandum Opinion at *2-3. The bankruptcy court rejected these arguments, finding that "it is Counsel's fundamental duty of candor that has been drawn into question. And none of the arguments offered by [counsel] at the hearing rebut the conclusion that he simply did not live up to that duty." *Id.* at *2. The court further found that counsel "apparently relied upon the hope that the Debtors' dissipation of the money would remain secret whatever decision was reached on the Motion to Sell." *Id.* at *3. After concluding that counsel breached his duty of candor to the tribunal under Rule 3.3(a)(1), the bankruptcy court referred the matter to the Disciplinary and Admissions Committee for the United States District Court for the District of Maryland pursuant to that court's disciplinary procedures. *Id*. at *5.

On April 5, 2010, the Disciplinary and Admissions Committee for the United States District Court for the District of Maryland issued its Report and Recommendation. *In re Goddard*, Case No. 8:08-mc-00131 (Report and Recommendation) (D. Md. April 7, 2010). There, the disciplinary panel focused on Rule 3.3(a)(1) and the comments thereto, noting that "even a failure to provide[] pertinent facts can constitute a violation, as '[t]here are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.'" Report and Recommendation at 4. The panel concluded that "the duty of reasonable candor to the court required [counsel] to disclose relevant information and material developments which affected the

case." *Id.* at 5. Noting that counsel "had an opportunity to disclose as early as July 2007 when he learned of the use of proceeds from the timber sale but simply did not do so," the panel found that the decision not to disclose for almost four months "is more than a technical ethical lapse. On the contrary, it is a breach of the candor toward the tribunal expected of a member of the Bar and required by MRPC 3.3." *Id.* at 6.

The actions of counsel in *Gulczynski* are both more problematic and less problematic than those of Mr. Sasser. In *Gulczynski*, counsel at least filed a motion to sell once he learned that the debtors had already executed a contract for the sale of timber and received the sale proceeds, albeit several weeks later. On the other hand, the motion to sell failed to disclose that the sale had already happened, that the debtors had received proceeds, and that the debtors had spent a substantial portion of the proceeds; and, further, counsel failed to disclose these facts at a preliminary hearing on the motion. But, it is the delay of four months between learning of the sale in July 2007 and disclosing all of the relevant facts at a hearing in November 2007 that was the basis of the multiple findings that counsel breached his duty of candor to the tribunal under Maryland RPC 3.3(a). And, noteworthy to the bankruptcy court were counsel's apparent hope that the issue would resolve itself through either approval or disapproval of the motion to sell and the fact that counsel required the trustee to discover the actual facts of the transaction through his own investigation.

Likewise, this court finds that Mr. Sasser breached his duty of candor to the tribunal under RPC 3.3(a) by failing to notify the court of the unauthorized transfer of the Corvette within a reasonable time after learning of it.[21] This was relevant information and a material development

[21] The court is not suggesting that Mr. Sasser needed to take action within minutes of receiving Mr. Beasley's email, but the disclosure should have occurred within a time period measured by days, not months. And, lest one forget, Mr. Sasser ***never*** disclosed the transfer; Mr. Beasley disclosed it to Ms. Beasley's counsel while being examined under oath, and Ms. Beasley's counsel informed the court of the transaction. Further, at the time the issue was raised at a June 2022 hearing, no one except Mr. Beasley and

that affected the case. Mr. Sasser's failure to disclose it is the equivalent of a misrepresentation as contemplated in RPC 3.3(a) and Comment 3. Mr. Sasser's anticipation that "it would come out," albeit *only* if it was discovered by another party, while also assuming that it would be a non-issue once the chapter 13 plan was confirmed and therefore might never be discovered, concern this court just as similar facts concerned the court in *Gulczynski*.

2. Application of Confidentiality Rules to Duty of Candor

Mr. Sasser maintains that he could not have disclosed the transfer without violating the attorney-client privilege,[22] but there are several things Mr. Sasser overlooks in making this argument. Client confidentiality is governed by RPC 1.6, which provides, in relevant part:

> RPC 1.6 Confidentiality of Information
>
> (a) A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
>
> (b) A lawyer may reveal information protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary:
>
> (1) to comply with the Rules of Professional Conduct, the law or court order;
>
> ***

Thus, by its terms, RPC 1.6 allows disclosure where necessary to comply with the Rules of Professional Conduct, and RPC 3.3(c) specifically provides that "The duties [of candor] stated in paragraphs (a) and (b) . . . apply even if compliance requires disclosure of information otherwise protected by Rule 1.6." Separately, RPC 1.4 provides that counsel should request consent of the

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Mr. Sasser knew that Mr. Sasser was aware of the transfer within hours of its occurrence three months earlier.

[22] The attorney-client privilege is an evidentiary concept, while client confidentiality is applicable to attorney ethics. While Mr. Sasser used "privilege" in his argument, the court will discuss the rules of confidentiality as they pertain to the matters before the court.

client where disclosure is required.[23] And even absent that consent, RPC 1.6 still allows disclosure where required by the Rules of Professional Conduct. Here, there is no evidence that Mr. Sasser explained to Mr. Beasley that disclosure was required, asked for his consent to disclose, or took other action required by the Rules of Professional Conduct to address any concerns related to confidentiality or privilege with respect to his duty of candor to the court. In sum, no aspects of the attorney-client privilege or an attorney's duty of confidentiality operate here to explain, excuse, or otherwise mitigate Mr. Sasser's conduct.

3. Materiality

Mr. Sasser also contends that the transfer of the Corvette was not material to the case and that there was no damage from either the delay in disclosure or in filing the adversary proceeding to avoid the transfer. The court disagrees with both points.

With respect to materiality, first, the argument that the transfer was not material is dependent upon the assumed confirmation of a chapter 13 plan that provides for Mr. Beasley to retain the Corvette. It is simply not credible that Mr. Sasser believed the plan would be confirmed in short order, as (1) the confirmation hearing had already been continued to April (on his own motion) when he learned of the February transfer, (2) eligibility for chapter 13 had been squarely challenged, and (3) Mr. Beasley had made no postpetition payments on his DSO to Ms. Beasley, which would have prevented plan confirmation under § 1325(a)(8). Second, this case has been on the brink of conversion to chapter 7 from the beginning. The transfer of an unencumbered,

[23] RPC 1.4 Communication
(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules . . . .
***
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

nonexempt, depreciable asset of significant value would certainly have been material upon conversion. Third, the value of the Corvette is material. Mr. Sasser bases his materiality argument not on the value of the property, but his erroneous assumption that the transfer would not have mattered had the plan been confirmed.[24] Regardless, § 363(b) is not dependent upon materiality: parties in interest are entitled to notice and an opportunity to be heard on any transfer of property of the estate outside the ordinary course of business. Finally, satisfaction of an unscheduled prepetition debt through a secret postpetition transfer of an asset of the estate is simply not authorized by the Bankruptcy Code and offends the required full transparency necessary to administer a bankruptcy case.

With respect to damage, there are at least two identifiable consequences to the delay in disclosure and seeking avoidance: first, Mr. Beasley is facing an objection to his discharge as a result of the transfer. It is possible that immediate disclosure and avoidance of the transfer might have mitigated the appearance of intent both to circumvent the bankruptcy requirements and to defraud the estate and creditors. Second, Ms. Barefoot was apparently driving the Corvette from March through December, with her right to do so not challenged until the adversary proceeding was filed in August. A motion for temporary restraining order seeking to enjoin Ms. Barefoot from driving the vehicle alleged that "[t]he Corvette is a very low-mileage example of a high performance model such that continuing to add mileage while this case proceeds will likely diminish the value of the Corvette significantly." Adv. Pro. No. 22-00114-5-PWM, D.E. 14 at ¶ 10. Had the adversary proceeding not been resolved through an actual sale to Ms. Barefoot, the

[24] Even if the plan had been confirmed and the value of the Corvette were included in the liquidation test requirements of the plan, Mr. Sasser's argument presumes that the plan would have been successfully completed. On the contrary, the continued possession of the Corvette by the estate provided adequate protection to creditors in the event of a plan default and liquidation of the estate. This possibility is one of the underpinnings for the requirements in the Bankruptcy Code and Rules that any transfers of property outside the ordinary course of business are subject to notice and an opportunity for creditors to be heard.

value of the Corvette could have been significantly reduced by the time a sale to a third party might have been consummated.

Finally, and perhaps most significantly, neither materiality nor damage are required to find that the Rules of Professional Conduct have been violated. While not relying solely on the catch-all "misconduct" rule, the court also finds RPC 8.4 to be informative and applicable. It provides:

> RPC 8.4 Misconduct
>
> It is professional misconduct for a lawyer to:
> ***
> (d) engage in conduct that is prejudicial to the administration of justice;
> ***
>
> *Comment 4 to RPC 8.4*
>
> A showing of actual prejudice to the administration of justice is not required to establish a violation of paragraph (d). Rather, it must only be shown that the act had a reasonable likelihood of prejudicing the administration of justice. . . .

For all of the policy reasons discussed in this opinion, including without limitation the necessity of full disclosure for the bankruptcy process to work, the court concludes that the lack of candor and failure to disclose the transfer of the Corvette is conduct prejudicial to the administration of justice constituting attorney misconduct.

In summary, the court concludes that Mr. Sasser has breached his independent duty of candor to the court under RPC 3.3(a) whether or not Mr. Beasley's conduct was criminal or fraudulent; that the breach is not trumped by the rules of confidentiality; and that the breach is not immaterial.

B. Duties Where Client Has Engaged in Criminal or Fraudulent Conduct

To the extent that Mr. Beasley engaged in conduct that was criminal or fraudulent, the court cannot find by clear, cogent, and convincing evidence that Mr. Sasser counseled or assisted Mr.

Beasley with conduct that was criminal or fraudulent as would implicate RPC 1.2(d),[25] nor can the court find by clear, cogent, and convincing evidence that Mr. Sasser's services were used in the commission of a criminal or fraudulent act as contemplated in RPC 1.6(b)(4).[26] The court also cannot find by clear, cogent, and convincing evidence that Mr. Sasser was in a position "to prevent the commission of a crime by the client" that would fall within RPC 1.6(b)(2).

The BA has, however, established by clear, cogent and convincing evidence that Mr. Sasser breached his duties as described in RPC 3.3(b). That subsection provides:

> RPC 3.3(b) Candor Toward the Tribunal
>
> (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct

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[25] RPC 1.2(d) provides that "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel to assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."

Comment 11 to RPC 1.2(d) provides:

> When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud.

[26] RPC 1.6(b) provides, in relevant part:

> (b) A lawyer may reveal information protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary:
>
> (2) to prevent the commission of a crime by the client;
>
> ***
>
> (4) to prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services were used;
>
> ***

> related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
>
> *Comment 12 to RPC 3.3 Preserving Integrity of Adjudicative Process*
>
> Lawyers have a special obligation to protect a tribunal against criminal or ***fraudulent conduct that undermines the integrity of the adjudicative process***, ***such as*** . . . ***failing to disclose information to the tribunal when required by law to do so.*** Thus, ***paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client***, . . . ***has engaged in criminal or fraudulent conduct related to the proceeding.*** (emphasis added).

Portions of RPC 1.0 (Terminology) and a comment to RPC 1.0 are important to the construction of RPC 3.3(b):

> (g) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
>
> (n) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. . . .

N.C. R. Prof. Conduct R.1.0.

> *Comment 5 to Rule 1.0*
>
> *Fraud*
> When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of North Carolina and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

RPC 3.3(b) requires a lawyer to "know" that a client has engaged in fraudulent conduct; "knowledge" means "actual knowledge" under RPC 1.0, but that rule provides that actual knowledge may be inferred from the circumstances.

The court concludes that Mr. Sasser has actual knowledge for purposes of RPC 3.3 by both inferring knowledge from the circumstances and by analogy to the doctrine of "willful blindness,"

which has been applied to the Rules of Professional Conduct in other jurisdictions and has been applied to prove actual knowledge in criminal cases in North Carolina and within the Fourth Circuit.[27] *See, e.g. United States v. Lighty*, 616 F.3d 321, 377-78 (4th Cir. 2010) ("It is appropriate to instruct the jury on willful blindness 'when the defendant claims lack of guilty knowledge in the face of evidence supporting an inference of deliberate ignorance.'"). While the North Carolina State Bar has not opined on whether willful blindness equates to actual knowledge for purposes of RPC 3.3, this court believes that the North Carolina State Bar would conclude that a finding of willful blindness is sufficient to infer actual knowledge.

Generally, a person is willfully blind when he (1) subjectively believes that there is a high probability that a fact exists; and (2) takes deliberate actions to avoid learning that fact. *Global-Tech Appliances, Inc. v. SEB S.A.,* 563 U.S. 754, 769 (2011). Ethics committees in other jurisdictions, reviewing other Rules of Professional Conduct requiring actual knowledge, have established that "lawyers should assume that 'knowledge' under the Rules includes willful blindness" and that "[a] lawyer's obligation under the Rules encompasses a duty not to act with willful blindness or to commit or assist a client in committing criminal or fraudulent acts." Colo. Bar Ass'n Ethics Comm., Formal Op. 142 (2021). Similarly, "a lawyer may not turn a blind eye to the obvious," and "specific facts could give rise to a duty to seek additional information." *See* Conn. Bar Ass'n Comm. on Prof'l Ethics, Informal Op. 91-22 (1991) (explaining that lawyers cannot turn a blind eye to an obvious fraudulent transfer; while there is no independent duty to investigate a client's intent, specific facts could give rise to a duty to seek additional information to avoid committing or assisting in fraud).

[27] The court also notes that if willful blindness is applicable to a finding of actual knowledge under a criminal "reasonable doubt" standard, it should be equally applicable where the standard of proof is lower.

Here, the court cannot overlook the red flags that Mr. Sasser either actually knew or willfully ignored to find that he did not "know" that the transfer was likely fraudulent and therefore had no duty to take remedial measures. The court views this differently than mere negligence or recklessness. Had Mr. Beasley simply said he was not willing to sell the Corvette, the court likely would find that Mr. Sasser had no duty to inquire further. It is the specific language used and the context of which Mr. Sasser was aware from which the court draws the conclusion that he either had actual knowledge or was willfully ignorant of the facts. Further, ample circumstantial evidence exists from which an inference of Mr. Sasser's knowledge that the transfer was likely fraudulent can reasonably be drawn. For example:

- The nature of Mr. Beasley's "robust" relationship with Ms. Barefoot ("This was something that they cooked up on their own for various reasons that, you know, again, I mean, I can't control everything my clients do." Tr. 29:9-11 (October 25, 2022)).

- Mr. Beasley wanted to keep the Corvette ("Mr. Beasley never told me he wanted to sell his Corvette. He only told me he wanted to keep it because that was meaningful to him." Jan. 24, 2023 Hrg. Audio at 1:12).

- Communications with Opposing Counsel ("…and I never once told Billy Braziel that he had the Corvette, we communicated quite a bit in those next three months and we just avoided that conversation altogether. I never said he had it, never said he didn't have it, we never talked about it actually, I just said he wasn't willing to sell it, which was true." Jan. 24, 2023 Hrg. Audio at 1:15-1:16).

- The Corvette was "not sold" and the transfer somehow involved Ms. Barefoot and "a debt" Mr. Beasley owed.

- The timing of the transfer ("…you know I had a sense that maybe it happened when it did because of the confirmation hearing that was about to happen and the fact that this motion [to convert] had been filed…" Jan. 24, 2023 Hrg. Audio at 1:35-1:36).

- Mr. Beasley was a "difficult" client ("But, if you look at the way that Mr. Beasley and I interacted with each other, he was very difficult to deal with, he's sending me all caps, you know, emails all prickly about things, and like that's not the client that I exactly want to be like, uh well the next minute after I have this communication with him, I want to say, I need to call the trustee right away." Jan. 24, 2023 Hrg. Audio at 1:31-1:32).

Having found that Mr. Sasser had actual knowledge that Mr. Beasley "engaged in fraudulent conduct related to" the bankruptcy proceeding as contemplated by RPC 3.3(b), the court concludes that Mr. Sasser was obligated to take reasonable remedial measures. Those remedial measures might have included only advising Mr. Beasley of the need to disclose, and, depending on his response, could have then required requesting consent to disclosure, disclosing to the court, or withdrawing as counsel.[28] But Mr. Sasser did none of those things, and in failing to act, he also failed to meet his obligations under RPC 3.3(b).[29]

CONCLUSION

The author of this opinion has known and respected Mr. Sasser since he began practicing in this district more than 20 years ago. He serves an important role in the bankruptcy bar – he zealously represents consumer debtors, and he brings issues before the court when he views the court's practices and procedures as varying from what is required by the Bankruptcy Code. In this case, Mr. Sasser turned a blind eye when his client violated the rules and failed to undertake the necessary response. Hoping the transaction could be undone or the plan confirmed before anyone found out about it simply does not satisfy the minimum ethical standards to which attorneys are held accountable.

In conclusion, the court finds that Mr. Sasser has engaged in professional misconduct by failing to meet his obligations under both RPC 3.3(a) and 3.3(b), Candor Toward the Tribunal. The court will hear further evidence and argument as to the appropriate sanction on **Thursday, April 14, 2023 at 1:30 p.m.** at the Century Station Post Office and United States Courthouse, 300

[28] Of some additional concern to the court, at the hearing on January 24, 2023, Mr. Sasser commented that he did not believe it was necessary for the firm to withdraw from the representation in the main cases, even if he might be required to testify in the adversary proceedings.

[29] For the reasons outlined in the discussion of RPC 3.3(a), above, client confidentiality does not relieve him of the obligations set forth in RPC 3.3(b).

Fayetteville Street, 3rd Floor Courtroom, Raleigh, North Carolina, and will consider at that time both mitigating and aggravating evidence, including, to the extent there are documented findings of fact and conclusions of law, evidence of a pattern of conduct and other sanctions imposed against Mr. Sasser. The court will also consider the amount and type of sanctions imposed by other disciplinary authorities and courts for similar misconduct by attorneys. The sanctions the court will consider include: monetary sanctions, denial of fees, disgorgement of any fees received, censure, and reprimand. Suspension and disbarment will not be considered, nor have they been requested. Because the objection to the fee applications is based solely on whether denial of the requested fees is an appropriate sanction, the hearing on the fee applications is reset for the same date.

END OF DOCUMENT

SO ORDERED

SIGNED this 20 day of April, 2023.

Pamela W. McAfee
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

EXHIBIT
B

IN RE:

STEPHEN D. BEASLEY	**CASE NO. 21-02322-5-PWM** **CHAPTER 11**
COLORTEK COLLISION & CUSTOMS, INC.	**CASE NO. 22-01178-5-PWM** **CHAPTER 11**
DEBTORS	

ORDER ON SANCTIONS FOR PROFESSIONAL MISCONDUCT AND REPRIMAND

The matters before the court are the Applications for Compensation filed by the Sasser Law Firm in the cases of Stephen D. Beasley, D.E. 123, and Colortek Collision & Customs, Inc. (Colortek), Colortek D.E. 92,[1] the Motion Requesting Entry of an Order to Appear and Show Cause filed by the Bankruptcy Administrator (the BA) in Mr. Beasley's case, D.E. 152 (the Show Cause Motion), and the resulting Show Cause Order issued by the court, D.E. 155. The court entered an order on March 14, 2023, D.E. 205, Colortek D.E. 114 (the March 14 Order), determining that Mr. Travis Sasser failed to meet his obligations of candor to the court and setting a further hearing to consider appropriate sanctions. That further hearing was conducted on April

[1] References to the docket in the Stephen D. Beasley case herein will be noted as D.E. __, while references to the docket in the Colortek case will be noted as Colortek D.E. __.

13, 2023, in Raleigh, North Carolina. Ruling from the bench, the court announced that it would censure Mr. Sasser by entry of this reprimand, imposed a monetary sanction of $1,000, and allowed the Sasser Law Firm's applications for compensation, on the bases discussed below.

PROCEDURAL BACKGROUND

Stephen D. Beasley filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on October 18, 2021. On motion of the debtor filed on June 2, 2022, the case was converted to one under chapter 11 of the Bankruptcy Code on June 29, 2022. At all times while his case was pending under chapter 13, the Sasser Law Firm (the Firm) represented Mr. Beasley. Travis Sasser, on behalf of Mr. Beasley, filed an application to employ Travis Sasser and the Firm in the chapter 11 case along with the motion to convert on June 2, 2022, and the court allowed the application by order dated July 1, 2022. D.E. 58, D.E. 72.

Colortek, an entity owned and controlled by Mr. Beasley, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on June 1, 2022. On June 2, 2022, Mr. Sasser and the Firm filed an application to be employed as attorney for Colortek, which the court allowed by order dated July 5, 2022. Colortek D.E. 8, 34.

As a result of events described in the March 14 Order, the Firm filed motions to withdraw as counsel in both cases on October 28, 2022, D.E. 124, Colortek D.E. 93, which were allowed by orders dated October 31, 2022. D.E. 125, Colortek D.E. 94. The Applications for Compensation now before the court were also filed on October 28, 2022. The Application for Compensation filed in Mr. Beasley's case seeks attorneys' fees in the total amount of $12,695 (comprised of the $6,500 standard "no-look" fee for the chapter 13 case[2] and $6,195 in fees for the chapter 11 case) and

[2] As noted in the March 14 Order, the Firm agreed that funds on hand with the chapter 13 trustee at the time of conversion could be paid toward the outstanding postpetition domestic support obligation owed to Ms. Brenda Beasley. Otherwise, the chapter 13 attorneys' fees would have been paid to the Firm at that time.

expenses in the amount of $1,270 (comprised of the $313 filing fee, the $25 credit counseling fee, and the $932 conversion fee). D.E. 123. The Application for Compensation filed in the Colortek case seeks attorneys' fees in the total amount of $15,368 and expenses in the amount of $1,738, and notes that the Firm is holding a $7,000 retainer.[3] Colortek D.E. 92. In sum, for both cases the Firm seeks attorneys' fees in the amount of $28,063 and expense reimbursement in the amount of $3,008.

The BA filed objections to both Applications for Compensation on December 2, 2022, D.E. 146, Colortek D.E. 104. The BA does not object to the amount or specific line items requested, but instead objects to the Applications for Compensation on the bases of (1) whether the Firm was not disinterested and should not have been approved as counsel based on the facts outlined in the March 14 Order, and (2) whether denial of the requested fees is an appropriate sanction for the misconduct described in the March 14 Order.

After a hearing conducted on January 24, 2023, the court entered the March 14 Order, in which it found that Mr. Sasser engaged in professional misconduct by failing to meet his obligations under North Carolina RPC 3.3(a) and 3.3(b), Candor Toward the Tribunal. The March 14 Order set a separate hearing at which the court would hear further evidence and argument as to the appropriate sanction and would consider at that time both mitigating and aggravating evidence, including, to the extent there are documented findings of fact and conclusions of law, evidence of a pattern of conduct and other sanctions imposed against Mr. Sasser. The March 14 Order further provided that the court would consider the amount and type of sanctions imposed by other disciplinary authorities and courts for similar misconduct by attorneys, and that the sanctions the court would consider imposing included monetary sanctions, denial of fees, disgorgement of

[3] The Colortek case was dismissed shortly after the Firm withdrew as counsel, and the Firm's Application for Compensation is the only matter remaining in that case.

any fees received, censure, and reprimand. Suspension and disbarment were neither requested nor considered.

JURISDICTION

This bankruptcy court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a statutorily core proceeding under 28 U.S.C. § 157(b)(1) that this court is authorized to hear and determine. The United States District Court for the Eastern District of North Carolina has referred this case and this proceeding to this court under 28 U.S.C. § 157(a) by its General Order of Reference entered on August 3, 1984. This proceeding is constitutionally core, and this court may enter final orders herein. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Bankruptcy courts, like Article III courts, have an inherent power to impose sanctions against parties or attorneys that appear or practice before them. *See In re Lewis*, No. 14-1881, 611 F. App'x 134 (4th Cir. June 9, 2015) (unpublished). This power is derived from the court's need to "'manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases,'" and includes "the power to control admission to its bar and to discipline attorneys who appear before it." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link v. Wabash R.R. Co.,* 370 U.S. 626, 630-31 (1962)). "The federal courts may and should hold attorneys appearing before them to recognized standards of conduct in their jurisdictions." *In re Computer Dynamics, Inc.*, 252 B.R. 50, 64 (Bankr. E.D. Va. 1997) (citing *In re Finkelstein,* 901 F.2d 1560, 1564 (11th Cir. 1990)).

This district has adopted a Local Rule incorporating the Rules of Professional Conduct of the North Carolina State Bar (as adopted by the Supreme Court of North Carolina), which provides 'hat for misconduct as defined in the Local Rules, after notice and an opportunity to be heard, any

attorney practicing before the court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant. *See* E.D.N.C. LBR 2090-2.

The January 24, 2023 hearing was preceded by adequate notice and an opportunity to prepare a defense as required by the Fourth Circuit under *United States Trustee v. Delafield*, 57 F.4th 414, 419-20 (4th Cir. 2023), and *Nell v. United States*, 450 F.2d 1090, 1093 (4th Cir. 1971). The Show Cause Motion clearly set forth allegations of attorney misconduct and the sanctions sought, and Mr. Sasser's response addressed those issues specifically. There was adequate time between the filing of the Show Cause Motion and the hearing to allow Mr. Sasser to prepare a defense and to retain counsel, which he elected not to do. Similarly, the April 13, 2023 hearing was preceded by adequate notice and an opportunity to prepare a defense, with all possible consequences having been identified in the March 14 Order.

ADDITIONAL EVIDENCE PRESENTED AT THE APRIL 13 HEARING

Mr. Sasser was represented at the April 13, 2023 hearing by his brother and law partner, Mr. Philip Sasser. Mr. Sasser presented testimony in his own defense, supported by exhibits, regarding the high number of chapter 13 cases filed in this district by the Firm and the extent to which Mr. Sasser routinely provided information and pre- and post-confirmation updates to the offices of the trustee and BA in those cases as required by the local rules and the initial order sent to debtors.

More specifically, Mr. Sasser testified that he has been licensed to practice law since 1999 and certified as a specialist in consumer bankruptcy law since 2004. He routinely speaks at local and national conferences and seminars on bankruptcy and professionalism topics and has published several articles. He has undertaken appellate work on a *pro bono* basis, and has assumed

representation in cases for attorneys whose practice was interrupted for one reason or another. He also takes on controversial positions before the court, often at great financial cost to the Firm, because he firmly believes that the law (or at least the court's interpretation of it) needs to be changed.

Mr. Sasser emphasized the "market share" that he and the Firm have of chapter 13 cases in this district, noting that they file a significant percent (7%) of those cases, and that he believes he more routinely complies with the requirements to seek court approval of certain transactions and to send "update" emails to the chapter 13 trustee than other attorneys. He testified that he personally has sent approximately 300 emails to the chapter 13 trustees with client updates since 2017.

Mr. Sasser also testified that neither he nor the Firm received any benefit (financial or otherwise) as a result of the failure to disclose that is the subject of the March 14 Order, and that there was no intent to hide the transfer of the Corvette. He does not believe that the nondisclosure harmed any party but acknowledged that if the case had converted to chapter 7, there may have been an impact on the ability of the estate to recover the value of the transfer as a result of the delay. It was Mr. Sasser's opinion that the transfer of the Corvette was more important than the lack of disclosure.

Mr. Sasser testified that he has never faced disciplinary action before and has never had a penalty or sanction imposed. On cross-examination, he elaborated on this issue when asked about a sanction imposed from the bench in another case in this district (discussed below), noting that he does not believe that "attorney misconduct" was at issue in that matter.[4]

[4] No written order has been entered in that matter to date.

Finally, Mr. Sasser expressed his regret that he did not counsel Mr. Beasley that the transaction needed to be promptly disclosed, even as Mr. Beasley sought to quietly undo it. He acknowledged that the fact of having a client who was "not easy" and somewhat difficult to deal with in no way excused his failure to do more, at the relevant time. He also testified that he felt chastened, educated, and more aware of his responsibilities after the BA's challenge to his conduct and entry of the March 14 Order, and that he appreciated the court's thorough analysis and would incorporate it into his future practice.

ADDITIONAL FACTS AVAILABLE TO THE COURT

After entry of the March 14 Order, Mr. Beasley filed a Notice of Waiver of Discharge, D.E. 212, which was approved by the court on March 30, 2023, after determining at a hearing that the waiver was voluntary, knowing, informed, and made with awareness of the consequences of foregoing a discharge in bankruptcy. D.E. 221.

In addition, as briefly referenced above, a monetary sanction against Mr. Sasser in the amount of $10,000 was announced from the bench by Chief Judge David M. Warren on November 2, 2022, in the case of *In re Sugar*, Case No. 19-4279. While there are many factual distinctions, that case also involved a chapter 13 debtor's failure to provide notice and obtain court approval of a transfer of property and a failure to disclose the transfer. *See In re Sugar*, Case No. 19-4279, 2023 WL 1931078, Order Dismissing Case and Barring Future Petitions (Bankr. E.D.N.C. Feb. 10, 2023). Although the court entered its order addressing the debtor's actions and the consequences thereof, no written order has yet issued in that case as to the sanction against Mr. Sasser, so this court cannot speak to the precise basis or bases on which that sanction rests.

DISCUSSION

1. Sanctions

Having previously made a finding of professional misconduct by Mr. Sasser based upon his failure to act with candor to the court as required by Rule 3.3(a) and (b), the court turns to a consideration of the circumstances that either aggravate or mitigate the sanction to be imposed in consequence of that conduct. At the hearing, both Mr. Sasser and the BA relied upon the standards for imposing lawyer sanctions outlined by the American Bar Association, which this court agrees are appropriate in this context. In full, those standards provide as follows:

> 9.2 Aggravation
> 9.21 Definition. Aggravation or aggravating circumstances are any considerations of factors that may justify an increase in the degree of discipline to be imposed.
>
> 9.22 Factors which may be considered in aggravation. Aggravating factors include:
> (a) prior disciplinary offenses;
> (b) dishonest or selfish motive;
> (c) a pattern of misconduct;
> (d) multiple offenses;
> (e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
> (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
> (g) refusal to acknowledge the wrongful nature of conduct;
> (h) vulnerability of victim;
> (i) substantial experience in the practice of law;
> (j) indifference to making restitution;
> (k) illegal conduct, including that involving the use of controlled substances.
>
> 9.3 Mitigation
> 9.31 Definition. Mitigation or mitigation circumstances are any considerations of factors that may justify a reduction in the degree of discipline to be imposed.
>
> 9.32 Factors which may be considered in mitigation. Mitigating factors include:
> (a) absence of prior disciplinary record;
> (b) absence of a dishonest or selfish motive;
> (c) personal or emotional problems;

> (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
> (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
> (f) inexperience in the practice of law;
> (g) character or reputation;
> (h) physical disability;
> (i) mental disability or chemical dependency including alcoholism or drug abuse . . . ;
> (j) delay in disciplinary proceedings;
> (k) imposition of other penalties or sanctions;
> (l) remorse; [and]
> (m) remoteness of prior offenses.

American Bar Ass'n Standards for Imposing Lawyer Sanctions, Sec. 9. The North Carolina State Bar Disciplinary Hearing Commission considers similar factors in imposing the appropriate discipline. *See* 27 N.C.A.C. 1B.0116(f)(3). These standards provide a fulsome list of factors commonly considered by courts in imposing sanctions for a range of lawyer misconduct.

Based on the evidence outlined above as well as the arguments of counsel, the court finds that Mr. Sasser's substantial experience in the practice of law is an aggravating factor. The court finds the absence of a prior disciplinary record; the absence of a dishonest or selfish motive; Mr. Sasser's reputation; the $10,000 sanction imposed in *Sugar*; and Mr. Sasser's candid acknowledgment of the mistakes that were made in this case to be mitigating factors.

There are additional important facts that do not necessarily weigh in either direction, or arguably weigh in both: first, at least partially as a consequence of the undisclosed transfer, Mr. Beasley did not achieve a discharge in his bankruptcy case. The court cannot weigh this in either direction because whether Mr. Beasley would have received a discharge had the transfer been disclosed and avoided sooner is a matter of speculation. Similarly, the BA contends that the bankruptcy estate incurred attorney's fees related specifically to the failure to disclose the transfer,

but the court cannot make a finding that these fees are a result of Mr. Sasser's conduct or Mr. Beasley's conduct, or a combination of the two.

In determining an appropriate sanction, the court also reviewed disciplinary cases in a variety of contexts, all involving sanctions ranging from censure and costs of $500 to significant monetary sanctions and disbarment. In the most analogous case, *In re Gulczynski*, Case No. 05-21435-RAG, 2008 WL 906816 (Memorandum Opinion) (Bankr. D. Md. April 3, 2008) (unpublished disposition), which was discussed at length in the March 14 Order, the Disciplinary and Admissions Committee for the United States District Court for the District of Maryland ultimately imposed the sanction of an official reprimand. In another attorney discipline case the court finds to be comparable, *Board of Professional Responsibility v. Custis*, 348 P.3d 823, 836 (Wy. S. Ct. 2015), the Wyoming State Bar imposed on counsel a sanction consisting of public censure, an administrative fee of $500, and court costs of $1,827.72 based on the attorney's violation of rules of conduct requiring, among other things, candor to the tribunal.[5]

Taking all of these things into consideration, and as the court announced from the bench at the conclusion of the hearing, the appropriate sanction in this matter consists of a monetary sanction in the amount of $1,000 and a reprimand. Notwithstanding the BA's request that the reprimand be issued as a published opinion, the court declines to do so. The court has further determined that neither a denial of fees nor the imposition of additional continuing legal education requirements in professional responsibility would be appropriate in this instance. The reasons for the court's determination are many, and are based upon not only the April 13 hearing, but on the

[5] The attorney in *Custis* signed and submitted a brief containing a material misrepresentation and including a quote without attribution in such a way as to suggest that the testimony of a forensic interviewer n a different criminal case was from the case at hand, then maintained that the misrepresentation was caused by his paralegal's drafting error. On these facts, the tribunal concluded that the attorney failed to neet his obligation to "prevent the trier of fact from being misled by false evidence." *Id*. at 832.

court's familiarity with Mr. Sasser and his representation of his clients over two decades as a fellow member of the bar of the Eastern District of North Carolina.

As noted in the March 14 Order, the bankruptcy process requires transparency. In exchange for the automatic stay, a discharge, and the discharge injunction, debtors must disclose detailed financial information and subject themselves to additional reporting and sometimes approval of financial transactions for varying periods of time depending on the chapter of the Bankruptcy Code under which they filed. Mr. Sasser's testimony established that the Firm's clients routinely comply with the reporting and approval rules notwithstanding that he believes many of them are inappropriate overreach by the court, signaling that the Firm as part of its practice counsels its clients regarding these obligations. The issue before the court in this case is not that the Firm counseled Mr. Beasley to violate a rule or even failed to advise him of those rules, but instead what action should have been taken by Mr. Sasser when he learned that Mr. Beasley had engaged in a transaction without complying with the rules and obtaining court authority for the transfer. It is at that precise point that RPC 3.3(a) and 3.3(b) came into play, and it is Mr. Sasser's failure to take appropriate steps to either advise Mr. Beasley regarding his disclosure obligations, or to disclose or withdraw if Mr. Beasley refused, that runs afoul of the Rules of Professional Conduct.[6]

2. Objection to Fees Under § 328

In addition to requesting denial of fees as a sanction for misconduct, the BA also objected to the Applications for Compensation under 11 U.S.C. § 328, contending that the Firm was not disinterested when the applications to employ were allowed, as it held an interest adverse to the chapter 11 estates. Specifically, Mr. Sasser and the Firm's knowledge that the Corvette had been

[6] Sometimes the failure to follow the rules is an honest error. However, in those cases where a client is aware of the rules and intentionally disregards them, counsel should give the issue heightened attention to ensure compliance with RPC 3.3. In either case, disclosure is required.

transferred without authority created an adverse interest, as the estate was depleted by that transfer. The BA also suggested that in many cases, including this one, the chapter 13 debtor is adverse to the chapter 13 estate, and reasons further that counsel for the chapter 13 debtor would then be adverse to the chapter 11 estate upon conversion. Mr. Sasser, on the other hand, maintained that because Mr. Beasley's debts were primarily priority debts that were required to be paid through the plan, his interest was aligned with the chapter 13 estate in this case.

Section 328(c) provides that "the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 . . . if, at any time during such professional person's employment . . . , such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed." 11 U.S.C. § 328(c). The statute is written in the permissive.

There are many "what-ifs" in this case, including whether the Firm would have been employed in either chapter 11 case had the timing of Mr. Sasser's knowledge of the transfer of the Corvette been disclosed at the time. Under these circumstances, the court will not speculate as to what might have happened differently, but simply finds that denial of fees either under § 328 or as a sanction would be excessively punitive in this case, particularly in view of the existing sanction noted above.

CONCLUSION

The court finds that Mr. Sasser has engaged in professional misconduct by failing to meet his obligations under both RPC 3.3(a) and 3.3(b), Candor Toward the Tribunal. In light of the aggravating and mitigating factors outlined above, as well as other sanctions imposed against Mr. Sasser, the court imposes as a sanction this REPRIMAND, as well as the monetary sanction of

$1,000, payable to the Clerk of Court within 14 days of the date of this order. The Firm's applications for compensation are approved and separate orders will be entered in each case.

As contemplated by 27 N.C.A.C. 1B.0120, the Clerk is directed to forward a copy of the March 14 Order and this Order to the North Carolina State Bar.

END OF DOCUMENT