

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
)  
CHARLES TAYLOR, Petitioner, )  
TAMALOU WILLIAMS, Trustee, ) No. 98-CV-4191-JPG  
)  
Plaintiff, ) BK. 96-40894  
)  
vs. ) Adv. No. 97-4132  
)  
CANDACE HANCOCK, et. al., )  
)  
Defendants. )

MEMORANDUM AND ORDER

**GILBERT, Chief Judge:**

This matter is before the Court on Attorney Charles Taylor's appeal of Bankruptcy Judge Meyers' order sanctioning Taylor for misconduct. This case originates from a chapter 7 bankruptcy filed by Michael Hancock and was appropriately referred to the Bankruptcy Court under 28 U.S.C. § 157 (1997). Likewise, the Bankruptcy Court's order was entered in a proceeding referred to the bankruptcy judge under that same section. Thus, this Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. §158 (1997).

**I. FACTS**

Bankruptcy Judge Meyers sanctioned two attorneys, Darrell Dunham ("Dunham") and Charles Taylor ("Taylor"), for their role in a post-petition sale of real estate. The debtor, Michael

Hancock ("Hancock"), filed a chapter 7 bankruptcy petition. Subsequent to the petition, a piece of real estate was sold by one of Hancock's corporations. Taylor assisted in the post-petition sale, and both attorneys defended the sale before the Bankruptcy Court. As a result of this conduct, the two attorneys were temporarily suspended from practicing in the Southern District of Illinois pending their payment of opposing counsels' attorneys' fees and costs. Taylor appealed the sanction.

#### **A. Background**

On July 29, 1996, Hancock filed a voluntary, *pro se*, chapter 7 bankruptcy petition in the Southern District of Illinois. In his statement of financial affairs, Hancock disclosed, without elaboration, that he was involved with a corporation, Rolling Keg Productions ("Rolling Keg"). At Hancock's section 341 meeting of creditors,<sup>1</sup>

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<sup>1</sup>11 U.S.C. § 341 provides:

(a) Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors.

(b) The United States trustee may convene a meeting of any equity security holders.

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

(d) Prior to the conclusion of the meeting of creditors or equity security holders, the trustee shall orally examine the debtor to ensure that the debtor in a case under chapter 7 of this title is aware of-

he testified that he owned ninety percent (90%) of all of Rolling Keg shares. Subsequent to the meeting, Rolling Keg was dissolved on October 1, 1996 for failure to file an annual report and pay its franchise tax.

On the day the bankruptcy petition was filed, Rolling Keg owned a parcel of land in Harrisburg, Illinois ("the property"). Sometime after the petition date, Taylor brokered a deal whereby Jim Watson ("Watson") agreed to purchase the property from Rolling Keg.<sup>2</sup> Watson signed a contract for sale on November 26, 1996, and Taylor sent the contract to Hancock in Texas where he resided. The contract was returned to Taylor with the purported signature of Michael Hancock dated December 1, 1996,<sup>3</sup> and was recorded on December 6, 1990.<sup>4</sup> Taylor was paid a ten percent

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- (1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;
  - (2) the debtor's ability to file a petition under a different chapter of this title;
  - (3) the effect of receiving a discharge of debts under this title; and
  - (4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d) of this title.

<sup>2</sup>Taylor is both an attorney and a real estate broker.

<sup>3</sup>The parties disagree that this contract was ever signed by Michael Hancock exist.

<sup>4</sup>Taylor recorded carbon copies of the contract in the Saline County Recorder's Office. According to Taylor, the

(10%) commission for brokering the sale.

In his deposition, Taylor stated that he had never recorded a contract prior to this transaction. One witness (Taylor's stepson and Watson's attorney and business partner) testified that the contract was recorded because of rumors that Hershel Hancock, Michael's father, was trying to sell the real estate. Shortly thereafter, on January 2, 1997, Taylor also recorded a mortgage on behalf of Corporate Holdings, Ltd. in Saline County.

Following the sale of the property, the Bankruptcy Trustee ("Trustee") filed a complaint to sell real estate pursuant to 11 U.S.C. § 363(h), which authorizes a trustee to sell a debtor's property. A summons and complaint were served on Michael Hancock, Candace Hancock,<sup>5</sup> and Rolling Keg. All of the defendants failed to plead or answer the complaint, and the Bankruptcy Court entered a default judgment against them on October 1, 1997.<sup>6</sup>

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contract signed by Watson was in triplicate. However, after sending the contract to Texas, Taylor received only the two carbon copies of the contract back.

<sup>5</sup>Candace Hancock is Michael's mother. She was a ten percent (10%) shareholder in Rolling Keg.

<sup>6</sup>The defendants filed a motion to set aside the default judgment, but the motion was denied. An appeal from that decision was also dismissed by this Court for lack of jurisdiction.

On December 5, 1997, the Trustee filed a complaint, seeking authority to pay all of the valid liens encumbering the property and to set aside all liens which were not valid. Count III of the complaint specifically sought to set aside Watson's purported purchase of the property from Michael Hancock, alleging that the bankruptcy estate was the legal owner of ninety percent (90%) of the subject property and that the sale was not authorized by the estate. In addition, the complaint asserted that the mortgage lien was not authorized by the Bankruptcy Court, that it constituted an unauthorized post-petition lien, and that the mortgage was not supported by any consideration. Rolling Keg, Corporate Holdings, Taylor (as a broker), and Watson were named as defendants in the complaint. Taylor represented Rolling Keg and Corporate Holdings, Darrell Dunham represented Taylor, and Robert Wilson represented Watson.<sup>7</sup>

The defendants moved to dismiss the complaint for lack of subject matter jurisdiction, claiming that the property was not part of the bankruptcy estate because it was owned by the corporation, not by Michael Hancock individually. In the interim, on January 16, 1998, the Trustee sold the property to

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<sup>7</sup>Watson and Wilson were business partners in a business called Chase National Corp. The check for the purchase of the property was drawn on the account of Chase National Corp., but never negotiated.

Tri-State Business, Inc. ("Tri-State"). As a result, the defendants made a second motion to dismiss claiming that, once the property was sold, the Trustee no longer had standing to challenge the earlier post-petition sale and, therefore, the Bankruptcy Court lacked subject matter jurisdiction. On January 27, 1998, the Bankruptcy Court denied both motions to dismiss after a hearing. Defendants then answered and moved for judgment on the pleadings.

#### **B. Subsequent Proceedings and Suspension**

As previously noted, the Bankruptcy Court was very unhappy with Attorneys Dunham and Taylor for the position they advanced. According to the court, the position was both frivolous and fraudulent. As a result, the Bankruptcy Court sanctioned both attorneys:

Pursuant to the findings and conclusions made in open court at hearings conducted on March 24, 1998, April 14, 1998, and April 21, 1998, attorneys Dunham and Taylor are suspended from practicing before the United States Bankruptcy Court for the Southern District of Illinois pending payment of attorneys' fees and costs in the amount of \$8,408.55; \$3,508.55 payable to A. Courtney Cox, counsel for Tri-State Business Equipment, and \$4,900 payable to Michelle Vieira, counsel for the chapter 7 trustee. Mr. Dunham and Mr. Taylor shall be jointly and severally liable for these obligations. This Order does not affect Mr. Dunham's right to serve as trustee in matters pending before the Court.

Because the court's order references prior hearings, it is prudent for this appeal to set out in detail the findings and

conclusions made at the three hearings.

**1. March 24, 1998 Hearing**

On March 24, 1998, a hearing was held on the petition to intervene filed by Tri-State. At the hearing, the court asked Taylor on what authority he was representing Rolling Keg. Taylor informed the court that he had been authorized in December of 1997 to represent Rolling Keg and that the corporate minutes authorizing Taylor's representation were signed on or about March 20, 1998, a few days prior to the hearing. The court then asked how Taylor had authority to file pleadings in the matter prior to the authorization. Taylor responded that he had oral authority and that he was under the impression that both Hancock and his mother had previously authorized his representation at a board meeting.

Finding that Taylor had no authority to file pleadings on Rolling Keg's behalf prior to March 20, 1998, the court struck all of Rolling Keg's pleadings and entered a default judgment against Rolling Keg. The court ordered, however, that Taylor would have ten days to demonstrate his prior authority to file pleadings on Rolling Keg's behalf and, if the authorization was established, the court would vacate the default judgment. Furthermore, the court ordered Taylor to present the testimony of Candace and Michael Hancock to demonstrate Taylor's

authorization.

Next, the court questioned Taylor as to whether he knew that Michael Hancock was in bankruptcy at the time Taylor brokered the sale of the property for Rolling Keg. Taylor revealed that he was aware of the pending bankruptcy, but that he believed that the sale of the property was lawful. Taylor believed that the Bankruptcy Court only had jurisdiction over the value of the assets or the shares that Michael Hancock would receive. The court correctly disagreed with Taylor and stated that, since the Trustee owned ninety percent (90%) of the shares at the time of the sale, it should have been given an opportunity to vote those shares before Rolling Keg sold the property. Although the Trustee knew about the sale and filed a *lis pendens* notice, it did not vote its ninety percent (90%) shares nor was it given the opportunity to vote those shares.

**2. April 14, 1998 Hearing and Events Occurring Shortly Thereafter**

On April 14, 1998, the court held a hearing on a Taylor's motion to reconsider the default judgment against Rolling Keg. Taylor failed to appear for the hearing. Wilson, Watson's attorney, informed the court that Taylor had filed a motion to continue the hearing, which the court received later that morning.

After entering default against Watson, the court addressed the issues specifically relating to Taylor. The court first noted that Taylor failed to show up for the hearing and that Taylor failed to produce both Candace and Michael Hancock to testify as previously ordered. In addition, the court found that the entire case had been "fraught with misrepresentations, innuendoes, half truths and fraud." The court then suspended Taylor and Dunham from practicing before the Bankruptcy Court in the Southern District of Illinois until further order of the court. The Bankruptcy Court elaborated that the suspensions could be purged if Taylor and Dunham produced books and records of Corporate Holdings, original documentation showing the loan from Corporate Holdings to Rolling Keg, books and records of Rolling Keg (including records showing the shareholders and directors of the corporation), a list of creditors to Rolling Keg, a statement from Taylor that he would present Candace and Michael Hancock for testimony under oath, the original contract for the sale of the property to Watson, and books and records of Chase National Corp. Finally, pursuant to the provisions of section 105 of the Bankruptcy Code, the court assessed reasonable attorneys' fees and costs incurred by the Trustee and Tri-State in defending the frivolous claims made by Taylor and Dunham.

Shortly after the suspension, Taylor and Dunham contacted the Bankruptcy Court *ex parte*. During this conversation, the Bankruptcy Court informed Taylor and Dunham that they should each file a motion asking for reconsideration of the suspensions. In the interim, the Bankruptcy Court stayed its previous order, and set another hearing for April 21, 1998 to consider the motions for reconsideration of the suspensions.

### **3. April 21, 1998 Hearing**

At the April 21, 1998 hearing, the Bankruptcy Court initially noted its displeasure with the motions to reconsider, stating that they were not contrite. The court gave Taylor and Dunham three options. They could either stand on their responses in their briefs, comply with the previous order of April 14, 1998, or express remorse and repentance. After giving Taylor and Dunham some time, the court allowed the two attorneys to present a statement to the court. Taylor and Dunham prepared a joint statement presented by Dunham.

Dunham expressed hope that their joint statement would comply with the third alternative and that, although not repentance, it was intended to explain why they took the position they chose. He then told the court that there were warning signs which both attorneys should have noticed when they first met Hershel Hancock and that they should not have taken

him on as a client. Specifically, Dunham noted that the Hancock family was dishonest about the quantity of stock each of them owned in Rolling Keg. Next, Dunham noted that both attorneys should have been suspicious when they were unable to procure documents from Panama regarding Corporate Holdings. Finally, Dunham told the court that, although he believed that they should have seen warning signs, neither he nor Taylor "believed at any point in the proceeding that Mr. Hancock was proceeding in an illegal way...." If they had, Dunham stated, "we would have dumped him."

At the conclusion of the statement, the court asked Taylor and Dunham to address the question of costs and fees which were awarded in the stayed order of April 14, 1998. Dunham stated that they would be willing to pay costs if the costs were an amount that the attorneys could afford. After the Trustee's attorney and Tri-State's attorney informed the court of the costs incurred, the court asked Taylor and Dunham for an answer. Dunham stated that he and Taylor had not advanced a position that was contrary to the law or facts. In addition, Dunham believed that he had not done anything in the court that made him liable for the payment of attorneys' fees. The court disagreed, saying:

Well, my thought on the issue is that there was a period in time when you were right, but there came a

point in time when I think it did create excess expense to the estate. I can see that initially you could be naive, whatever, you could raise the issues, but there came a point in time when it should be -- it should have been perfectly obvious to you and everybody else -- it was obvious to everyone except you -- that it was time to get out.

Dunham expressed his disagreement with this statement while Taylor remained silent.

The court informed the two attorneys that it was assessing all of the costs and fees incurred by Tri-State because "[t]hey would not have been a party to this proceeding if you would not have persisted in this endeavor." The court further assessed "one-half of the trustee's attorney's fees and costs" because the trustee would not have incurred nearly the expense if the two attorneys had not insisted on their frivolous arguments. The court then informed Dunham and Taylor that they would not be suspended if they promptly paid the attorneys' fees. After Dunham advised the court that he was unable to pay the fees, the court suspended both attorneys pending payment of the costs and fees.

Taylor subsequently paid the all of the costs and fees assessed. He now appeals.

## **II. ANALYSIS**

Taylor raises three arguments in his appeal. First, he claims that the Bankruptcy Court did not afford him due process

of law prior to sanctioning him for his misconduct. Second, he argues that the evidence in the record does not support the Bankruptcy Court's decision to sanction him. Finally, he asserts that the Bankruptcy Judge should have referred the matter to an independent attorney for an investigation prior to rendering the sanction. Although neither party raises the question of jurisdiction, the Court must address it first.

#### **A. Jurisdiction**

Although not raised in either of the parties' briefs, this Court must address whether the present appeal of Taylor's suspension is moot. *See North Carolina v. Rice*, 404 U.S. 244, 245 (1971) (a federal court is obligated to raise, *sua sponte* if not raised by the parties, the issue of mootness). Article III of the United States Constitution limits the jurisdiction of federal courts to "cases" and "controversies." U.S. CONST. Art. III, sec. 2. This limitation serves two purposes. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395-96 (1980) (citing *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). First, "[i]t limits the business of federal courts to 'questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process....'" *Geraghty*, 445 U.S. at 396 (1980) (citing *Flast*, 392 U.S. at 95 (1968)). Second, "it defines the 'role assigned to the judiciary in a

tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government.'" *Id.*

The doctrines of mootness, standing, and ripeness serve to determine whether an issue is justiciable. *Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 227 (5th Cir. 1998). Mootness occurs where the interest which was at stake at the commencement of the lawsuit no longer exists. *Id.* Mootness may occur for several reasons. *Id.* "'One such reason can be an intervening event which causes the plaintiff to no longer have a present right to be vindicated or a stake or interest in the outcome.'" *Id.* (citing *Calderon v. Moore*, 518 U.S. 149, 149-51 (1996)). "An intervening event, however, will only render a plaintiff's action moot if the plaintiff is divested of all personal interest in the result or the effect of the alleged violation is completely eradicated and the event will not occur again." *Id.* at 227. However, where the primary injury has been resolved, but there is a continuing harm which the court has the power to avert, the collateral consequences doctrine serves as an exception to prevent mootness. *Id.* at 227 (citing *Sibron v. New York*, 392 U.S. 40, 53-59 (1968)).

In *Dailey*, the trial court disbarred an attorney from further practice before that court until the attorney paid

monetary sanctions imposed for violations of Rule 11. *Dailey*, 141 F.3d at 226. The attorney paid the monetary sanctions, and the court reinstated the attorney. *Id.* On appeal, the Fifth Circuit addressed whether the attorney's appeal of the disbarment order was moot. *Id.* The Fifth Circuit held that "the mere possibility of adverse collateral consequences is sufficient to preclude a finding of mootness." *Id.* at 228 (quoting *Sibron*, 392 U.S. at 55). The Fifth Circuit also found that even a temporary disbarment may be detrimental to an attorney's professional well-being, reputation, and success because admission to an appropriate bar is an absolute prerequisite to the practice of law. *Id.* As such, collateral consequences existed that were sufficient to preclude a finding of mootness. *Id.*

Here, Taylor was suspended from practicing before the Bankruptcy Court until he paid the other parties' attorneys' fees. Taylor paid the fees and the Bankruptcy Court reinstated him. Just as in *Dailey*, there are collateral consequences associated with the suspension, such as Taylor's reputation, well-being, and success as an attorney. Taylor's appeal of the suspension is, therefore, not moot.

#### **A. Due Process**

Taylor argues that the Bankruptcy Court did not afford him

due process because he did not have adequate notice of the impending sanction nor was he given a full opportunity to be heard. Disbarment is a punishment imposed on a lawyer which is designed to protect the public. *In re Ruffalo*, 390 U.S. 544, 550 (1968). As such, an attorney facing disbarment is entitled to procedural due process, which includes notice and an opportunity to be heard. *Id.*

#### **1. Notice**

In general, "the [attorney] against whom sanctions are being considered is entitled to notice of the legal rule on which the sanctions would be based, the reasons for the sanctions, and the form of the potential sanctions." *In re Tutu Wells Contamination Litig.*, 120 F.3d 368, 379-80 (3d Cir. 1997). In the present case, on the morning of April 14, 1998, Taylor was suspended from practicing before the Bankruptcy Court until he paid the attorney's fees for Tri-State and the Trustee. He was not given notice nor an opportunity to be heard before being suspended. In fact, Taylor was not even present when the court imposed the suspension. There can be no doubt that Taylor was denied due process at the April 14, 1998 hearing.

However, as the Seventh Circuit has noted, "[g]enerally speaking, procedural errors are cured by holding a new hearing in compliance with due process requirements." *Batanic v.*

*Immigration and Naturalization Service*, 12 F.3d 662, 667 (7th Cir. 1993); see also *Zinerman V. Burch*, 494 U.S. 113, 126 (1990). Here, shortly after the suspension, on the afternoon of April 14, Taylor contacted the Bankruptcy Court and the order suspending Taylor until payment of attorney's fees was stayed. In that order, the court scheduled a hearing for April 21, 1998 to reconsider its previous ruling. This order clearly informed Taylor that suspension was a possible sanction at the April 21 hearing. In addition, the transcript from the April 14, 1998 hearing clearly informed Taylor of the rule upon which sanctions were being based and the reasons for the sanctions. The Bankruptcy Court stated at the April 14 hearing that it was taking action pursuant to the provisions of section 105 of the Bankruptcy Code.<sup>8</sup> Moreover, the Bankruptcy Court outlined the reasons for imposing sanctions in great detail at the April 14 hearing. It is quite clear that the Bankruptcy Court provided Taylor with sufficient notice that comported with due process.

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<sup>8</sup>Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.  
11 U.S.C. § 105(a).

## 2. Opportunity to be Heard

An opportunity to respond is afforded when a party has "the opportunity to present reasons, either in person or in writing, why proposed action should not be taken...." *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). To meet due process requirements, an opportunity to be heard must be afforded "at a meaningful time and in a meaningful manner." *Mathews v.*

*Eldridge*, 424 U.S. 319, 333 (1976) (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

In the case at bar, Taylor was given an opportunity to be heard at the April 21 hearing. This opportunity was afforded at a meaningful time and in a meaningful manner. Taylor helped prepare a joint statement which was presented to the court. In this statement, Taylor expressed the reasons why he thought sanctions should not be imposed. Specifically, Taylor voiced the opinion that he did not believe that he had advanced a position which was contrary to the law or facts as he believed them to be. Although the Bankruptcy Court disagreed with this position, Taylor was not denied an opportunity to be heard. The Bankruptcy Court merely rejected Taylor's position.

Taylor also argues that he was not given an opportunity to

be heard since he was unable to have his examination taken pursuant to Bankruptcy Rule 2004.<sup>9</sup> This contention is clearly without merit. Rule 2004 has absolutely no application to question at hand. Even if it did,

"although the requirements of due process of law are applicable to a proceeding to impose sanctions, ... the right to a hearing in these circumstances is obviously limited to cases where a hearing could assist the court in its decision. Where the sanctionable conduct occurred in the presence of the court, there are no issues that a hearing could illuminate and hence the hearing would be pointless."

*Kapco Mfg. Co., Inc. v. C&O Enterprises, Inc.*, 886 F.2d 1485, 1494-95 (7th Cir. 1989); *Hill v. Norfolk & Western Railway Co.*, 814 F.2d 1192, 1201 (7th Cir. 1987). Here, the sanctionable

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<sup>9</sup>Rule 2004 provides:

(a) Examination on motion - On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of examination - The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

conduct took place before the court. Any examination of Taylor would not have assisted the court in making its decision. Moreover, Taylor's deposition had already been taken and there were no witnesses which could have been called regarding this issue. The court had informed Taylor that he could purge himself of the suspension by bringing Michael and Candace Hancock before the court to testify. Taylor failed in all respects. No other witnesses could have assisted the court in making its determination. Not only is Rule 2004 inapplicable to this case, a hearing would have been useless.

### **C. Referral to a Fact Finding Committee**

Taylor claims that the Bankruptcy Court should have referred the matter to an independent fact-finding committee. He claims that there is no local rule which gives the Bankruptcy Court the power to discipline attorneys. Since admission to practice law in the District Court for the Southern District of Illinois constitutes an admission to practice in the Bankruptcy Court, Taylor claims that the Bankruptcy Court must follow Local Rule 29, which sets out a procedure for disciplining attorneys. Under Local Rule 29, when the court is faced with misconduct or allegations of misconduct, and the applicable procedure is not otherwise mandated by the rules, the court must refer the matter to counsel for investigation. S.D. Ill. Local Rule 29(e)(1).

Taylor is correct in his assertion. Courts have an inherent power to discipline attorneys practicing before it. *Magnus Electronics v. Masco Corp.*, 871 F.2d 626, 632 (7th Cir. 1989); see also *Overmyer Co., Inc. v. Robson*, 750 F.2d 31, 33 (6th Cir. 1984) (finding that this inherent power extends to bankruptcy courts). However, this power is subject to the procedures adopted in the local rules since the local rules are binding on the court and must be followed. *United States v. Hastings*, 695 F.2d 1278, 1283 n.13 (11th Cir.), cert. denied, 461 U.S. 931 (1983); *Woods Construction Co. v. Atlas Chemical Industries, Inc.*, 337 F.2d 888, 890-91 (10th Cir. 1964). The Bankruptcy Court was required to follow Local Rule 29 and refer the matter to counsel for investigation. See *Link v. Wabash R.R.*, 291 F.2d 542 (7th Cir. 1961) ("[C]ourt rules have the force of law."). It failed to do so, and this constituted error. However, this error was harmless because any further investigation would not have been helpful in this situation. The conduct for which the attorneys were sanctioned took place immediately before the Bankruptcy Court. Support for the sanction is readily apparent in the record and any further investigation would have been fruitless.

**D. Support for the Suspension in the Record**

Taylor claims that the record does not support his

suspension. He claims that in order to suspend an attorney, the court must find that there is clear and convincing evidence sufficient to support the sanction. See *Resolution Trust Co. v. Bright*, 6 F.3d 336, 341 (5th Cir. 1993). He further argues that no findings were made to support such a conclusion. Taylor's contention is incorrect; the Bankruptcy Court made a finding that there was clear and convincing evidence to support the sanction.

The Bankruptcy Court specifically found that Taylor had no authority to represent Rolling Keg in the matter. There is no evidence that suggests that Taylor had any authority to represent the corporation, and, when asked to produce such evidence, Taylor failure to produce anything, including the testimony of Candace and Michael Hancock. The Bankruptcy Court's findings of fact will be upheld unless clearly erroneous. *In re A-1 Paving & Contracting, Inc.*, 116 F.3d 242, 243 (7th Cir. 1997); *In re Marrs-Winn Co.*, 103 F.3d 584, 589 (7th Cir. 1996). This Court cannot say that this finding was clearly erroneous. The Bankruptcy Court gave Taylor numerous opportunities to produce the Hancocks to testify, but Taylor repeatedly failed to do so. Therefore, the Bankruptcy Court was justified in finding that Taylor failed to show he had authority to represent Rolling Keg.

The Court also finds that this conduct constituted clear and convincing evidence sufficient to warrant the sanction imposed by the Bankruptcy Court. Filing pleadings on behalf of a company without prior authorization to represent the company warrants a sanction. In addition, the Bankruptcy Court found, and Taylor admitted, that Taylor knew that Michael Hancock was in bankruptcy at the time of the sale of the property. In spite of this knowledge, Taylor did not give the Trustee an opportunity to vote the Trustee's shares in Rolling Keg prior to the sale. Because Hancock was in bankruptcy, ninety percent (90%) of the shares belonged to the Trustee at the time the property was sold. Along with the shares, the Trustee also acquired the right to vote the shares. *See In re Loughnane*, 28 BR. 940, 942 (Bankr. D. Colo. 1983); ("the property interest of ... the bankruptcy estate extends ... to the intangible personal property rights represented by the stock certificates"). At the very least, the Trustee should have been given an opportunity to vote Michael's shares before Rolling Keg sold the property. In effect, Taylor sold the property of the Trustee and, therefore, constituted a post-petition sale.<sup>10</sup> A post-

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<sup>10</sup>A corporation's assets pass directly to the shareholders once the company is dissolved. *See In re Lipuma*, 167 B.R. 522, 525 (N.D. Ill. 1994); *In re Midwest Athletic Club*, 161 F.2d 1005, 1008 (7th Cir. 1947)(court assumed, without deciding, that title to the property of a dissolved Illinois corporation

petition sale of another's property certainly constitutes sanctionable conduct.

### III. Conclusion

Taylor was not denied due process. Although the hearing on April 14, 1998 did not comport with the requirements of due process, the subsequent hearing on April 21 cured any such defects. Prior to the April 21 hearing, Taylor was given notice of the possible sanctions along with the basis for sanctions. He was given an opportunity to be heard and presented a statement jointly with Dunham. Although the Bankruptcy Court should have referred the matter to a counsel for investigation pursuant to Local Rule 29, this failure constituted harmless error.

Further, the record establishes that the Bankruptcy Court made specific findings that showed clear and convincing evidence sufficient to warrant sanctions. The court specifically found that Taylor did not have authority to represent and file pleadings on behalf of Rolling Keg and that Taylor sold property post-petition without receiving prior approval from the Trustee. Both actions constituted sanctionable conduct.

For these reasons, the Bankruptcy Court's decision is hereby AFFIRMED.

IT IS SO ORDERED.

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passed to the shareholders as tenants in common).

DATED: December 29, 1998

/s/ J. Phil Gilbert  
Chief Judge