

1
2
3
4
5
6
7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 In re:

12 **THE DISCIPLINARY PROCEEDINGS OF**
13 **BRIAN D. WIRSCHING,**

14 Attorney.

Case No.: LA MI 09-00002

15 **MEMORANDUM OF DECISION**
16 **SUSPENDING BRIAN D. WIRSCHING**
17 **FROM PRACTICING LAW IN THIS**
18 **COURT**

19 Date: May 8, 2009
20 Time: 10:00 a.m.
21 Ctrm: 1545
22 Floor: 15th

23 This disciplinary proceeding began with an application on November 6, 2008 by
24 Peter Anderson, U.S. Trustee, to Chief Judge Vincent Zurzolo for the issuance of an
25 order to Brian D. Wirsching to appear and to show cause why he should not be
26 referred to this court's disciplinary panel following a determination by the California
27 State Bar that he was "not eligible to practice law" as of July 1, 2008.

28 Mr. Wirsching was admitted to practice law in California in 1997. The
application of the U.S. Trustee gave evidence that, as of July 1, 2008, Mr. Wirsching
was no longer eligible to practice law in California. The State Bar website shows that
Mr. Wirsching's ineligibility results from his failure to satisfy the continuing education

1 requirements impose on California lawyers. The application further shows that,
2 in September 2008, Mr. Wirsching made court appearances notwithstanding his
3 ineligibility to practice law in California.

4 Judge Zurzolo issued an order to show cause on December 4, 2008, which set
5 a hearing on January 6, 2009. Mr. Wirsching failed to appear at the hearing on the
6 order to show cause and failed to respond in any fashion. In consequence, on
7 January 23, 2009 Judge Zurzolo issued a Statement of Cause referring the matter to
8 the court's Disciplinary Panel pursuant to General Order 96-5. Each of these
9 documents was served on Mr. Wirsching at his address of record with the Price Law
10 Group, where he practiced as an attorney.

11 **Notice**

12 The court has received a declaration under penalty of perjury from April L.
13 Dyer, a legal assistant to the Price Law Group, that Mr. Wirsching's last day at the firm
14 was June 13, 2008. Thus it appears that Mr. Wirsching may not have received the
15 U.S. Trustee's application for an order to show cause and Judge Zurzolo's show
16 cause order, which were sent to his address of record.

17 April L. Dyer, Legal Assistant to Stuart M. Price, filed a declaration with the
18 court under penalty of perjury on February 26, 2009, stating that she contacted
19 Mr. Wirsching through his MySpace account on February 24, 2009, and that he replied
20 that she could forward documents to him at 4525 Rosewood Avenue #3, Los Angeles,
21 CA 90004. Ms. Dyer's declaration further states that, on that date, she forwarded the
22 service copies of the following documents received by the Price Law Group:
23 the Statement of Cause, the Notice of Assignment of Hearing Panel, and a copy of
24 General Order 96-05. Ms. Dyer's declaration does not state that she (or anyone)
25 forwarded the earlier documents to Mr. Wirsching. Subsequently, on March 19, 2009,
26 this court served a Notice of Disciplinary Hearing on Mr. Wirsching at his Rosewood
27 Avenue address.

28 ///

1 California Business & Professions Code § 6002.1 provides in relevant part:

2 (a) A member of the State Bar shall maintain all of the following on
3 the official membership records of the State Bar:

4 (1) The member's current office address and telephone number or,
5 if no office is maintained, the address to be used for State Bar purposes or
6 purposes of the agency charged with attorney discipline.

7 The Price Law Group Address is the address that is posted for Mr. Wirsching on the
8 State Bar website.

9 The Panel finds that the Statement of Cause and the Notice of Disciplinary
10 Hearing, as well as all other relevant documents filed in this matter in 2009, were in
11 fact served on Mr. Wirsching at the address that he gave to Ms. Dyer. The Panel
12 further finds that Mr. Wirsching had constructive notice of the 2008 documents,
13 including the application by the U.S. Trustee and Judge Zurzolo's order to show
14 cause, because they were served on his address of record with the California State
15 Bar.

16 The Panel concludes that Mr. Wirsching has received proper and adequate
17 notice of this disciplinary proceeding.

18 **Duty to Obtain Continuing Education**

19 The duty of a California lawyer to obtain continuing education is imposed
20 pursuant to Business & Professions Code § 6070, which requires the establishment of
21 a mandatory continuing education requirement for lawyers. Pursuant thereto, Rule
22 9.31(c) of the California Rules of Court requires each lawyer to complete at least 25
23 hours of continuing education every 36 months, and to report his or her compliance to
24 the State Bar. Rule 9.31(d) further provides, "A member of the State Bar who fails to
25 satisfy the requirements of the State Bar's minimum continuing legal education
26 program must be enrolled as an inactive member of the State Bar" Pursuant to
27 this requirement, Mr. Wirsching is not presently eligible to practice law in California.

28 ///

1 **Power to Impose Discipline**

2 Under Ninth Circuit caselaw, “[b]ankruptcy courts generally have the power
3 to sanction attorneys pursuant to (1) their civil contempt authority under 11 U.S.C.
4 § 105(a); and (2) their inherent sanction authority.” *Price v. Lehtinen (In re Lehtinen)*,
5 564 F.3d 1052, 1058 (9th Cir. 2009). Before imposing sanctions under its inherent
6 power, the court must find that the misconduct was willful or in bad faith, and not
7 merely negligent or reckless. See *id.* The court’s powers to impose discipline under
8 § 105 may be broader.

9 In this case, the Panel imposes sanctions both under § 105(a) and under its
10 inherent sanction authority. Given Mr. Wirsching’s failure to appear or to respond to
11 the order to show cause or to the notice of hearing, the Panel specifically finds that his
12 continuing to practice law in this court after his suspension effective July 1, 2008, was
13 both willful and in bad faith.

14 Under Ninth Circuit caselaw, “disbarment by federal courts does not
15 automatically flow from disbarment from state courts.” *Brown v. Smith (In re Poole)*,
16 222 F.3d 618, 620 (9th Cir. 2000), quoting *Theard v. United States*, 354 U.S. 278, 281
17 (1957). The U.S. Supreme Court further stated in *Theard*: “While a lawyer is admitted
18 into a federal court by way of a state court, he is not automatically sent out of the
19 federal court by the same route.” *Id.* at 281. See also *Gallo v. U.S. District Court*, 349
20 F.3d 1169 (9th Cir. 2003).

21 The point of both *Poole* and *Theard* is that federal court disbarment does not
22 follow *automatically* from state court disbarment. The Supreme Court in *Theard*
23 stated: “ample opportunity must be afforded to show cause why an accused
24 practitioner should not be disbarred.” *Id.* at 282. Nonetheless, the Court stated,
25 “[i]f the accusation rests on disbarment by a state court, such determination of course
26 brings title deeds of high respect.” *Id.*

27 ///

28 ///

1 The court in *Poole* further stated, “[a] federal court may impose discipline or
2 disbarment based upon another court’s disciplinary adjudication only if an independent
3 examination of the other court’s record shows: (1) no deprivation of due process; (2)
4 sufficient proof of misconduct; and (3) no grave injustice would result from the
5 imposition of such discipline.” *Poole*, 222 F.3d at 621.

6 This Panel finds that the records of the California State Bar, as they appear in
7 its website, establish a prima facie case that Mr. Wirsching is not eligible to practice
8 law in California. While this evidence is rebuttable, Mr. Wirsching has not appeared or
9 offered any rebuttal.

10 The Panel further finds that Mr. Wirsching has the burden of showing a
11 deprivation of due process. By failing to appear or respond, he has not carried this
12 burden.

13 Finally, the Panel finds no grave injustice that would result from suspending him
14 from the practice of law before the bankruptcy judges of this court, given his
15 ineligibility to practice law in California.

16 17 **Factors for Imposing Discipline**

18 Ninth Circuit Bankruptcy Appellate Panel caselaw requires this Panel to
19 consider four factors in determining the appropriate level of discipline: “whether the
20 duty violated was to a client, the public, the legal system or the profession; (2) whether
21 the lawyer acted intentionally, knowingly or negligently; (3) whether the lawyer’s
22 misconduct caused a serious or potentially serious injury; and (4) whether aggravating
23 factors or mitigating circumstances exist.” *In re Brooks-Hamilton*, 400 B.R. 238, 252
24 (BAP 9th Cir. 2009).

25 In this case the Panel finds that all four factors apply. First, the duty to be fully
26 licensed to practice law is an obligation to the client, to the public, to the legal system
27 and to the profession. Second, the Panel finds that Mr. Wirsching’s conduct was
28 intentional and knowing, and not merely negligent. Third, Mr. Wirsching’s conduct

1 caused, or potentially could have caused, serious injury to persons seeking relief in
2 this court as a direct result of his failure to obtain the required continuing education: he
3 may not have kept up with current statutory or case law applicable to cases that he
4 handled in this court. Fourth, Mr. Wirsching's failure to appear and defend is an
5 aggravating circumstance.

6
7 **Discipline Imposed**

8 While General Order 96-05 does not provide that a discipline order may disbar
9 an attorney from practicing in the State of California, it does authorize "any appropriate
10 discipline, including but not limited to revocation or suspension of the right to practice
11 before all the judges in this court."

12 This Panel holds, based on the foregoing findings, that Mr. Wirsching should be
13 suspended from the practice of law before the bankruptcy judges of this district.
14 Because disqualification to practice law in California does not automatically make
15 Mr. Wirsching ineligible to practice in this district, the Panel does not impose further
16 discipline in consequence of his appearances in this court after the State Bar
17 determined that he was ineligible to practice.

18 An order will be issued suspending Mr. Wirsching's entitlement to practice
19 before the bankruptcy judges of this court. Reinstatement of Mr. Wirsching as an
20 attorney licensed to practice law in the state of California will not restore him to good
21 standing in this court absent further order of this court.

22
23 **Conclusion**

24 Based on the foregoing, this Panel finds that appropriate discipline in this case
25 is suspension of Mr. Wirsching's right to practice before all the judges in this court.

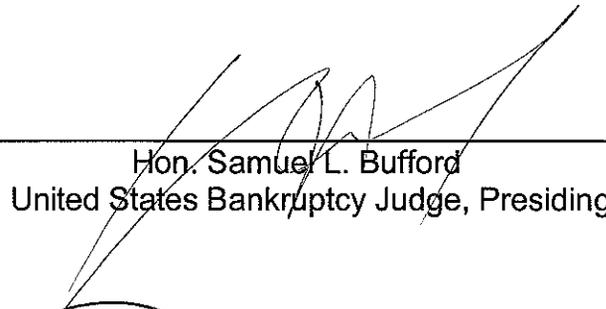
26 ///

27 ///

28 ///

1 This suspension will last until further order of this court. A separate Discipline Order
2 will be issued based on this Panel's memorandum of decision.

3
4
5 Dated: August 6, 2009

6
7
8 
9 _____
10 Hon. Samuel L. Bufford
11 United States Bankruptcy Judge, Presiding

12 Dated: August 11, 2009

13 
14 _____
15 Hon. Peter H. Carroll
16 United States Bankruptcy Judge

17 Dated: August 19, 2009

18 
19 _____
20 Hon. Kathleen Thompson
21 United States Bankruptcy Judge
22
23
24
25
26
27
28

1 **NOTE TO USERS OF THIS FORM:**

- 2 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate
3 document.
4 2) The title of the judgment or order and all service information must be filled in by the party lodging the
5 order.
6 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this
7 category.
8 4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and
9 person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if
10 person/entity is listed in category I.

7 **NOTICE OF ENTERED ORDER AND SERVICE LIST**

8 Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM OF DECISION**
9 **SUSPENDING BRIAN D. WIRSHING FROM PRACTICING LAW IN THIS COURT** was entered on the
10 date indicated as "Entered" on the first page of this judgment or order and will be served in the manner
11 indicated below:

10 **I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling
11 General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following
12 person(s) by the court via NEF and hyperlink to the judgment or order. As of August 6, 2009, the
13 following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary
14 proceeding to receive NEF transmission at the email address(es) indicated below.

13 United States Trustee ustpreion16.la.ecf@usdoj.gov

14 Service information continued on attached page

15 **II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or
16 order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or
17 entity(ies) at the address(es) indicated below:

17 Brian D. Wirsching, Esq.
18 4525 Rosewood Avenue
19 #3
20 Los Angeles, California 90004

19 Ron Maroko, Esq.
20 U.S. Trustee
21 Department of Justice
22 725 South Figueroa Street, 26th Floor
23 Los Angeles, California 90017

22 Service information continued on attached page

23 **III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this
24 judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a
25 complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email
26 and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the
27 address(es), facsimile transmission number(s), and/or email address(es) indicated below:

26 Service information continued on attached page

27 **ADDITIONAL SERVICE INFORMATION** (if needed):

28 Service information continued on attached page