

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
The Disciplinary Proceeding of
MARK R. HAMILTON

Case No: 2:17-mp-00108-PC

**MEMORANDUM DECISION IMPOSING TWO
YEAR MINIMUM SUSPENSION, WITH
CONDITIONS FOR REINSTATEMENT**

Disciplinary hearing:

Date: October 2, 2017
Time: 10:00 a.m.
Place: 255 E. Temple St. Rm. 1645
Los Angeles, CA 90012

Attorney Mark R. Hamilton, Esq. was the attorney of record in the bankruptcy case of Elisabeth Mary Ziesmer ("Debtor") (Case No. 8:16-bk-13472-ES). In that case Mr. Hamilton (1) executed a creditor matrix that omitted Debtor's landlord; (2) executed his own declaration stating that the landlord had been intentionally omitted so as to hide the bankruptcy case from it; (3) prepared and filed Debtor's nearly identical declaration; and (4) at a subsequent hearing, asserted that these things were merely his innocent error – apparently because he believed, based on unspecified advice from "the internet" and/or unspecified bankruptcy preparation software, that omitting a creditor would be "inconsequential."

1 When the judge presiding over the *Ziesmer* case raised concerns about Mr.
2 Hamilton's submission of these false declarations – and pointed out that he had failed to
3 correct those falsehoods until he was questioned about them by the judge – he did not
4 address those concerns. Instead he made several generic apologies without
5 acknowledging or appearing to recognize what he had actually done wrong.

6 Before this disciplinary panel Mr. Hamilton still has not squarely acknowledged
7 his wrongdoing, let alone provided any assurance that he will avoid such conduct in
8 future. We conclude that he must be suspended from practice before this Bankruptcy
9 Court for a period of not less than two years, at which time he may petition for
10 reinstatement, subject to conditions specified below and in the accompanying order
11 implementing this Memorandum Decision.

12 **1. BACKGROUND¹**

13 On August 17, 2016 Mr. Hamilton filed a Verification Of Master Mailing List Of
14 Creditors (case dkt. 1, at PDF pp. 8-11) in which he and Debtor each certify “under
15 penalty of perjury” that the attached master mailing list of creditors (the “Creditor
16 Matrix”) “is complete, correct, and consistent with the Debtor’s schedules” and further
17 stating that “I/we assume all responsibility for errors and omissions.” In fact, the
18 Creditor Matrix omitted Debtor’s landlord, Ikram Shah and Ikram Shah and Fauzia Shah
19 Trustees Of The Shah Family Trust Dated August 15, 1996 (collectively, “Landlord”).

20 On September 28, 2016 Landlord, having found out about the bankruptcy case,
21 filed a motion for relief from the automatic stay (§ 362(d)) to be able to complete an
22 unlawful detainer proceeding against Debtor (the “R/S Motion,” case dkt. 20). On
23 October 11, 2016, Mr. Hamilton filed an amended Creditor Matrix adding Landlord (case
24

25
26 ¹ For brevity, documents are referred to by docket number rather than their full title (e.g., “mp dkt. ___” for
27 documents filed in this miscellaneous proceeding, or “case dkt. ___” for documents filed in Debtor’s
28 bankruptcy case itself). Unless the context suggests otherwise, references to a “Chapter” or “Section”
 (“§”) refer to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), a
 “Rule” means one of the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, or
 other federal or local rule, and other terms have the meanings provided in the Bankruptcy Code, the
 Rules, and the parties’ filed papers.

1 dkt. 27) and an opposition to Landlord's R/S Motion which states that Landlord had
2 been intentionally omitted from the Creditor Matrix:

3 Debtor did not intend that her landlord should have any knowledge
4 of her bankruptcy, which is the reason she left his name off the creditor
5 list. Now that the landlord has found out about the bankruptcy, Debtor
6 wishes to reaffirm her executory contract with the landlord. [Case dkt. 29,
7 at PDF p. 4, ¶ 3, emphasis added.]

8 The opposition papers include Debtor's almost identical declaration:

9 For fear of economic bias, I did not intend that my landlord should
10 have any knowledge of this bankruptcy, which is the reason I left his name
11 off the creditor list. Now that the landlord/owner has found out about the
12 bankruptcy, I wish to reaffirm her [sic] executory contract with her [sic]
13 landlord. [Case dkt. 29, at PDF p. 5, ¶ 2, emphasis added.]

14 Prior to the hearing on the R/S Motion the presiding judge, The Honorable Erithe
15 Smith, issued a tentative ruling granting the R/S Motion. At the hearing, on October 20,
16 2016, Mr. Hamilton engaged in the following colloquy with Judge Smith:

17 MR. HAMILTON: ... It would appear that the Court is punishing my
18 client for my error in failing to include Mr. Shah as a creditor

19 THE COURT: Hold on a minute. ... Could you just make that
20 statement again?

21 MR. HAMILTON: It would appear that the Court is shining light on
22 the fact that I made an error as the debtor's attorney. I filed a creditor
23 matrix address list that did not include the landlord. ...

24 THE COURT: Let me stop you right there. ... I'm going to read [the]
25 second sentence of the debtor's declaration.

26 "For fear of economic bias I did not intend that my landlord
27 should have any knowledge of this bankruptcy which is the reason I
28 left his name off the creditor list. Now that the landlord has found
out about the bankruptcy, I wish to reaffirm the [sic] executory
contract."

... So I'm not punishing your client for something you did. ... I'm
responding to what she said she intentionally did.

MR. HAMILTON: Your Honor, I wrote that for my client and it was in
error. ...

THE COURT: You submitted a declaration that is false? ... And you
allow it to stand and you didn't correct it and she signed it?

1 MR. HAMILTON: I apologize. I throw myself on the mercy of the
court and --

2 THE COURT: And you were not going to tell the Court about this?

3 MR. HAMILTON: I'm here today, Your Honor.

4 THE COURT: No. ... [T]hat should have been the first thing out of
5 your mouth that you submitted a declaration for your client that was false.
6 ... [T]his is very specific ... [and so is] your declaration. [The Court quotes
from both declarations.] ...

7 MR. HAMILTON: I'm not understanding, Your Honor. Is it the
8 Court's opinion that a landlord is allowed to punish a tenant for filing
bankruptcy?

9 THE COURT: Is it your understanding that a debtor does not
10 disclose all her creditors and liabilities?

11 MR. HAMILTON: It was my understanding. I misjudged what I saw
12 on the internet. I haven't been before this Court in ten years and I
apologize for my error. I have had problems with the computer trying to
interface with your software

13 THE COURT: What on earth [] does that have to do with the
14 requirement that is on the face of the petition that a debtor disclose all
creditors and all liabilities?

15 MR. HAMILTON: I didn't read it in ten years, Your Honor. ...

16 THE COURT: [T]his is completely unexpected. So basically now I
17 have two declarations under penalty of perjury that are false? ... There's
18 yours and the debtor's.

19 MR. HAMILTON: I told her to give me all of her creditors. We filed
20 on an emergency basis. All of the creditors were not listed. I thought that
it would be [] inconsequential pursuant to what I read on the internet and I
21 was wrong I trusted a source on the internet as to this issue [and] it
was incorrect

22 THE COURT: What did the internet tell you to do?

23 MR. HAMILTON: ... I don't have software to produce the forms. I
24 purchased a product designed for laypersons and ... it said not to answer
the question ... it was very confusing to me but I [] followed what it said.

25 THE COURT: ... I have to say there are few times that I am
26 completely speechless. ... I'm looking at a declaration that is very specific
about an intent to leave the landlord off the list and that cannot be due to
27 any software issues

28 MR. HAMILTON: So the Court is very [] clearly punishing that act,
that someone is to be evicted if they leave out their landlord in a

1 bankruptcy [] petition they are automatically evicted at that point. Is that
the law?

2 THE COURT: For the second time this morning I am completely
3 speechless and incredulous. ... [Y]ou're not fully appreciating the
4 enormity of what you've done here. You know, our entire system, at least
5 in this district, relies on the efficacy of sworn statements that are []
6 provided to the Court and I have before me two declarations under penalty
7 of perjury that apparently are completely false according to your
8 representation to the Court today. And these declarations were submitted
9 to the Court and there was no attempt to advise the Court that there was
10 anything inaccurate or false about these documents until you started
11 making the argument that I was punishing your client for something you
12 did and I pointed out that your client has submitted a declaration saying
13 she deliberately [had] not listed her landlord because she didn't want her
14 landlord to know anything about the bankruptcy. ... [T]he debtor does not
15 have a right to intentionally not list certain creditors because she doesn't
16 want to. ...

17 * * *

18 THE COURT: ... Mr. Hamilton, I'm going to [] be referring this
19 matter to our Court's disciplinary panel because I think what you've done
20 here today, submitting declarations that were false and not alerting [] the
21 Court to the inaccuracy of the declaration[s] is completely not acceptable.
22 It's not appropriate and I don't think you should be practicing in this district
23 if you're not going to familiarize yourself with the Rules and be
24 completely forthright and transparent when you're submitting sworn
25 statements to the Court.

26 MR. HAMILTON: Your Honor, I apologize. I was doing *pro bono*
27 work. I haven't done this for ten years.

28 THE COURT: Well, ... I commend you for doing *pro bono* work but
I cannot condone submitting a declaration that is false. Two declarations.
[Tr. 10/20/16 (case dkt. 39), at pp. 3:8-9:16 and pp. 11:22-12:22]

On February 14, 2017 the Office of the United States Trustee ("UST") filed a
motion seeking to have Mr. Hamilton referred to this disciplinary panel for "filing false
bankruptcy commencement documents, and specifically a false Verification [of the
Creditor Matrix,]" and "not alerting the Court as to their falsity." Case dkt. 52, pp. 1:26-
2:3. The UST's motion attached and quoted extensively from the above-referenced
documents and transcript, and also cited and quoted the relevant ethical rules and this
Bankruptcy Court's Amended General Order 96-05, all described in the discussion
below.

1 Mr. Hamilton did not file any written opposition or appear at the hearing on the
2 UST's motion. On April 4, 2017 Judge Smith issued her written findings of fact and
3 conclusions of law (case dkt. 58), her order (case dkt. 59) granting the UST's motion,
4 and the Statement Of Cause (case dkt. 60) referring this matter to this disciplinary
5 panel.

6 Judge Smith's detailed findings of fact and conclusions of law include the
7 following:

8 5. The Court concludes that the intentional omission of the landlord
9 on the mailing matrix was done for an improper purpose, specifically, to
10 hide from the landlord the fact that his tenant had filed a bankruptcy case.
11 The intentional omission of the landlord from the mailing matrix has
12 caused unnecessary delay and needless increase in the cost of litigation.

13 6. The Court concludes that counsel's actions have violated the
14 provisions of F.R.B.P. Rule 9011.

15 7. Pursuant to the California Rules of Professional Conduct
16 ("CRPC") Rule 3-210, a lawyer is prohibited from advising the violation of
17 any law, rule or ruling or a tribunal unless he or she believes in good faith
18 that such law, rule or ruling is invalid.

19 8. Pursuant to the California Rules of Professional Conduct Rule 5-
20 200, in presenting a matter to a tribunal, a member (B) Shall not seek to
21 mislead the judge, judicial officer, or jury by an artifice or false statement
22 of fact or law.

23 9. The American Bar Association ("ABA") Model Rules prohibit
24 lawyers from knowingly counseling or assisting clients to commit a crime
25 or fraud.

26 10. Although California has not yet adopted a version of the ABA
27 Model Rules, Model Rule 3.3 requires candor from an attorney towards
28 the tribunal. Specifically Model Rule 3.3 subsection (a) provides that a
lawyer shall not knowingly (1) make a false statement of 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.

11. The Court concludes from the evidence presented, which
includes the declarations filed by counsel and the Debtor along with the
skeletal petition filed on August 17, 2016 and the Verification of Master
Mailing List of Creditors, signed under penalty of perjury by both the
Debtor and attorney Mark R. Hamilton, attesting to the truth and accuracy
of the list of creditors, that both the Debtor and attorney Mark R. Hamilton
knew that the Master Mailing List of Creditors was false.

1 12. The Court concludes that Mr. Hamilton knowingly signed and
2 permitted his client to sign under penalty of perjury a document they knew
was false.

3 13. The Court concludes that Mr. Hamilton made representations
4 on the record at the October 20, 2016 hearing that call into question the
5 veracity of the sworn statements he filed with the Court on behalf of
6 himself and the Debtor.

7 14. The Court concludes that attorney Mr. Hamilton violated the
8 California Rules of Professional Conduct, and specifically CRPC Rule
9 3.210; CRPC Rule 5-200, and F.R.B.P. Rule 9011.

10 15. Mr. Hamilton filed no response or opposition to the OSC, nor
11 did he appear at the hearing. Pursuant to Local Bankruptcy Rule ("LBR")
12 9013-1(h), failure of a party to timely file and serve documents may be
13 deemed by the Court as consent to the relief requested.

14 16. The Court concludes that there is cause to refer Mr. Hamilton to
15 the Disciplinary Panel of the Central District of California with a
16 recommendation that he be suspended from the practice of bankruptcy
17 law in the Bankruptcy Court of the Central District of California and such
18 other and further relief that the Disciplinary Panel deems appropriate.
19 [Findings Of Fact And Conclusions Of Law (case dkt. 58), pp. 5:16-7:8]

20 On May 8, 2017 this disciplinary proceeding was opened. On September 1,
21 2017 Mr. Hamilton filed a memorandum of points and authorities (mp dkt. 9) arguing
22 that his "error" in "submitting the Master Mailing List which omitted reference to creditor
23 Ikram Shah" was attributable to his judgment having been impaired for various reasons.
24 *Id.*, p. 4:4-6. One asserted reason was his emotional involvement in the dispute
25 between Landlord and Debtor, whom he describes as his girlfriend. *Id.*, p. 4:6-11.
26 Another asserted reason is "multiple medical and psychological issues," which are not
27 specified. *Id.* Mr. Hamilton also did not specify or even raise those issues as reasons
28 for his "error" in response to the R/S Motion, or at the hearing before Judge Smith, or in
response to the UST's motion seeking to have him referred to this disciplinary panel.
Nevertheless, as described below, we permitted him to testify as to those issues in this
disciplinary proceeding.

Mr. Hamilton's memorandum also argues:

Hamilton made a timely, good faith effort to rectify the
consequences of his misconduct, by amending the list to include the
landlord as a creditor when it was brought to his attention. Otherwise,
Hamilton has practiced in bankruptcy court, and otherwise, without

1 incident since 1995, had a discipline-free practice record other than an
2 incident in 2004 [He does not describe that incident except to say that
3 it "did not involve the practice of law or any clients and arose from the
4 negative effects of a prescription drug" and resulted in an unspecified
5 "Agreement in Lieu of Discipline"].

6 Hamilton recognizes the seriousness of his error and expressed
7 remorse to the court when he apologized. Given the *pro bono* nature of
8 this matter, he had no selfish motive. Accordingly, an admonition from the
9 court is the appropriate sanction to deter. [Mr. Hamilton's Memorandum
10 (mp dkt. 9), pp. 2:13-20 & 5:19-20]

11 Mr. Hamilton asserts that there are mitigating factors including the following:

12 Here, Hamilton's conduct involved a single incident, the filing of the
13 [Creditor Matrix] without including the landlord, which did not involve a
14 pattern of misconduct involving multiple incidents across multiple matters.
15 Hamilton has no prior record of discipline other than entering into an
16 Agreement in Lieu of Discipline on a matter unrelated to the practice of
17 law. The matter did not cause significant harm to the administration of
18 justice, because he rectified the error by filing an amended [Creditor
19 Matrix] including the landlord as a creditor. Hamilton acknowledged his
20 error and apologized to the court, asking for the court's mercy.

21 In mitigation, the court may consider the absence of a prior
22 disciplinary record, absence of a dishonest or selfish motive, personal or
23 emotional problems, timely good faith effort to rectify consequences of
24 misconduct, full and free disclosure to disciplinary board or cooperative
25 attitude toward proceedings; inexperience in the practice of law, character
26 or reputation; physical disability or mental disability, remorse and the
27 remoteness of prior offenses, spontaneous candor and cooperation
28 displayed to the victims of the misconduct, prompt objective steps,
demonstrating spontaneous remorse and recognition of the wrongdoing
and timely atonement. [Mr. Hamilton's Memorandum, (mp dkt. 9)
pp. 8:20-9:6 (citation omitted)]

On September 25, 2017 Mr. Hamilton filed his declaration stating, among other
things, that "I corrected the matrix to add the missing landlord as soon as I knew the
creditor matrix had been filed incorrectly" and "due to the attorney client privilege, and
due to my duty of loyalty to my former client, the Debtor, I cannot further explain the
circumstances that lead to the filing of the matrix without the landlord being listed
without disclosure of confidential client communications." Mp dkt. 15, p. 2:6-15. He
asserts that his judgment had been impaired due to unspecified medical issues, and
that he did not appear at the hearing on the UST's motion seeking sanctions because
he had read the court's tentative ruling and did not have anything to add, and also

1 “[b]ecause of extreme stress and back pain I left the court without appearing at the
2 hearing.” *Id.*, p. 2:22-25.

3 The UST’s response states, among other things, “No attempt was made by Mr.
4 Hamilton to correct the [Creditor Matrix] until responses were filed [by him] to the
5 [Landlord’s R/S Motion].” Mp dkt. 18, p. 2:10-11. The UST also argues that Mr.
6 Hamilton’s “unspecified medical issues” that allegedly impaired his judgment suggest
7 “that he is a danger to the public, if he continues to practice law.” *Id.* p. 4:12-14. The
8 UST recommends suspension from the practice of law in this Bankruptcy Court as well
9 as preconditions to any reinstatement, such as evidence of rehabilitation, mandatory
10 legal education in the area of ethics, and possibly public reproof.

11 On October 2, 2017 this disciplinary panel held its hearing. Mr. Hamilton was
12 present, represented by counsel. The UST’s attorneys were present, along with a
13 witness: the attorney for Landlord.

14 At the commencement of the hearing this panel noted that Mr. Hamilton did not
15 appear to be “taking issue with any of the findings of fact or conclusions of law made by
16 Judge Smith.” Tr. 10/2/17 (mp dkt. 22), p. 9:4-6. Mr. Hamilton’s counsel affirmed that
17 this was so and that “the issue that’s really before this panel is whether [this disciplinary
18 panel] should accept the recommendation of Judge Smith with regard to a suspension,
19 as the appropriate remedy for the violations that Judge Smith has set forth in the
20 findings and conclusions,” or alternatively accept Mr. Hamilton’s recommendation that
21 any sanction imposed not be more than a reprimand. *Id.*, p. 9:7-17.

22 Mr. Hamilton testified, and that testimony was expressly limited to the issue of
23 possible mitigation. Tr. 10/2/17 (mp dkt. 22), p. 13:9-24. He testified that there is “some
24 disagreement” as to the exact nature of his psychological conditions, but it could be
25 characterized as “post traumatic stress disorder” and it “causes a lapse of reasoning
26 ability.” *Id.* p. 15:3-8. In addition, he testified that he had “degenerative disc disease”
27 and “multiple disc hernias” causing overwhelming pain all of which greatly impaired his
28 performance in Debtor’s bankruptcy case. *Id.* pp. 15:25-16:10. In addition, he testified

1 that "I am not in control of my adrenaline" which means "I can't control this energy that I
2 have." *Id.* p. 17:7-12. He added, "[M]y apology is sincere. My behavior was abhorrent.
3 I'm aware of it. I have great difficulty reading the transcript. It's very embarrassing. I'm
4 sorry." *Id.* p. 17:15-17.

5 The UST called Landlord's attorney, Fritz J. Firman, Esq. He testified that
6 Landlord became aware of Debtor's bankruptcy at some point after filing an unlawful
7 detainer complaint, and thereafter was delayed by the bankruptcy petition and incurred
8 the expenses of attorney fees and costs in seeking relief from the automatic stay.

9 In closing arguments Mr. Hamilton's counsel argued, among other things, that
10 "he trusted a source on the internet" and "he made a mistake," which "does not negate
11 what he did, but it does give some more perspective to the entire situation." Tr. 10/2/17
12 (mp dkt. 22), p. 28:5-10. As to the false verification of the original Creditor Matrix, Mr.
13 Hamilton's counsel argued that he could not divulge attorney-client communications but
14 that the record already showed that "[h]e told her, give me all your creditors[,] [a]nd
15 beyond that, we don't have anything specific that gets into whether he told her to violate
16 the law." *Id.* p. 29:2-5.

17 The UST's counsel argued that what Mr. Hamilton is "trying to do here is take
18 findings that Judge Smith found involving intentional conduct, and saying, it's really a
19 mistake." Tr. 10/2/17 (mp dkt. 22), p. 35:8-10. The UST renewed its recommendation
20 for suspension rather than simply an admonition.

21 This matter was submitted at the conclusion of the disciplinary hearing.

22 **2. JURISDICTION, VENUE AND AUTHORITY**

23 This panel has jurisdiction and venue is proper under 28 U.S.C. §§ 1334 and
24 1408. This panel also has the authority to enter a final judgment or order. See 28
25 U.S.C. § 157(b)(2)(A); *Stern v. Marshall*, 131 S. Ct. 2594 (2011); *Wellness Int'l Network,*
26 *Ltd. v. Sharif*, 135 S.Ct. 1932 (2015).

1 **3. DISCUSSION**

2 **a. This Disciplinary Panel**

3 "In the federal system there is no uniform procedure for disciplinary
4 proceedings." *In re Lehtinen*, 564 F.3d 1052, 1062 (9th Cir. 2009) (citation omitted).
5 But the proceedings must be fair; evidence must support any factual findings; and the
6 penalty imposed must be reasonable. *In re Nguyen*, 447 B.R. 268, 276 (9th Cir. BAP
7 2011) (citations and footnote omitted).

8 To meet the foregoing standards, and in keeping with recommendations by the
9 Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP"), this Bankruptcy Court has
10 established this disciplinary panel. See *In re Brooks-Hamilton*, 400 B.R. 238, 253 (9th
11 Cir. BAP 2009). These disciplinary proceedings are governed by Fourth Amended
12 General Order 96-05 (included in mp dkt. 5).

13 **b. Ethical Standards**

14 Rule 9011 (Fed. R. Bankr. P.) provides in relevant part:

15 **(b) Representations to the Court.** By presenting to the court (whether by
16 signing, filing, submitting, or later advocating) a petition, pleading, written
17 motion, or other paper, an attorney or unrepresented party is certifying
18 that to the best of the person's knowledge, information, and belief, formed
after an inquiry reasonable under the circumstances,—

19 (1) it is not being presented for any improper purpose, such as to
20 harass or to cause unnecessary delay or needless increase in the
cost of litigation;

21 * * *

22 (3) the allegations and other factual contentions have evidentiary
23 support or, if specifically so identified, are likely to have evidentiary
24 support after a reasonable opportunity for further investigation or
discovery;

25 * * *

26 **(c) Sanctions.** If, after notice and a reasonable opportunity to respond,
27 the court determines that subdivision (b) has been violated, the court
28 may, subject to the conditions stated below, impose an appropriate

1 sanction upon the attorneys, law firms, or parties that have violated
2 subdivision (b) or are responsible for the violation.

3 **(1) How Initiated.**

4 * * *

5 **(B) On Court's Initiative.** On its own initiative, the court may
6 enter an order describing the specific conduct that appears
7 to violate subdivision (b) and directing an attorney, law firm,
8 or party to show cause why it has not violated subdivision (b)
9 with respect thereto.

10 **(2) Nature of Sanction; Limitations.** A sanction imposed for
11 violation of this rule shall be limited to what is sufficient to deter
12 repetition of such conduct or comparable conduct by others
13 similarly situated. Subject to the limitations in subparagraphs (A)
14 and (B), the sanction may consist of, or include, directives of a
15 nonmonetary nature, an order to pay a penalty into court, or, if
16 imposed on motion and warranted for effective deterrence, an order
17 directing payment to the movant of some or all of the reasonable
18 attorneys' fees and other expenses incurred as a direct result of the
19 violation.

20 **(A)** Monetary sanctions may not be awarded against a
21 represented party for a violation of subdivision (b)(2).

22 **(B)** Monetary sanctions may not be awarded on the court's
23 initiative unless the court issues its order to show cause
24 before a voluntary dismissal or settlement of the claims
25 made by or against the party which is, or whose attorneys
26 are, to be sanctioned.

27 **(3) Order.** When imposing sanctions, the court shall describe the
28 conduct determined to constitute a violation of this rule and explain
the basis for the sanction imposed.

In addition, federal courts look to the ethical rules in the State in which they sit,
as well as model and national ethical rules, guidelines, and general principles. See,
e.g., In re Nguyen, 447 B.R. 268 (9th Cir. BAP 2011).

Rule 3-210 of the California Rules of Professional Conduct (the "California
Rules") prohibits a lawyer from advising the violation of any law, rule, or ruling of a
tribunal unless the lawyer believes that authority is invalid in which event the lawyer
may take appropriate steps in good faith to test its validity. Declarations are required to

1 be true and correct, under penalty of perjury (28 U.S.C. § 1746), and Mr. Hamilton has
2 not argued that such requirements are invalid. See California Rule 3-210. See UST's
3 Request for Judicial Notice ("RJN") (case dkt. 53), Ex. J (copy of Cal. Rule 3-210).

4 California Rule 5-200 states that in presenting a matter to a tribunal a lawyer
5 shall employ such means only "as are consistent with the truth." California Rule
6 5-200(A) & (B). It also provides that a lawyer "shall not seek to mislead the judge" by
7 any false statement of fact. *Id.*

8 The American Bar Association ("ABA") has promulgated model rules regarding
9 ethics (the "Model Rules")² Model Rule 3.3(a) prohibits lawyers from knowingly making
10 any false statement of fact to a tribunal, or failing to correct a false statement of material
11 fact previously made to the tribunal by the lawyer. Model Rule 1.2(d) prohibits lawyers
12 from knowingly counseling or assisting clients to commit a fraud. See Model Rule
13 1.2(d) and UST's RJN (case dkt. 53), Ex. I (copy of official Comments to Model Rule
14 1.2, in particular Comments "[9]" and "[10]").

15 Finally, and more broadly, this disciplinary panel takes into consideration all of
16 the relevant facts and circumstances. Without detailing every consideration, when an
17 attorney is alleged to have violated ethical standards we generally look to:

18 (1) whether the duty violated was to a client, the public, the legal system,
19 or the profession, (2) whether the attorney acted intentionally, knowingly
20 or negligently, (3) the seriousness of the actual or potential injury caused
21 by the attorney's misconduct, and (4) the existence of aggravating and
mitigating factors. [*Nguyen*, 447 B.R. 268, 277 (summarizing ABA
standards).]

22 With these standards in mind we return to Mr. Hamilton's conduct in Debtor's
23 case, the findings of fact and conclusions of law by Judge Smith, and our analysis of the
24 arguments and evidence in this disciplinary proceeding.

25
26
27
28 ² Model Rule 1.2(d) is available at:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html (last checked 11/20/17).

1 **c. Mr. Hamilton's False Statements And Lack Of Acknowledgement Of His**
2 **Wrongdoing Warrant A Minimum Two Year Suspension**

3 Judge Smith found and concluded that "both the Debtor and attorney Mark R.
4 Hamilton knew that the Master Mailing List of Creditors was false." Findings Of Fact
5 And Conclusions Of Law (case dkt. 58), pp. 5:16-7:8. Mr. Hamilton has agreed that he
6 is not contesting Judge Smith's findings of fact and conclusions of law, and in any event
7 the record is clear that he knew he and Debtor were falsely declaring, under penalty of
8 perjury, that the Mailing Matrix was complete and correct, when in fact it omitted
9 Landlord. Both Mr. Hamilton and Debtor later declared, again under penalty of perjury,
10 that Debtor "did not intend that her landlord should have any knowledge" of the
11 bankruptcy case, which was "the reason she left his name off the creditor list." Case
12 dkt. 29, at PDF pp. 4 ¶3 & 5 ¶2.

13 Mr. Hamilton does not squarely acknowledge these facts. He appears to argue
14 that he can characterize his omission of Landlord from the Creditor Matrix as a
15 "mistake" or "error" because he purportedly believed, based on unspecified advice from
16 "the internet" and/or unspecified bankruptcy preparation software, that omitting a
17 creditor would be "inconsequential." To reach that conclusion he has to ignore at least
18 the following:

19 (1) the actual text of the verification that he and Debtor signed, certifying
20 "under penalty of perjury" that the Creditor Matrix is "complete" and "correct";

21 (2) his obligations under Rule 9011 to assure that this factual
22 representation is adequately supported, and that the verified Creditor Matrix is
23 not presented for any improper purpose such as concealing the bankruptcy case
24 from Landlord;

25 (3) his obligations under the California Rule 3-210 prohibiting a lawyer
26 from advising Debtor to violate the requirement that declarations be true and
27 correct (28 U.S.C. § 1746);
28

1 (4) his obligations under California Rule 5-200 to employ such means only
2 "as are consistent with the truth," and not to seek to mislead the court by any
3 false statement of fact; and

4 (5) his obligations under Model Rules 3.3(a) and 1.2(d) not to make false
5 statements of fact to the court, or fail to correct material false statements, or
6 counseling or assisting clients to commit a fraud, including a fraud upon the
7 court.

8 Mr. Hamilton points to the fact that he filed an amended Creditor Matrix listing
9 Landlord. He only did so after Landlord had already discovered the bankruptcy case
10 and filed its R/S Motion.

11 At the hearing on the R/S Motion Mr. Hamilton attempted to recharacterize the
12 issue as Judge Smith punishing "a tenant for filing bankruptcy," rather than addressing
13 the facts that (a) he had filed false declarations for himself and Debtor and (b) he failed
14 to correct those falsehoods (until after the court raised them). He continues to evade
15 that issue in this disciplinary proceeding. As argued by the UST's counsel at the
16 disciplinary hearing, Mr. Hamilton has attempted to re-characterize as negligence the
17 conduct that Judge Smith found was intentional.

18 The duties violated by Mr. Hamilton have very serious implications. First, at the
19 disciplinary hearing the UST's counsel noted that false statements by Debtor may result
20 in the UST seeking to deny her a bankruptcy discharge, so he has jeopardized his own
21 client's interests. Second, as Judge Smith pointed out, the bankruptcy system depends
22 on the accuracy of representations to the Bankruptcy Court, especially when those
23 representations are made under penalty of perjury, such as his and Debtor's verification
24 of the Creditor Matrix. By filing false declarations Mr. Hamilton has undermined the
25 ability of the public to rely on anything filed by him, and he has undermined public
26 confidence in the profession. Third, Mr. Hamilton continues to evade any actual
27 acknowledgment of his wrongdoing, let alone provide any assurance that he can be
28 trusted to behave differently in future.

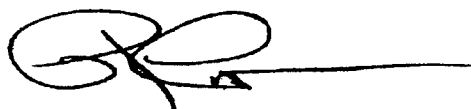
1 In mitigation, Mr. Hamilton's testimony provided evidence of some severe
2 physical and psychological impairments, all of which appear to have affected his
3 judgment. On the other hand, as the UST has argued, that cuts both ways because the
4 alleged ongoing nature of those problems suggests that Mr. Hamilton will continue for
5 an indefinite time to be impaired and a danger to the public and the bankruptcy system.
6 Those considerations suggest that Mr. Hamilton should be eligible for reinstatement
7 after a minimum period of suspension if he can provide persuasive evidence that his
8 physical and psychological impairments have been mitigated or counteracted so that
9 they will not similarly impair his judgment in future.

10 **4. CONCLUSION**

11 We conclude that Mr. Hamilton must be suspended, and that the period must be
12 at least two years, and thereafter he may apply to the Chief Judge of this court for
13 reinstatement. In addition, before being reinstated he must present admissible
14 evidence of (a) rehabilitation from the psychological and physical impairments that
15 allegedly have impaired his judgment, or any treatments or medications that are
16 sufficient to mitigate or counteract the effects of those impairments on his judgment, and
17 (b) that he has completed not less than three hours of continuing legal education on the
18 topic of ethics, plus not less than six hours on the topic of bankruptcy. We, however,
19 deny UST's request to award Landlord \$800 in attorney's fees. Those fees were
20 incurred because Landlord sought relief from the automatic stay, and there is no
21 evidence that those fees would not have been incurred were it not for Mr. Hamilton's
22 misconduct. An order incorporating the foregoing is being issued concurrent with this
23 memorandum decision.

24 ###

25
26
27 DATED: 12/05/2017



28 Peter H. Carroll, Presiding

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

#

DATED: 12/05/2017



Neil W. Bason

United States Bankruptcy Judge

DATED: 12/05/2017



Scott H. Yun

United States Bankruptcy Judge

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
255 E. Temple Street, Los Angeles, CA 90012

A true and correct copy of the foregoing document entitled (*specify*): Case No; 2:17-mp-00108-PC
Memorandum Decision Imposing Two Year Minimum Suspension, With Conditions For Reinstatement

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 12/05/2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Frank Cadigan frank.cadigan@usdoj.gov
- Ron Maroko ron.maroko@usdoj.gov
- William.Smelko@procopio.com, Kristina.terlaga@procopio.com; calendaring@procopio.com
- United States Trustee (LA) ustregion16.la.ecf@usdoj.gov

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On (*date*) 12/05/2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

- | | |
|------------------------|---------------------------|
| Elisabeth Mary Ziesmer | Javier H Castillo, Esq. |
| 8632 Orange Ave | Castillo Law Firm |
| Orange, CA 92865 | 145 E Rowland St., Ste. A |
| | Covina, CA 91723 |

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 12/05/2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

- | | | |
|-----------------|-------------------------|--|
| Overnight Mail: | Mark R. Hamilton, Esq. | Carole J. Buckner, Esq. |
| | 3024 E Chapman Ave #322 | Procopio, Cory, Hargreaves & Savitch LLP |
| | Orange, CA 92869 | 525 B Street, Suite 2200 |
| | | San Diego, CA 92101 |

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/05/2017
Date

Jennifer Kohout
Printed Name

Jennifer Kohout
Signature

2:17-mp-00108-PC

Certificate of Service Continued

The State Bar of California
Office of the Chief Trial Counsel
Intake Department
845 South Figueroa St.
Los Angeles, CA 90017-2515

The State Bar of California