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

In re:

**THE DISCIPLINARY PROCEEDING OF
ERIC D. JOHNSON**

Case No. LA MI 09-00004

**MEMORANDUM OF DISCIPLINARY
PROCEEDING AGAINST ERIC D.
JOHNSON**

Date: July 31, 2009
Time: 11:00 A.M.
Place: Ctrm 1545

The matter before the Court is a disciplinary proceeding (“Proceeding”) commenced against attorney Eric D. Johnson (“Johnson”) pursuant to General Order 96-05 of the United States Bankruptcy Court for the Central District of California (the “General Order”).

Statement of Procedure and Notice of Hearing

The Proceeding was initiated by Bankruptcy Judge Sheri Bluebond on a written Statement of Cause against Mr. Johnson filed May 11, 2009 (the “Statement of Cause”). On April 15, 2009, Judge Bluebond heard a motion by Chapter 7 Trustee P.J. Zimmermann for disgorgement of attorney fees and prohibition to practice before the United States Bankruptcy Court for the Central District of California (“Disgorgement Action”) filed in In re Jose Castro Meza and Elsa Castro, chapter 7 case no. RS 08-27322-BB (the “Castro Case”). Judge

1 Bluebond ordered disgorgement of fees and referred the latter request to the disciplinary panel
2 established under the General Order.

3 In accordance with the procedure set forth in the General Order, the Clerk of the
4 Bankruptcy Court designated a panel of three bankruptcy judges from this district to hear the
5 Proceeding. The members of the panel are the Hon. Geraldine Mund, the Hon. Ernest M.
6 Robles, and the Hon. Maureen A. Tighe (collectively, the "Panel"). A Notice of Assignment of
7 Hearing Panel was served on Mr. Johnson on May 21, 2009.

8 Pursuant to General Order 96-05, Mr. Johnson had until the expiration of a period of 10
9 days after service of the foregoing notice to move to recuse one or more of the judges assigned
10 to the Panel. No motion to recuse was filed.

11 Mr. Johnson was served with a notice of the hearing on this disciplinary proceeding on
12 June 11, 2009. Mr. Johnson did not file a written response of any kind to the Statement of
13 Cause. A hearing on notice to Mr. Johnson was held before the Panel on July 31, 2009. Mr.
14 Johnson appeared on his own behalf and provided sworn testimony. There were no other
15 appearances.

16 At the hearing, Mr. Johnson stated that he received notice of the disciplinary hearing,
17 but did not receive the Statement of Cause. No request for continuance to prepare a response
18 was made. However, one day prior to the disciplinary hearing Mr. Johnson, through a
19 representative of his office, did request a continuance of the hearing for medical reasons. The
20 request was denied subject to provision of additional information to the Panel. Shortly before
21 the disciplinary hearing, Mr. Johnson did submit a Work Status Report placing him off work
22 from July 22, 2009 through July 31, 2009. At that time, however, Mr. Johnson did not request a
23 continuance of the hearing for health reasons.

24 **Statement of Cause Pursuant to General Order No. 96-05**

25 The conduct that gave rise to the Statement of Cause was set forth in the Order
26 Granting Motion to Disgorge Fees and Refer Attorney Eric D. Johnson to Judicial Disciplinary
27 Panel filed in the Castro Case on May 4, 2009. That conduct included "(a) knowingly
28 partnering with a paralegal firm to provide bankruptcy services in violation of the Rules of

1 Professional Conduct of the State Bar of California; (b) making false statements under penalty
2 of perjury his Disclosure of Compensation for Attorney for Debtor that he had received \$1,701
3 in fees and that he did not share this fee with any other person (when, in fact, he explained that
4 the paralegal firm received this fee and that his share was only \$300); and (c) agreeing to
5 represent the debtors at their 341(a) meeting in his Declaration re: Limited Scope of
6 Appearance and then failing to attend this meeting.”

7 The Panel incorporates by reference the Statement of Cause. Specifically, the Statement
8 of Cause refers to three bankruptcy cases in which Mr. Johnson served as bankruptcy counsel
9 through the offices of a paralegal service, Bancarrota.com.¹ In connection with these cases,
10 Judge Bluebond made the following findings of fact:²

- 11 1. In a series of bankruptcy cases,³ ... Johnson had served as counsel of record for the
12 debtors at the request of a paralegal service known as “Bancarrota.com”⁴ that caters to
13 Spanish-speaking clients.
- 14 2. The clients in each of the ... cases paid a fee of \$1,700 to Bancarrota.com, of which
15 Johnson was to receive, by agreement between Johnson and Bancarrota.com, a total of
16 \$300.
- 17 3. Notwithstanding his agreement to share fees with Bancarrota.com and his agreement to
18 accept not more than \$300 for his services, Johnson stated under penalty of perjury in
19 the Declaration Re: Limited Scope of Appearance Pursuant to Local Bankruptcy Rule
20 2090-1 (the “Limited Scope Forms”) that he filed in each of the ... cases that he had
21 received a fee of \$1,701 and certified in the Disclosure of Compensation of Attorney
22 for Debtor forms that he filed in each of the ... cases that he had received a total of
23 \$1,701 in fees and that he had not agreed to share these fees with any person who was
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27 ¹ The cases are *In re Castro*, 6:08-bk-27322-BB; *In re Pelagio*, 6:08-24191-RN; and *In re Morales*, 6:08-24188-PC.

² Statement of Cause, *In re the Disciplinary Proceeding of Eric D. Johnson*, Case No. MI 09-00004, at 2.

³ See note 1, supra, for a listing of the cases in which Johnson served as counsel.

28 ⁴ Various documents filed with the court refer to Bancarrota.com using various spellings. Any inconsistencies have been altered to reflect the correct spelling of the company’s name.

1 not an associate or a member of his firm. Johnson made these statements and
2 certifications knowing that they were not true.

3 4. Johnson agreed in the Limited Scope Forms to represent the debtors in each of the ...
4 cases at their respective 341(a) meetings, yet failed to appear at the initial 341(a)
5 meetings in the ... cases.

6 5. By his own admission on the record during the course of the hearing on the trustee's
7 motion, at the time he agreed to assume the representation of hundreds of clients from
8 Bancarrota.com, Johnson had only limited experience in handling bankruptcy matters.

9 **The Hearing**

10 Based on the aforementioned, a hearing on notice to Mr. Johnson was held before the
11 Panel on July 31, 2009. Mr. Johnson appeared on his own behalf. No other appearances were
12 made. Although he did not file a written response to the Statement of Cause, the Panel
13 entertained oral argument and offers of proof from Mr. Johnson at the time of the hearing.⁵

14 Mr. Johnson did not dispute the accuracy of the Statement of Cause reciting the events
15 that led to the Proceeding, but he did make a number of representations or offers of proof.
16 More specifically, Mr. Johnson made the following representations, among others:

- 17 1. Mr. Johnson represented on the record at the Hearing that his initial contact with
18 Bancarrota.com occurred in April 2008. Bancarrota.com was a paralegal service that
19 advertised on Spanish-speaking radio stations offering bankruptcy assistance.
- 20 2. Bancarrota.com had been soliciting clients through a website and another business
21 called First Financial Plus Investments. The customers had already paid fees to this
22 business to file bankruptcy for them. A woman who previously worked for Johnson
23 called him in April 2008 and advised that she had started working for Bancarrota.com
24 and they were in a crisis and really needed an attorney to come help. She explained that
25 the office had hundreds of files and people expecting bankruptcies but the owner of the
26 business, Juan Rangel, had stopped coming in and no one was filing the bankruptcies.

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⁵ Mr. Johnson did file a response to the Disgorgement Action, which the Panel reviewed.

- 1 3. Mr. Johnson went in to check out the office and realized there were about 200 people in
2 various stages of having a bankruptcy filed but that there was no attorney associated
3 with the office.
- 4 4. Upon seeing a large number of incomplete cases and feeling he could help many of
5 those clients, Mr. Johnson decided to “acquire” the company by gaining the trust of the
6 employees over a three month period and then using that trust to take the client files
7 from Bancarrota.com.
- 8 5. During those three months, Mr. Johnson worked for Bancarrota.com for \$2,000 per
9 week. He acknowledges that he knew the money was coming from Bancarrota.com but
10 that he did not know the actual source of the money or the person who authorized the
11 payments.
- 12 6. After three months, Mr. Johnson took the client files and moved to a different location.
13 Within approximately nine months he finished all the cases solicited by
14 Bancarrota.com.⁶
- 15 7. Though Mr. Johnson was not operating as Bancarrota.com during that time, he admits
16 to using that business’ website. Eventually, however, he changed the name of the
17 website but kept the same set-up of the website. Currently, Mr. Johnson represents that
18 he is no longer using the website.
- 19 8. Mr. Johnson admits he misstated the amount received on the Declaration Re: Limited
20 Scope of Appearance Pursuant to Local Bankruptcy Rule 2090-1 (“Declaration”) and
21 the Disclosure of Compensation of Attorney for Debtor (“Disclosure of
22 Compensation”) forms that were filed in at least three of the Bancarrota.com cases.⁷
23 He explained that the clients had already paid the fee to Bancarrota.com, so he could
24 not charge them an additional fee, but he thought he should disclose all of the fee they
25 paid to anyone. However, at one point he claims it was an oversight, while at another
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28 ⁶ The finding below determined Mr. Johnson worked on about 40-50 cases; however, Mr. Johnson stated during the hearing he thought there were a few hundred cases to process.

⁷ The forms state Mr. Johnson received \$1,701, despite his actual receipt of only \$300.

1 point in the hearing he states he did not want to confuse the clients and make them
2 think he was trying to dupe them into paying additional money to him. He further states
3 that in September or October 2008, when a Chapter 7 Trustee told him to put down
4 what he actually received, he immediately changed his practice of disclosure. However,
5 when confronted with a December 2008 filing where he again certified receipt of
6 \$1,701, he had no explanation.

7 9. Mr. Johnson acknowledges that he missed some § 341(a) meetings, but states the
8 mistake was the result of a panic situation of taking on such a large quantity of cases
9 from Bancarrota.com and of an unreliable employee responsible for the scheduling of
10 such meetings.

11 10. Mr. Johnson further admits to splitting fees and that his relationship to Bancarrota.com
12 amounted to “capping” (described, infra), but excuses his actions because he wanted to
13 help people in financial distress.

14 **Findings of Fact**

15 Based on the Statement of Cause, the absence of any written response from Mr.
16 Johnson, the testimony offered by Mr. Johnson at the time of the hearing and the Court’s
17 records and files in this disciplinary action and the underlying bankruptcy cases, the Panel
18 makes the following findings of fact:

- 19 1. The procedures taken as set forth above were in accordance with the procedures
20 required by General Order 96-05.
- 21 2. On May 7, 2009, Bankruptcy Judge Bluebond issued a Statement of Cause against
22 Johnson. The Panel was then appointed. Mr. Johnson was provided with adequate
23 notice of this proceeding and a fair opportunity to respond to the Statement of Cause.
24 However, Mr. Johnson failed to file any written response to the Statement of Cause. On
25 July 31, 2009, a disciplinary hearing before the Panel was held.
- 26 3. Mr. Johnson worked for non-attorney owned Bancarrota.com for three months and took
27 approximately 50 client files from cases solicited by Bancarrota.com when he left the
28 company’s employ.

- 1 4. By his own admission, Mr. Johnson felt compelled to take on Bancarrota.com's cases
2 and would take this same action if he could do it over again.
- 3 5. Although Mr. Johnson acknowledges his receipt of only \$300 and Bancarrota.com's
4 receipt of \$1,400 for the cases referred to him by Bancarrota.com, he stated on the
5 Declaration and the Disclosure of Compensation forms under penalty of perjury that he
6 received a fee of \$1,701 and that he had not agreed to share these fees with any person
7 not associated with his firm.
- 8 6. Despite agreeing in writing to represent the Debtors at the initial § 341(a) meetings, Mr.
9 Johnson failed to attend many of these meetings. However, Mr. Johnson eventually
10 attended the meetings and obtained discharges for the cases.
- 11 7. Mr. Johnson obtained a "Purchase Agreement" from Juan Rangel, the former owner of
12 Bancarrota.com on or about May 16, 2009, but specifying that Johnson was responsible
13 for all client files effective April 1, 2008. Mr. Johnson brought a copy of that
14 agreement to the hearing.
- 15 8. Mr. Johnson paid all sanctions pursuant to the Order issued by Judge Bluebond.
- 16 9. All cases from Bancarrota.com are complete and no relationship remains between
17 Bancarrota.com and Mr. Johnson.
- 18 10. The Court has received no complaints from Mr. Johnson's clients.

19 **Findings of Law**

20 Bankruptcy courts "are vested with inherent powers to manage their cases and
21 courtrooms and to maintain the integrity of the judicial system," including the power to
22 suspend or disbar attorneys. *In re Brooks-Hamilton*, 400 B.R. 238, 246 (9th Cir. B.A.P. 2009).
23 "There is no uniform procedure for disciplinary proceedings in the federal system. Instead, the
24 individual judicial districts are free to define the rules to be followed and the grounds for
25 punishment." *Peugeot v. United States Trustee and Crayton (In re Crayton)*, 192 B.R. 970, 976
26 (9th Cir. B.A.P. 1996). Appropriate grounds for punishment include an attorney's failure to
27 abide by the ethical standards of the bar to which he is admitted, as well as an attorney's failure
28 to abide by state laws regulating the conduct of the legal profession. *Standing Committee on*

1 *Discipline of U.S. Dist. Court for Southern Dist. Of California v. Ross*, 735 F.2d 1168, 1170-71
2 (9th Cir. 1984).

3 The Panel finds that Mr. Johnson violated both the California Rules of Professional
4 Conduct (“CRPC”) as well as the California Business and Professions Code (“CBPC”). Mr.
5 Johnson violated the CRPC by splitting fees with non-attorneys and violated the CBPC by
6 engaging in a business relationship with an organization that employed runners and cappers.
7 He also falsely declared under penalty of perjury that he accepted \$1,701, when in fact he had
8 split his fees and received only \$300.

9 Fee Splitting

10 With limited exceptions not applicable here, California Rule of Professional Conduct
11 (“CRPC”) 1-320(a) provides: “Neither a member nor a law firm shall directly or indirectly
12 share legal fees with a person who is not a lawyer.” The primary purposes of CRPC 1-320(a)
13 are “to protect the integrity of the attorney-client relationship, to prevent control over the
14 services rendered by attorneys from being shifted to lay persons, and to ensure that the best
15 interests of the client remain paramount.” Los Angeles County Bar Association Professional
16 Responsibility and Ethics Committee Formal Opinion No. 510 (Dec. 15, 2003) at 4–5.

17 By his own admission, Johnson shared fees with Bancarrota.com, an organization
18 composed solely of non-attorneys. This conduct compromised the integrity of the attorney-
19 client relationship by placing control over a significant portion of the cases in the hands of an
20 organization composed of non-attorneys. The Panel finds that by splitting fees with non-
21 attorneys, Mr. Johnson violated CRPC § 1-320(a).

22 Capping

23 California Business and Professions Code (“CBPC”) § 6152(a)(1) provides that it “is
24 unlawful for any person ... to act as a runner or capper for any attorneys or to solicit any
25 business for any attorneys ... in any public place ... or upon private property of any character
26 whatsoever.” A “runner” or “capper” is “any person, firm, association or corporation acting for
27 consideration in any manner or in any capacity as an agent for an attorney at law or law firm ...
28 in the solicitation or procurement of business for the attorney at law or law firm.” CBPC

1 § 6151(a). An “[a]ttorney who employs runners or cappers in the solicitation of business for
2 him may be held criminally liable on a theory of aiding and abetting and may also be charged
3 with conspiracy.” *Hutchins v. Municipal Court of Santa Monica Judicial Dist., Los Angeles*
4 *County*, 132 Cal. Rptr. 158 (Ct. App. 1976). CBPC § 6151(a) defines a “runner” or “capper” as
5 an organization that acts “for consideration *in any manner* ... for an attorney at law” (emphasis
6 added).

7 The Panel finds that Mr. Johnson’s relationship with Bancarrota.com violated the
8 CBPC’s prohibition on the use of runners or cappers. Bancarrota.com solicited legal business,
9 retained the vast majority of the fees that clients paid (of the \$1,700 fee, Mr. Johnson received
10 \$300 and Bancarrota.com retained \$1,400), and effectively controlled the relationship with the
11 business’ client. By virtue of the consideration it received, Bancarrota.com acted as a “runner”
12 or “capper” for Mr. Johnson within the meaning of CBPC § 6151(a).

13 Mr. Johnson aided and abetted Bancarrota.com’s unlawful use of runners and cappers
14 by agreeing to provide legal services to the clients that Bancarrota.com solicited. As noted
15 above, attorneys may be held liable for violating § 6152(a)(1) on an aiding and abetting theory.
16 The Panel finds that by aiding and abetting Bancarrota.com, Mr. Johnson violated CBPC
17 § 6152(a)(1).⁸

18 False Declaration

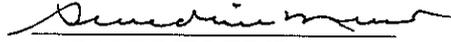
19 Forms signed and filed with the court by attorneys are submitted under penalty of
20 perjury. Mr. Johnson attempted to hide his fee splitting arrangement with Bancarrota.com by
21 filing false Declaration and the Disclosure of Compensation forms. The Panel finds that Mr.
22 Johnson’s submission of the false forms to the court in each case subjects him to sanctions for
23 perjury.

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28 ⁸ The Panel’s findings should not be construed as an adjudication of Johnson’s potential criminal liability under
CBPC § 6152(a)(1). However, in determining appropriate disciplinary sanctions, the Panel is required to evaluate
the extent to which Johnson may have violated applicable law.

1 Dated: October 5, 2009

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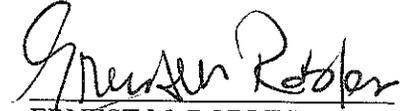


GERALDINE MUND
United States Bankruptcy Judge

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5 Dated: October 1, 2009

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ERNEST M. ROBLES
United States Bankruptcy Judge

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8 Dated: October 6, 2009

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MAUREEN A. TIGHE
United States Bankruptcy Judge

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