

SO ORDERED.

Dated: September 30, 2021



*Madeleine C. Wanslee*  
Madeleine C. Wanslee, Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re:

**TODD D. DELL,**

Debtor.

Case No. 2:19-bk-03622-MCW

Chapter 7

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
REGARDING ORDER TO SHOW  
CAUSE, THE UNITED STATES  
TRUSTEE'S RESPONSE TO THE  
ORDER TO SHOW CAUSE, AND  
DEBTOR'S MOTION FOR  
DISGORGEMENT OF FEES**

This matter concerns a lawyer's alleged bad conduct. After receiving an *Emergency Motion to Remove Attorney* filed directly by Debtor Todd D. Dell (Emergency Motion), whose attorney of record was then Scott Michael Forrester ("Forrester" or "Counsel"), the Court entered an *Order to Show Cause* (Dkt. No. 62). Debtor's Emergency Motion and the docket suggested that Counsel 1) possibly provided ineffectual legal representation, 2) allegedly abandoned this case before a proposed Amended Chapter 13 Plan was confirmed, and 3) may have received unauthorized post-petition payments directly from Debtor. Regrettably, all these things and other bad acts proved to be true.

1 The Order to Show Cause directed Counsel and his law firm, Forrester Law Practice, to  
2 appear and show cause why they should not be subject to discipline, including sanctions and  
3 disgorgement of fees. Thereafter, the Court received from the Office of the United States Trustee  
4 (“UST”), Debtor, and Debtor’s new counsel several filings related to Forrester’s compensation  
5 and the quality of the services he provided. At the Order to Show Cause hearing (“OSC  
6 Hearing”), Forrester and the UST entered into a stipulation for Forrester to perform certain acts  
7 designed to bring his conduct into compliance with the Code. After a subsequent two-day  
8 evidentiary hearing, the Court took the matter under advisement.

9 Immediately before and after the evidentiary hearing, the UST filed three separate  
10 Notices of Non-Compliance alleging that Counsel failed to perform as agreed under the court-  
11 approved stipulation. The Court held two additional hearings on the UST’s Notices of Non-  
12 Compliance, and took those matters under advisement.

13 The Court now finds and concludes that Forrester engaged in egregious and sanctionable  
14 conduct requiring the Court to discipline him to protect the integrity of the bankruptcy system,  
15 the Court, and parties before the Court. Among other things, Forrester failed to (1) comply with  
16 the Code’s requirements; (2) comply with Federal Rules of Bankruptcy Procedure’s  
17 requirements; (3) properly communicate with his client as well as perform other required ethical  
18 obligations; (4) attend the First Meeting of Creditors in this case; (5) timely file documents; and  
19 (6) accurately and fully complete filed documents.

## 20 I. JURISDICTION

21 The Court has jurisdiction under 28 U.S.C. § 1334. The Court has statutory and  
22 constitutional power to enter a final judgment on this matter, which is a core proceeding under  
23 28 U.S.C. § 157. This decision constitutes the Court’s findings of fact and conclusions of law  
24 to the extent required by FEDERAL RULE OF BANKRUPTCY PROCEDURE 7052.<sup>1</sup>

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26 <sup>1</sup> Unless otherwise indicated, all chapter, code, and rule references are to the United States Bankruptcy Code, 11  
U.S.C. §§ 101-1532, and to the FEDERAL RULES OF BANKRUPTCY PROCEDURE, Rules 1001-9037.

## II. BACKGROUND

Forrester filed Debtor's Chapter 13 case on March 29, 2019. Debtor's *pro se* Emergency Motion states that it had come to his attention that the filings completed by his attorney of record, Forrester and his law firm, Forrester Law Practice, "may be inaccurate, incomplete, missing or omitting key information." Debtor also asserted that Counsel had not appropriately addressed the *Trustee's Recommendation* dated July 12, 2019 and had missed a key extended deadline, of which Debtor had not been informed, leading the Chapter 13 Trustee to file a *Notice of Intent to Lodge Dismissal Order*. According to Debtor, the extended deadline to submit a stipulated order confirming the plan was December 16, 2019, but Debtor did not receive any of this information until January 10, 2020. Debtor stated that the communication with Counsel during the case had been sporadic and ultimately unacceptable.

Also on January 16, 2020, Diane Drain ("Drain") filed a *Notice of Appearance on Behalf of Todd Dell* (Dkt. No. 56), with a copy of Debtor's Emergency Motion attached as an exhibit; and a *Motion to Extend Time to Respond to Trustee's Recommendation* (Dkt. No. 57). Drain later filed a *Motion to Remove Professional Scott M. Forrester, Prior Counsel, from the Docket as Counsel for Debtor* (Dkt. No. 60) and an *Amended Motion to Extend Time to Respond to Trustee's Recommendation* (Dkt. No. 61). Drain's Motion to Remove Professional states that Forrester should be removed as counsel of record because he provided ineffective legal counsel in this case. The schedules that Forrester filed failed to list all creditors. When Debtor queried Forrester about this, he reportedly replied, "the bankruptcy is meant to cover all debt." Drain argued that this failure to specifically list all creditors in the Chapter 13 case violated the Code<sup>2</sup> and would have irreparably harmed Debtor, his Chapter 13 process, and the subsequent Chapter 13 discharge. Drain also argues that Counsel failed to timely notify Debtor of the Trustee's

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<sup>2</sup> 11 U.S.C. § 1328 (a) provides for discharge of only those debts "provided for by the plan or disallowed under [s]ection 502 of this title . . ."

1 Notice of Intent to Lodge Dismissal Order and otherwise failed to timely communicate with  
2 Debtor.

3 The Court's Order to Show Cause directed Forrester to appear and show cause, if any, as  
4 to whether he should be subject to discipline based on his actions, or lack of action, in the pending  
5 case and further warned that such discipline might include sanctions and complete or partial  
6 disgorgement of fees paid to Forrester or his law firm. The Court gave notice to Forrester that it  
7 was concerned that Counsel may have (1) provided ineffectual legal counsel, (2) abandoned  
8 Debtor before the *Amended Chapter 13 Plan* was confirmed, and (3) received unauthorized  
9 payment from Debtor post-petition (i.e., Forrester's *Disclosure of Compensation* indicated that  
10 Debtor had paid \$500 pre-petition and was to directly pay \$1,700 post-petition upon the filing  
11 of the Schedules and Statements).

12 Drain later filed Debtor's *Motion to Convert* to Chapter 7 along with *Amended Schedules*  
13 *A/B, C and G* (Dkt. Nos. 66 & 67), an *Amended Chapter 7 Means Test Calculation* (Dkt. No.  
14 68), *Disclosure of Compensation by Attorney Pursuant to FRBP 2016* (Dkt. No. 69), *Individual*  
15 *Debtor's Statement of Intention* (Dkt. No. 70), *Amended Statement of Financial Affairs* (Dkt.  
16 No. 71), *Amended Summary of Schedules* (Dkt. No. 72), and an *Amended Declaration About an*  
17 *Individual Debtor's Schedules* (Dkt. No. 73).

18 The day after the case converted to Chapter 7, Drain filed a *Motion to Disgorge*  
19 *Attorney's Fees* (Dkt. No. 75). The Motion to Disgorge detailed alleged improprieties  
20 concerning Forrester and his Firm's representation and asked the Court to (1) deem Debtor's  
21 contract with Counsel void; (2) deny any fee award to Counsel due to his failure to provide the  
22 services promised based on his alleged negligent and unethical conduct, including his false  
23 advertising; (3) order Counsel to disgorge all funds Debtor paid in this case; (4) direct the  
24 Chapter 13 Trustee not to pay any fees to Counsel; (5) award Debtor his attorney's fees for  
25 bringing the Motion to Disgorge; (6) award penalties and sanctions under §§ 526, 527, 528; (7)  
26 if the Court finds that Forrester, while acting as Debtor's attorney violated Bankruptcy Rule



1 9011, order the assessment of an appropriate civil penalty against Forrester; and (8) that the  
2 Court enjoin Forrester from filing cases in the District of Arizona as contemplated by § 526(c)(5).

3 The UST filed a *Response to the Court's Order to Show Cause* (Dkt. No. 84). It advised  
4 that it was reviewing Forrester's cases and filing complaints to bring before the Court an alleged  
5 pattern and practice of Forrester and his firm, including:

- 6 a) failing to execute written retention agreements and continuing to take post-  
7 petition withdrawals;
- 8 b) taking direct post-petition payments and churning fees;
- 9 c) failing to disclose attorney association and compensation;
- 10 d) failing to timely communicate with clients;
- 11 e) failing to attend 341 meetings;
- 12 f) failing to review and to obtain signed documents resulting in inaccurate schedules  
13 and statements of financial affairs; and
- 14 g) failing to return debtors' records after disassociation.

15 The UST asserts that these same items of concern in Forrester's pattern and practice are  
16 present in this case. In sum, the UST argues that this record establishes that Forrester engaged  
17 in serious unethical conduct and substandard representation, including violations of the ethical  
18 rules and the duties imposed by the Code, the Rules, and the Local Rules for this District, which  
19 harmed Debtor and constitutes an abuse of the bankruptcy process. The UST seeks a myriad of  
20 relief including monetary sanctions and an order enjoining Forrester from practicing in this  
21 Court.<sup>3</sup>

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23 <sup>3</sup> Among other things, the UST requests that the Court:

- 24 a) Cancel the Dell Retainer Agreement;
- 25 b) Order Forrester to disgorge any and all fees paid to him or his law firm by Dell as unreasonable;
- 26 c) Order Forrester to pay a monetary sanction to Dell consistent with any harm he suffered;
- d) Order Forrester to pay a civil penalty or monetary sanction in such amount as the Court deems  
appropriate considering the circumstances of this case;
- e) Suspend Forrester's electronic case filing privileges (for no less than 6 months);
- f) Require Forrester to file all original documents with the Court for a period of no less than 1 year;

1 At a preliminary hearing on this matter, the parties stipulated on the record for Forrester  
2 to file (1) all original wet signed signature pages (“Wet Signatures”) with the Court for a period  
3 of no less than one year and (2) file an additional statement with any Filing Fee Application that  
4 the client has been properly advised of the additional \$150 fee Forrester charges to reinstate any  
5 dismissed cases due to untimely payment of the filing fee installment payment. The parties also  
6 agreed that the Clerk of Court was authorized to remove Forrester as debtor’s attorney where the  
7 case has been dismissed over three months. The Court approved the parties’ stipulation in open  
8 court (Dkt. No. 88) and ordered Forrester to abide by the same (the “Stipulated Order”).

9 An evidentiary hearing on the Order to Show Cause, Debtor’s Motion to Disgorge, and  
10 the UST’s Response to the Order to Show Cause and relief requested therein spanned two days.  
11 Two witnesses testified - Debtor and Glen Hadley, a Forrester Law Practice employee. The  
12 Court admitted some twenty-three exhibits, took notice of multiple papers filed on the Court  
13 docket, and then took the matter under advisement.

14 **Post-Trial Proceedings: UST Requests**  
15 **Sanctions For Forrester’s Non-Compliance Under Stipulated Order**

16 Shortly before the OSC evidentiary hearing was set to begin, the UST filed a *Notice of*  
17 *Non-Compliance* with respect to the Stipulated Order and requested an expedited hearing on the  
18 same (Dkt. No. 127). The UST alleged that Forrester had failed to comply with the parties’  
19 Stipulated Order because Wet Signatures were not being filed contemporaneously with  
20 documents – instead, Forrester filed the documents and then subsequently filed only excerpts of  
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- 22 g) Require Forrester to file an additional statement with any Filing Fee Application that the client  
23 has been properly advised of the additional \$150 fee he charges to reinstate any dismissed case due to  
24 untimely payment of the filing fee installment;  
25 h) Require Forrester to file amended 2016 Statements to disclose any fee arrangements with other  
26 attorneys where other attorneys appear at his clients’ 341 meetings;  
i) Direct the Clerk of Court to remove Forrester as debtor’s attorney where the case has been  
dismissed over 3 months;  
j) Strike language where routine services are excluded from Forrester’s 2016 Statement and  
Retention Agreements; and  
k) Impose appropriate monetary sanctions and/or injunctive relief.

1 the signature pages of these documents, generally after significant delay and in a format that did  
2 not match the filed pages. The total average delay between filing the bankruptcy document and  
3 the Wet Signature averaged thirteen days according to analysis and charts prepared by the UST.  
4 In sum, the UST argued that Forrester had failed to abide by the Stipulated Order by continuing  
5 to engage in conduct that violates the ethical rules and duties imposed by the Code, the Rules,  
6 and Local Rules for this District,<sup>4</sup> and asked that Forrester's non-compliance be considered when  
7 determining possible denial of fees and other sanctions to prevent Forrester's alleged misconduct  
8 in the future.

9 The Court granted the UST's request for an expedited hearing on the Notice of Non-  
10 Compliance, setting it on the date the evidentiary hearing was to commence (Dkt. No. 131).  
11 Although the Court ordered Forrester to file a response, he failed to comply. Because Forrester  
12 failed to respond to the Notice of Non-Compliance, the Court continued that hearing and ordered  
13 Forrester, for a second time, to file a formal response, accommodating Forrester's schedule and  
14 allowing him to personally select the second Court-ordered response date. Yet again, Forrester  
15 failed to abide by a Court Order because he did not file a formal response to the UST's Notice  
16 of Non-Compliance.<sup>5</sup> The UST, however, filed a *Reply*, which detailed Forrester's alleged  
17 further failures to comply (Dkt. No. 152). The UST has since treated and referred to the Reply  
18 as the *UST's Second Notice of Non-Compliance*.

19 At the December 1, 2020 hearing, the Court found and concluded that because Forrester  
20 had twice ignored specific deadlines ordered by the Court to formally respond to the UST's  
21 Notice of Non-Compliance, and Mr. Forrester had not requested an extension of time to respond  
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24 <sup>4</sup> See Rule 1008, Local Rule 5005-4(d)(2)(B), and the Court's ECF Users' Administrative Guide.

25 <sup>5</sup> When asked in why he failed to file a response, Forrester replied that he thought he had prepared a short response  
26 and speculated that perhaps it was docketed under the wrong case number. The UST's representative, Patty Chan,  
avowed to the Court that her office had not received any response related to the Notice of Non-Compliance. Thus,  
even if the response was filed in the wrong case, it was never served. Forrester never supplemented the record with  
evidence of his purported response.

1 before the second hearing commenced, that the only conclusion the Court could make is that  
2 Forrester conceded all allegations and conclusions made by the UST concerning his non-  
3 compliance.

4 The Court further found that in addition to willfully violating the two orders directing  
5 him to file a Response to the UST's Notice of Non-Compliance (Dkt. Nos. 131 and 145),  
6 Forrester also willfully violated the Stipulated Order because he had not been filing Wet  
7 Signatures. Accordingly, the Court issued interim sanctions, including among other things,  
8 directing Forrester to file a report of fees ("Fee Report") received, directing disgorgement of fees  
9 he collected in two Chapter 13 cases filed before this Judge since March 11, 2020, and requiring  
10 additional fee disclosures to clients and Wet Signature client acknowledgements (Dkt. No. 154).<sup>6</sup>  
11 The disgorged fees were to be deposited into the Court's Registry on or before December 8, 2020  
12 (later *sua sponte* extended to December 14). The Court also established an application process  
13 under which Forrester might later recover reasonable attorney fees.<sup>7</sup> The Court indicated that it  
14 would revisit the matter and these interim sanctions when issuing a decision on the under  
15 advisement OSC matter.

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18 <sup>6</sup> The Sanction Order and instructions contained in the December 1, 2020 Minute Entry at Dkt. No. 154 actually  
19 instructed Forrester to file a report identifying the cases. On December 16, 2020, which was after the extended  
20 deadline, Forrester filed his "*List of Cases Filed Post-Stipulation and Motion to Reconsider Payment of Fees*  
21 *Based on Potential Appeal or Alternatively Reconsider if Payment is Necessary Since Signature Pages Are On the*  
*Docket*" (Dkt. No. 157). It was within this document that Forrester identified the two Chapter 13 cases, *Fisher*,  
No. 20-bk-12857, with fees collected of \$1,500 and *Mendivil*, No. 20-bk-04239 with fees of \$1,200.

22 The Court issued an *Amended Order Denying Mr. Forrester's Request for Pre-Appeal Stay; and Order Denying*  
23 *Mr. Forrester's Request for Relief or Reconsideration of the Court's Previous Order* on January 13, 2021 (Dkt.  
24 No. 172) where the Court dealt with the cases identified by Forrester and the other relief that he requested. The  
25 Court identified that Forrester's report of cases was incorrect, as well as the amount of fees he stated he collected,  
according to the statements he filed in the actual cases. The cases that he should have reported as being filed from  
March 11, 2020 and December 1, 2020, and which were pending on December 1, 2020, were *Engwall*, No. 2:20-  
bk-11494-MCW and *Fisher*, No. 2:20-bk-12857-MCW. The fees collected in these two cases totaled \$3,500.00  
(\$1,500 in *Fischer* and \$2,000 in *Engwall*).

26 <sup>7</sup> The Minute Entry Order made other clarifications and expansions to the Court's prior orders, such as defining  
"immediately" to mean within 72 hours and directing the Chapter 13 Trustees to retain any attorney's fees  
scheduled to be paid to Forrester until further Court order.

**Additional Post-Trial Proceedings: UST Files  
Third Notice of Non-Compliance And Requests Sanctions**

The UST filed its *Third Notice of Non-Compliance and Request for Sanctions* on December 15, 2020 (Dkt. No. 156), which again detailed certain alleged errors and omissions by Forrester, including his failure to abide by the Order directing him to file the Fee Report and disgorge fees by December 8, 2020, which was subsequently extended to not later than close of business on December 14, 2020. Two days after the deadline, on December 16, 2020, Forrester filed a document seeking various forms of relief titled, *List of Cases Filed Post-Stipulation and Motion to Reconsider Payment of Fees Based on Potential Appeal or Alternatively Reconsider if Payment is Necessary Since Signature Pages Are On The Docket* (“Omnibus Motion”) (Dkt. No. 157). The Omnibus Motion appeared to seek a stay of the requirement to file the Fee Report and disgorge fees while Forrester was “mulling” over whether to file an appeal and contended that it was technologically impossible for him to prepare the Fee Report through CM/ECF or on his own office systems. He also argued that he had complied with the Stipulated Order. The UST filed her *Response to the Omnibus Motion* on December 23, 2020 (Dkt. No. 162).

Forrester never obtained a hearing date for his Omnibus Motion. The Court eventually entered its *Order Denying Mr. Forrester’s Request for Pre-Appeal Stay; and Order Denying Mr. Forrester’s Request for Relief or Reconsideration of the Court’s Previous Order* disposing of the relief requested in the Omnibus Motion on January 13, 2021 (Dkt. No. 172).

The UST’s Third Notice of Non-Compliance came on for hearing on January 14, 2021. Forrester did not file an objection or other response, but he appeared at the hearing. As of that date, 30 days had passed since Forrester was to have deposited the \$3,500 into the Court’s Registry.<sup>8</sup> Forrester had not yet deposited any funds into the Registry. After Forrester confirmed

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<sup>8</sup> The \$3,500 was based on the amount of fees collected in the cases that were still actually pending on December 1, 2020, *Fischer* and *Engwall*. But Forrester did not correctly identify the pending cases. His report identified the *Fisher* and *Mendivil* cases. He should have deposited \$3,500, based on his erroneous case identification. See *Supra*, fn 6 and accompanying text. The amount Forrester deposited at this time was zero.

1 that disgorgement was not an impossibility, the Court again found him to be in contempt, and  
2 again ordered compliance – this time for the \$3,500 to be deposited into the Court’s Registry no  
3 later than Tuesday, January 19, 2021 at 3:00 PM AZ Time. The UST and Drain requested  
4 additional sanctions of \$10.00 a day for each of the two Chapter 13 cases for which disgorgement  
5 was to have occurred. After considering the parties’ arguments, the Court took the matter of  
6 additional sanctions under advisement. On January 21, 2021, Forrester finally deposited \$3,500  
7 into the Court’s Registry, albeit two days late.

### 8 III. STIPULATED FACTS & TRIAL TESTIMONY

9 The parties’ Joint Pretrial Statement (Dkt. No. 111) contains 33 stipulated facts that they  
10 agree are uncontested and material, which are appended to this decision. The Court relied on  
11 these facts when making its finding in conclusions. The Court also relied on the following  
12 testimony:

13 **Glen Hadley’s testimony:** Glen Hadley (“Hadley”) testified about his employment with  
14 the Forrester Law Practice, its procedures, and having been trained by Forrester. Hadley’s duties  
15 included collecting initial documents from clients and entering client information into the  
16 bankruptcy case software. He stated that he coordinates meetings with clients to sign documents,  
17 and then after the case is filed, he sends a follow-up email to advise the clients of their bankruptcy  
18 case number and to provide copies of their fee arrangement.

19 Hadley testified that he prepared the papers filed in the *In re Esparza* case pending before  
20 another Arizona judge, 20-bk-6334-PS. On that petition, Hadley’s own email address was listed  
21 in the box for the debtors’ email address. When queried about this, Hadley explained that “if  
22 there’s a problem with it, 99 percent of the time the client doesn’t know what’s going on and I  
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1 don't want to shake them up. Because if there's a problem with it, it would have been something  
2 that I did so we have them contact me.”<sup>9</sup>

3 Because the petitions are lengthy, Hadley separates the signature blocks from the  
4 bankruptcy petition, schedules, and statement and just has the clients sign those. In other words,  
5 “rather than print 60 or 70 pages when somebody is going to come in, we print the signature  
6 pages and that's what we have them sign” This practice results in a collection of signatures that  
7 are not affixed to the relevant schedules and statements. He further conceded that he is  
8 “sometimes . . . slow in getting those filed. . . . I just don't always file them [signatures] with  
9 them [the forms].”

10 Finally, Hadley insisted during his testimony that there is no consequence to a chapter 13  
11 debtor for failure to list a creditor in the schedules, contending that the “debt goes away whether  
12 or not it was listed in the – in the bankruptcy petition so – . . . frankly, that's what the – that's  
13 what the law is. . . . I know that that's the case, not just think. I know it.”

14 **Todd Dell's testimony:** Dell testified extensively about his negative experience with  
15 Forrester and the Forrester Law Practice. Dell discussed having been charged \$150 to have his  
16 case reinstated, despite that charge not being specifically listed in the retention agreement. He  
17 also testified at length about how Forrester unexpectedly debited his bank account post-petition,  
18 causing financial and personal stress while he was traveling with co-workers on a business trip.  
19 According to Dell, he had authorized Forrester to debit his account \$500 pre-petition and then  
20 \$850. Two weeks after the initial \$850 debit, Forrester took an unauthorized debit of another  
21 \$850. When Dell asked Forrester about this unauthorized transaction, Forrester replied in an  
22 email:

23 Hey, Todd. I will have to check with what we have on the contract, although it  
24 shouldn't differ. But what we have in our system and what I recall us discussing  
25 very clearly is the payments will be on your next two paydays, 4/1 and 4/15. **That**

26 <sup>9</sup> Local Rule 1005-2(a) requires a debtor to include their email address. It is clearly improper for Forrester's  
paralegal to insert his own email address in place of the debtor's.

1 **payment page obviously was not set up fully, and there isn't even a start date**  
2 **for the payment.** We went over a lot in the consult. **And clearly I didn't reduce**  
3 **to writing what is verbally set up.** But I have a pretty great memory, and I also  
4 know how we structure payments. When we file so little, we typically collect the  
balance of what is owed within 30 days. So next payment is scheduled for 4/15.  
And payment to us directly will be done, the rest paid through the plan. (emphasis  
added).

5 After Dell sent a follow up email, Forrester reiterated his position stating:

6 I believe I already answered this in my prior email. **And also, how the contract is**  
7 **structured is we don't upload the plan until the full upfront amount is paid.**  
8 And the plan is due 30 days from when we filed. So a hundred percent of the time  
when we file for 500, the balance of the upfront portion is due in 30 days.  
(emphasis added).

9 I filed your case for so little as a favor to you to lock in the March filing date. We  
10 usually don't file a case until the full \$2,300 is paid.

11 Any financial strain these payments are causing are extremely short-term. We are  
going to save you of tens of thousands in the long run.

12 Despite receiving \$500 pre-petition, Forrester filed a motion for Dell to pay his filing fee  
13 in installments. Dell testified that he was never shown this application and that he actually had  
14 the ability to immediately pay the \$310 filing fee in full.<sup>10</sup> Dell's case was dismissed soon after  
15 filing because he sent the installment payment to the trustee instead of to the Court. Dell learned  
16 of the dismissal when he received the dismissal order from the Court, rather than from Forrester.  
17 Forrester charged Dell \$150 for the motion to reinstate even though that service was not listed  
18 in their retention agreement. That reinstatement motion included certain waivers required by  
19 Local Rule 1017-1. Because Forrester did not discuss this motion with Dell, Dell learned for the  
20 first time while he was testifying that he had waived timeliness objections to certain complaints,  
21 motions, claims, etc. as a condition of reinstatement.

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26 <sup>10</sup> Under Rule 1006(b)(3), Forrester should not have received any additional attorney's fees until the filing fee  
was paid in full. *See also* Local Rule 1006-1.



1 Dell testified that he never signed his bankruptcy petition.<sup>11</sup> He also testified that he was  
2 employed at the time his case was filed. However the Declaration of Evidence of Employer  
3 Payments falsely stated that Dell had not received any payment advice, paystubs or other  
4 evidence of payment from any employer within 60 days of filing the petition. Forrester never  
5 reviewed this document with Dell or even showed it to him.

6 Forrester later filed a motion to extend time to comply with trustee's recommendations,  
7 which, again, Dell never reviewed and approved. Similarly, Forrester never shared with Dell the  
8 motions to extend time to file documents or motion to extend time to file a stipulated order of  
9 confirmation.

10 Dell also testified that Forrester never asked him to provide information about his  
11 creditors, and that the information in the schedules and statements appeared to be taken from his  
12 credit report only. This resulted in certain creditors being omitted from the bankruptcy papers.  
13 In sum, Dell testified that he was never "offered the option to sign – physically sign a document  
14 other than the initial consultation and then when I signed on at home for the electronic declaration  
15 in June. Everything else was filed without me going over it. Ms. Milam [Forrester's paralegal]  
16 and I have never met. I've never spoken to her. I wouldn't recognize her if she was sitting across  
17 the hall from – across the street from me. So, yes, all of those things were go – were going on  
18 without me reviewing and physically signing any of them."

#### 19 **IV. DISCUSSION**

##### 20 **A. FORRESTER'S SUBSTANDARD LEGAL REPRESENTATION.**

21 The Court's Order to Show Cause directed Forrester to appear and show cause, if any, as  
22 to whether he should not be subject to discipline from this Court based on his actions or lack of  
23 action in the pending case, with such discipline to possibly include, without limitation, sanctions  
24 and complete or partial disgorgement of his fees. It further ordered him to file a response to the  
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26 <sup>11</sup> Rule 1008, all petitions, lists, schedules, statements and amendments must be verified or contain an unsworn declaration as provided by 28 U.S.C. § 1746.

1 OSC no later than five business days before the hearing and explain his actions in this case and  
2 what monies were paid to him or his Firm by Debtor. In what was to become a pattern of practice  
3 in these proceedings, Counsel failed to abide by the Order and filed his response the day before  
4 the hearing.<sup>12</sup>

5 Evidence at trial revealed that Forrester failed to attend the 341 meeting and failed to  
6 disclose his association with and compensation to Mr. Maestas for attending that 341. The  
7 evidence also revealed that he failed to return Dell's file after his representation was  
8 terminated,<sup>13</sup> failed to obtain signed documents, filed inaccurate schedules and statements of  
9 financial affairs, and failed to timely communicate with Dell. Perhaps more problematic is some  
10 ways, it appears that he placed Dell in a chapter 13 case when that was unnecessary – a simple  
11 and proper calculation under the means test would have spared Dell significant funds and many  
12 months of stress. Dell credibly testified that it was he, and not Forrester's office, that worked to  
13 resolve his outstanding tax issues. As the parties stipulated, Forrester could provide no wet  
14 signatures for 13 separate documents that Dell was required to review and verify. Dell testified  
15 that never saw many of the documents and he did not sign them. This practice of filing papers  
16 without client review and approval is particularly egregious when, as here, the documents  
17 incorporate a declaration to be signed by the debtor that is intended to verify the veracity of the  
18 attached documents. Forrester also filed multiple requests for extension without conferring with  
19 Dell. And he did not keep Dell apprised of the case status. One glaring example is that Dell

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21 <sup>12</sup> Forrester's response reveals a callous opinion of those that have entrusted their legal affairs to him.  
22 Specifically, he characterized the situation as "simply a matter of an individual, bankrupt by definition, acting  
23 opportunistically to get his money shamefully returned to him since he no longer wants to proceed with his  
24 chapter 13, and he found an attorney willing to helping [sic] him facilitate this shameful endeavor. An attorney  
25 who files very few cases comparatively and has a clear financial motive." He further opined that it "is  
26 unsurprising that a Debtor, who has already decided and feels entitled to not pay back his debts, while having that  
constitutional right, to also feel entitled to get their fees back because they decide to file a chapter 7 and have no  
need for their chapter 13 attorney . . . [and that it is] not surprising a financially destitute individual trying to  
survive would make decisions that would potentially result in getting his money back." (Dkt. No. 86).

<sup>13</sup> The only originally signed documents in the partial file given to Dell included only the: (1) Dell Retainer Agreement, (2) automatic payment authorization form (undated), (3) Section 527 Debt Relief Agency Disclosure (dated March 28, 2019), and (4) Declaration re: Electronic Filing (dated June 3, 2019).

1 when learned of the Trustee having given notice of intent to dismiss the case, it was not from his  
2 attorney but from receiving a copy of the papers in the mail from the Court. One can think of  
3 few experiences more stressful for a client seeking a fresh start than to learn from a third party,  
4 and not their well-compensated attorney, that their case will likely soon be dismissed.

5 **B. FORRESTER IMPROPERLY TOOK PROPERTY OF ESTATE.**

6 Forrester's Disclosure of Compensation shows that he received \$500 pre-petition, and  
7 would be paid an additional \$1,700 directly from the Debtor when the Schedules and Statements  
8 were uploaded, with a balance of \$2,300 to be paid through the confirmed Chapter 13 plan. The  
9 case was filed on March 29, 2019, and the Schedules and Statements were not filed until the  
10 early hours of May 2, 2019, one day after the deadline given in the second extension of time for  
11 Debtor to file Schedules and Statements. Trial testimony showed that Forrester withdrew funds  
12 from Debtor's bank account post-petition and without Court authorization. In fact, Forrester  
13 made four separate post-petition withdrawals from the Debtor's account totaling \$1,850.

14 Forrester's Response to the OSC concedes that "how my firm structured our fees in this  
15 case is not in perfect harmony with the local rules." However, he goes on to argue that there "is  
16 no legal authority that establishes a nexus for disgorgement and imperfect compliance with a  
17 local rule, especially one that is potentially inconsistent with the bankruptcy code." (Dkt. No.  
18 86). He argues that no disgorgement is warranted because his fees were both reasonable and  
19 disclosed.

20 **1. Unauthorized Post-Petition Payment from Property of the Estate**

21 The filing of a bankruptcy petition commences a bankruptcy case and creates a  
22 bankruptcy estate under 11 U.S.C. § 541(a). The bankruptcy estate is generally comprised of all  
23 legal or equitable interests of the debtor, wherever located and by whomever held, as of the  
24 commencement of the case. § 541(a)(1). Section 541 includes specific provisions for  
25 community property, property recovered under the Bankruptcy Code, and other specified items  
26 of property as of the commencement of the case. In a Chapter 13 case, in addition to the property

1 identified in § 541, property of the estate includes property of the kind identified in § 541 that is  
2 acquired post-petition until such time as the case is closed, dismissed, or converted. 11 U.S.C.  
3 § 1306(a). Further, under § 1306(b), “[e]xcept as provided in a confirmed plan or order  
4 confirming a plan, the debtor **shall** remain in possession of all property of the estate.” (emphasis  
5 added).

6 Chapter 13 debtors’ attorney’s fees are entitled to an administrative expense priority and  
7 full payment for their reasonable attorney’s fees. 11 U.S.C. §§ 330(a); 503(b)(2); 507(a)(1)  
8 1322(a)(2). Section 330(a)(4)(B) provides:

9  
10 In a chapter 12 or chapter 13 case in which the debtor is an individual, the  
11 court may allow reasonable compensation to the debtor's attorney for  
12 representing the interests of the debtor in connection with the bankruptcy case  
13 based on a consideration of the benefit and necessity of such services to the  
14 debtor and the other factors set forth in this section.

15 11 U.S.C. § 330(a)(4)(B).

16 Under 11 U.S.C. § 329 any attorney representing a debtor in a bankruptcy case or in  
17 connection with a bankruptcy case, whether or not the attorney applies for compensation in the  
18 bankruptcy case, must file a statement of the compensation paid or agreed to be paid for any  
19 payment or agreement that was made at any time after the date that is one year before the  
20 bankruptcy petition was filed for services rendered, or to be rendered in contemplation of or in  
21 connection with the case by such attorney and the source of the compensation. § 329(a). If the  
22 compensation exceeds the reasonable value of any such services, the Court may cancel the  
23 agreement or order the return or disgorgement of the payments to the extent that such payment  
24 is excessive. § 329(b). This provision allows the Court to review fees, even those paid before  
25 the commencement of the case.

26 The bankruptcy court has inherent authority over debtor’s attorney’s compensation and  
has the authority to deny completely attorney’s fees requested for allowance or paid to the  
attorney. *Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th  
Cir. 1997) (“[T]he bankruptcy court’s authority to deny completely . . . attorney’s fees [is]

1 grounded in the inherent authority over the debtor's attorney's compensation. The Bankruptcy  
2 Code contains a number of provisions (e.g., §§ 327, 329, 330, 331) designed to protect the debtor  
3 from debtor's attorney.") "[S]everal courts have recognized that the bankruptcy court has broad  
4 and inherent authority to deny any and all compensation when an attorney fails to meet the  
5 requirements of these provisions." *Id.* These provisions include *both* the requirement for  
6 disclosure and the requirement to seek allowance of compensation under § 330(a)(4)(B) in a  
7 Chapter 13 case, and obtaining an order of the Court before removing property of the estate.

8 There is nothing in these Bankruptcy Code provisions, or in any other provision cited to  
9 this Court that would allow an attorney to pay themselves post-petition from property of the  
10 estate without approval and an order from the Court. For all fees in a Chapter 13 case, the Court  
11 must allow the fees and enter an order granting payment of those fees.

12 In this District, unless "ordered otherwise and except for pre-petition retainers, **all fees**  
13 **must be paid through the plan.**" See Local Rule 2084-3(e) (emphasis added). Local Rule  
14 2084-4(a) requires that Local Form 2084-4 (Chapter 13 Plan) be used for all original, amended,  
15 or modified plans. Unless counsel elects to file a fee application as provided for by Local Rule  
16 2084-3 (Attorneys Fees), that form plan provides for the allowance and payment of attorney's  
17 fees. When the plan is confirmed, it will have been noticed to all parties in the Chapter 13 case,  
18 and those parties will have had an opportunity to object to the plan provisions, including the  
19 provision regarding payment of debtor's attorney's fees. The fees are allowed by the order  
20 confirming the plan itself, or as that order adopts the provisions of the proposed chapter 13 plan.  
21 If the Chapter 13 plan is not confirmed, and the case is dismissed, the debtor's attorney may  
22 lodge a form of order allowing the fees and directing the Trustee to pay the allowed fees to  
23 counsel before returning funds to the debtor. See Local Rule 2084-3(f). Either way, the Court  
24 allows the fees and the Court enters an order for their payment from property of the estate. As a  
25 matter of law, under no circumstances may an attorney representing a Chapter 13 debtor be paid  
26 from property of the estate without a Court order that both allows the fees and orders their

1 payment from property of the estate. For an attorney to pay themselves post-petition from  
2 property of the estate without such an order is an unauthorized taking of property of the estate,  
3 and counsel is in effect stealing property of the estate.

4 **C. DISGORGEMENT OF FEES IS REQUIRED.**

5 **1. Disgorgement of Fees Based on Failure to Disclose**

6 Bankruptcy Rule 2016(b) mandates certain fee disclosures to be made in every chapter  
7 13 case. That Rule states:

8 Every attorney for a debtor, whether or not the attorney applies for  
9 compensation, shall file and transmit to the United States trustee within 14  
10 days after the order for relief, or at another time as the court may direct, the  
11 statement required by § 329 of the Code including whether the attorney has  
12 shared or agreed to share the compensation with any other entity. . . . A  
supplemental statement shall be filed and transmitted to the United States  
trustee within 14 days after any payment or agreement not previously  
disclosed.

13 Fed. R. Bankr. P. 2016(b).

14 **2. Disgorgement of Fees Based on Their Excessiveness**

15 Bankruptcy Code § 329 provides:

16 (a) **Any attorney representing a debtor** in a case under this title, or in  
17 connection with such a case, whether or not such attorney applies for  
18 compensation under this title, **shall file with the court a statement of the**  
19 **compensation** paid or agreed to be paid, if such payment or agreement was  
made after one year before the date of the filing of the petition, **for services**  
**rendered** or to be rendered in contemplation of or **in connection with the**  
**case** by such attorney, **and the source of such compensation.**

20 (b) **If such compensation exceeds the reasonable value of any such**  
21 **services, the court may cancel any such agreement, or order the return of**  
**any such payment, to the extent excessive, to—**

22 (1) **the estate**, if the property transferred—

23 (A) would have been property of the estate; or

24 (B) was to be paid by or on behalf of the debtor under a plan  
25 under chapter 11, 12, or 13 of this title; or

26 (2) **the entity that made such payment.**

1 Here, Forrester's disclosures reveal the forthcoming \$1,700 payment required of Dell for  
2 the filing of schedules and statements, and the chapter 13 plan. The disclosure, however, does  
3 not reveal the additional sum of \$150 to reinstate the case. Mr. Forrester has argued throughout  
4 these proceedings that these disclosures are all that is necessary, along with reasonableness.

5 The Court has already rejected this argument. An attorney cannot simply take post-  
6 petition payments without authorization. Instead, the Court must allow the fees and enter an  
7 order granting payment of those fees. It is well settled that disgorgement of fees is an appropriate  
8 sanction for failure to comply with the disclosure requirements of Section 329 and Rule 2016.  
9 *Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997)  
10 ("An attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code  
11 and Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees.");  
12 *Consumer Seven Corp. v. United States Trustee (In re Fraga)*, 210 B.R. 812, 822 (9th Cir. BAP  
13 1997) (Section 329 and Rule 2016 require every attorney for a debtor to file the appropriate  
14 disclosures. "An attorney's failure to computer with the disclosure requirements of the Code  
15 and Rules is a sanctionable violation, even if proper disclosure would have shown that the  
16 attorney had not actually violated any Code provision or any Rule." (citations omitted)).

17 No court order allowed Forester's fees or payment of the same. Based on Forrester's  
18 undisputed unauthorized taking of property of the estate by means of four post-petition direct  
19 withdrawals from Debtor's bank account, the Court finds that these were impermissible post-  
20 petition transfers of property of the estate. The Court therefore voids the retention agreement  
21 and orders the forfeiture of all fees in this case by Forrester to Dell.

### 22 **3. Disgorgement of Fees and Actual Damages Under Sections 526, 527, and 528**

23 The United States Supreme Court in *Milavetz, Gallop & Milavetz, P.A. v. United States*,  
24 559 U.S. 229 (2010), held that "attorneys are debt relief agencies when they provide qualifying  
25 services." The Code instructs bankruptcy attorneys, as debt relief agencies, to avoid certain  
26

1 conduct and requires them to provide clients (called “assisted persons”) information and notices  
2 found in Sections 526, 527, and 528.

3 Section 526 directs that a debt relief agency shall not (1) fail to perform any services  
4 promised to a client; (2) make any untrue or misleading statement, or counsel a client to make  
5 an untrue or misleading statement in connection with a bankruptcy case; (3) misrepresent any  
6 promised services or the benefits and risks of filing bankruptcy; or (4) advise a client or  
7 prospective client to incur more debt. Section 527 mandates the debt relief agency to timely give  
8 certain written notices to a client. One of the required notices is a description of how to identify  
9 and schedule all the information the client is required to provide under Section 521, including a  
10 list of creditors, the schedule of assets and liabilities, the schedule of income and expenses, and  
11 the statement of financial affairs. Section 528 requires that a contract between a debt relief  
12 agency and client must be in writing and “clearly and conspicuously” explain the scope of  
13 services that the agency will provide and the fees or charges for such services. Forrester failed  
14 to clearly and conspicuously explain his services and the fees for such services.

15 The penalties for violating these sections are harsh. “[A]ny contract for bankruptcy  
16 assistance between a debt relief agency and an assisted person that does not comply with  
17 [Sections 526-528] ... shall be void” and may only be enforced by the assisted person. *See* 11  
18 U.S.C. § 526(b). Additionally, Section 526(c)(2) states that a debt relief agency may be required  
19 to pay back all fees and charges received from the client, plus pay any actual damages and  
20 reasonable attorney’s fees and costs if a material requirement of the Code or the Rules is  
21 intentionally or negligently disregarded.

22 Having violated the debt relief provisions, Forrester’s contract is now void. Bringing  
23 these matters before the Court has caused actual damages to Dell and his replacement counsel  
24 Drain, making them entitled to recover their actual damages and reasonable attorney’s fees and  
25 costs.  
26



1           **D. OTHER BAD ACTS REVEAL FORRESTER’S CONTEMPT OF COURT.**

2           In addition to violating the Code, Rules, and Local Rules, Forrester violated duties owed  
3 to his clients. His failures burdened the Court and the parties that appeared before it, and amount  
4 to ethical misconduct and contempt. After the Court issued the OSC and while this matter was  
5 pending, Forrester failed to do the following:

- 6           1. return Dell’s full file (only four (4) original wet signatures were included);<sup>14</sup>
- 7           2. timely respond to the Court’s OSC (tardy response filed day before hearing);
- 8           3. comply with two Court Orders directing responses to two Notices of Noncompliance;
- 9           4. abide by the Stipulated Order directing him to file Wet Signatures;
- 10          5. cooperate in preparing and filing a joint pre-trial statement;
- 11          6. timely mark and exchange trial exhibits;
- 12          7. attend and participate in the Court mandated technical pre-trial conference incidental  
13 to smoothly conducting the evidentiary hearing;
- 14          8. comply with a Court Order directing Forrester to file a status report of fees collected  
15 in pending cases;
- 16          9. comply with a Court Order directing Forrester to deposit funds into the Court  
17 Registry; and
- 18          10. display professionalism and respect for the process.<sup>15</sup>

---

19  
20  
21 <sup>14</sup> None of the following documents in Forrester’s file contained the requisite original wet signatures: 1) Petition  
22 (Dkt. No. 1); 2) Dell Application to Pay Installments (Dkt. No. 2); 3) Schedules (Dkt. No. 20); 4) List of  
23 Creditors (Dkt. No. 20); 5) Statements (Dkt. No. 20); 6) C-1 Means Test (Dkt. No. 21); 7) C-2 Expenses Means  
24 Test (Dkt. No. 21); 8) Employer Pay Statements (Dkt. No. 22); 9) Chapter 13 Plan (Dkt. No. 23); 10) Amended  
25 Schedules I & J (Dkt. No. 27); 11) Amended C-1 (Dkt. No. 28); 12) Amended C-2 (Dkt. No. 28); and 13)  
26 Amended Ch13 Plan (Dkt. No. 29).

<sup>15</sup> Forrester refused to take these proceedings seriously. He failed to cooperate in timely preparing the joint  
pretrial statement, timely mark and exchange exhibits, or appear at the Court ordered technical pretrial conference  
to test equipment for the evidentiary hearing. He also unapologetically wore a polo shirt instead of business attire  
on the first day of the evidentiary hearing. As an attorney practicing in Arizona courts since 2012 with the  
responsibility to maintain dignity in courtroom proceedings, it is difficult to imagine that Forrester sincerely  
considers a polo shirt to be proper courtroom attire.

1                   **1. Civil Contempt Sanctions**

2                   Courts have an inherent power to issue civil contempt sanctions to enforce their orders  
3 and maintain the dignity of the court system. Civil contempt occurs when a party disobeys a  
4 specific and definite court order by failing to take all reasonable steps within the party's power  
5 to comply. *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir.  
6 1993). The Code grants bankruptcy courts civil contempt power through § 105(a), which  
7 provides:

8                   The court may issue any order, process, or judgment that is necessary or  
9 appropriate to carry out the provisions of this title. No provision of this title  
10 providing for the raising of an issue by a party in interest shall be construed to  
11 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.

12                  The alleged contempt must be shown by clear and convincing evidence and establish that the  
13 contemnor violated a specific and definite order of the court. *Renwick v. Bennett (In re Bennett)*,  
14 298 F.3d 1059, 1069 (9th Cir. 2002). "A court's inherent power to sanction is very powerful,  
15 and therefore must be used with restraint and discretion." *Chambers v. NASCO, Inc.*, 501 U.S.  
16 32, 44 (1991). "A primary aspect of that discretion is the ability to fashion an appropriate  
17 sanction for conduct which abuses the judicial process." *Id.*

18                  Counsel's actions here go beyond office supervision errors or sharp practice. They  
19 clearly violate the Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules. First,  
20 an attorney cannot simply take post-petition payments. Instead, the Court must allow the fees  
21 and enter an order granting payment of those fees. *See* Section 329, LR 2084-3(e), and Rule  
22 2016. Second, obtaining and archiving Wet Signatures is a Local Rule mandate. *See* Local Rule  
23 5005-4(d)(2)(B) and the Court's ECF Users' Administrative Guide.<sup>16</sup> In filing any paper  
24 requiring a Wet Signature, Counsel represented to the Court that Dell had signed these papers

25 \_\_\_\_\_  
26 <sup>16</sup> Local Rule 5005-4(d)(2)(B) titled Electronic Court Filing System generally requires original signed documents  
to be retained for five (5) years.

1 and that counsel had an original with the debtor's wet-ink signature that mirrored the filed paper.  
2 This was not the case and therefore constitutes a false representation of the facts. *See* Rule  
3 9011(b).

4 And then there is the pattern and practice of Forrester violating this Court's orders. When  
5 issuing the OSC, the Court expected that the complained-of conduct was aberrational, or perhaps  
6 remedial such that it could be corrected on a going forward basis with some guidance by the  
7 Court and a sincere desire by Forrester to improve his practice and better serve his clients.  
8 Unfortunately, Forrester's subsequent extensive history of refusing to abide by the Code, the  
9 Rules and orders of this Court is clear and convincing evidence of Forrester's civil contempt.  
10 Simply put, Forrester has shown a puzzling and habitual violation of Court orders – he cavalierly  
11 ignored orders of this Court dated March 11, September 30, October 5 and December 1, 2020  
12 (the date in this last order was later extended by Minute Entry Order dated December 8). When  
13 queried about these violations, Forrester appeared offended and did not acknowledge the  
14 significance of his actions and omissions. His continued refusal to comply with the Stipulated  
15 Order and continued failure to file formal responses, file the Fee Report, and timely disgorge  
16 fees which he conceded he had the ability to pay, reveal a shocking disrespect for court orders.  
17 These practices — beyond the poor representation, excessive fees, and failure to disclose —  
18 caused prolonged litigation and increased cost. This cost was borne by Dell and his new counsel  
19 Diane Drain, together with the Office of the UST. They are entitled to their actual damages and  
20 reasonable attorney's fees and costs.

## 21 **2. Enjoining Forrester from Practice Before the Bankruptcy Court**

22 Given Forrester's resolute refusal to address his burgeoning problems with clients, the  
23 Court, and the UST, the Court must conclude that counsel's failures were more than simple  
24 negligence but were instead willful refusal to acknowledge his issues and improve his  
25 performance. The Court cannot condone such willful conduct.  
26

1 Along with the statutory authority to impose sanctions for contempt, the Supreme Court  
2 has held that “[a]ll courts, whether established under Article I or Article III, have the inherent  
3 power to enforce compliance with their lawful orders by imposing sanctions for contempt.”  
4 *Chambers*, 501 U.S. at 43 (noting that “the inherent power of a court can be invoked even if  
5 procedural rules exist which sanction the same conduct”). Additionally, a federal court has the  
6 “power to control admission to its bar and to discipline attorneys who appear before it” under  
7 its inherent powers. *Id.*

8 As detailed above, the Court finds that Forrester (1) engaged in unethical conduct (i.e.,  
9 violated Local Rule 9011-1 which incorporates Rule 42 of the Rules of the Supreme Court of  
10 the State of Arizona incorporating Model Rules of Professional Conduct of the American Bar  
11 Association - 1.1. Competence; 1.3. Diligence; 1.4. Communication; and 1.5. Fees), (2) willfully  
12 violated multiple court orders (i.e., the Stipulated Order to file Wet Signatures and return Dell’s  
13 entire client file, the orders to file formal responses to two notices of non-compliance, the order  
14 to file a report of collected fees, and the order to disgorge fees, among other orders), and (3)  
15 improperly took client’s funds in contravention of the Code, the Rules, and the Local Rules.

16 After witnessing firsthand Forrester’s unrepentant attitude, seeing the evidence of  
17 Forrester’s consistent lack of attention to his clients, and considering the dismissive language  
18 and tone Forrester uses when discussing his own clients and his ethical obligations in  
19 representing them, the Court can only conclude that Forrester’s callousness is detrimental to the  
20 judicial system and those we serve.

21 Accordingly, based upon the conduct in this case, pursuant to its inherent powers under  
22 11 U.S.C. § 105, the Court concludes that Forrester should be suspended and enjoined from  
23 appearing in any future bankruptcy cases in the District of Arizona without first obtaining  
24 approval from the Chief Judge after written request and upon satisfaction of any conditions that  
25 the Court may require. The possibility of such an application may be remote as the Honorable  
26 William J. O’Neil, Presiding Disciplinary Judge of the State Bar of Arizona, disbarred Forrester

1 from the practice of law effective May 5, 2021 (“Disbarment Order”). See *Decision and Order*  
2 *Imposing Sanctions*, PDJ 2020-9120.<sup>17</sup> Based in part on the conduct that occurred in this matter,  
3 Forrester was disbarred a second time effective August 12, 2021 (“Second Disbarment Order”).  
4 See *Decision and Order Imposing Sanctions*, PDJ 2021-9012.

5 Finally, the Court notes that there is currently a miscellaneous proceeding, 2:20-mp-  
6 00004-BKM, pending before the Hon. Brenda K. Martin in which Judge Martin is undertaking  
7 a comprehensive review of Forrester’s conduct in cases filed in this District.

## 8 V. CONCLUSION

9 Accordingly, Forrester’s conduct requires appropriate sanctions. For the foregoing  
10 reasons,

11 **IT IS ORDERED** cancelling the Dell retainer agreement and directing that the fees of  
12 \$1,850 previously disgorged and held in Diane Drain’s trust account are forfeited and shall be  
13 returned to Mr. Dell.

14 **IT IS FURTHER ORDERED** that the fees of \$3,500 previously disgorged to the  
15 Court’s Registry on January 21, 2021 shall be forfeited as a sanction and returned to Kyleen  
16 Fisher, Case 2:20-bk-12857-MCW (\$1,500), and Earl J. Engwall and Deborah J. Engwall, Case  
17 2:20-bk-11494-MCW (\$2,000).

18 **IT IS FURTHER ORDERED** assessing Mr. Forrester with the amount of Mr. Dell’s  
19 actual damages and reasonable attorney’s fees and costs incurred in this matter. Mr. Dell must  
20 file a formal fee application for fees and expenses incurred in this matter within 21 days of the  
21 entry of this order and Mr. Forrester shall have 21 days thereafter to file any objection to the  
22 application.

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23  
24  
25  
26 <sup>17</sup> Based upon different conduct, Forrester was later suspended from the practice of law for three years effective August 10, 2021, to run concurrently with the Disbarment Order. See *Decision and Order Imposing Sanctions*, PDJ 2019-9097.

1           **IT IS FURTHER ORDERED** suspending and enjoining Mr. Forrester from appearing  
2 in any future bankruptcy cases in the District of Arizona without first obtaining approval from  
3 the Chief Judge after written request and upon satisfaction of any conditions that the Court may  
4 require.

5   **DATED AND SIGNED ABOVE.**  
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**APPENDIX**

Facts that the parties stipulated were uncontested and material in their Joint Pretrial Statement (Dkt. No. 111):

1. During the Consultation, Dell informed Forrester about concerns about further garnishment and delinquent tax matters.

2. On March 29, 2019, Dell paid Forrester \$500 down.

3. A voluntary chapter 13 petition ("Petition") was filed for Dell on March 29, 2019 ("Petition Date").

4. On March 28, 2019, Dell received a copy of the retainer agreement ("Dell Retainer Agreement") and signed the Dell Retainer Agreement.

5. In Forrester's Bankruptcy Disclosure of Compensation pursuant to § 329 and 2016(b) for Forrester Law Practice (the "2016 Statement"), Forrester certified that he received \$500.00 pre-Petition from Dell.

6. In the 2016 Statement, Forrester certified that he expected \$1,700 "to be paid by debtor directly to upload schedules and statements" and \$2,300 to be paid through the chapter 13 plan.

7. On May 15, 2019, Forrester withdrew post-Petition \$425 directly from Dell's bank account.

8. In the 2016 Statement, Forrester certified that he has "agreed to render legal service for all aspects of the bankruptcy case, including but not limited to: . . . (c) Representation of the debtor at the meeting of creditors and . . . any adjourned hearings thereof; (d) Negotiations with secured creditors to reduce to market value; . . . preparation and filing of reaffirmation agreements and applications as needed."

9. The Dell Retention Agreement contains additional fees for "non-basic services," including: "amendments to creditor schedules (\$150+\$26 filing fee); any reaffirmation agreements \$150 per reaffirmation regardless of who fills it out, attorney or client" and "\$600 for negotiating Client a lower payment"; and "continued 341 meetings (\$150) if continued due to Client's failure to produce documents, respond to Trustee requests" and "\$250 if client fails to show at 341 hearing."

10. The Chapter 13 Plans filed by Forrester for Dell on May 2, 2019 ("Initial Plan") and on May 8, 2019 ("Amended Plan") included fees for: "Preparing and filing of any motion to sell property \$850.00"; and "MMMP Fees" \$2,500 if approved and \$2,000 if denied.

11. On May 21, 2019, Forrester filed a Motion to Vacate Dismissal Order and Reinstate Case ("Motion to Reinstate").

1       12. On May 21, 2019, Forrester charged Dell for the Motion to Reinstate and  
2       withdrew post-Petition \$150 directly from Dell's bank account.

3       13. Attorney Miles Maestas ("Mr. Maestas") appeared with Dell at the 341 Meeting.

4       14. The Bankruptcy Documents filed in the case are: the Petition, Schedules,  
5       statement of financial affairs ("Statements"), Installment Payment Application, Declaration of  
6       Employer Pay Statements, the Form 122C – Chapter 13 Statement of Current Monthly Income  
7       and Calculation ("CMI Form"), Plan, and all subsequent amendments to the Schedules, CMI  
8       Form, and Plan.

9       15. After Forrester filed the Bankruptcy Documents with the Court, if a copy was  
10      sent to Dell, Forrester mailed rather than e-mailed that copy.

11      16. When Dell inquired about missing creditors, Forrester told Dell not to be  
12      concerned because "bankruptcy was meant to cover all debt."

13      17. Forrester amended Dell's Means Test that resulted in a monthly net disposable  
14      income of negative \$3,647.68 ("Amended Means Test").

15      18. The Chapter 13 Trustee filed his Recommendations on July 12, 2019 ("Trustee's  
16      Recommendations").

17      19. Forrester filed a Motion to Extend Time ("Motions to Extend Time") to comply  
18      with the Trustee's Recommendations three times: on August 15, 2019; on October 24, 2019; and  
19      on December 2, 2019.

20      20. On January 7, 2020, the Chapter 13 Trustee noticed his Intent to Lodge Dismissal  
21      Order ("Chapter 13 Trustee Dismissal Notice").

22      21. Forrester missed an extension deadline that was due on December 16, 2019 (the  
23      "December 16th Deadline").

24      22. On January 16, 2020, Drain filed her Notice of Appearance, Substitution of  
25      Counsel and Request for Notice.

26      23. On January 16, 2020, Dell filed his Emergency Motion to Remove Attorney to  
27      remove Forrester as his bankruptcy counsel.

28      24. On January 29, 2020, this Court issued her OSC.

29      25. On February 9, 2020, Debtor filed a Notice to Convert from Chapter 13 to Chapter  
30      ("Notice to Convert to Chapter 7").

31      26. Debtor, through Drain, made several amendments to his Schedules and  
32      Statements on February 9, 2020 and February 29, 2020 ("February Amendments").

33      27. On February 27, 2020, the UST filed the UST's Response.



1           28.     On March 10, 2020, Forrester filed Forrester's Reply.

2           29.     On March 13, 2020, an initial hearing was held on the Court's OSC (the "March  
3 13th Hearing").

4           30.     At the March 13th Hearing, Forrester stipulated on a going-forward basis for a  
5 period of not less than one year (i.e., until March 13, 2021) to file all original documents with  
6 the Court; file an additional statement with any filing fee application regarding additional  
7 charges that he will impose to reinstate any dismissed case due to untimely payment of the filing  
8 fee installment and advise that he will not take any post-petition payment prior in violation of  
9 bankruptcy rules, and the UST can contact any debtor in any case that that has been closed for  
10 over three months and still lists Forrester as attorney on the docket (the "March 13th  
11 Stipulation").

12           31.     On February 10, 2020, Dell, through counsel, filed his Disgorgement of Attorney  
13 Fees ("Debtor's Disgorgement Motion"), which was supplemented on February 24, 2020.

14           32.     Pursuant to the Court's June 10th Order, Forrester was to email a copy of Debtor's  
15 entire file to the UST, through undersigned counsel, and to provide at Forrester's receptionist's  
16 desk the original files with wet signatures ("Originally Signed Documents") for pickup by Drain.  
17 The Originally Signed Documents included only the: (1) Dell Retainer Agreement, (2) automatic  
18 payment authorization form (undated), (3) Section 527 Debt Relief Agency Disclosure (dated  
19 3/28/19), and (4) the Declaration re: Electronic Filing (dated June 3, 2019).

20           33.     None of the following documents contained wet signatures and were included in  
21 the Originally Signed Documents:

- 22           1)     Petition (ECF No. 1);
- 23           2)     Dell Application to Pay Installments (ECF No. 2);
- 24           3)     Schedules (ECF No. 20);
- 25           4)     List of Creditors (ECF No. 20);
- 26           5)     Statements (ECF No. 20);
- 6)     C-1 Means Test (ECF No. 21);
- 7)     C-2 Expenses Means Test (ECF No. 21);
- 8)     Employer Pay Statements (ECF No. 22);
- 9)     Ch13 Plan (ECF No. 23);
- 10)    Amended Sched I & J (ECF No. 27);
- 11)    Amended C1 (ECF No. 28);
- 12)    Amended C2 (ECF No. 28); or
- 13)    Amended Ch13 Plan (ECF No. 29).