UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IN RE:	)	CASE NO. 91-50191-INH
	)	
VERNON EDWARD IVERS, JR. and MARILYN K. IVERS,	)	CHAPTER 7
	)	
	)	MEMORANDUM DECISION RE:
	)	MOTION FOR TERMS
Debtors.	)	AND SANCTIONS

The matter before the Court is the Motion for Terms and Sanctions filed by First Western Bank of Wall and Jerald Kjerstad and the response thereto filed by Debtors Vernon E. and Marilyn K. Ivers and their counsel, Lawrence R. Bihlmeyer. This is a core proceeding under 28 U.S.C. § 157(b)(2). This ruling shall constitute Findings and Conclusions as required by F.R.Bankr.P. 7052.

I.

Vernon E. and Marilyn K. Ivers (Debtors) filed a Chapter 13 petition for adjustment of debts and a plan on June 10, 1991. Little went according to schedule after that and the case began its long, yet unfinished, journey. The § 341 meeting of creditors was scheduled for August 5, 1991 and the confirmation hearing was scheduled for September 10, 1991.

On July 31, 1991, Chapter 13 Trustee Rick A. Yarnall (Trustee) filed several objections to Debtors' plan. A confirmation hearing was held September 10, 1991. Appearances included Trustee; Brent A. Wilbur, counsel for First Western Bank and Jerald Kjerstad (Bank and Kjerstad); and Lawrence R. Bihlmeyer, counsel for Debtors. The plan apparently was not in a posture for confirmation so the hearing was continued to November 12, 1991.

By motion filed October 16, 1991, Bank and Kjerstad sought a F.R.Bankr.P. 2004 examination of Debtors with a production of business and personal financial records. By Order entered October 18, 1991, Debtors were directed to appear at a court reporter's office in Rapid City with the requested records on October 28, 1991 at 1:00 p.m.

Bank and Kjerstad filed a Motion to Dismiss on October 16, 1991 on grounds that the petition was filed in bad faith, Debtors had not timely moved the case forward, and confirmation of a plan would not be in the best interests of creditors. A hearing on the Motion was scheduled for November 12, 1991.

Debtors did not appear at the scheduled 2004 examination on October 28, 1991 because of hazardous travel conditions. Attorney Wilbur was informed of Debtors' decision by their counsel after Attorney Wilbur arrived that morning in Rapid City from Pierre.

Bank and Kjerstad filed on November 5, 1991 a second motion for a 2004 examination of Debtors to be conducted in Rapid City on November 12, 1991. That motion was granted by Order entered November 5, 1991.

Debtors filed an objection to Bank's and Kjerstad's Motion to Dismiss on November 6, 1991. They argued that they had timely prosecuted the case, their petition was filed in good faith, and confirmation would be in the best interests of creditors.

On November 6, 1991, Bank and Kjerstad filed a motion for a 2004 examination of Jess Bryan, Debtor Marilyn K. Ivers' father. By Order entered November 6, 1991, the motion was granted and Mr.

Bryan was directed to appear at a court reporter's office in Rapid City on November 12, 1991 at 9:00 a.m.

Bank filed objections to Debtors' plan on November 7, 1991 and argued that: the plan had not been proposed in good faith; Debtors had unreasonably delayed the case and that the delay had been prejudicial to it; and the plan failed to include payment of terms and costs of $1,200.00 to Bank for appearances in Rapid City on September 10, 1991 when Debtors failed to appear at a confirmation hearing and on October 28, 1991 when Debtors failed to appear at a scheduled 2004 examination.

A hearing on Bank and Kjerstad's Motion to Dismiss and a continued confirmation hearing was held November 12, 1991. Bank and Kjerstad appeared telephonically through their counsel, Attorney Wilbur. Attorney Bihlmeyer appeared for Debtors. Wilbur reported that a settlement had been reached and that he would notice it for objections from interested parties. Debtors reported they would file an amendment to their schedules. Confirmation was continued to January 7, 1992.

Bank filed the settlement agreement and a Motion for Approval of Settlement Agreement on December 16, 1991. Bank gave notice of the settlement to Trustee, the United States Trustee, Debtors, Doyle Estes (counsel for Dale and Mary Keyser), and Bihlmeyer. Debtors filed a resistance to Bank's motion to approve their settlement on January 3, 1992. They argued that changes in Debtor Vernon E. Ivers' employment would result in $1,000.00 per month less income and that the Debtors' marital separation would require

the maintenance of two households and increased expenses. Thus, Debtors stated, they could no longer afford to abide by the terms of the settlement reached with Bank. On January 3, 1991, Bank and Kjerstad responded to Debtors' resistance by arguing, among other things, that Debtors did not have standing to object to their own settlement with Bank. Bank and Kjerstad also requested costs of $2,000.00 expended in negotiating, preparing, and noticing the settlement. Debtors filed a reply to Bank and Kjerstad on January 6, 1992. Debtors conceded that their objection to the settlement was untimely but they argued they had standing to object. They also reiterated the previously stated reasons why they could no longer abide by the settlement and added that they had recently scheduled further debts totaling over $23,000.00 that now had to be addressed in their plan.

A hearing on the Motion to approve the settlement agreement was held January 7, 1992. Appearances included Wilbur and Bihlmeyer. Debtors did not present any evidence in support of their motion. Consequently, the settlement was approved by Order entered on January 9, 1992. The hearing on Bank's and Kjerstad's Motion to Dismiss was rescheduled to February 4, 1992. Confirmation was continued to March 3, 1992.

Debtors filed a Restated Chapter 13 Plan on January 21, 1992. It was served that day on all creditors but it was not scheduled for a confirmation hearing.

Trustee joined Bank's and Kjerstad's Motion to Dismiss on January 21, 1992.

On January 21, 1992, Debtors filed an objection to Bank's Motion to Dismiss and by separate motion and memorandum they asked the Court to reconsider its approval of the settlement agreement because of the changes in their financial circumstances and the increased debt load that was disclosed after the settlement was negotiated. That day Debtors also amended their schedules of current income and expenditures and they added claims of $350.00 to their schedule of secured claims and claims of $20,869.34, $700.00, $1,000.00, $211.00 to their schedule of unsecured claims.

By Order entered January 29, 1992, Debtors' Motion to Reconsider and Vacate Order was denied because Debtors failed to identify any error of law or fact.

Upon the request of Bank and Kjerstad that its Motion to Dismiss be heard at the same time as other pending matters, the continued hearing on the Motion to Dismiss was rescheduled to March 3, 1992. Debtors filed a notice on February 4, 1992 that the § 341 meeting of creditors was continued to March 2, 1992.

Debtors filed a second Motion to Reconsider and to Vacate Order Approving Settlement Agreement on February 11, 1992. They noticed it for hearing on March 3, 1992. Bank and Kjerstad filed a response to the second motion to reconsider on February 14, 1992, that questioned the propriety of Debtors' second motion.

Bank and Kjerstad filed a Motion for Terms and Sanctions and an affidavit by Wilbur on February 18, 1992. The motion and affidavit seek terms of $1,713.75 against Debtors and Bihlmeyer resulting from costs incurred by Wilbur in attending the aborted

confirmation hearing on September 10, 1991 and the cancelled 2004 examination on October 28, 1991 and the cost for legal services incurred by Wilbur in responding to Debtors' objection to the settlement agreement.

Bank and Kjerstad filed an objection to Debtors' "Restated" plan on February 18, 1992 because the plan failed to incorporate the settlement approved by the Court. Debtors filed a Second Amended Chapter 13 Plan on February 24, 1992. It was served on all creditors and parties in interest but was not noticed for hearing. Bank and Kjerstad filed objections to that plan on February 25, 1992 on the same grounds as their objection to Debtors' "Restated" plan.

Marsha M. Sumpter, as an agent for Fairchild Enterprises, Inc., (Fairchild) filed an objection to the settlement agreement on March 2, 1992 on the grounds that Fairchild had not received notice of the settlement. Dale and Mary Keyser, Rodney Renner, and Johnson's Ranchers Supply, Inc., all represented by Doyle D. Estes, filed a Joinder to Motion to Reconsider & Vacate Order Approving Settlement Agreement on March 4, 1992 on the grounds that they also had not received notice of the settlement. These creditors also filed a memorandum of law in support of their Joinder.

A hearing on Debtors' second motion for reconsideration, the joinder to it, and Fairchild's objection to the settlement was held March 3, 1992. The Court denied Debtor's motion, overruled Fairchild's objection on procedural grounds, and granted the creditors' joinder in the motion to reconsider. The Order

approving the settlement was not vacated. Instead, the Court ordered Bank to notice the settlement to all creditors and other interested parties who had not been served previously and stated it would reconsider the Order approving the settlement when other objections to the settlement, if any, were filed. Confirmation was continued to April 7, 1992.

Debtors and Bihlmeyer did not respond to Bank's and Kjerstad's motion for terms and sanctions. Bank and Kjerstad had not set their sanctions motion for hearing. Consequently, the Court ordered that any responses to the motion be filed by March 27, 1992 and that a hearing on the motion be held April 7, 1992.

Bank and Kjerstad filed a motion to convert on March 13, 1992. They argued the case should be converted to a Chapter 7 proceeding because the case was filed and maintained by Debtors in bad faith, Debtors could not propose a confirmable plan, there had been unreasonable delay that was prejudicial to creditors, Debtors had failed to make payments to Trustee as required by 11 U.S.C. § 1326(a)(1), and Debtors were in default of the settlement agreement with Bank. Debtors filed a resistance to the motion to convert on March 27, 1992.

Debtors filed a response to Bank's and Kjerstad's motion for terms and sanctions on March 24, 1992. They explained their absences at the September 10, 1991 confirmation hearing (Trustee told them they did not have to appear) and the October 28, 1991 2004 examination (poor traveling conditions due to bad weather). In response to the creditors' allegation that Debtors filed their

objection to the settlement agreement in bad faith, Debtors said they were intimidated into signing the agreement and that they did not learn they would be unable to abide by it until shortly after they signed it. Further, they argued their subsequent efforts to set aside the Court's approval of the settlement agreement were well grounded in fact and supported by existing law.

The hearing on Bank's and Kjerstad's motion to convert was held April 7, 1992. Debtor Marilyn K. Ivers agreed to the conversion. After receipt of testimony and argument of counsel, the motion to convert was granted against Debtor Vernon E. Ivers, also.

The hearing on Bank's and Kjerstad's motion for terms and sanctions was also held April 7, 1991. Wilbur reviewed the four reasons why sanctions should be imposed against Debtors and Bihlmeyer that were set forth in the motion and his affidavit: (1) Debtors' failure to attend the confirmation hearing on September 10, 1991; (2) Bihlmeyer's failure to reply to correspondence regarding the settlement; (3) Debtors' failure to attend the deposition scheduled for October 28, 1991; and (4) Debtors' objection to the motion for approval of the settlement agreement and their efforts to have the Court reconsider its Order approving the settlement. Wilbur conceded that Debtors' absence at the September 10, 1991 confirmation hearing was explained by Trustee's statement to Debtors that they did not need to attend. Debtors and Bihlmeyer were then left with three grounds for sanctions to address.

Bihlmeyer admitted that communication between his clients and him was poor. He stated that Debtors did not give him a true picture of their liabilities at the time of the settlement. Further, he argued that had he received more complete information about the circumstances surrounding the settlement agreement and some of the communications Debtors had with the Bank, he would have counseled Debtors not to sign the agreement. Bihlmeyer also said the poor communication with his clients made it difficult for him to respond to Wilbur's correspondence since he was unsure how Debtors wanted to proceed. Finally, Bihlmeyer explained that the poor communication problems were compounded by the changes in Debtors' living arrangement.

The motion for terms and sanctions was taken under advisement after closing arguments by both parties.[1]

II.

A recent case before this Court, as well as the several opinions of the Court of Appeals for the Eighth Circuit, illustrates that the imposition of sanctions is a serious matter that this Court must approach with circumspection. In re Coones Ranch, Inc., Bankr. No. 91-40183, slip op. at 10 (Bankr. D.S.D. March 9, 1992) (citing Lupo v. Rowland & Co., 857 F.2d 482, 485 (8th. Cir. 1988); O'Connell v. Champion International Corp., 812 F.2d 393, 395 (8th Cir. 1987)). Fortunately, there is ample

[1] By Order entered May 21, 1992 (subsequent to the sanctions hearing), Bank and Kjerstad were granted relief from the automatic stay as to Debtor Vernon E. Ivers only.

precedent since F.R.Bankr.P. 9011 closely tracks F.R.Civ.P. 11. Mid-Tech Consulting, Inc., v. Swendra, 938 F.2d 885, 888 (8th Cir. 1991); Weiszhaar Farms, Inc. v. Livestock State Bank, 113 B.R. 1017, 1019 (D.S.D. 1990).

Rule 9011 is designed to prevent abuses of the bankruptcy process by parties and their attorneys. Weiszhaar Farms, Inc., 113 B.R. at 1019-20. It provides, in pertinent part:

> Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney . . . shall be signed by at least one attorney of record in the attorney's individual name. . . . The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay, or needless increase in the cost of litigation or administration of the case. . . . If a document is signed in violation of this rule, the court on motion . . . shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

The Rule addresses itself to two types of sanctionable conduct: first, where the papers filed are frivolous, legally unreasonable, or without factual foundation; and second, where the pleading is filed for an improper purpose. Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447, 2457 (1990); Hartman v. Hallmark Cards, Inc., 833 F.2d 117, 124 (8th Cir. 1987); In re Cedar Falls Hotel Properties Limited Partnership, 102 B.R. 1009, 1014 (Bankr. N.D. Iowa 1989)

(citations therein).

Sanctions are mandatory when a violation has occurred. Happy Chef Systems, Inc. v. John Hancock Mutual Life Insurance Co., 933 F.2d 1433, 1438 (8th Cir. 1991). Whether a violation has occurred is determined within the court's discretion. Id.; O'Connell, 812 F.2d at 395. The standard to be applied is **objective** reasonableness under the circumstances. Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 111 S.Ct. 922, 932-33 (1991).[2] Subjective "good faith" cannot excuse the signer's action. Kurkowski v. Volcker, 819 F.2d 201, 204 (8th Cir. 1987). Signing denotes merit. Business Guides, 111 S.Ct. at 930.

> [T]he imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process[.]

Cooter & Gell, 110 S.Ct. at 2456; Lupo, 857 F.2d at 485; O'Connell, 812 F.2d at 395 ("The issue is whether the person who signed the pleading conducted a reasonable inquiry into the facts and law supporting the pleading."). What the signator actually believed is not "particularly relevant" because the test is

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[2] Some court's have concluded that Rule 11 contains both objective and subjective components: whether the signer conducted a reasonable inquiry of fact and law is viewed objectively while the question of whether the signer filed the pleading in bad faith, regardless of his prefiling investigation, is reviewed subjectively. See Weiszhaar Farms, Inc. v. Livestock State Bank, 113 B.R. 1017, 1022 (D.S.D. 1990)(cases cited therein). The Court of Appeals for the Eighth Circuit has not clearly made that distinction. See Pulaski County Republican Committee v. Pulaski County Board of Election Commissioners, 956 F.2d 172, 173,(8th Cir. 1992).

objective, not subjective. Cedar Falls Hotel, 102 B.R. at 1015. Ignorance of the law or legal procedures does not excuse the conduct. Kurkowski, 819 F.2d at 204. However, "Bankruptcy Rule 9011 sanctions should not be imposed on a party who makes a good faith argument based on existing precedent." Mid-Tech Consulting, Inc., 938 F.2d at 888.

When faced with a motion for sanctions, a court must address three issues. First, fact questions regarding the attorney's prefiling inquiry and the factual basis of the pleading must be answered. Cooter & Gell, 110 S.Ct. at 2457. Factors a court may consider when it reviews the reasonableness of the signer's pre-filing inquiry into the facts of the case and applicable law include: the amount of time available for investigation; how much reliance the attorney had to place on the clients for facts; and the complexity of the factual and legal issues. Cedar Falls Hotel, 102 B.R. at 1015. These questions of fact also include an assessment of the signer's credibility. Id. at 2459; O'Connell, 812 F.2d at 395. Second, the court must answer the legal questions of whether a pleading is warranted by existing law or a good faith argument for changing the law and whether the attorney's signature violated the Rule. Cooter & Gell, 110 S.Ct. at 2457. The trial court can use its familiarity with the litigants and issues to determine whether sanctions are warranted to serve Rule 11's goal of specific and general deterrence. Id. at 2459; Happy Chef, 933 F.2d at 1439. Third, a court must in its discretion fashion an appropriate sanction. Cooter & Gell, 110 S.Ct. at 2457.

Rule 9011 provides that a represented party may be sanctioned as well as or instead of the party's attorney. The same reasonable inquiry standard applies. See generally Business Guides, 111 S.Ct. at 931-32. The court should consider the sophistication of the client because what is objectively reasonable for a party may differ from what is objectively reasonable for an attorney. Id. at 932-33. If a party misleads or deceives his attorney, however, that party may bear the burden of sanctions alone. Id. at 932; In re Alderson, 114 B.R. 672, 677 (Bankr. D.S.D. 1990).

III.

Bank's and Kjerstad's request for sanctions is premised on F.R.Bankr.P. 9011 and 11 U.S.C. § 105(d). Rule 9011 governs sanctionable pleadings, not conduct per se. Redress of costs incurred because of unreasonable or vexatious conduct by an attorney is governed by 28 U.S.C. § 1927. The Court of Appeals for the Eighth Circuit, however, has not recognized that this Court may impose costs under § 1927. In re Arkansas Communities, Inc., 827 F.2d 1219, 1221 (8th Cir. 1987); In re Alderson, 114 B.R. 672, 676 (Bankr. D.S.D. 1990). Therefore, this decision is limited to the application of Rule 9011 and the sanctionable pleadings filed by Debtors through Bihlmeyer.

Upon consideration of F.R.Bankr.P. 9011 and the attendant case law discussed above, the Court concludes that it was not objectively reasonable for Debtors to file an objection to Bank's motion for approval of the settlement agreement where Debtors offered no evidence to support their pleading at the hearing on the

objection. Had Debtors come forward with evidence that showed the claimed change in their family situation or their present inability to comply with the settlement, the Court may have had some basis to withhold approval of the settlement because it was no longer in the best interest of the estate. Absent any evidence, the Court was left with a bare pleading that objected to a settlement that Debtors had presumably negotiated in good faith and to which they were bound absent exigent circumstances.

Debtors' next pleading, the first motion to reconsider, was without sound legal basis. Debtors urged the Court to overturn its Order approving the settlement agreement but they failed to allege and provide evidence of any error of law or fact that justified relief from the Order. After that motion was denied, Debtors filed a second motion to reconsider. This time they finally identified a procedural error of law but it was one that could and should have been identified in their original objection.

The testimony and exhibits presented at the sanctions hearing[3] indicate Attorney Bihlmeyer failed to conduct a reasonable inquiry into the facts and law available before he signed and filed the objection to the settlement and the first motion to reconsider.

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[3] Subsequent to the sanctions hearing and a 2004 examination of Debtors, Attorney Wilbur filed a letter dated May 19, 1992 in which he outlined a questionable pre-petition transaction between Debtors, a corporation they had, and Mrs. Ivers' father. Attorney Bihlmeyer filed a letter in response dated May 20, 1992. The Court has not considered either letter as evidence in this matter. The issues raised in Attorney Wilbur's letter are better addressed in a preference action or a complaint objecting to discharge or dischargeability.

Accordingly, an imposition of sanctions on Bihlmeyer is mandated by Rule 9011.

A court's final, discretionary task under Rule 9011 of determining the appropriate sanction is difficult. The court must impose a sanction that is tailored to the violation and the sanction must effectuate the goal of deterrence. Imposition of the appropriate sanction in this case is especially difficult because this is the second time Attorney Bihlmeyer has run afoul of Rule 9011.[4] Apparently the small monetary sanctions imposed on Attorney Bihlmeyer the first time did not serve their deterrent purpose. This sanction must, therefore, instill in Bihlmeyer the message that the prescriptions of Rule 9011 must be considered **every** time a pleading is filed. Rule 9011 is very straight forward. A petition or pleading must be filed in good faith and it must be well-grounded in fact and law. If not, sanctions are mandatory. This Court has observed that opposing counsel in this District seldom hesitate to seek sanctions when a Rule 9011 violation occurs. Consequently, the Bankruptcy Bar in this District must expect consequences will follow ill-conceived pleadings.

The appropriate sanction of Attorney Bihlmeyer in this case

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[4] On November 25, 1991, the Court imposed monetary sanctions of $50.00 on Attorney Bihlmeyer in each of four Chapter 7 cases, In re Robert Glymph, Bankr. No. 91-50293; In re Todd Hayes, Bankr. No. 91-50294; In re Gerald Birk, Bankr. No. 91-50304; and In re Hobart Hawk, Bankr. No. 91-50305, because he filed incomplete petitions and then subsequently failed to communicate with the United States Trustee's office when that office attempted to rectify the situation with minimal court involvement.

is a public reprimand via this Memorandum. Most often, this Court has observed that Attorney Bihlmeyer renders appropriate legal services for his Chapter 7 and 13 clients at a reasonable cost. That work should continue. However, as previously noted, this is not the first case in which Attorney Bihlmeyer's pleadings have fallen short of the professional attention demanded by Rule 9011. His clients and their bankruptcy estates, opposing parties and their counsel, and this Court can no longer afford the time and costs that arise from his inattention to the law, failure to communicate with others, or poor management of his cases. Accordingly, the Court cautions Attorney Bihlmeyer that future violations of Rule 9011 may have significant consequences, including stiff monetary fines, a referral of the problem to the State Bar Disciplinary Committee, or a denial of or limitation on employment applications or fee applications.

Substantial monetary sanctions in this case against Bihlmeyer are not appropriate. This Court has reserved significant monetary sanctions for those cases in which an attorney has violated Rule 9011 by filing bad faith petitions. See Coones Ranch, slip op. at 19-20, and Weiszhaar Farms, slip op. at 1 (Order Granting Sanctions Under Bankruptcy Rule 9011), modified by Weiszhaar Farms, Inc. v. Livestock State Bank, 113 B.R. 1017 (D.S.D. 1990).

In Coones Ranch, the Court dismissed the corporate debtor's case because, inter alia, the newly formed corporation filed a bad faith petition in South Dakota after the corporate principal's reorganization bankruptcy case in Wyoming failed. The Court found

that the corporate debtor's principal and the debtor's bankruptcy counsel had sufficient information pre-petition to determine that the petition in South Dakota would be in bad faith and that they could not have reasonably expected the case to be successful. The size of the monetary sanction imposed reflected the Court's desire to thwart such bad faith petitions in the future. Two creditors' requests for monetary sanctions that would have covered the costs they incurred in getting the case dismissed were denied because those sums would have been too burdensome.

In Weiszhaar Farms, this Court sanctioned the debtors and their counsel for a bad faith successive filing of a petition in bankruptcy. The debtors filed a Chapter 12 petition the same day that the Court denied their ex parte motion to modify their Chapter 11 plan and stay an earlier order in the Chapter 11 case directing the debtors to surrender secured livestock. The large monetary sanction imposed for the bad faith filing was the actual costs incurred by the creditor as the result of the reimposition of the automatic stay by the Chapter 12 petition. These costs included the transportation of and feed and veterinary care for over 650 head of cattle that were scheduled to be sold the week the Chapter 12 petition was filed plus the creditor's legal costs in getting the Chapter 12 case dismissed one week later. On appeal, the District Court for the District of South Dakota[5] affirmed the amount of the sanction but imposed it exclusively on the debtors'

[5] The Honorable Donald J. Porter, Chief Judge, presiding.

counsel because it concluded only the bankruptcy attorney, not the debtors, understood the potential legal entanglements from a successive bankruptcy petition.

This case is distinguishable from Coones Ranch and Weiszhaar Farms. First, there has been no showing that Debtors' Chapter 13 petition was filed in bad faith or, if it was, that Attorney Bihlmeyer played a role in that bad faith filing. Second, unlike the Chapter 12 petition in Weiszhaar Farms that attempted to circumvent this Court's orders entered in the debtors' Chapter 11 case, Debtors' objection to their settlement with Bank and their first motion to reconsider were direct attempts to negate Debtors' settlement with Bank. While the objection and first motion to reconsider were incomplete and without sufficient legal support, Bihlmeyer at least used forthright pleadings in his attempt to invalidate the settlement.

Finally, substantial monetary sanctions on Attorney Bihlmeyer are not appropriate at this time because he is presently a Chapter 13 debtor who is completing payments under a confirmed plan. Monetary sanctions of any import could undermine that debt adjustment effort and jeopardize his practice.

Debtors violated Rule 9011 by contributing to Attorney Bihlmeyer's poor factual background that lead to the injudicious objection to the settlement and first motion to reconsider. Debtors not only failed to timely disclose some of their liabilities to him but they also failed to communicate to him their concerns about the settlement with Bank and the possible

consequences for them or Mrs. Ivers' father if they did not sign the settlement.

Debtors already have paid for these miscues with their attorney because their case has been converted to a Chapter 7 proceeding. Further, monetary sanctions would not serve as a useful deterrent since Debtors no longer have a role in the administration of their case and such sanctions could impede Debtor-Marilyn K. Ivers fresh start.[6] Consequently, no additional sanctions will be imposed on Debtors at this juncture.[7]

Dated this _____ day of June, 1992.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

[6] The United States Trustee has filed an uncontested discharge complaint that states Debtor Vernon E. Ivers is ineligible for discharge pursuant to 11 U.S.C. § 727(a)(9).

[7] See supra note 3.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IN RE:	)	CASE NO. 91-50191-INH
	)	
VERNON EDWARD IVERS, JR. and MARILYN K. IVERS,	)	CHAPTER 7
	)	
	)	ORDER IMPOSING
	)	SANCTION OF A PUBLIC
Debtors.	)	REPRIMAND

In recognition of and compliance with the Memorandum of Decision Re: Motion for Terms and Sanctions entered this day,

IT IS HEREBY ORDERED that Debtors' counsel, Lawrence R. Bihlmeyer, is publicly reprimanded for his violations of F.R.Bankr.P. 9011 as stated in the Memorandum.

So ordered this 12th day of June, 1992.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk
(SEAL)