IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	**§**	**Case No. 15-44343-705**
	§	
Leander Young,	**§**	**Chapter 7**
	§	
Debtor.	**§**	**[Related to Doc. No. 21]**

ORDER

On November 24, 2015, the Debtor, proceeding pro se, filed a Motion to Disgorge [Docket No. 21], seeking disgorgement of the attorney's fees he paid to his bankruptcy attorney, Dean D. Meriwether. The Court now orders that the Motion to Disgorge be granted. The Court also orders that Meriwether be suspended from the privilege of practicing law before this Court from the date of the entry of this Order through March 7, 2016, and that other directives be issued, as set forth herein.

I. FACTUAL BACKGROUND OF THE CRITIQUE SERVICES BUSINESS AND MERIWETHER'S PARTICIPATION IN THAT BUSINESS

Meriwether is a Missouri-licensed attorney who has repeatedly represented to this Court that he does business as the fictitious name "Critique Services." He also represents in his signature block on bankruptcy petition papers that he practices at the "Law Office of Dean D. Meriwether" or "Dean Meriwether Attorney at Law." However, his real business is being an attorney at the Critique Services Business (as that term is defined herein). Thus, for purposes of this Order, it is necessary to explain what the Critique Services Business is, and how Meriwether is involved with it.

A. Overview

The Critique Services Business is a "bankruptcy services" scheme that targets low-income, minority persons from metropolitan St. Louis. Clients come to an office at 3919 Washington Blvd., St. Louis, Missouri (the "Critique Services Business Office") seeking legal representation in a chapter 7 or chapter 13 bankruptcy case. They have good reason to expect that they will receive legal services: the sign above the street entrance door at the Critique Services

Business Office reads: “Critique Services,” and has a prominent scales-of-justice emblem emblazoned underneath.[1] However, in reality, the Critique Services Business is a massive rip-off operation that functions on the unauthorized practice of law, the practice of client abandonment, and the failure or refusal to provide legal services.

B. The Scope of the Critique Services Business

Describing the Critique Services Business as “massive” is not an understatement. According to the records of the Clerk of Court, in 2013, James C. Robinson (the now-suspended attorney who, in 2013, was the primary attorney at the Critique Services Business) filed 1,014 chapter 7 cases (charging an average attorney fee of $296.23 per case) and 123 chapter 13 cases (charging an average attorney fee of $4,000.00 per case). As such, in 2013 alone, Robinson collected approximately $300,337.22 in chapter 7 attorney’s fees and $492,000.00 in chapter 13 attorney’s fees—for a total of approximately $792,337.22 in attorney’s fees. This means that annually, just through Robinson, more than three-quarters of a million dollars in attorney’s fees were collected from debtors with cases filed in this District and flowed through the Critique Services Business. The suspension of Robinson did little to slow the Critique Services Business machine; Robinson was just replaced by Meriwether.

C. The Persons and Entities Involved with the Critique Services Business

The operations of the Critique Services Business are composed of: (i) the activities of Critique Services L.L.C. and its owner, Beverly Holmes Diltz, a non-attorney; (iii) the activities of non-attorney staff persons; and (ii) the activities of attorneys under contract with Critique Services L.L.C. (the “Critique Services Attorneys”). The roles of those persons are described below.

1. Critique Services L.L.C. and its Owner, Diltz

In the mid-1990s, Diltz began peddling “bankruptcy services” through a “Critique”-named business. Shortly thereafter, she began getting sued by the

[1] The Court takes judicial notice of this permanently, publicly displayed sign. Its existence and content are not subject to reasonable dispute.

United States Trustee (the "UST") for unlawful or improper business activities, including for the unauthorized practice of law.

Originally, Diltz operated as "d/b/a Critique Service." However, in 1999 in *Pelofsky v. Holmes d/b/a Critique Service (In re Daniele M. Hamilton)* (Case No. 99-4065), and again in 2001 in *Pelofsky v. Holmes d/b/a Critique Service (In re Beatrice Bass)* (Case No. 01-4333), injunctions were entered against Diltz, prohibiting her from the unauthorized practice of law. So, in 2002, Diltz organized two artificial entities, Critique Services L.L.C. and Critique Legal Services L.L.C., and began operating through those.

In its Articles of Organization, Critique Services L.L.C. represents that its business purpose is: "Bankruptcy Petition Preparation Service." However, in 2007, in *Gargula v. Diltz, et al. (In re Hardge)* (Adv. Proc. No. 05-4254), the Court entered an order (the "2007 Injunction") prohibiting Diltz and "Her Interests" (including her artificial entities) from providing bankruptcy petition preparation services in this District. Since then, however, Critique Services L.L.C. has not amended its Articles of Organization. As such, for years, it has had no lawful business purpose of record. Nevertheless, it has continued to operate.

Today, Critique Services L.L.C. is the artificial entity through which Diltz contracts with the Critique Services Attorneys. In the currently pending matters of *In re Evette Nicole Reed, et al.* (Lead Case No. 14-44818), Critique Services L.L.C. has refused to turn over a copy of its contract with Meriwether, despite being compelled to do so.[2] However, it did provide a copy of its contract with Robinson. That contract reveals that Critique Services L.L.C. agrees to allow the Critique Services Attorney to use the fictitious name "Critique Services," to lease real estate to the attorney, to provide administrative, secretarial, bookkeeping and advertising services to the attorney, and to license "intellectual property" to

[2] Critique Services L.L.C. is committed to avoiding any disclosure of its business operations—so much so that it refuses to comply with court orders directing that it make discovery or turnover about its business operations. In addition to its disobedience in *In re Reed, et al.* (for which it is now facing the possibility of sanctions), in *In re Latoya Steward* (Case No. 11-46399), it chose to take almost $50,000.00 in sanctions instead of complying with an order compelling discovery.

the attorney. The contracting attorney, in exchange, agrees to pay Critique Services L.L.C. The contract appears to be designed to create the appearance on paper that Critique Services L.L.C. is in compliance with the 2007 Injunction.

2. The Non-Attorney Staff Persons

The "legal" services provided at the Critique Services Business are rendered by the non-attorney staff persons. This has been shown in numerous cases, including most recently in *In re Latoya Steward* (Case No. 11-46933), *In re Arlester Hopson* (Case No. 15-43871), *In re Reed, et al.*, and the instant Case.

The non-attorney staff persons collect the debtor's cash payments for services [3] (the business is an all-cash operation) before the client even perfunctorily meets with an attorney (*if* the client ever meets with an attorney). The non-attorney staff persons solicit the information for completion of the petition papers and prepare the petitions papers. The non-attorney staff persons are the only people with whom the clients can speak when they call the office, as the clients are repeatedly told that the attorney is unavailable. The non-attorney staff persons also render legal advice—and often very bad legal advice, at that. They have solicited false information for inclusion in petition papers. They have advised debtors to make false statements. Recently, they advised the *Hopson* debtor that he should go to court, without counsel, to a hearing in a contested matter in his main bankruptcy case, to represent himself.

Once payment is collected, the client is all but abandoned. It is almost impossible to get a Critique Services Attorney on the phone. Calls go to voicemail, or simply go unanswered or unreturned, or the client is informed that the attorney is "in court" (a laughable notion, given that Critique Services Attorneys often fail to show up for court). Desperate clients have to go into the

[3] What happens to the debtors' cash after it is handed to the non-attorney staff persons is unknown. This is an issue in the currently pending matter of *In re Reed, et. al.* No one affiliated with the Critique Services Business will explain what happens to all that cash—despite the fact that an attorney has a fiduciary duty to hold unearned fees in trust. The fact that no one will explain how the Critique Services Business's fees are handled is not a small matter; prepetition-paid unearned attorney's fees are property of the estate.

Critique Services Business Office, to plead for attention to their pressing legal matters. Clients have to repeatedly inquire about the status of their cases—which may, or may not, have been filed. Required papers go unfiled, resulting in serious and costly consequences to the clients.

3. The Critique Services Attorneys

The Critique Services Attorneys are an integral part of the Critique Services Business, but not for a proper purpose. The role of the attorneys is not to provide legal counsel; it is to provide cover. Consistent with the long history of the Critique Services Business operations, and as established most recently in *In re Steward*, *In re Hopson*, and in the instant Case, the Critique Services Business uses the signatures and bar card numbers of its contracted attorneys to give the cosmetic appearance of legal services being rendered, to mask the business's real operations: the unauthorized practice of law.

The Critique Services Attorneys do not meet with clients prior to the clients paying for their services. They refuse to return calls and fail to provide services. They file Attorney Compensation Disclosure Statements that violate Local Bankruptcy Rule 2093 by impermissibly carving out services that attorneys are required to provide to all debtor-clients. The Critique Services Attorneys who sign the petition papers often do not appear at the § 341 meeting of creditors, as required. They often do not show up in court at contested matters; as a result, bewildered, frightened, or angry debtors show up in court, alone, without anyone to advocate for their interests. At a hearing in *In re Hopson*, which Meriwether did not show up for, the Debtor could not identify the gender of his attorney, much less his name. In fact, the *Hopson* debtor advised the court that he had never even *heard of* Meriwether. Clients have repeatedly informed the Court that they tried, with no avail, to speak with their attorney.

With only one exception,[4] every Critique Services Attorney has been suspended or disbarred for professional malfeasance. In *In re Robert Wigfall, Jr*.

[4] Attorney Dedra Brock-Moore was a Critique Services Attorney from approximately August 2014 to August 2015. It is the Court's understanding that

(Bankr. S.D. Ill. Case No. 02-32059), long-time Critique Services Attorney Ross H. Briggs was sanctioned by the U.S. Bankruptcy Court for the Southern District of Illinois (the "Illinois Bankruptcy Court") and suspended from filing new cases for three months. In 2003, in *Rendlen v. Briggs, et al. (In re Thompson)* (Adv. Proc. No. 03-4003), Briggs was sanctioned by this Court and suspended from filing new cases for six months. In *In re Barry Bonner, et. al.* (Bankr. S.D. Ill. Lead Case No. 03-30784), Critique Services Attorney Leon Sutton was permanently disbarred from practicing law before the Illinois Bankruptcy Court. On May 24, 2004, Sutton was suspended on an interim basis by the Missouri Supreme Court; on May 10, 2006, he was disbarred by the Missouri Supreme Court (Missouri Supreme Court Case No. SC87525). On August 1, 2006, Critique Services Attorney George E. Hudspeth, Jr. was disbarred by the Missouri Supreme Court (Missouri Supreme Court Case No. SC87881). In November 2013, in *In re Steward*, Robinson was suspended from use of the Court's overnight drop box and from the remote access use of the Court's CM-ECF electronic docketing system, due to Robinson's refusal to obey an order compelling turnover; the following February, Robinson was sanctioned $3,000.00 for violating that order. On June 10, 2014, in *In re Steward*, Robinson and Critique Services L.L.C.'s attorney, Elbert A. Walton, Jr., were suspended for making false statements, contempt, refusing to obey a court order, and abuse of process—and remain suspended to this day. (In addition, in *In re Steward*, Robinson, Critique Services L.L.C. and Walton were jointly sanctioned $49,720.00.) Currently, Robinson and Briggs again are facing the possibility of sanctions, including suspension, in the pending matter of *In re Reed, et al*., for the refusal to obey a court order compelling turnover and for making misleading representations to the Court. In addition, in the pending matters of *In re Terry L. and Averil May Williams, et al.* (Lead Case No. 14-44204), Robinson currently is facing another action for against him (and against Diltz and Critique Services L.L.C.) brought by the UST on allegations of the unauthorized practice of law.

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she dissociated herself from the Critique Services Business late in the summer of 2015. She has not filed cases as a Critique Services Attorney in months.

These suspensions and disbarments are a part of the regular business operations of the Critique Services Business. The Critique Services Business never changes its unauthorized practice of law; it merely changes its facilitating attorneys. Once an attorney is suspended or disbarred, Diltz simply replaces him with another, and the cycle begins again. Bearing witness to this are the carcasses of the various Critique Services Attorneys with putrefied reputational integrity, rotting in professional disgrace, and discarded off the web like the desiccated remnants of a black widow spider's meal. This is not an unfortunate coincidence or poor judgment in the hiring process; this is a deliberately arachnidian business management strategy. Meanwhile, Diltz, Critique Services L.L.C, and the non-attorney staff persons are shielded from any real consequences. As non-attorneys, they cannot be suspended or disbarred from the practice of law. At most, Diltz has the inconvenience of having to agree to an injunction before she can go back to the unauthorized practice of law, to wait for the next time she will be sued and has to agree to another consent injunction.

B. The Sanctions and Injunction History of those Affiliated with the Critique Services Business

Diltz and her affiliated attorneys were sued multiple times by the UST, both in this District and across the Mississippi, in the Southern District of Illinois. In 2003, the Illinois Bankruptcy Court finally threw Diltz and her business out of that district, permanently enjoining her from ever doing sort of bankruptcy-related services business there.

On this side of the river, Diltz, along with her "Critique Services"-named entities and her revolving-door of attorneys, also were repeatedly sued by the UST for the unauthorized practice of law and other unlawful business activities—in 1999, 2001, 2002, 2003, 2005, and 2014.[5] Diltz settled the matters against

[5] *See Pelofsky v. Holmes d/b/a Critique Service (In re Daniele M. Hamilton)* (Case No. 99-4065); *Pelofsky v. Holmes d/b/a Critique Service (In re Beatrice Bass)* (Case No. 01-4333); *In re Cicely Wayne* (Case No. 02-47990); ***Rendlen v. Briggs, et al. (In re Thompson)*** (Adv. Proc. No. 03-4003); *Gargula v. Diltz, et al. (In re Hardge)* (Adv. Proc. No. 05-4254); and *In re Terry L. and Averil May Williams, et al.* (Lead Case No. 14-44204).

her and her entities by agreeing to a consent order, in which she would promise to stop the unlawful or prohibited behavior. Unfortunately, these injunctions proved utterly ineffective. Critique Services Business's unauthorized practice of law has continued on, unabated in any meaningful sense, for almost two decades. And, in complement, the exploitation of the poor has continued. The poor, in many ways, are the perfect victims for this predation. Because of the nature of the bankruptcy process, most "no-asset" cases do not require a court appearance by the debtor, or involve contested matters. Creditors are not beating down the courthouse door in a fight over non-existent assets. No one is scouring the representations in the debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs. Most no-assets cases pass through the bankruptcy system without close scrutiny by the Court. This makes it very easy to effectively steal from debtors by providing substandard services (or failing to provide services at all), without fear of consequences. This dynamic is compounded by the fact that debtors who are too poor to hire quality counsel are generally also too poor to seek justice when their attorney takes their money without providing services. It is an almost-perfect racket for the unscrupulous.

C. Meriwether as Part of the Critique Services Business Scheme

Meriwether joined the Critique Services Business scheme in the fall of 2014, following Robinson's suspension. As shown in *In re Hopson*, *In re Shadonaca Davis* (Case No. 15-48102), and in the instant Case, in his short tenure before this Court, Meriwether has shown himself to have a propensity for client abandonment and case mismanagement. He also has shown himself to be dishonest and dangerously incompetent. In just the past six months Meriwether has: filed scores of Attorney Compensation Disclosure Statements that violated Local Bankruptcy Rule 2093, attempting to unlawfully "unbundle" his services (a way to rip-off debtors); received additional fees from a debtor without disclosing it to the Court; abandoned clients by failing to render necessary legal services; failed to file financial management course certificates (each, a "FMCC") for clients, resulting in their cases being closed without discharge; failed to meet with clients before accepting their payment for the retention of his "services"; failed to

meet with a client before filing a case on his behalf; failed to appear at a § 341 hearing; failed to appear at a contested hearing; failed to comply with at least two Court orders; and allowed non-attorneys staff persons at the Critique Services Business to commit the unauthorized practice of law in his clients' cases.

In August 2015, Meriwether was suspended for one year from remote access use of the Court's CM-ECF electronic docketing system, due to his dishonest activities in *In re Hopson*. He has been monetarily sanctioned—twice—for failing to obey Court orders. He has been referred to the Missouri Supreme Court's Office of Chief Disciplinary Counsel (the "OCDC") multiple times. He has been directed to disgorge his attorney's fees for having failed to earn them. He has been directed to either disgorge his attorney's fees or file a new case for a debtor, after failing to handle her case with a minimal level of competence. At one point, the Court was so appalled by Meriwether's refusal to muster the requisite attention to achieve even a marginally acceptable level of practice that it openly begged for Meriwether to start lawyering competently, writing in an order entered in *In re Hopson*:

> The Court cannot fathom what is going on with Meriwether, to have resulted in such incompetency. The Court strongly encourages Meriwether to up-his-game when practicing in this forum. In the August 27 Order, Meriwether had his electronic filing privileges revoked for a year and a referral was made by the Court to the Missouri Supreme Court's Office of Chief Disciplinary Counsel (the "OCDC"). Now, he has been monetarily sanctioned and given notice that he may incur more sanctions or be suspended. ***It is time for Meriwether to start paying attention, obeying Court orders, practicing competently, and being in compliance with the Local Bankruptcy Rules.***

Most attorneys would have been so mortified by this admonition that they would have immediately taken whatever measures were required to right the ship and begin practicing competently. However, Meriwether just got worse.

D. Meriwether's Professional Incompetence, Case Mismanagement and Client Abandonment in this Case

At the end of November 2015, Meriwether filed two nearly identical motions to reopen—one in *In re Davis,* and one in the instant Case [Docket No.

15]. Those cases had long-been closed without the granting of a discharge because Meriwether had not filed the statutorily required FMCCs. In the motions to reopen, Meriwether requested that the Court reopen the cases to allow him to file the grossly delinquent FMCCs. However, Meriwether alleged no cause for reopening the cases under 11 U.S.C. § 350(b). As such, the motions to reopen were denied. As the Court explained in its denial order entered in this Case [Docket No. 18], the motion to reopen appeared to be nothing more than an effort by Meriwether to remedy the consequence of his sloppiness or incompetency; however § 350(b) is not a mechanism by which a debtor can remedy the results of his attorney's malpractice or incompetence.

Then, on November 24, 2015, the Debtor in this Case filed a Motion to Reopen [Docket No. 20] and the Motion to Disgorge. The Debtor sought to reopen to the Case for the purpose of prosecuting his Motion to Disgorge. On November 25, 2015, the Court entered an order [Docket No. 22], granting the Motion to Reopen. Contemporaneously, it also entered an Order and Notice [Docket No. 23], in which it observed "[i]n the Motion to Disgorge and the accompanying Motion to Reopen [Docket No. 20], the Debtor made numerous allegations against Meriwether, including attorney incompetence, gross case mismanagement, and client abandonment. In short, the Debtor alleges that Meriwether failed to earn the fees that the Debtor paid to him for legal representation in his Case." The Court then ordered that "any response to the Motion to Disgorge be filed by December 4, 2015" and gave notice that **"**it may impose monetary and/or nonmonetary sanctions against Meriwether, if it is shown that he committed a sanctionable act, including but not limited to client abandonment, failing to appear at a § 341 meeting, or allowing a non-attorney to practice law on his behalf." Meriwether chose not to respond.

II. JURISDICTION, VENUE, NOTICE AND OTHER ISSUES

A. Subject Matter Jurisdiction

The bankruptcy court does not have subject matter jurisdiction vested to it. Subject matter jurisdiction is vested to the district court. As such, an inquiry into

whether this Court has subject matter jurisdiction is really an inquiry into whether the district court has subject matter jurisdiction.

Section 1334(a) & (b) of title 28 establishes that the district court has "original and exclusive jurisdiction of all cases under title 11 [the Bankruptcy Code]," and "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." Under this framework, the district court has subject matter jurisdiction over the matter of a disgorgement request, since it arises under title 11 or arises in a case under title 11. In addition, because the district court has subject matter jurisdiction over the issue of disgorgement, it also has subject matter jurisdiction over the issue whether sanctions should be imposed under § 105(a) and the inherent power of the court related to the attorney's activities in conjunction with the need for disgorgement.

B. Authority to Hear and Determine

While § 1334 confers subject matter jurisdiction over bankruptcy matters, § 157 of title 28 of the United States Code ("§ 157") confers authority upon the district court to refer bankruptcy matters to the bankruptcy court, and confers upon the bankruptcy court authority to preside over referred proceedings. Section 157(a) establishes that the district court "may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." As such, the district court has authority to refer those bankruptcy cases and proceedings over which it has subject matter jurisdiction to the bankruptcy court. A § 157(a) referral of bankruptcy proceedings is effected by a standing order whereby the district court automatically refers those matters that, by statute, may be referred to the bankruptcy court. *See, e.g.,* E.D. Mo. L.R. 81-9.01(B)(1).

Section 157, in turn, establishes that a bankruptcy judge has authority to preside over referred proceedings—although the authority to determine a matter by final disposition depends on the type of case or proceeding that has been referred. On one hand, "[b]ankruptcy judges may hear and determine all cases

under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . .” 28 U.S.C. § 157(b)(1). On the other hand, a bankruptcy judge may only hear (but not determine) a non-core proceeding that is merely “related to” a case under title 11. 28 U.S.C. § 157(c)(1). However, there is an exception to this limitation: with the consent of the parties, a bankruptcy judge may hear and determine a non-core proceeding that is merely “related to” the case.

Here, the referred proceedings—the Motion to Disgorge and the sanctions issue—are core proceedings arising under title 11 or arising in a case under title 11. As such, the Court does not require consent of the parties to hear and determine these proceedings. The recent U.S. Supreme Court case of *Stern v. Marshall*, 131 S.Ct 2594 (2011), does not change this. In *Stern*, the Supreme Court held that § 157(b)(2)(A) is unconstitutional as applied to a state law claim for tortious interference at issue in that case. *Stern v. Marshall* did not involve the determination of a motion to disgorge or sanctions issues, did not hold that all of § 157 is unconstitutional as applied, and did not strip the bankruptcy court of its authority to determine disgorgement proceedings or sanctions matters.

C. Personal Jurisdiction

Meriwether is the attorney of record in this Case. He has made an appearance and the Court has personal jurisdiction over him. Further, by failing to respond to the Order and Notice or the Motion to Disgorge, Meriwether has consented to personal jurisdiction by waiver of the issue.

D. Venue

Section 1408(1) of title 28 of the United States Code provides that:

> a case . . . may be commenced in the district court for the district **. . .** in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district.

Further, "[i]t is well established that an objection to venue is waived if not timely raised." *Block v. Citizens Bank et al.,* 249 B.R. 200, 203 (Bankr. W.D. Mo. 2000). Venue of this Case lies in this Court and no party has suggested otherwise.

E. Power to Sanction and Suspend

It is well-established that bankruptcy courts have the power to sanction. *See, e.g., Elbert A. Walton, Jr. v. John V. LaBarge (In re Clark),* 223 F.3d 859, 864 (8th Cir. 2000)("[Section 105 gives to bankruptcy courts the broad power to implement the provisions of the bankruptcy code and to prevent an abuse of the bankruptcy process . . ."); *Needler v. Cassmatta (In re Miller Automotive Group, Inc.),* 2015 WL 4746246, at *5 (8th B.A.P. Aug. 12, 2015)("Bankruptcy Code § 105(a) provides a bankruptcy court with authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, and allows the court to "tak[e] action or mak[e] any determination necessary or appropriate to . . . prevent an abuse of process." 11 U.S.C § 105(a)). It also is well-established that bankruptcy court have the inherent power to sanction abusive litigation practices. *See Law v. Siegel*, --- U.S. ---, ---, 134 S.Ct. 1188, 188 L.Ed.2d 146, 2014 WL 813702, at *5 (2014)(citing *Marrama v. Citizen Bank of Mass.,* 549 U.S. 365, 375-376, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007); *In re Young*, 507 B.R. 286, 291 (8th Cir. B.A.P. 2014). "This power is broad in scope, and includes the power to impose monetary sanctions, as well as to 'control admission to its bar and to discipline attorneys who appear before it.'" *In re Burnett*, 450 B.R. 116, 132 (Bankr. E.D. Ark. 2011)(quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991), and citing *Plaintiffs' Baycol Steering Comm. v. Bayer Corp*., 419 F.3d 794, 802 (8th Cir. 2005), and *Harlan v. Lewis*, 982 F.2d 1255, 1259 (8th Cir. 1993)).

In addition, the local rules make it clear that the Court has the authority to discipline attorneys before it, including by suspension. L.B.R. 2093-A provides that "[t]he professional conduct of attorneys appearing before this Court shall be governed by the Rules of Professional Conduct adopted by the Supreme Court of Missouri, the Rules of Disciplinary Enforcement of the United States District Court for the Eastern District of Missouri, and these Rules." In addition, L.B.R.

2094-C provides that "[n]othing in this Rule shall preclude the Court from initiating its own attorney disciplinary proceedings regardless of whether an attorney has been disciplined by another court," and L.B.R. 2090-A provides that this Court adopts "[t]he requirements for . . . attorney discipline . . . outlined in Rules 12.01-12.05" of the Local Rules of the U.S. District Court (each, an "E.D.Mo. L.R.")

In turn, E.D.Mo. L.R. 12.02 provides that "a member of the bar of this Court and any attorney appearing in any action in this Court, for good cause shown and after having been given an opportunity to be heard, may be disbarred or otherwise disciplined," as provided in the U.S. District Court's Rules of Disciplinary Enforcement (each, an "E.D.Mo. R.D.E."). And in turn, E.D.Mo. R.D.E. IV-A provides that "[f]or misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant." E.D.Mo. R.D.E. IV-B defines conduct "which violates the Code of Professional Responsibility adopted by the Supreme Court of Missouri" may be grounds for discipline.[6]

It should be noted that disciplining an attorney by suspending him under E.D.Mo. L.R. 12.02 and E.D.Mo. RDE IV-A is not the same as bringing a "formal disciplinary proceeding" against that attorney under E.D.Mo. R.D.E. V. Under E.D. R.D.E. V, when misconduct or allegations of misconduct come to the attention of the judge, the judge may (stated in the permissive, not the mandatory) refer a matter to counsel appointed under E.D.Mo. R.D.E. X, for investigation and prosecution of a formal disciplinary proceeding. Here, however, there is no need for the Court to make a referral of the matter for appointment of Rule X counsel. The misconduct occurred in a case before the Court and the record is clear. There is no need for an investigation or prosecution in a formal disciplinary proceeding.

[6] The Missouri Supreme Court's Rules of Professional Conduct serve as the code of professional responsibility for attorneys licensed to practice by that court.

Accordingly, case law, § 105, and the Local Rules all establish that the Court has the power to sanction, including by suspending an attorney.

F. Service

Meriwether receives in near real-time electronic notification from the Court of all filings in this Case. His current suspension from the remote access use of the Court's CM-ECF docketing system did not change this; he still receives electronic notification of filings. Accordingly, Meriwether was served with a copy of the Motion to Disgorge as well as the Order and Notice.

G. Notice

Notice is required before sanctions are imposed. *Walton v. LaBarge* (*In re Clark)*, 223 F.3d at 864. Due process is provided where "the sanctioned party has a real and full opportunity to explain its questionable conduct before sanctions are imposed." *Coonts v. Potts*, 316 F.3d 745, 753 (8th Cir. 2003)(*Chrysler Corp. v. Carey*, 186 F.3d 1016, 1023 (8th Cir. 1999)). However, this is not a mandate that a hearing be conducted prior to the imposition of sanctions. *Walton v. LaBarge* (*In re Clark)*, 223 F.3d at 864 ("The court may act [to impose sanctions] without a hearing if it has provided an opportunity for one but no parties in interest requested it."); *In re Rimsat, Ltd*., 212 F.3d 1039, 1046 (7th Cir. 2000)("Putting to one side the possibility that the appellants were not entitled to a hearing in the first place, the problem with the appellants' argument that the bankruptcy court should have held a hearing before imposing sanctions is that the appellants never requested a hearing. Since a court is not invariably required to provide a hearing before imposing sanctions, the appellants' failure to request a hearing waives any right they might have had to one."); *see* 11 U.S.C. § 102(1)(providing that "'notice and a hearing', or a similar phrase . . . means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but . . . authorizes an act without an actual hearing if such notice is given properly and if . . . such a hearing is not requested timely by a party in interest.").

The Court gave Meriwether notice of its intent to impose sanctions in connection with the determination of the Motion to Disgorge, and afforded

Meriwether an opportunity to respond. Meriwether declined to respond and did not request a hearing. As such, he had a real and full opportunity to explain his questionable conduct, but declined to act upon this opportunity.

III. FACTS ADMITTED

Meriwether was given an opportunity to file a response to the Motion to Disgorge, but declined to do so. He did not contest any representation. He did not request an evidentiary hearing. He did not request oral arguments. In light of this, the Court deems that Meriwether, by his deliberate decision not to respond despite the invitation to do so, admitted the well-pleaded facts alleged by the Debtor. Those well-pleaded facts include:[7]

- The Debtor obtained his FMCC on July 10, 2015.
- Meriwether failed to appear to represent the Debtor at his § 341 meeting on July 14, 2015.
- A "representative" of "Critique Services" named "Tracey" was at the § 341 meeting. (Whoever this person was, she was not an attorney with the Critique Services Business. The Court has no record of anyone with that first name serving as a Critique Services Attorney in any case before it.)
- The Debtor handed to Tracey a copy of his FMCC.
- After later receiving a letter from the Court advising that he had not completed the FMCC, the Debtor contacted Renee Mayweather, the office manager at the Critique Services Business Office, who advised him to disregard the email and stated that the FMCC had been filed.
- Two weeks later, the Debtor received another notice that he had not completed the FMCC. This time, the Debtor went into the Critique Services Business Office, asked to speak with his attorney, and was told

[7] These facts were pleaded in the Motion to Reopen and the Motion to Disgorge. In its Order and Notice, the Court described the facts it construed to be alleged in support of the disgorgement request, and included those alleged in both documents. This construction is consistent with the obligation to liberally construe pro se filings. The Debtor clearly meant to allege the facts in the Motion to Reopen in support of the Motion to Disgorge, as well.

that his attorney was not there. The Debtor left his telephone number, but no one called him back.

- The Debtor made yet-more telephone calls and more trips into the office, but was never able to speak with Meriwether. Every time the Debtor asked to speak with his attorney, he was told that the attorney was unavailable. His telephone calls went unreturned and the telephone lines were rarely answered. When he went into the office, he was advised that he needed to be patient and that he would receive his discharge.
- At the beginning of October, the Debtor went into the office yet again, because some of his creditors were calling him. He demanded to have his questions answered and refused to leave until they were answered.
- At that point, Mayweather advised the Debtor that there had been a typographical error on his FMCC, and she would have it processed again.
- The Debtor was, yet again, told to wait.
- On October 19, 2015, the Debtor came to the office and was told that his case had been dismissed "because the Judge has a personal issue with their company." The Debtor did not believe Mayweather, and told her so.

Further, the record establishes that at no time between July 14, 2015 and October 29, 2015 did Meriwether file an FMCC for the Debtor. In addition, the record establishes that the Case was dismissed for the failure to file the FMCC. Mayweather's false representation to the Debtor that the case was dismissed due to a "personal issue" is nothing more than a dishonest attempt to cover up Meriwether's case mismanagement. And, the record establishes that Meriwether still waited almost another whole month after October 19, 2015, before he even attempted to file the FMCC.

IV. DISGORGEMENT

A. Disgorgement of Attorney's Fees Proper

Section 329(b) provides that "[i]f such compensation [of a debtor's attorney] exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to . . . the estate, if the property transferred . . . would have

been property of the estate." This statute "allows the court sua sponte to regulate attorneys and other people who seem to have charged debtors excessive fees." *(Brown v. Luker) In re Zepecki*, 258 B.R. 719, 725 (B.A.P. 8th Cir. 2001)(citing *In re Weatherley*, 1993 WL 268546 (E.D. Pa. 1993)). Section 329, by its terms, applies to post-petition services as well as to prepetition services. *See Schroeder v. Rouse (In re Redding)*, 247 B.R. 474, 478 (B.A.P. 8th Cir. 2000). As such, pursuant to § 329(b), the bankruptcy court may order that a request for payment of the debtor's attorney's fees be denied or that fees paid to the debtor's attorney be disgorged. *Walton v. LaBarge (In re Clark)*, 223 F.3d at 864 (noting the power of the bankruptcy court to award or deny fees); *In re Burnett*, 450 B.R. at 130-31 (providing that § 329(b) allows the court to disgorge compensation already received).

Disgorgement of attorney's fees is not a punitive measure and does not constitute damages. *In re Escojido*, 2011 WL 5330299, at *2 (Bankr. S.D. Cal. Oct. 28, 2011) (citing *Berry v. U.S. Trustee (In re Sustaita)*, 438 B.R. 198, 213 (B.A.P. 9th Cir. 2010)). Disgorgement pursuant to § 329(b) is a civil remedy with no additional procedural protections.

Before disgorgement may be ordered, there must first be a determination that the fees are excessive. *Schroeder v. Rouse (In re Redding)*, 247 B.R. at 478. In determining whether fees are excessive, "a court should compare the amount of compensation that the attorney received to the reasonable value of the services rendered." *Brown v. Luker (In re Zepecki)*, 258 B.R. at 725 (citing *Schroeder v. Rouse (In re Redding)*, 247 B.R. at 478). The attorney bears the burden of proving that his compensation is consistent with the reasonable value of his services. An attorney may not hide behind the excuse that his non-attorney staff persons rendered poor or improper services, regardless of whether he specifically directed his staff to practice law without a license or to commit improprieties, or whether he just incompetently managed his staff.

The evidence here establishes that the reasonable value of Meriwether's services is $0.[8] Meriwether failed to do even ***the bare minimum*** required for the Debtor his discharge—the very purpose of filing for chapter 7 bankruptcy relief. He had the FMCC long before it was due, yet inexcusably failed to file it, and was never—at any point—honest with the Debtor about the situation. And, he failed to return telephone calls, refused to respond to inquiries, and ignored the Debtor's pleas for attention to his Case. He utterly abandoned the Debtor.

Accordingly, the Court **ORDERS** that the Motion to Disgorge be **GRANTED** and that Meriwether disgorge to the Debtor all fees paid to Meriwether by the Debtor ***forthwith***.

V. SANCTIONS

The actions of Meriwether in this Case are reprehensible. He abandoned a client and allowed non-attorney staff persons at the office where he works to lie to the Debtor—repeatedly—about the status of his Case. He took no effort to interact with or to respond to his own client. And, in a particularly outrageous turn of events, he permitted Mayweather not merely to lie to his client, but to lie to his client about the Court and why a particular disposition was entered—a lie designed to create distrust of the court of which Meriwether is an officer. Words fail to adequately describe the disgracefulness of Meriwether's conduct.

The Court has given Meriwether ample and repeated warnings about his problematic conduct, and those warnings have been ignored. The Court has tried escalating sanctions, and they have proven ineffective. Monetary sanctions do not deter Meriwether and even the suspension of his remote access filing privileges has been of no avail. In summary, Meriwether has collected fees that he failed to earned, failed to show up at a § 341 meeting as required, abandoned his client, lied to his client about his case status, and lied to his client about the

[8] The Court chooses to assign zero-value because this dovetails with § 329(b)'s "excess" requirement. However, an alternate holding would be that Meriwether failed to adequately represent the Debtor, thereby failing to earn his fees. *In re Bost*, 341 B.R. 666, 689 (Bankr. E.D. Ark. 2006)(ordering disgorgement because the attorney had not adequately represented his clients and has not earned the fees they paid him).

Court's dispositions. And, sadly, none of this is even surprising, given Meriwether's record of similar behavior in other cases.

This must stop. Meriwether must stop ripping off clients by abandoning them. He must stop collecting fees and not earning them. He must stop violating the Local Rules, which require that he appear at § 341 meetings. He must stop abusing the bankruptcy process. He must stop harming debtors before this Court. He must stop permitting non-attorney staff persons from participating in the unauthorized practice of law, and he must stop them from lying to his clients about their cases.

Accordingly, pursuant to § 105(a) and the inherent power of the Court to discipline attorneys who appear before it, the Court **ORDERS** that, effective immediately, Meriwether be suspended from the privilege of practicing before the U.S. Bankruptcy Court for the Eastern District of Missouri from the date of the entry of this Order through March 7, 2016. During his suspension, Meriwether may not file a pleading or document of any sort on behalf of anyone other than himself, or represent any person, other than himself, before this Court in any capacity. He is barred from practicing or appearing before this Court on behalf of another person, whether by: special appearance or regular appearance; for representation of a paying client or a pro bono client; for representation of a family member or an unrelated person; or in a Main Case or an Adversary Proceeding.[9] He may not practice in any case before, or anticipated to be before, this Court, whether such practice would be inside or outside the courtroom. He may not appear at a § 341 meeting on behalf of any debtor. He may not "send" another attorney to a § 341 meeting, unless that attorney has formally entered his notice of appearance as the debtor's attorney in the case. He may not serve as co-counsel with any attorney in the representation of a client in a case before or anticipated to be before this Court. He may not fee-

[9] Nothing herein shall prohibit Meriwether from being subpoenaed or summonsed in any matter before this Court or from responding to such subpoena or summons. He may be subject to deposition in matters before this Court and may give testimony in hearings and trials before this Court.

share with any attorney in any fees that he collected pre-petition, but which he had not earned as of the date of his suspension date.

The Court will not permit Meriwether, during his suspension, to supervise, manage or otherwise be in charge of another attorney who practices before this Court. Meriwether cannot manage himself or the non-attorney staff pesons with whom he works. He certainly cannot be trusted to competently supervise, manage, or otherwise be in charge of another attorney. Accordingly, the Court **ORDERS** that, for the duration of Meriwether's suspension, no attorney may list with the Court "3919 Washington Blvd., St. Louis, Missouri" (Meriwether's office address) as his business address or list any landline telephone number associated with that address as his business contact number. Currently, no (non-suspended) attorney lists this address and telephone number in his contact information with this Court, so this directive will in no way affect the Court's current records of other practicing attorneys.

Further, the Court **ORDERS** that Meriwether be **DIRECTED** to return all attorney's fees that he collected prior to his suspension, but which he will be unable to earn personally as a result of this suspension. To establish that such fees are returned, Meriwether is directed to file, in his personal capacity, an Affidavit of Return of Unearned Fees in each case in which the debtor returned unearned fees, with proof of payment attached. And, Meriwether is directed to file a Certificate of Compliance in this Case, in which he lists each case number, debtor's name, and the amount of the fees returned.

Further, the Court **ORDERS** that Meriwether be **DIRECTED** to post at the front office counter at 3919 Washington Blvd., St. Louis, Missouri, the attached "NOTICE OF SUSPENSION." The posted notice shall be an exact copy of the attached NOTICE OF SUSPENSION," and shall be fully and easily viewable, facing outward (not inward, toward the staff), and not be obscured or hidden in any way. It shall be legible and not be reduced in size, and not be mutilated, damaged, altered, or otherwise modified from the attached version in any way. It shall be posted immediately and shall remain posted throughout the suspension. It shall be posted regardless of whether Meriwether is present in the office. This

posting is required because the facts of this Case and the facts of *In re Hopson* show that Meriwether makes false representations to his clients. The Court has no confidence that Meriwether will be honest about his suspension. Potential clients are entitled to known about the suspension.

Further, the Court **ORDERS** that Meriwether be **DIRECTED** to provide to any person, who enters 3919 Washington Blvd., St. Louis, Missouri seeking any sort of legal or bankruptcy services an exact copy of the attached "NOTICE OF SUSPENSION." Each such copy shall be fully legible and unaltered in any way.

Further, the Court **ORDERS** that Meriwether be **DIRECTED** to provide to the Court (i) a copy of his contract with Critique Services L.L.C., and (ii) an affidavit setting forth how his attorney's fees paid by debtors are handled: when those fees are collected, to whom they are handed, to what entity they are paid (whether they are paid to "Critique Services" or "Critique Services L.L.C." or "Law Office of Meriwether", or another entity or person), what type of receipt is provided to the payor, where they are held, whether they are placed in a trust account, by whom they are held, when they are treated as fully earned, whether non-attorney staff persons who handle Meriwether's fees are paid by Meriwether (either as his employees or as his independent contractors) or by someone else (and if by someone else, by who), and any other relevant details. This is disclosure is necessary because of Meriwether's proven ignorance about the happenings in the cases in which he is the attorney of record, and his incompetence in handling basic matters for his debtor-clients. The Court requires proof from Meriwether does not run his practice in a way that results in the mishandling of prepetition-paid attorney's fees (which, to the degree that they are unearned as of the petition date, are property of the estate). Such documents may be filed under protection in this Case, to prevent public viewing without Court authority.

And further, the Court **ORDERS** that Meriwether be **DIRECTED** complete twelve (12) hours of continuing legal education in professional ethics.

The Court gives **NOTICE** that any violation of, or failure to comply with, this Order may be met with sanctions.

VI. CONCLUSION

Meriwether may file a Motion to Reinstatement within two weeks of the expiration of his suspension. Meriwether will be reinstated, provided that he can show that he disgorged his fees in the Case, completed his continuing legal education requirements, returned unearned fees in other cases, obeyed this Order in full, and is otherwise in good standing with this Court.

As set forth herein, the Court orders that Meriwether disgorge all fees paid to him by the Debtor and that Meriwether be suspended on the terms and the directive set forth herein. A copy of this Order will be forwarded to the OCDC.

DATED: December 7, 2015
St. Louis, Missouri 63102
mtc

CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

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NOTICE OF SUSPENSION

ATTORNEY DEAN D. MERIWETHER HAS BEEN *SUSPENDED* FROM PRACTICING BEFORE THE U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI UNTIL MARCH 7, 2016.

MERIWETHER HAS BEEN SUSPENDED AS A RESULT OF HIS PARTICIPATION IN THE UNAUTHORIZED PRACTICE OF LAW, MAKING FALSE REPRESENTATIONS TO A CLIENT, CLIENT ABANDONMENT, AND REPEATED INSTANCES OF CASE MISMANAGEMENT.

DURING HIS SUSPENSION, MERIWETHER MAY NOT REPRESENT ANY PERSON, RENDER SERVICES TO ANY PERSON, FILE ANY DOCUMENT FOR ANY PERSON, OR APPEAR IN COURT OR AT A § 341 MEETING ON BEHALF OF ANY PERSON, IN ANY BANKRUPTCY CASE OR ANTICIPATED BANKRUPTCY CASE IN THIS DISTRICT.

A COPY OF THE ORDER SUSPENDING MERIWETHER MAY BE OBTAINED AT NO COST AT THE COURT'S WEBSITE AT: www.moeb.uscourts.gov