

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

Nancy H. Michels,
Plaintiff

v.

Adv. No. 00-1140-JMD

William Sheridan,
Defendant

Nancy Michels, Esq.
MICHELS & MICHELS
Attorney for Plaintiff

William Sheridan, Esq.
LAW OFFICES OF WILLIAM C. SHERIDAN, P.A.
Attorney for Defendant

MEMORANDUM OPINION

I. INTRODUCTION

On June 21, 2000, Nancy Michels (the “Plaintiff” or “Michels”) was appointed as special counsel by Chief Judge Vaughn to investigate possible violations of Rules 1.1 and 1.5 of the New Hampshire Rules of Professional Conduct (“NHRPC”) by Attorney William C. Sheridan (“Sheridan”). On September 20, 2000, Michels filed her report with Chief Judge Vaughn recommending that a disciplinary proceeding be instituted. Accordingly, Chief Judge Vaughn granted Michels leave to institute a disciplinary proceeding against Attorney Sheridan for violation of any of the New Hampshire Rules of Professional Conduct. On October 30, 2000, Michels filed a complaint requesting that disciplinary action be taken against Attorney Sheridan for violation of the NHRPC. On June 4, 2001, the Court held a trial on the complaint. After hearing from the parties and their witnesses, the Court took the matter under submission.

The Court has been asked to take disciplinary action against Attorney Sheridan for violations of the NHRPC. The Court has found no case within this circuit specifically allowing it to discipline attorneys for violations of applicable rules of professional conduct. Such power arises instead from a federal court's inherent authority to discipline attorneys who appear before it. See Ex Parte Burr, 22 U.S. 529 (1824). Such inherent power allows a court to manage its affairs to assure an orderly disposition of its cases. See Chambers v. Nasco, Inc., 501 U.S. 32, 42-44 (1991). Included within the inherent power to manage its affairs is the court's power to require that its rules be followed by those appearing before it. Id.

Bankruptcy courts are units of the district courts that are authorized to exercise authority with respect to bankruptcy matters. 28 U.S.C. § 151; see also Eck v. Dodge Chemical Co. (In re Power Recovery Sys., Inc.), 950 F.2d 798, 802 (1st Cir. 1991) (bankruptcy courts are vested with contempt power); Williams v. United States (In re Williams), 215 B.R. 289 (D.R.I. 1997) (affirming a bankruptcy court's sanctioning of attorneys). As a unit of the district court, bankruptcy courts do not have the power to admit attorneys to the bar of the United States District Court. Admission to the United States District Court for the District of New Hampshire (the "District Court") is determined by the District Court itself. See Local Rules of the United States District Court for the District of New Hampshire ("LR") 83.1. Attorneys that are admitted to the District Court are required to adhere to the New Hampshire Rules of Professional Conduct and are subject to discipline by the District Court for violation of the professional conduct rules. See LR 83.5.

The District Court has delegated to the bankruptcy court the authority to promulgate rules of practice and procedure. See LR 77.4. Included within the delegation of authority is the right to control the eligibility of attorneys to practice in the bankruptcy court. Id. The only limitation placed upon the bankruptcy court's authority with regards to eligibility is that the promulgated rules cannot conflict with the District Court's rules and attorneys must be required to be admitted to the District Court. Id. Pursuant to the authority granted by the District Court this Court has adopted Administrative Order 2090-2 entitled Disciplinary Rules and Procedures. Administrative Order 2090-2 grants the Court the power to discipline

attorneys that practice before the Court. Accordingly, the Court finds that it has jurisdiction to hear this disciplinary matter.

II. FACTS

Michels' complaint, as amended, alleges that in thirty-four separate bankruptcy cases, many with multiple violations, Attorney Sheridan failed to properly represent his clients before the Court. The cases described in the complaint were filed by Attorney Sheridan over a twenty month period between January 13, 1999 and September 29, 2000. The Court will review the factual record before it on a case by case basis. Some of the counts originally filed by Michels were withdrawn. Other counts were not supported by the evidence presented at trial. Prior to the commencement of the trial, the parties filed a stipulation, (Doc. No. 31), in which Attorney Sheridan admitted many of the factual allegations in the complaint. In this Memorandum Opinion the Court will only deal with those factual allegations that were either proved by Michels at trial, stipulated between the parties, or successfully defended by Attorney Sheridan.

A. In re Andrews, Bk. No. 99-13092-MWV

Attorney Sheridan failed to file a certificate of service showing that the Chapter 13 plan had been served in this case. See Exhibit 1. Attorney Sheridan also failed to file an answer to the original motion to dismiss or convert that had been filed by the Chapter 13 Trustee, Larry Sumski ("Sumski"). Id.

Attorney Sheridan admits that there is no certificate of service for the confirmed Chapter 13 plan, but claims that he did in fact serve the plan. Attorney Sheridan also admits that he failed to file an answer to the original motion to dismiss or convert, but points out that he did file a response to the amended motion to dismiss or convert. See Exhibit 3.

B. In re Blackington, Bk. No. 00-11475-JMD

The statement of affairs, schedules, and Chapter 13 plan were due in this case on May 30, 2000. See Exhibit 5. On June 16, 2000, the Court issued an order to show cause regarding the failure to file the

above mentioned documents and a hearing was scheduled for June 28, 2000. See Exhibit 6. At the June 28th hearing Attorney Sheridan was given until June 30, 2000, to file the documents, but on June 30, 2000, Attorney Sheridan filed a motion to extend the time in which to file the documents, which the Court granted. See Exhibits 7 and 8. Attorney Sheridan failed to file the documents by the new July 3, 2000, deadline and the Court dismissed the case on July 6, 2000, for the failure to file the above mentioned documents. See Exhibit 8.

Attorney Sheridan did not admit to the above facts because he believed them to be argumentative.

C. In re Blackington, Bk. No. 00-12756-MWV

Attorney Sheridan failed to list the debtor's prior bankruptcy case on the petition, even though he had been the debtor's attorney in the prior case. Although the petition was filed on September 29, 2000, the petition was not amended to correct the mistake until October 10, 2000. See Exhibit 9. Evidence was also presented to show that Attorney Sheridan had failed to timely file a Chapter 13 plan in this case or a timely motion to extend the time in which to file a Chapter 13 plan. See Exhibits 9 and 10. Although the Chapter 13 plan was due on or before October 16, 2000, Attorney Sheridan did not file a motion to extend the time in which to file the plan until November 24, 2000. See Exhibit 13. The evidence also shows that the case was eventually dismissed on December 14, 2000, due to the failure to file a Chapter 13 plan. See Exhibit 9. Finally, evidence was presented to show that on September 29, 2000, Attorney Sheridan had paid the \$185.00 filing fee for the Chapter 13 petition and the check had been returned to the Court for insufficient funds. See Exhibit 11.

Attorney Sheridan admits that he failed to list the debtor's prior bankruptcy case on the petition as originally filed. Attorney Sheridan also admits that he failed to timely file a motion to extend the time in which to file the Chapter 13 plan in this case. Attorney Sheridan admits that a check was returned to the Court for insufficient funds, but points out that the check was replaced with one that did clear. See Exhibit 12.

D. In re Brown, Bk. No. 99-12827-JMD

In this case the schedules and Chapter 13 plan were due on September 22, 1999. See Exhibit 15. Attorney Sheridan did not file a motion to extend the time in which to file the documents until September 24, 1999. See Exhibit 16. The Court granted the motion to extend time, but Attorney Sheridan still failed to file the schedules and the Chapter 13 plan. The Court, therefore, issued an order to show cause on October 22, 1999, and set the matter for hearing on November 17, 1999. See Exhibit 17. Attorney Sheridan finally filed the schedules and the Chapter 13 plan on November 17, 1999. See Exhibit 14.

There were other items that Attorney Sheridan failed to ever file in this case. Attorney Sheridan never filed a statement of attorney compensation in accordance with Federal Rule of Bankruptcy Procedure (“Rule”) 2016(b). See Exhibit 14. Further, Michels presented evidence showing that Attorney Sheridan did not file a certificate of service for the Chapter 13 plan in the case. Id. Finally, Attorney Sheridan failed to file a response to a motion to dismiss or convert the case filed by Sumski. Id.

As well as the above mentioned mistakes in filing documents, Attorney Sheridan also failed to appear at two different section¹ 341 meetings. According to the testimony of Sumski, there was a section 341 meeting scheduled for November 30, 1999, and Attorney Sheridan failed to appear. See Exhibit 18. Sumski also testified that the 341 meeting was rescheduled to December 14, 1999, and Attorney Sheridan failed to appear for that meeting as well. Id.

Attorney Sheridan admits that he did not file a certificate of service for the Chapter 13 plan, but claims that the plan was served. Further, Attorney Sheridan admits that he did not file a written response to Sumski’s motion to dismiss or convert. Finally, with regards to the section 341 meetings in this case, Attorney Sheridan did appear at the initial section 341 meeting on October 19, 1999, but his clients failed to appear. At the hearing on Sumski’s motion to dismiss or convert held on November 19, 1999, Attorney Sheridan and his clients were present when Sumski agreed to withdraw his motion if they attended a section 341 meeting on November 30, 1999. Neither the debtors nor Attorney Sheridan appeared at that meeting.

¹ Any references hereinafter to “section” are to Title 11 of the United States Code unless otherwise indicated.

After Sumski had personally notified Attorney Sheridan and his clients of a third rescheduled creditors meeting to be held on December 14, 1999, the debtors appeared, but Attorney Sheridan did not appear. Id. Attorney Sheridan admitted that he failed to appear at the December 14, 1999, section 341 meeting.

E. In re Coldwell, Bk. No. 00-11172-MWV

The schedules and Chapter 13 plan were due in this case on May 4, 2000. See Exhibit 19. On May 5, 2000, the Court issued an order to show cause with regards to the unfiled documents and set the matter for hearing on June 13, 2000. See Exhibit 19. Attorney Sheridan finally filed the schedules and a Chapter 13 plan on May 12, 2000. Id. Although he filed the Chapter 13 plan, Attorney Sheridan did not file a certificate of service showing that he had served the plan. Id.

Attorney Sheridan admitted that he was thirty-five minutes late for a hearing on a motion for relief in this case. The Chapter 13 plan filed by Attorney Sheridan on May 12, 2000 identified a dispute in the case over the amount of the mortgage claim. See Exhibit 20. On October 10, 2000, Attorney Sheridan filed an objection to the mortgagee's request for relief from the automatic stay alleging fraud in the original mortgage transaction, questioning the status of the mortgagee as a holder in due course, and claiming the original mortgage was unenforceable. See Exhibit 21. Attorney Sheridan alleged that the debtor would be filing an adversary proceeding seeking affirmative injunctive relief. Attorney Sheridan admitted that he did not file the adversary until October 17, 2000, the day of the hearing on the motion for relief.² Finally, the certificate of service filed by Attorney Sheridan with regards to an objection to a motion for relief in this case stated that Attorney Sheridan served the objection on movant's counsel and the Assistant United States Trustee (the "UST") on October 10, 2000, via mail. Movant's counsel did not receive the objection by mail, but received a facsimile on October 13, 2000.

Attorney Sheridan admits that he did not timely file the debtor's schedules and admits that he did not file a certificate of service showing that the Chapter 13 plan had been served. However, Attorney

² Despite Attorney Sheridan's admission, the Court's records do not show that any adversary proceeding was filed in this case.

Sheridan claims that the Chapter 13 plan was in fact served. Attorney Sheridan also admits that he was thirty-five minutes late for a hearing on the motion for relief. Finally, Attorney Sheridan admits that he waited five months to file the adversary proceeding, but does not agree that the mortgage was the major issue for the debtor. Finally, Attorney Sheridan admits that he served the movant's attorney via facsimile rather than by mail as stated in his certificate of service.

F. In re Kathleen Crowley, Bk. No. 00-10022-MWV

The Chapter 13 plan in this case was due on or before January 20, 2000. Attorney Sheridan failed to file a Chapter 13 plan and the Court issued an order to show cause on March 30, 2000, with a hearing on the matter scheduled for April 18, 2000. See Exhibit 22. The Chapter 13 plan was filed on April 11, 2000. Id. Attorney Sheridan did not, however, file a certificate of service showing that the Chapter 13 plan had been served. Id. Attorney Sheridan also failed to file a response to a motion to dismiss or convert filed by Sumski. See Exhibits 22 and 23. Michels also presented evidence and made an offer of proof that Attorney Sheridan failed to appear at an April 6, 2001, hearing regarding Sumski's motion to dismiss and confirmation of the debtor's Chapter 13 plan. See Exhibit 25. Attorney Sheridan filed a motion to continue the hearing on April 5, 2001. See Exhibit 22.

On August 25, 2000, Attorney Sheridan had indicated in Court that he would be filing a motion to consolidate Kathleen Cowley's case with the case of Robert Crowley, Bk. No. 00-10023-MWV. See Exhibit 24. Sumski testified that Robert is the son of Kathleen and there were many joint obligations that needed to be address through consolidation of the cases. Sumski also testified that the motion to consolidate was never filed and that after several continuances in the case Chief Judge Vaughn ordered Attorney Sheridan to file a motion to consolidate by June 1, 2001. As of the June 4, 2001, trial date in this disciplinary proceeding, the motion to consolidate had not been filed.

Attorney Sheridan admits that he did not file a Chapter 13 plan until April 11, 2000. Attorney Sheridan further admits that he did not file a certificate of service showing that the Chapter 13 plan had been served, but claims that he did in fact serve the Chapter 13 plan. Attorney Sheridan also admits that he

did not file a response to Sumski's motion to dismiss or convert. Attorney Sheridan admits that he failed to appear at the April 6, 2001 hearing. Attorney Sheridan admits that he had not filed a motion to consolidate the cases as he had represented that he would, but he does point out that an amended plan was filed on June 4, 2001.

G. In re Robert Crowley, Bk. No. 00-10023-MWV

Michels has made the same allegations in this case as she made in the Kathleen Crowley case in subparagraph F above and Attorney Sheridan has provided the same responses as he did in the Kathleen Crowley case. The only difference that needs to be noted are the exhibit numbers that Michels entered into evidence in support of her allegations. Michels entered exhibits 26, 27, 28, and 29 into evidence with regards to this case. All of these documents are virtually identical to the exhibits entered in the Kathleen Crowley case in subparagraph F above, the only difference being that these exhibits are copies of documents in the Robert Crowley bankruptcy case.

H. In re Damelio, Bk. No. 99-10427-JMD

The Chapter 13 plan in this case was due on March 3, 1999. See Exhibit 30. A motion to extend the time within which to file the Chapter 13 plan until "next week" was filed by Attorney Sheridan on March 16, 1999. See Exhibit 31. The motion to extend was granted and the Chapter 13 plan was timely filed on March 24, 1999. See Exhibit 32. Attorney Sheridan did not, however, file a certificate of service showing that the Chapter 13 plan had been served until October 28, 1999. See Exhibit 30. Attorney Sheridan also failed to file a response to a motion to dismiss or convert filed by Sumski on September 1, 1999. Id. On November 17, 1999, the Chapter 13 plan in this case was confirmed and the order directed Attorney Sheridan to serve the confirmation order on all parties. See Exhibit 34. Attorney Sheridan never filed a certificate of service showing that the confirmation order was served. See Exhibit 30.

Attorney Sheridan admits that he filed the motion to extend the time in which to file a plan late. Attorney Sheridan also admits that the certificate of service for the Chapter 13 plan was not filed until October 28, 1999. Attorney Sheridan did not provide testimony or file a written response to the allegation in the amended complaint that he did not file a response to Sumski's motion to dismiss. As Attorney Sheridan is required to file an answer to the amended complaint under Rule 7012(a), his failure to either admit or deny the allegation means that he is deemed to have admitted the allegation regarding the motion to dismiss. See Fed. R. Bankr. P. 7008(d). Attorney Sheridan admits that he did not file a certificate of service showing that the order confirming the debtor's Chapter 13 plan was served. Attorney Sheridan testified that he thought Sumski served such orders.

I. In re Doig, Bk. No. 99-11534-MWV

The debtor's schedules and Chapter 13 plan were due on May 25, 1999. The schedules were filed on June 1, 1999. See Exhibit 35. On May 28, 1999, Attorney Sheridan filed a late motion to extend the time in which to file the Chapter 13 plan until June 2, 1999. See Exhibit 36. The Chapter 13 plan was filed on June 2, 1999, but Attorney Sheridan did not file a certificate of service showing that the Chapter 13 plan had been served. See Exhibit 35. Attorney Sheridan also failed to file a response to a motion to dismiss or convert filed by Sumski. Id.

Attorney Sheridan admits that the debtor's schedules were not filed on time and that the motion to extend the time in which to file a Chapter 13 plan was not timely filed. Attorney Sheridan also admits that he did not file a certificate of service showing that the Chapter 13 plan had been served, but claims that the Chapter 13 plan was in fact served. Attorney Sheridan admits that he did not file a written response to Sumski's motion to dismiss or convert.

J. In re Dube, Bk. No. 99-11285-JMD

The schedules and the Chapter 13 plan in this case were due on May 3, 1999, but were not filed until May 7, 1999. See Exhibit 37. Attorney Sheridan did not file a certificate of service showing that the Chapter 13 plan was served. Id. Further, the order confirming the Chapter 13 plan in this case directed

Attorney Sheridan to serve the order, but Attorney Sheridan did not file a certificate of service showing that the order was served. See Exhibits 37 and 39. Finally, Attorney Sheridan failed to file a response to a motion to dismiss or convert filed by Sumski. See Exhibit 37.

Attorney Sheridan admits that the debtor's schedules and Chapter 13 plan were not timely filed. Attorney Sheridan further admits that he did not file a certificate of service showing that the Chapter 13 plan was served, but claims that the plan was in fact served. Attorney Sheridan also admits that he did not serve the order confirming the debtor's Chapter 13 plan. Finally, Attorney Sheridan admits that he did not file a written response to Sumski's motion to dismiss or convert.

K. In re Dube, Bk. No. 00-11743-MWV³

Attorney Sheridan failed to file a matrix with the petition in this case on the date of filing, and as a result the notice to creditors of the bankruptcy filing was mailed three to four days late. See Exhibit 41. The Chapter 13 plan and the verified statement of the debtor regarding the matrix were due on June 26, 2000 in this case. See Exhibit 40 and 41. Neither document was filed by June 26, 2000. See Exhibit 40. An order to show cause was issued by the Court regarding the debtor's failure to file a Chapter 13 plan, and the matter was set for hearing on August 15, 2000. See Exhibit 43. The Chapter 13 plan was finally filed on August 14, 2000. See Exhibit 44. Attorney Sheridan did not, however, file a certificate of service showing that he had served the Chapter 13 plan. See Exhibit 40. A Chapter 13 plan was eventually confirmed by the Court and the order confirming the debtor's Chapter 13 plan directed Attorney Sheridan to serve the confirmation order, but Attorney Sheridan never filed a certificate of service showing that he had served the confirmation order. See Exhibits 40 and 45.

³ The debtor's prior bankruptcy case discussed in subparagraph J above was dismissed subsequent to the confirmation of a Chapter 13 plan. The debtor did not complete the plan and did not receive a discharge.

Attorney Sheridan denies that notice to creditors was delayed by three to four days. Attorney Sheridan admits that neither the Chapter 13 plan nor the verified statement of the debtor regarding the matrix were filed by June 26, 2000. Attorney Sheridan admits that he did not file a certificate of service showing that the Chapter 13 plan had been served, but claims that the plan was in fact served. Attorney Sheridan also admits that he did not file a certificate of service showing that he served the confirmation order for the debtor's Chapter 13 plan.

L. In re Garcia, Bk. No. 99-10541-JMD

The Chapter 13 plan in this case was due on March 9, 1999, but was not filed until March 19, 1999. See Exhibit 46. Attorney Sheridan did not file a certificate of service showing that the Chapter 13 plan in this case was served. Id. Attorney Sheridan also failed to file a response to a motion to dismiss or convert the case filed by Sumski on September 1, 1999. Id. A Chapter 13 plan was confirmed and the order confirming the plan directed Attorney Sheridan to serve all parties, but there is no certificate of service on file showing that the order was served. See Exhibits 46 and 47.

Attorney Sheridan admits that the Chapter 13 plan was not timely filed. Attorney Sheridan also admits that he did not file a certificate of service for the Chapter 13 plan, but claims that the plan was in fact served. Attorney Sheridan admits that he did not file a written response to Sumski's motion to dismiss or convert the case. Attorney Sheridan also admits that he did not serve the order confirming the debtor's Chapter 13 plan.

M. In re Gladhill, Bk. No. 99-11983-JMD

The schedules in this case were due on July 2, 1999. See Exhibit 49. On July 14, 1999, the Court issued an order to show cause regarding the debtor's failure to file her schedules. See Exhibit 50. On July 15, 1999, Attorney Sheridan filed a late motion to extend the time in which to file the debtor's schedules. See Exhibit 51. The Court granted the motion and gave Attorney Sheridan until July 19, 1999, to file the schedules. See Exhibit 49. On July 21, 1999, Attorney Sheridan filed another late motion to extend the time in which to file the debtor's schedules. See Exhibit 52. The Court denied the July 21, 1999, motion to

extend time.⁴ See Exhibit 49. On November 2, 1999, the Court issued an order to show cause regarding the debtor's failure to pay the filing fee installments. Id. On November 17, 1999, the Court held a hearing regarding the order to show cause and Attorney Sheridan failed to appear. See Exhibit 53. Accordingly, the debtor's case was dismissed. Id. On December 2, 1999, Attorney Sheridan filed a motion to reconsider with regard to the dismissal of the case, but the motion was not timely filed and the Court denied the motion. See Exhibit 54.

Attorney Sheridan admits that the debtor's schedules were not timely filed and admits that his two motions to extend the time in which to file the schedules were both untimely as well. Attorney Sheridan further agrees that he failed to appear at the November 17, 1999, hearing and that he did not timely file his motion to reconsider the order dismissing the case.

N. In re Gladhill, Bk. No. 99-13847-JMD

On December 16, 1999, the Court issued an order vacating a prior order approving a request by the debtor to pay the filing fee in installments and issued a show cause order regarding the debtor's need to pay the full amount of the filing fee. See Exhibit 56. The Court ordered the debtor and Attorney Sheridan to appear at a January 5, 2000, hearing regarding the order to show cause. Id. Neither the debtor nor Attorney Sheridan appeared at the January 5, 2000, hearing and the Court dismissed the case. See Exhibit 55. On January 18, 2000, Attorney Sheridan filed a motion to reconsider the order dismissing the case, in which he stated that he had failed to note that the show cause order had a hearing date. See Exhibit 57. The Court granted the motion to reconsider and the debtor's case was reopened. See Exhibit 55. A section 341 meeting scheduled for January 21, 2000, had been canceled due to the prior dismissal of the case. Attorney Sheridan failed to notify the Court of the need for a new 341 meeting date and a new 341 meeting did not take place until July 27, 2000. Id.

⁴ The Court notes that the case was not dismissed and the schedules were finally filed on July 28, 1999.

Attorney Sheridan admitted at trial that he failed to appear at the January 5, 2000, hearing. Attorney Sheridan denies that it is his responsibility to notify the Court of the need to schedule a 341 meeting. Attorney Sheridan points out that he personally paid most of the filing fee for this case.

O. In re Higgins, Bk. No. 00-10764-JMD

The schedules and Chapter 13 plan were due in this case on April 3, 2000. See Exhibit 58. Attorney Sheridan did not file a motion requesting an extension of the time in which to file the schedules and plan until April 7, 2000. See Exhibit 59. The Court nevertheless granted the debtor's motion and granted an extension to April 12, 2000. Id. The schedules were filed late on April 14, 2000. See Exhibit 58. The Chapter 13 plan was not filed, however, and the Court issued a an order to show cause for failure to file a plan on April 24, 2000. Id. The Chapter 13 plan was finally filed on April 26, 2000. Id. Attorney Sheridan, however, failed to file a certificate of service showing that the Chapter 13 plan was served on all parties. Finally, a section 341 meeting was scheduled in this case for April 18, 2000, but neither the debtor nor Attorney Sheridan appeared at the meeting.

Attorney Sheridan admits that he did not timely file an extension within which to file the schedules and a Chapter 13 plan. Attorney Sheridan admits that the schedules and Chapter 13 plan were not timely filed. Attorney Sheridan also admits that neither he nor his client appeared at the section 341 meeting on April 18, 2000. Finally, Attorney Sheridan admits that he did not file a certificate of service showing that the Chapter 13 plan had been served, but denies that the plan was not served.

P. In re Hobson, Bk. No. 99-12549-JMD

The schedules in this case were due on August 26, 1999, but were not filed until September 1, 1999. See Exhibit 66. In this case the debtor signed three reaffirmation agreements relating to three separate pieces of real property. See Exhibits 67, 68, and 69. However, only one of the properties was listed on the debtor's Schedule A. See Exhibit 70. A second piece of property was listed on Schedule F as belonging to the debtor's sister. Id.

Attorney Sheridan admits that the schedules were not timely filed. Attorney Sheridan also admits that the debtor signed three reaffirmation agreements some of which involved property not owned by the debtor. Attorney Sheridan, however, denies that: (1) the reaffirmation agreements were not in the debtor's best interest, (2) he should not have signed the attorney affidavit, or (3) the schedules should have been amended.

Q. In re Jenovese, Bk. No. 99-11783-JMD

There were successive motions for extensions of time in which to file the debtor's Chapter 13 plan, the last one providing that the debtor had until July 7, 1999, to file a plan. See Exhibits 72, 73, and 74. The plan was finally filed on July 9, 1999. See Exhibit 71. Attorney Sheridan failed to file a certificate of service showing that the Chapter 13 plan had been served. On September 28, 1999, Attorney Sheridan was ordered to file a stipulation on or before October 8, 1999, regarding an agreement that was reached on a motion for relief. Id. Attorney Sheridan failed to do so and the Court issued an order to show cause on October 28, 1999. Id. Attorney Sheridan was eventually ordered to pay sanctions to opposing counsel regarding the order to show cause. Id. Finally, Sumski filed a motion to dismiss or convert the case on November 9, 1999, and Attorney Sheridan failed to file a response. Id. However, after the motion to dismiss was granted Attorney Sheridan filed a motion to reconsider the order dismissing the case. Id. The motion to reconsider was denied by the Court on January 12, 2000, and the debtor filed a second Chapter 13 proceeding on March 29, 2000. See Exhibits 71 and 75.

Attorney Sheridan admits that the Chapter 13 plan was not timely filed. Attorney Sheridan also admits that he did not file a certificate of service showing that the Chapter 13 plan had been served, but denies that the plan was not served. Attorney Sheridan admits that he did not file the stipulation timely and that he was sanctioned for his failure by the Court. Attorney Sheridan also admits that he did not file a response to the motion to dismiss or convert filed by Sumski.

R. In re Jenovese, Bk. No. 00-10903-JMD

The Chapter 13 plan in this case was due on April 13, 2000. See Exhibit 75. On April 25, 2000, the Court issued an order to show cause regarding the failure to file a plan. Id. The plan was not filed until May 8, 2000. Id. Attorney Sheridan failed to file a certificate of service showing that the plan had been served on creditors. Id. On June 13, 2000 Sumski filed a motion to dismiss or convert the case and Attorney Sheridan failed to file a written response. Id.

Attorney Sheridan admits that he did not timely file a Chapter 13 plan. Attorney Sheridan also admits that he did not file a certificate of service, but denies that the plan was not served. Finally, Attorney Sheridan admits that he failed to file a response to Sumski's motion to dismiss or convert.

S. In re Konovelchick, Bk. No. 99-12016-JMD

The schedules in this case were due on July 7, 1999, and were filed late on July 14, 1999. See Exhibit 76. On July 15, 1999, Attorney Sheridan filed a motion to extend the time in which to file a Chapter 13 plan and the Court granted the motion and extended the deadline to July 20, 1999. See Exhibit 77. The Chapter 13 plan was filed on July 21, 1999. See Exhibit 76. Attorney Sheridan failed to file a certificate of service showing that the plan was served until October 29, 1999. Id. On August 13, 1999, Sumski filed a motion to dismiss or convert the case and Attorney Sheridan failed to file a written response. Id.

Attorney Sheridan admits that neither the schedules nor the Chapter 13 plan were timely filed. Attorney Sheridan also admitted that he did not file a certificate of service showing that the plan had been served, but the Court's records show that the certificate was filed on October 29, 1999. Attorney Sheridan admits that he did not file a written response to Sumski's motion to dismiss or convert.

T. In re Mahony, Bk. No. 99-10118-JMD

Attorney Sheridan failed to file a certificate of service showing that the Chapter 13 plan was served in this case. See Exhibit 78. Attorney Sheridan also failed to file a certificate of service for an Amended Plan dated March 4, 1999. Id. On June 23, 1999, Sumski filed a motion to dismiss or convert the case and Attorney Sheridan failed to file a written response. Id.

Attorney Sheridan admits that he did not file a certificate of service for either the original Chapter 13 plan or the Amended Chapter 13 plan, but denies that he did not serve the plans. Attorney Sheridan admits that he did not file a written response to Sumski's motion to dismiss or convert.

U. In re O'Connor, Bk. No. 99-11807-JMD

Attorney Sheridan was given four extensions of time to file the Chapter 13 plan in this case, with the final extension setting the due date as July 20, 1999. See Exhibits 81, 82, 83, and 84. The Chapter 13 plan was not filed until August 11, 1999. See Exhibit 80. The certificate of service for the Chapter 13 plan was not filed until October 27, 1999. See Exhibit 86. On March 24, 2000, the Court ordered an amended plan to be filed by April 12, 2000, or the case would be dismissed. See Exhibit 87. Attorney Sheridan filed a motion to extend the time in which to file an amended plan and was given until April 19, 2000. See Exhibit 88. Attorney Sheridan did not file an amended plan and the case was dismissed on May 19, 2000. See Exhibit 89.

Attorney Sheridan admits that the Chapter 13 plan was not timely filed. Attorney Sheridan also admits that the Chapter 13 plan and its corresponding certificate of service were not timely filed. Attorney Sheridan admits that an amended Chapter 13 plan was not filed.

V. In re O'Connor, Bk. No. 00-12105-MWV

Attorney Sheridan's disclosure of his compensation was due on August 4, 2000, but was not filed until August 8, 2000. See Exhibit 90. Further, a verified statement regarding the matrix was filed late on July 24, 2000. The Chapter 13 plan was due on August 4, 2000, but was filed late on August 15, 2000. Id. Although the Chapter 13 plan was filed, no certificate of service showing that the plan had been served was filed. Id. Further, the statements and schedules that were filed appear to be copies of the schedules that were filed in the debtor's previous case despite the fact that a year had passed and some of the information, such as the amount due on the mortgage, clearly should have changed. See Exhibits 85 and 93.

Attorney Sheridan failed to appear at a hearing on a motion to dismiss or convert this case on April 6, 2001. Further, on September 26, 2000, Attorney Sheridan filed a notice of hearing stating that a hearing

would be held on November 3, 2000, on an Objection to Proof of Claim of Advanta Mortgage. See Exhibit 91. However, Attorney Sheridan had not obtained this date from the calender clerk as required by Local Bankruptcy Rule (“LBR”) 7101(b) and no hearing was held on that date. See Exhibit 90. Attorney Sheridan then obtained a date from the calender clerk and the matter was scheduled for January 12, 2001. However, Attorney Sheridan failed to file a notice of hearing for January 12, 2001, and the Court held the hearing on that date and denied the objection. See Exhibit 92.

Attorney Sheridan admits that the disclosure of his compensation was filed late, as was the verified statement regarding the matrix. Attorney Sheridan also admits that the Chapter 13 plan was filed late. Attorney Sheridan does not admit that the statements and schedules filed were copies of the schedules filed in the debtor’s first bankruptcy case. Attorney Sheridan admits that he did not appear at the April 6, 2001, hearing. Attorney Sheridan admits that he noticed a hearing for November 3, 2000, without first obtaining that date from the calender clerk. Attorney Sheridan further admits that he obtained a hearing date of January 12, 2001, but did not send out a notice of hearing.

W. In re Ossai, Bk. No. 00-10489-MWV

The Chapter 13 plan in this case was due on March 14, 2000, but was not filed until April 14, 2000. See Exhibit 94. The Court had scheduled an order to show cause hearing for April 4, 2000, regarding the failure to file a Chapter 13 plan. See Exhibit 95. Attorney Sheridan failed to appear at the hearing and the case was dismissed. See Exhibit 94. Attorney Sheridan filed a motion to vacate the dismissal in which he stated that he had not opened his mail from Friday, March 31, 2000, to Wednesday, April 5, 2000. See Exhibit 96. However, the Court’s certificate of service shows that the order to show cause was served on March 16, 2000, two weeks prior to the time period in which Attorney Sheridan did not open his mail. See Exhibit 95. Michels also claims that Attorney Sheridan did not serve the United States Trustee with the motion to vacate the dismissal.

Attorney Sheridan admits that the Chapter 13 plan was filed late. Attorney Sheridan also admits that he did not appear at the order to show cause hearing and that the debtor’s case was dismissed as a

result. Attorney Sheridan does not agree to the facts regarding the opening of his mail and the date the Court served the certificate of service. Attorney Sheridan testified that he did not serve the UST with the motion to vacate the dismissal of the case, but claims that he did not have time to serve the UST because when he called for a hearing date he was told to come in that very day.

X. In re Salie, Bk. No. 99-13330-MWV

The Chapter 7 Trustee in this case, Steve Notinger, requested on February 29, 2000, that Attorney Sheridan make an amendment to the schedules after it became clear at the section 341 meeting that an asset was encumbered by a lien, although it had been listed as free and clear of liens in the debtor's schedules. See Exhibits 98 and 99. The case was closed one year later on March 15, 2001. See Exhibit 97. The amendment was never filed. See Exhibit 97. Steve Notinger testified at the trial that he had requested the amendment and that he finally had to close the case without the amendment.

Attorney Sheridan denies the above mentioned allegations.

Y. In re Spiewak, Bk. No. 99-13714-MWV

Schedule D was due in this case on December 16, 1999. See Exhibit 101. On December 21, 1999, the Court issued an order to show cause regarding the failure to file Schedule D. Id. Attorney Sheridan failed to file a certificate of service showing that the Chapter 13 plan had been served. Id.

Attorney Sheridan admits that Schedule D was not timely filed. Attorney Sheridan also admits that he did not file a certificate of service for the Chapter 13 plan, but denies that the plan was not served.

Z. In re Valliere, Bk. No. 00-11893-MWV

The schedules and the Chapter 13 plan were due on July 11, 2000. See Exhibit 102. The schedules and the Chapter 13 plan were never filed. Id.

Attorney Sheridan admits that the schedules and Chapter 13 plan were never filed.

AA. In re Varrato, Bk. No. 99-10084-JMD

The schedules and Chapter 13 plan were due in this case on January 28, 1999, but were not filed until February 2, 1999. See Exhibit 103. Attorney Sheridan failed to file a certificate of service showing

that the Chapter 13 plan was served. Id. Sumski filed a motion to dismiss or convert the case on June 23, 1999. Id. Attorney Sheridan failed to file a response to the motion filed by Sumski. Id.

Attorney Sheridan admits that the schedules and Chapter 13 plan were not timely filed. Attorney Sheridan admits that he did not file a certificate of service for the Chapter 13 plan, but denies that the plan was not served. Attorney Sheridan also admits that he did not file a response to Sumski's motion.

BB. In re Walsh, Bk. No. 99-10219-MWV

The schedules and Chapter 13 plan were due on February 11, 1999. See Exhibit 104. The schedules and Chapter 13 plan were not filed and the Court issued an order to show cause regarding the documents. Id. The documents were never filed and the case was dismissed. Id.

Attorney Sheridan admits that proper documents were not filed and that the case was dismissed.

CC. Askenaizer v. Amirault (In re Amirault), Adv. No. 00-1073-MWV

An answer to the complaint was due on July 14, 2000. See Exhibit 105. Attorney Sheridan did not file an answer until August 16, 2000. Id.

Attorney Sheridan admits that the answer in this case was not timely filed.

DD. In re Hogan, Bk. No. 98-11935-MWV

On May 21, 1999, Sumski issued a check payable to Attorney Sheridan and John and Michelle Hogan. See Exhibit 110. On May 27, 1999, Attorney Sheridan endorsed the check and used the funds to pay himself fees.

Attorney Sheridan admits that he received the check, endorsed it, and used the funds to pay himself fees. Attorney Sheridan claims that he had explained to the Hogans at the beginning of their case that should their case be dismissed prior to confirmation he would receive a check from Sumski for the funds that the debtors had paid towards the plan prior to confirmation. Attorney Sheridan claims that he had explained to the Hogans that he was being given a power of attorney to use the check to pay any remaining unpaid fees. Attorney Sheridan testified that the Hogans acted as though they understood the agreement. Attorney Sheridan also testified that he did not call the Hogans when he received the check from Sumski.

EE. In re Bariteau, Bk. No. 00-12603-JMD

A confirmation hearing was scheduled in this case for April 20, 2001. See Exhibit 116. Attorney Sheridan failed to appear at the confirmation hearing. See Exhibit 117.

Attorney Sheridan admits that he did not appear at the hearing, but claims that his presence was not necessary as the confirmation had already been agreed to with Sumski.

FF. Hogan v. Sheridan (In re Hogan), Adv. No. 00-1129-JMD

On February 23, 2001, the Court ordered Attorney Sheridan to pay Sumski \$250.00 per month beginning March 1, 2001. See Exhibit 113. Sumski had to file two motions to compel payment as payments were not timely made. See Exhibit 114 and 115.

Attorney Sheridan admits that he was ordered to make payments by the Court.

GG. In re Amirault, Bk. No. 99-11286-MWV

Attorney Sheridan did not file a financial affidavit for the debtor in a timely manner as required for an April 10, 2001, hearing. Further, Attorney Sheridan arrived fifteen minutes late for the hearing. On April 10, 2001, the Court issued a bench ruling requiring Attorney Sheridan to disclose his compensation to the UST by April 13, 2001. As of April 30, 2001, Attorney Sheridan had not disclosed his compensation to the UST.

Attorney Sheridan admits that he did not timely file the debtor's financial affidavit. Attorney Sheridan cannot remember whether he was late for the April 10, 2001, hearing. Attorney Sheridan does admit that the Court ordered him to disclose the amount of his compensation to the UST by April 13, 2001. Attorney Sheridan admits that as of April 30, 2001, he had not disclosed his compensation to the UST.

HH. Michels v. Sheridan, Adv. No. 00-1140-JMD

The answer to the complaint in this matter was due on December 3, 2000. On December 18, 2000, the Court held a hearing in this case at which Attorney Sheridan orally moved for an extension of time in which to file his answer. The Court granted the extension and on December 26, 2001, Attorney Sheridan

filed his answer. Attorney Sheridan was to file a list of witness and exhibits in this case by March 30, 2001. Attorney Sheridan had spoken with Michels about extending this deadline on several occasions, but did not file a motion to extend the time in which to file the document until April 9, 2001. Attorney Sheridan filed the motion to extend the deadline with the Court, but did not serve Michels with the motion. Michels had agreed to an extension of the deadline until April 9, 2001, but the motion contained a typographical error and requested that the deadline be extended until April 99, 2001. Accordingly, the Court granted the order and extended the deadline until April 19, 2001. Attorney Sheridan called Michels to apologize for the error and it was only then that Michels knew Attorney Sheridan had filed a motion to extend the deadline.

Attorney Sheridan and Michels were scheduled to meet on April 16, 2001, at 10:00 a.m. to discuss an agreed-upon statement of facts, stipulations of law, etc. to comply with the Court's pretrial order in this case. At 10:05 a.m. on April 16, 2001, Attorney Sheridan called Michels to state that he could not come due to a court hearing. Attorney Sheridan stated that he would call back to reschedule when he had his palm pilot available. On April 17, 2001, Michels reminded Attorney Sheridan about the need to reschedule the meeting. On April 26, 2001, Michels left Attorney Sheridan a telephone message regarding the need to reschedule the meeting. On May 7, 2001, Attorney Sheridan finally called to reschedule the meeting, however, it was already too late to comply with the dates set forth in the Court's pretrial order.

Attorney Sheridan admits that his answer in this case was not timely filed. Attorney Sheridan admits that his motion to extend the deadline was not timely filed and that his typographical error caused the Court to grant a longer extension than Michels had agreed to. Attorney Sheridan also admits that he had to cancel his April 16, 2001, meeting with Michels and that despite Michels reminders he did not call to reschedule the meeting until May 7, 2001.

III. DISCUSSION

A. Certificates of Service

Attorney Sheridan failed to file a certificate of service for Chapter 13 plans filed by him seventeen times in sixteen cases.⁵ Attorney Sheridan claims that the plan was served in each of these cases. In three cases, *In re Damelio*,⁶ *In re Konovelchick*,⁷ and *In re O'Connor*⁸ Attorney Sheridan did file the certificates of service, but none of them were timely. The certificate in *O'Connor* was filed two months after the plan, in *Konovelchick* the certificate was filed three months after the plan, and in *Damelio* the certificate was not filed until seven months after the plan was filed. The length of time between the filing of the plans and the certificates of service in these three cases raises serious questions with the Court about the reliability of the certificates.

Section 1324 of the Bankruptcy Code requires notice of the confirmation hearing in a Chapter 13 proceeding. Section 102(1)(A) of the Bankruptcy Code states that the words “after notice and a hearing” mean after such notice as is appropriate in the particular circumstances. Rule 2002(b) requires the clerk, “or some other person as the court may direct”, to give twenty-five days notice to all creditors of a Chapter 13 confirmation hearing. Under LBR 3015-1(b) the Court has directed debtors to serve a notice of the confirmation hearing along with a copy of the Chapter 13 plan at the time that the Chapter 13 plan is filed with the Court. Debtors are also required to file a certificate of service certifying that the Chapter 13 plan has been served upon the proper parties at the time the notice of hearing and Chapter 13 plan is filed with the Court. LBR 3015-1(b).

⁵ See the discussion of facts in Section II above, subparagraphs A, D, E, F, G, I, J, K, L, O, Q, R, T, V, Y and AA.

⁶ See Section II, subparagraph H.

⁷ See Section II, subparagraph S.

⁸ See Section II, subparagraph U. The first *O'Connor* case was dismissed on May 19, 2000, for failure to file an amended Chapter 13 plan. In a subsequent Chapter 13 proceeding filed August 4, 2000, for the same debtor, Attorney Sheridan failed to file any certificate of service. See Section II, subparagraph V.

The evidence shows that Attorney Sheridan was aware of this rule by at least the end of October 1999. On October 27, 1999, Attorney Sheridan filed a certificate of service for a Chapter 13 plan in the O'Connor case, on October 29, 1999 he filed a certificate of service for the Chapter 13 plan in the Konovelchick case, and on October 28, 1999, he filed a certificate of service for the Chapter 13 plan in the Damelio case. See Exhibits 33, 76, and 80. Even though Attorney Sheridan was aware of his duty to file a certificate of service for Chapter 13 plans by the end of October 1999, the evidence shows that on seven cases occasions after October of 1999 Attorney Sheridan failed to file a certificate for Chapter 13 plans that he filed with the Court.⁹

Attorney Sheridan claimed at trial that the Chapter 13 plans were properly served in each of the sixteen cases in which he failed to file a certificate of service. However, he also admitted that there was no certificate of service in the Court's file showing that the Chapter 13 plans had been properly served. Accordingly, Sheridan has admitted that the record does not reflect his clients' compliance with the requirements of the Bankruptcy Code and the applicable procedural rules.

Attorney Sheridan's failure to file a certificate of service for a Chapter 13 plan that has been filed has the potential to cause harm and/or causes harm on several levels. First, Attorney Sheridan's failure breaches his duty to the Court. This Court is charged to apply the provisions of the Bankruptcy Code, subject to Constitutional requirements of due process, under rules established by the United States Supreme Court in the Federal Rules of Bankruptcy Procedure, as supplemented by this Court's Local Bankruptcy Rules. As an attorney practicing before this Court, Attorney Sheridan has a duty to the Court and a responsibility to his clients to follow the requirements of the Bankruptcy Code and the applicable procedural rules. The rights of Attorney Sheridan's clients, and other parties in interest, are protected through compliance with the applicable procedural rules. Attorney Sheridan's failure to comply with such rules threatens those rights and breaches his duty to the Court.

⁹ See the discussion of facts in Section II above, subparagraphs E, F, G, K, O, R and V.

Second, in four¹⁰ of the cases in which Attorney Sheridan failed to file a certificate of service for a Chapter 13 plan that was filed, the case was ultimately confirmed by the Court. As the Fourth Circuit Court of Appeals has stated,

a bankruptcy court confirmation order generally is treated as *res judicata*. However, we cannot defer to such an order on *res judicata* grounds if it would result in a denial of due process in violation of the Fifth Amendment of the United States Constitution. The United States Supreme Court has concluded that “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

Piedmont Trust Bank v. Linkous (In re Linkous), 990 F.2d 160 (4th Cir. 1993) (quoting Mullane v. Central Hanover Bank & Trust, 339 U.S. 306, 314 (1950) (citations omitted)).

Without a certificate of service on file there is no proof that creditors in these four cases ever received proper notice of the Chapter 13 plan. Should a creditor later come into court claiming that it had not received proper notice of the Chapter 13 plan and was, therefore, not bound by the confirmation order, the record may not reflect the required notice to all creditors and could result in such creditor not being bound by the confirmed plan. While none of Attorney Sheridan’s clients have as of yet been harmed by his failure to file a certificate of service contemporaneously with the Chapter 13 plan that was filed, the potential for an enormous amount of harm to occur is very real.¹¹

NHRPC 1.1(a) requires an attorney to provide competent representation to a client. At a minimum, legal competence requires specific knowledge about the fields of law in which the lawyer practices, performance of the techniques of practice with skill, proper preparation and attention to details necessary to

¹⁰ See Section II, subparagraphs A, J, K and L. The Court does note that the case described in subparagraph J was dismissed after confirmation had been approved.

¹¹ The Court notes that one reason Attorney Sheridan’s clients have not been harmed to date is in part due to the practice of the Chapter 13 Trustee to serve a copy of the proposed confirmation order, which contains a summary of the Chapter 13 plan, prior to the confirmation hearing. While the Trustee’s practice may have helped protect Attorney Sheridan’s clients so far, the Trustee is under no obligation to serve a proposed order including a summary of the plan on creditors. Accordingly, the Trustee’s practice does not remove the potential for harm to occur to Attorney Sheridan’s clients.

assure that the matter undertaken is completed with no avoidable harm to the client's interest. NHRPC 1.1(b). Attorney Sheridan's continued failure to file certificate's of service reflecting compliance with applicable procedural rules in sixteen cases over a period of two years demonstrates either a lack of knowledge about the procedural rules applicable in bankruptcy proceedings in this Court or inadequate preparation and attention to detail. Accordingly, Attorney Sheridan has violated NHRPC 1.1 seventeen times in the sixteen cases referenced in footnote 5.

B. Failure to File An Answer to Motions to Dismiss or Convert

Attorney Sheridan failed in twelve cases to file a written response or objection to a motion to dismiss or convert that had been filed by Sumski.¹² LBR 7102(b)(2) requires that an answer or response be filed with the Court. Even if the local rules did not require a formal response, the minimum competence required of a lawyer in performing services for a client in terms of gathering facts from the client, formulating material issues, acting in a timely manner, and the attention to detail required to avoid harm to a client's interest would all dictate that a written objection or response be filed to a motion which threatens the foundation of the legal relief which a Chapter 13 debtor client is seeking, namely confirmation of a plan.

See NHRPC 1.1.

At trial, Sumski testified that it is his custom that so long as an attorney had contacted him prior to the hearing and an agreed upon resolution of the motion was reached, no written response would need to be filed. However, despite this custom, Sumski also testified that in 75% of the cases an attorney files a written response even after talking to him. Attorney Sheridan testified that he believed that no formal response was necessary if he had reached an agreement with the Chapter 13 Trustee prior to the hearing. While the failure to file a response or objection to the Trustee's motion to dismiss or convert a Chapter 13 proceeding may put the debtor-client at a risk of harm, based upon the Trustee's long standing practice in

¹² See the discussion of facts in Section II, subparagraphs A, D, F, G, H, I, J, L, Q, R, S, and T.

resolving such matters directly with debtors' counsel, the Court finds that Attorney Sheridan's conduct in these twelve cases does not violate NHRPC 1.1.

C. Failure to Timely File Documents

On thirty-nine occasions in twenty-eight different cases Attorney Sheridan failed to either timely file the requisite document or a motion to extend the time within which to file the document.¹³ Under LBR 1007-1(g)(2) a motion to extend the time within in which to file a statement of affairs and/or schedules must be filed prior to the expiration of the originally prescribed period.

Attorney Sheridan's failure to timely file documents or to seek extensions of time to file documents violates his duty to the Court and may cause harm to his clients. The failure to timely file documents impairs the efficient operation of the Court and causes the clerk, the Chapter 13 Trustee, and the Court to expend unnecessary time and effort in the administration of a case. For instance, when Attorney Sheridan fails to properly file a motion to extend the time within which to file schedules or a Chapter 13 plan the clerk issues an order to show cause and sets the matter for hearing. Not only does this create extra work for the clerk's office, but it requires investigation and/or a response by the Chapter 13 Trustee, and needlessly takes up time on the Court's calender. When questioned at trial about not timely filing motions to extend the time in which to file schedules and/or a Chapter 13 plan, Attorney Sheridan stated that it was his understanding that so long as the documents were filed before the order to show cause date expired, then the case could not be dismissed by the Court and the client would not be harmed. Rather than properly filing a motion to extend a deadline, Attorney Sheridan chooses instead to create work for the clerk's office and to take up time on the Court's calender. Such actions not only disrupt the flow of Attorney Sheridan's client's case through the bankruptcy process, it may delay other cases. In addition, the repeated failure to timely file necessary documents reflects a general disregard by Attorney Sheridan for unnecessary delay which may be prejudicial to creditors. Such delay may be grounds for conversion or dismissal of the debtor's case. See

¹³ See the discussion of facts in Section II, subparagraphs A, B, C, D, E, F, G, H, I, J, K, L, M, O, P, Q, R, S, U, V, W, Y, Z, AA, BB, CC, FF, and HH.

11 U.S.C. § 1307(c). Attorney Sheridan's pervasive failure to timely file required documents, or to seek an extension of time, displays either an inability to competently represent a client or an unprofessional inattention to the details necessary to represent debtors in bankruptcy proceedings, all in violation of NHRPC 1.1.

Not only do Attorney Sheridan's actions breach his duty to the Court, but his actions also cause harm to his clients. By failing to timely file required documents such as schedules or a Chapter 13 plan, there is the potential that the debtor's case will be dismissed. Id. In fact, the evidence presented at trial indicates that more than potential harm has been suffered by his clients. For instance, due to the failure to timely file schedules and a Chapter 13 plan debtor Paul Blackington's case was dismissed on July 6, 2000.¹⁴ On September 29, 2000, the debtor, Paul Blackington, filed a second Chapter 13 petition with the Court.¹⁵ In this second case the Chapter 13 plan was not timely filed. Attorney Sheridan did file a motion to extend time to file a plan until five weeks after the plan was due. Although the motion to extend was granted, no plan was filed and the case was dismissed. At trial Attorney Sheridan failed to offer any explanation for his failure to file a plan for the same client in two successive cases filed within four and one-half months of each other. The Court does not presume that Attorney Sheridan filed these two cases for any improper purpose. Therefore, the Court must conclude that the client incurred multiple filing fees and was ultimately unable to obtain relief under Chapter 13 through Attorney Sheridan's failure to competently represent him.

By failing to timely file documents as discussed above Attorney Sheridan has failed to properly pay attention to details to assure that his representation of the client would not cause avoidable harm to their interests. Accordingly, Attorney Sheridan has violated NHRPC 1.1(b)(5) in the Blackington cases.

In accordance with the discussion contained in this section the Court finds that there have been thirty-nine violations of NHRPC 1.1 by Attorney Sheridan with regards to timely filing documents. .

¹⁴ See Section II, subparagraph B.

¹⁵ See Section II, subparagraph C.

D. Reaffirmation Agreements

In her complaint, Michels alleges that Attorney Sheridan failed to properly review and advise a client prior to signing a reaffirmation agreement signed by the client and filed with the Court. Specifically, the reaffirmation agreement in question described three properties, only one of which was listed in the debtor's schedules. Michels contends that Attorney Sheridan should have advised his client not to reaffirm a debt secured by property she did not own or should have advised the debtor to amend her schedules.

At trial Attorney Sheridan testified that he had gone over everything in great detail with the debtor and due to circumstances that are confidential and that he could not disclose at trial, it was appropriate for Attorney Sheridan to sign an affidavit in accordance with section 524(c). Michels did not present evidence which would rebut or call into question Attorney Sheridan's testimony concerning his advice and action in this matter. The Court also takes notice of the quandary that section 524(c) creates for debtor's attorneys. A reading of the rule does not provide an answer to the question of what an attorney is to do if the client insists upon reaffirming a debt against the advice given by the attorney. If an attorney were to refuse to sign such an agreement the attorney would be in an adversarial position with his client. Yet under section 524(c) an attorney's signature on a reaffirmation agreement is a certification that the agreement does not impose an undue hardship upon the debtor.

Absent clear evidence of a failure to consider the dictates of section 524(c), this Court presumes that no debtor's attorney would sign a reaffirmation agreement without considering the consequences for his or her client. The Court finds that Attorney Sheridan's explanation is sufficient absent evidence to rebut the presumption that he considered and advised the client on the factors identified in section 524(c). Accordingly, the Court finds that Attorney Sheridan did not violate any professional conduct rules by signing and filing the affidavit in question.

E. NHRPC 1.15(b)

Subsequent to the dismissal of the Hogan case, Sumski sent Attorney Sheridan a check made out to him and his clients, the debtors. The check represented plan payments made by the debtors prior to the

dismissal of the case. Attorney Sheridan endorsed the check and cashed it without obtaining his clients' endorsement. Attorney Sheridan claims that he had an agreement with his clients that gave him a power of attorney to endorse the check and use the money to pay his unpaid fees. Michels alleges that Attorney Sheridan's conduct violated NHRPC 1.15. NHRPC 1.15 requires an attorney to hold client's property separate from the lawyer's own property, maintain records of such property, and upon receiving funds or other property in which a client has an interest, to promptly notify the client and deliver to the client any property that the client is entitled to receive.

Attorney Sheridan presented no documentary evidence reflecting any agreement with his clients on the use of the funds to pay his fees or any power of attorney to endorse checks for them. Nor did he present any testimony from the Hogans regarding their understanding of the agreement. Further, the evidence presented at trial shows that the Hogans eventually sued Attorney Sheridan seeking to have the funds returned to them. See Exhibits 109 and 113.

Attorney Sheridan admitted that he did not contact the Hogans upon receiving the check from Sumski. Based upon the record presented at trial, the Court finds that Attorney Sheridan's actions violated NHRPC 1.15.

F. Failure to Pay Proper Attention to Details

1. Failure to File Properly Filled Out and Legible Documents

The evidence presented at trial showed that on several different occasions Attorney Sheridan filed documents that contained either factual or typographical errors. While any single mistake would not be cause for alarm, a compilation of the mistakes shows a disturbing pattern. In the second case that he filed for Paul Blackington, Attorney Sheridan filed schedules that failed to show that the debtor had previously filed for bankruptcy even though Attorney Sheridan had filed the first petition for the debtor. See Section II, subparagraphs B and C. In the second O'Connor case the schedules filed appear to be copies of schedules filed in the debtor's previous case. For instance, the amount due on the mortgage is the same as stated in the first petition, this despite the fact that months had passed since the schedules in the first case

had been filed. In the Sallie case, Attorney Sheridan failed to properly show a lien on an asset belonging to the debtor and failed to correct the mistake even after he was asked to by the Chapter 7 Trustee in the case. In the Coldwell case Attorney Sheridan filed a certificate of service stating that he had served the movant's

the Paula Amirault case Attorney Sheridan was ordered to disclose the compensation to the UST by addt) Tj T* -0.3.97 Tc 0.3.97 Tw (c

¹⁶ The Court notes that Attorney Sheridan only admitted that he did not file a certificate of service showing that the order had been served. However, without a certificate of service there is not proof that the order was ever served. Accordingly, the Court finds that the order was never served.

3. Failure to Appear

At other times Attorney Sheridan failed to appear for scheduled 341 meetings and Court hearings. On three different occasions Attorney Sheridan failed to appear at section 341 meetings.¹⁷ On six occasions¹⁸ Attorney Sheridan failed to appear for scheduled Court hearings.¹⁹ On two other occasions²⁰ Attorney Sheridan arrived late to scheduled Court hearings. Attorney Sheridan's failure to either appear or appear on time at the above mentioned meetings and hearings caused disruptions for both the Court and other attorneys involved in the proceedings. Attorney Sheridan's cases do not proceed smoothly through the bankruptcy system, to the potential detriment of his clients and creditors, and valuable time of other parties involved is wasted.

4. Failure to Follow Court Procedural Rules

In the second O'Connor case, Attorney Sheridan filed a notice of hearing for a specified date without first obtaining that date from the Court's calender clerk as is required by LBR 7101(b). Attorney Sheridan then proceeded to obtain a date from the calender clerk so that a hearing could be held, but then failed to file a notice of hearing for the date he was given as required by LBR 7101(c).

In the Ossai case Attorney Sheridan admits that he did not serve the UST with a motion to vacate a dismissal. Attorney Sheridan specifically testified that he called Sumski, but did not call the UST because he did not have time. While the Court realizes that under the circumstances it would not have been practical to serve the UST by mail as required by the local rules, the Court cannot condone Attorney Sheridan's

¹⁷ See Section II, subparagraphs D and O.

¹⁸ See Section II, subparagraphs F, M, N, V, W and EE.

¹⁹ While the Court takes notice of Attorney Sheridan's claim in the Bariteau case that he did not appear because confirmation had been agreed to with Sumski, the Court notes that confirmation was still subject to the approval of the Court. While the Court has on occasion told attorneys that they need not appear for a confirmation hearing, no such statement is alleged to have been made in the Bariteau case.

²⁰ See Section II, subparagraphs E and GG.

failure to contact the UST. Attorney Sheridan testified that he had a two to four hour period prior to the hearing. Surely that is sufficient to place a phone call to notify the UST of a hearing.

In this adversary proceeding, while Attorney Sheridan obtained the agreement of Michels to an extension of a deadline, Attorney Sheridan failed to serve Michels with the motion when he had filed it with the Court in violation of LBR 5075-1.

5. Details

In other cases, Attorney Sheridan failed to pay attention to details. In the Coldwell case he waited to file an adversary proceeding for five months, and by such time the creditor had already filed a motion for relief. Consequently, the motion for relief was granted before the Court had a hearing on his client's objection to the validity of the creditor's claim. Had Attorney Sheridan paid sufficient attention to details and filed the objection to the claim sooner there is the potential that the creditor may not have been able to obtain relief. In the second Dube case Attorney Sheridan failed to file a matrix with the petition, thereby delaying the notice to creditors that the petition had been filed. In the second Gladhill case he stated in a motion for reconsideration that he had failed to appear for a hearing because he had failed to notice the hearing date due to the holidays. Further, once the Court granted the motion for reconsideration, Attorney Sheridan failed to notify anyone that a new section 341 meeting needed to be scheduled and the meeting was not held for six months. While Attorney Sheridan is under no obligation to inform anyone about the need for a section 341 meeting, by failing to do so Attorney Sheridan delayed the debtor's fresh start. In this adversary proceeding Attorney Sheridan had to reschedule a meeting with Michels so that they could comply with the Court's pretrial order. Despite phone calls from Michels, Attorney Sheridan did not reschedule the meeting until almost a month later. By the time he rescheduled the meeting it was already too late to timely file the documents required by the Court's pretrial order.

Attorney Sheridan's failure to pay attention to details goes beyond failing to promptly attend to matters as they arise. In the Ossai case Attorney Sheridan stated that he had refrained from opening his mail from March 31, 2000, to April 5, 2000, and accordingly missed a hearing date that had been scheduled.

Setting aside the issue of whether the hearing notice would have been received by him during that time frame, the Court finds it very troubling that an attorney would intentionally refrain from opening his mail for a week. Even if an attorney knew that he had no impending deadlines, there is always the potential that an emergency will arise calling for a hearing within a short period of time or that time will be lost in preparing a response on behalf of a client.

Further, in the second Blackington case Attorney Sheridan used his firm check to pay the filing fee and the check was returned for insufficient funds. Although the check was later replaced by Attorney Sheridan, the Court finds that such actions demonstrate an inability to pay attention to details of his own business operations. Finally, on another occasions Attorney Sheridan failed to file a statement in accordance with section 329, Rule 2016(b), and LBR 2016-1(a) revealing the compensation he had received. See Section II, subparagraph D.

6. Summary

As outlined in this subparagraph F, the evidence at trial established that Attorney Sheridan failed on thirty-one occasions (excluding his inattention to his own interests in this proceeding) to give sufficient attention to his clients' interests. Any one, or even several, of these failures could be explained by the press of business, law office organizational problems, family stress and the like. However, the evidence reflects an ongoing pattern of inattention to the procedural and substantive details of his clients' cases over a significant period of time. Attorney Sheridan has demonstrated that he is either unwilling or unable to deal with the level of procedural and substantive detail necessary to competently represent debtors in this Court and to assure that no avoidable harm will occur to his clients' interests. Each of these thirty-one failures to give the necessary attention to the procedural and substantive details of his clients' cases is a violation of NHRPC 1.1.

G. Difficult Clients Defense

As a defense to more than a few of the above violations Attorney Sheridan claimed at trial that his clients were hard to get a hold of, were uncooperative, or simply disappeared during the pendency of the

bankruptcy case. Attorney Sheridan also stated at trial that he believed that telling the Court he could not get a hold of his clients or that the clients had disappeared would have been a breach of confidentiality. The record in the individual cases does not show that Attorney Sheridan was having difficulty getting in touch with his clients. Attorney Sheridan did not present any documentary or testimonial evidence to support his claim of uncommunicative clients. Attorney Sheridan's claim that disclosing his inability to contact his clients would breach client confidentiality is similarly unsupported. This Court does not understand how a duty of confidentiality attaches to non-communication with a client. Attorney Sheridan's testimony, standing alone, is not sufficient to overcome the overwhelming evidence presented at trial of inattention to the details of his cases. The Court rejects the "difficult client defense" and finds that Attorney Sheridan's actions and inactions were the predominant source of the failures established at trial.

Even assuming that Attorney Sheridan's testimony was enough in and of itself to support his claim, the Court finds that such a defense is inadequate. While the Court realizes that difficult clients might necessitate additional time, the Court notes that other attorneys practicing before the Court are faced with the same challenge. In such situations it is the attorney's job to obtain proper extensions of deadlines and if it becomes impossible to obtain the proper information or cooperation from a client then it is the attorney's job to request permission from the Court to withdraw as counsel. Further, by simply informing the Court that there has been a breakdown of communication with the client, it is possible to withdraw as counsel without treading upon client confidentiality. By failing to take such actions, even if Attorney Sheridan's statements regarding his clients are correct, his defense that the mistakes were due to the nature of his clients is inadequate. Difficult clients do not prevent an attorney from properly following rules and procedures of the Court.

H. The "No Harm to Clients" Defense

As part of his defense to the allegations presented by Michels, Attorney Sheridan claims that no harm has come to his clients in any of these cases. This defense is unavailing for two reasons.

First, the evidence presented by Michels clearly shows that in many cases Attorney Sheridan's clients were harmed.²¹ For instance, with respect to the Gladhill and Jenovese cases, the debtors' first bankruptcy cases were dismissed due to Attorney Sheridan's procedural failures. See Section II, subparagraphs M and Q. The debtors obviously did not want the cases dismissed as Attorney Sheridan filed motions to reconsider the respective orders dismissing the cases. When the motions for reconsideration were denied, the debtors were forced to file a second bankruptcy petition, thereby requiring the payment of a second filing fee. See Section II, subparagraph N. Obviously, those debtors were harmed by being forced to pay a second filing fee. Attorney Sheridan then caused further harm to Lynn Gladhill by failing to notify the Court about the need to reschedule the 341 meeting and thereby delaying the debtor's discharge for an extended period of time. In the first Jenovese case, Attorney Sheridan failed to file a written response to Sumski's motion to dismiss or convert and the Court dismissed the debtor's case. Attorney Sheridan then filed a motion for reconsideration regarding the dismissal of the case, which the Court denied. The motion for reconsideration shows that the debtor did not want his case dismissed and indicates that harm was caused to the debtor. The debtor was then further harmed by being forced to pay a second filing fee to file a second bankruptcy petition. Finally, in the Coldwell case the creditor was able to obtain relief before the debtor's objection to the claim could even be heard. Consequently, the debtor was harmed because the creditor obtained relief when there was the possibility that the underlying mortgage was not enforceable. See Exhibits 20 and 21.

Second, an attorney violates his duty to competently represent a client when he fails to bring sufficient knowledge or skill and provides inadequate attention to a client matter to assure that the matter is completed with no avoidable harm to the client's interest. NHRPC 1.1. Even if Attorney Sheridan is correct that his action and inaction caused no actual harm to his clients, the potential for harm through

²¹ The Court wishes to make it clear that the instances discussed in this section are not exhaustive, but merely represent a cross section of the type of harm that occurs to Attorney Sheridan's clients due to the manner in which Attorney Sheridan has handled their respective cases.

missed deadlines and failure to timely file required documents is great. The evidence presented at trial clearly establishes that Attorney Sheridan is unable or unwilling to provide the necessary level of professional competence required by the NHRPC.

IV. CONCLUSION

The United States District Court for the District of New Hampshire has delegated to this Court the authority to promulgate rules governing the admission and eligibility to practice in the bankruptcy court. See LR 77.4(b). Pursuant to that authority, this Court has adopted disciplinary rules and procedures. See AO 2090-2. As set forth above, this Court has found that during a twenty month period between January 13, 1999, and September 29, 2000, Attorney Sheridan committed at least 88 violations of the NHRPC. These violations involved thirty clients in thirty-three separate cases, exclusive of the five violations in this proceeding. Other than the violation of NHRPC 1.15 in *In re Hogan*, all of the remaining violations involved NHRPC 1.1. Based upon the record in this proceeding, Attorney Sheridan has demonstrated a continuing unwillingness or inability to competently provide services to clients and to meet his professional obligations to this Court. In the Stipulation Attorney Sheridan admitted to allegations which at best show a repeated pattern of conduct involving inattention to and neglect in handling client matters. Accordingly, it is necessary for this Court to impose disciplinary sanctions on Attorney Sheridan.

In determining the sanctions to be applied in this case, the Court is mindful that “[T]he purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties to clients, the public, the legal system, and the legal profession.” American Bar Association’s *Standards for Imposing Lawyer Sanctions* (Approved Draft 1986), Standard 1.1. Most of the acts or omissions that constitute the professional conduct violations in this case are undisputed.

The Court finds that due to the pattern of repeated violations of his obligation to handle client matters competently, as required by NHRPC 1.1, Attorney Sheridan has demonstrated that he is not currently fit to practice law in this Court. The record in this case demonstrates that Attorney Sheridan is not

capable of improving his conduct while he is practicing before this Court. Attorney Sheridan is an experienced attorney who has practiced in this Court for a significant period of time. He cannot, and did not, offer any excuse for not being aware of the Court's procedural rules and practices. Moreover, the fact that he complied with such rules on some occasions, but failed to do so in others, leads the Court to the conclusion that he is aware of the requirements. Attorney Sheridan does not demonstrate a lack of concern for protecting the legal interests and right of his clients. However, he has demonstrated a long term inability to act competently to protect those rights and interests.

In order to protect the public and the administration of justice, the Court finds that it must suspend Attorney Sheridan from the practice of law in this Court for such period of time as is necessary for him to effectuate such changes in his professional life as will enable him to competently perform services as an attorney practicing before this Court. Such changes may include the hiring of administrative or legal assistance, association with other attorneys, implementation of office procedures to diary deadlines and insure timely communications with clients and timely filing of required pleadings and certificates. This Court is not directing any particular action. It is the responsibility of Attorney Sheridan to determine what actions are necessary. The period of suspension shall be for one year from the date of this opinion.

In accordance with DR-8(b) of AO 2090-2, Attorney Sheridan may not apply for reinstatement of his right to practice before this Court any earlier than six months before the period of his suspension has expired. At such time as he applies for reinstatement of his right to practice before this Court the Court shall schedule a hearing at which he shall be required: (1) to establish that he is then a member in good standing of the bar of the United States District Court for the District of New Hampshire, (2) to demonstrate that he will be able to competently represent the interests of clients before this Court and (3) that he has reimbursed the government for the cost of this proceeding by paying to the Clerk of the United States District Court the amount of any fees and expenses awarded to Michels in connection with this proceeding. Attorney Sheridan shall, within ten days from the date of this opinion, provide the Court with a list of all clients that he is currently representing before this Court together with a copy of a letter to each such client advising

them that he must immediately withdraw from representing them and that they must secure new counsel. In addition Attorney Sheridan is to provide a report on the disposition of the files of each such client. He shall supplement that report weekly thereafter until all client files have been transferred to new counsel or the client.

This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 12th day of October, 2001, at Manchester, New Hampshire.

J. Michael Deasy
Bankruptcy Judge