

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY**

In re:	)	
CARLOS M. RUIZ	)	
	)	Case No. 03-37733
Debtor(s).	)	
	)	
ELVA J. RUIZ	)	
Plaintiff.	)	A.P. No. 04-3036
vs.	)	
	)	
CARLOS M. RUIZ	)	
Defendant.	)	
_____	)	

**ORDER**

This adversary comes before the Court on the Court’s Order for plaintiff’s counsel, Douglas E. Miller (hereinafter “Respondent”), to appear and show cause why he should not be sanctioned due to his continuing neglect in handling this adversary proceeding. The following shall constitute the Court’s findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Plaintiff initiated this adversary against the defendant on February 6, 2004, seeking to hold certain marital debts nondischargeable under 11 U.S.C. § 523(a)(15).
2. A scheduling order was issued on February 9, 2004, directing that a telephonic pre-trial conference would be held on April 6, 2004 at 10:00 a.m.
3. No certificate of service was filed evidencing that the complaint, or summons and notice were properly served as required by Fed. R. Bank. P. 7004.
4. Despite the defects with service, the defendant filed his answer on March 15, 2004.
5. The Respondent failed to make himself available for the scheduled telephonic pre-trial conference

on April 6, 2004.

6. Consequently, on April 7, 2004, this Court dismissed this adversary pursuant to Fed. R. Bank. P. 7016(f) and Fed. R. Bank. P. 7037(b)(2)(C) due to the Respondent's failure to "attend" the pre-trial conference.
7. On April 13, 2004, Respondent, on behalf of the plaintiff, moved for the Court to reconsider its order of dismissal.
8. On April 21, 2004, the Court entered an order granting the motion to reconsider. In that order, the Court included the following language: "Counsel must be available on the date and time scheduled for the pre-trial conference. The court cannot stress this enough to counsel. Just as counsel should not miss an in-person hearing due to an intervening circumstance (at least not without some adverse consequences), counsel should not miss a telephonic pre-trial conference. Having said that, counsel in this case will be given a second, and final, chance."
9. Telephonic pre-trial conferences were held on May 18, 2004, and July 20, 2004. Although Respondent was available for the May 18, 2004 telephonic pre-trial conference, Wesley Durham filled in for Respondent at the July 20, telephonic pre-trial conference. A final telephonic pre-trial conference was scheduled for October 5, 2004.
10. On October 5, 2004, Respondent again failed to make himself available for the telephonic pre-trial conference.
11. Consequently, this Court issued an order for Respondent to appear to show cause why he should not be sanctioned due to his continuing neglect in handling this case. A hearing on the show cause order was set on November 2, 2004.
12. Respondent filed no written response to the show cause order prior to the November 2, 2004

hearing.

13. At the show cause hearing, Respondent failed to proffer an acceptable explanation for his neglect in handling this adversary. The Court directed the Respondent to file a written response by November 12, 2004.
14. On November 5, 2004, Respondent filed a response assigning partial blame for the handling of this case on his secretarial staff. The tone of the response could best be described as flippant or nonchalant. From the response, the Court can only conclude the Respondent does not or refuses to grasp the gravity of the situation.

### **CONCLUSIONS OF LAW**

The American College of Trial Lawyers has issued a Code of Pretrial Conduct to promote professionalism and courtesy among trial lawyers. This Code of Conduct suggests several minimum standards for lawyers' pretrial conduct. Rule 10(a) provides that a "lawyer should carefully read and comply with an order setting a pretrial deadline or scheduling conference. Rule 10(c) provides that a "lawyer should determine in advance of a pretrial conference the trial judge's custom and practices in conducting such conferences." Rule 10(g) provides that "[u]nless unavoidable circumstances prevent it, the pretrial conference should be attended by a lawyer who will actually try the case, and, in any event, by a lawyer who is familiar with the case." Finally, Rule 10(h) provides that a "lawyer should alert the court as soon as practicable to scheduling conflicts . . . ." *American College of Trial Lawyers, Code of Pretrial Conduct*, Rule 10 (2002). As stated above, these are the minimum standards for professional conduct. As demonstrated by the facts set out above, it is clear the Respondent has failed to meet these minimum standards.

Federal Rule of Bankruptcy Procedure 7016(f) provides that if no appearance is made on behalf

of a party at a scheduling or pre-trial conference, the Court may issue such orders as are just. Furthermore, in lieu of or addition to any other sanction, the Court must require the party or party's attorney or both to pay the reasonable expenses incurred due to the non-appearance, including attorney's fees, unless the Court finds other noncompliance substantially justified or other circumstances make the award of expenses unjust.

The Court was originally inclined to dismiss this case again due to the Respondent's behavior in handling this case. While such a result is certainly authorized by the rules, it would disadvantage or harm plaintiff rather than the Respondent, the true culprit of these actions. As it is, the plaintiff has been forced to wait over eight months for a resolution to this dispute which could have been handled rather quickly.

Clearly, the Respondent did not take to heart the Court's previous admonitions regarding the importance of being available for pre-trial conferences and sanctions are necessary to discourage the deficient practice by the Respondent. Accordingly, it is hereby **ORDERED**

1. Within the next ten (10) days, Respondent is directed to pay defendant's counsel attorney's fees in the amount of \$350.00 as compensation for the two missed pre-trial conferences.
2. Within the next ten (10) days, Respondent is directed to pay \$150.00 to the United States District Court library fund.
3. Within the next calendar year from the date of this order, Respondent is order to undertake an additional two hours of continuing legal education in the area of ethics and professional responsibility. This is in addition to the two hours of mandatory continuing legal education required in this area.
4. Respondent is directed to file a certificate of compliance after completing each of the directives set out above. The certificate of compliance with respect to the continuing legal education shall include

a description of the programs attended.