

FOR IMMEDIATE RELEASE
October 22, 2024

Delaware Supreme Court adopts interim policy providing guidance on the use of generative artificial intelligence by judicial officers and court personnel

The guidance comes from the Supreme Court's Commission on Law and Technology that provided the draft guidance following months of study

The Delaware Supreme Court today adopted an interim policy providing guidance on the use of Artificial Intelligence (“AI”) – specifically AI that generates data– by judicial officers and court personnel.

The interim policy was drafted by two committees of the Delaware Commission on Law and Technology (DCLT), an Arm of the Delaware Supreme Court that was reformed in November 2023 and specifically charged with looking at developing technology, like AI, to provide education and guidance to the legal community. Following extensive work by the Emerging Technologies Committee and the Rules and Professionalism Committee, the full commission approved the interim policy on October 14, 2024. As part of this process, commission members have been reviewing policies and rules adopted by other courts and consulting with technology experts. The interim policy adopted by the Supreme Court is brief, by design. Generative AI technology is evolving at such a rate that delving into technical specifics could lead to outdated, inaccurate and even counterproductive guidance within days of adopting any new policy.

The interim policy neither prohibits nor requires the use of generative AI. Like technologies that have come before, generative AI has the potential to be helpful and to provide efficiencies, said Supreme Court Justice and DCLT Co-Chair Karen Valihura. “But just as with earlier technologies, there are potential pitfalls and dangers associated with it and we believe this interim policy provides our judges and employees some needed and appropriate guardrails,” she said.

The court’s interim policy focuses on the fact that those who use this technology are ultimately responsible for the accuracy of whatever is produced. The policy also states users have a duty to educate themselves on the technology, how to use it properly and comply with existing court rules and policies.

Finally, the policy advises against using non-approved generative AI programs – which could potentially make confidential information public – and makes clear that “decision-making functions” may never be delegated to generative AI.

The Supreme Court order with a link to the interim policy can be found on the [court’s website](#).

Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel

Purpose:

This Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel (this “Interim Policy”), reviewed and approved by the Delaware Commission on Law and Technology, is offered for consideration by the Chief Justice of the Delaware Supreme Court as the Administrative Head of all Delaware Courts. This Interim Policy is intended to ensure the safe and appropriate use of GenAI by Authorized Users. Generative AI tools are intended to provide assistance and are not a substitute for judicial, legal or other professional expertise.

Scope:

This Interim Policy applies to the use of GenAI by Authorized Users in the course and scope of their official duties and on State Technology Resources.

Definitions:

“Approved GenAI” means GenAI tools that have been approved by the Administrative Office for use by Authorized Users in the performance of their duties and using State Technology Resources.

“Artificial Intelligence” or “AI” means technology that enables computers and machines to reason, learn, and act in a way that would typically require human intelligence.

“Authorized Users” means all judicial branch judicial officers, employees, law clerks, interns, externs, and volunteers.

“Generative AI” or “GenAI” means Artificial Intelligence trained on an existing set of data (which can include text, images, audio or video) with the intent to "generate" new data objects when prompted by a user. Generative AI creates new data objects contextually in response to user prompts based only on the data it has already been trained on.

“Non-Public Information” means information to which an Authorized User has access to as a result of their official position and not otherwise publicly available through action of the Authorized User.

“Non-Approved GenAI” means GenAI that is not Approved GenAI.

“State Technology Resources” include any and all computer systems, software, network systems, telecommunications equipment and systems, email and messaging systems, data storage, hardware, peripherals and other electronic systems and devices owned, leased, and/or provided by the State of Delaware.

Policy:

1. **Authorized User Remains Responsible.** Any use of GenAI output is ultimately the responsibility of the Authorized User. Authorized Users are responsible to ensure the accuracy of all work product and must use caution when relying on the output of GenAI.

2. **Informed Use.** Authorized Users should not use Approved GenAI without a working knowledge and understanding of the tools. Authorized Users should be trained in the technical capabilities and limitations of Approved GenAI prior to use.
3. **Decision Making.** Authorized Users may not delegate their decision-making function to Approved GenAI.
4. **Compliance with Laws and Judicial Branch Policies.** Use of GenAI must comply with all applicable laws and judicial branch policies.
5. **Non-Approved GenAI.** Authorized Users may not input any Non-Public Information into Non-Approved GenAI. Non-Approved GenAI may not be used on State Technology Resources.



Delaware

Enacted

The Delaware Personal Data Privacy Act which goes into force on January 1, 2025 provides consumers the right to opt-out of profiling if such profiling is in furtherance of solely automated decisions that produce legal or similarly significant effects concerning the consumer. Controllers must also perform data protection assessments when data processing presents a "heightened risk of harm" including where Controller processes personal data for the purposes of profiling, where such profiling presents a reasonably foreseeable risk of any of the following: (a) unfair or deceptive treatment of, or unlawful disparate impact on, consumers, (b) financial, physical, or reputational injury to consumers, (c) a physical or other intrusion upon the solitude or seclusion, or private affairs or concerns, of consumers, where such intrusion would be offensive to a reasonable person; or (d) other substantial injury to consumers.

Delaware General Assembly (/)

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House Bill 154

152nd General Assembly (2023 - 2024)

Bill Progress

Current Status:
Signed 9/11/23

What happens next?

The General Assembly has ended, the current status is the final status.

Bill Details

Introduced on:
5/12/23

Primary Sponsor:

[Griffith \(https://housedems.delaware.gov/members/house-district-12\)](https://housedems.delaware.gov/members/house-district-12)

Additional Sponsor(s):

Reps. [Baumbach \(/LegislatorDetail?personId=252\)](#), [Dorsey Walker \(/LegislatorDetail?personId=13590\)](#), [Harris \(https://housedems.delaware.gov/members/house-district-32\)](#), [K. Johnson \(https://housedems.delaware.gov/members/house-district-5\)](#), [Lambert \(https://housedems.delaware.gov/members/house-district-7\)](#), [Longhurst \(/LegislatorDetail?personId=359\)](#), [Neal \(https://housedems.delaware.gov/members/house-district-13\)](#), [Phillips \(https://housedems.delaware.gov/members/house-district-18\)](#), [Romer \(https://housedems.delaware.gov/members/house-district-25\)](#), [Bush \(https://housedems.delaware.gov/members/house-district-29\)](#)
Sen. [Townsend \(https://senatedems.delaware.gov/members/senate-district-11\)](#), [Gay \(/LegislatorDetail?personId=13474\)](#), [Hensen \(https://senatedems.delaware.gov/members/senate-district-10\)](#)

Co-Sponsor(s):

Reps. [Briggs King \(/LegislatorDetail?personId=3058\)](#), [Chukwuocha \(https://housedems.delaware.gov/members/house-district-1\)](#), [Heffeman \(https://housedems.delaware.gov/members/house-district-6\)](#), [Minor-Brown \(https://housedems.delaware.gov/members/house-district-17\)](#), [Morrison \(https://housedems.delaware.gov/members/house-district-27\)](#), [Osienski \(https://housedems.delaware.gov/members/house-district-24\)](#), [Parker Selby \(https://housedems.delaware.gov/members/house-district-20\)](#), [K. Williams \(https://housedems.delaware.gov/members/house-district-19\)](#)
Sen. [Hoffner \(https://senatedems.delaware.gov/members/senate-district-14\)](#), [S. McBride \(https://senatedems.delaware.gov/members/senate-district-1\)](#), [Sokola \(https://senatedems.delaware.gov/members/senate-district-8\)](#), [Sturgeon \(https://senatedems.delaware.gov/members/senate-district-4\)](#)

Long Title:

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO PERSONAL DATA PRIVACY AND CONSUMER PROTECTION.

Original Synopsis:

This bill creates the Delaware Personal Data Privacy Act. The Act delineates a consumer's personal data rights and provides that residents of this State will have the right to know what information is being collected about them, see the information, correct any inaccuracies, or request deletion of their personal data that is being maintained by entities or people. This Act is modeled after existing frameworks for data privacy in other jurisdictions. This Act will apply to entities that conduct business in the State of Delaware who controlled or processed the personal data of not less than 35,000 consumers or controlled or processed the personal data of not less than 10,000 consumers and derived more than 20 percent of their gross revenue from the sale of personal data. This Act requires Delaware Department of Justice to engage in public outreach to educate consumers and the business community about the Act beginning at least 6 months prior to the effective date of the Act.

Volume:Chapter:

84:197

Advisory Number:

22

Fiscal Note/Fee Impact:

F/N (Complete)

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Effective Date:

1/1/25

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140388&legislationTypeId=1&docTypeId=2&legislationName=HB154\)](#)
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Session Laws

Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
HA 1	Passed	6/7/23	Griffith (https://housedems.delaware.gov/members/house-district-12)	view amendment details (/BillDetail/legislationId=14)
HA 4	Passed	6/8/23	Griffith (https://housedems.delaware.gov/members/house-district-12)	view amendment details (/BillDetail/legislationId=14)
SA 1	Passed	6/27/23	Townsend (https://senatedems.delaware.gov/members/senate-district-11)	view amendment details (/BillDetail/legislationId=14)

Committee Reports

Date	Committee	# Members	View Meeting History ()			view ()
			Favorable	On Its Merits	Unfavorable	
5/16/23	Technology & Telecommunications (/CommitteeDetail?committeeId=599)	8	2	4	0	view ()
6/6/23	Appropriations (/CommitteeDetail?committeeId=583)	6	0	4	0	view ()
6/28/23	Banking, Business, Insurance & Technology (/CommitteeDetail?committeeId=607)	8	0	6	0	view ()
6/29/23	Finance (/CommitteeDetail?committeeId=605)	6	0	4	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
House	Passed	6/30/23 3:38 PM	SM	37	3	0	1	(/json/RollCallControl/rollCallId=55083)
Senate	Passed	6/29/23 3:47 PM	SM	15	5	1	0	(/json/RollCallControl/rollCallId=54983)

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
House	Passed	6/8/23 5:37 PM	SM	33	5	1	2	(json/RollCallControl:rollCallId=54575)

Actions History

Date	Action
5/12/23	Introduced and Assigned to Technology & Telecommunications Committee in House
5/16/23	Reported Out of Committee (Technology & Telecommunications) in House with 2 Favorable, 4 On Its Merits
5/17/23	Assigned to Appropriations Committee in House
6/6/23	Reported Out of Committee (Appropriations) in House with 4 On Its Merits
6/7/23	Amendment HA 1 to HB 154 - Introduced and Placed With Bill
6/8/23	Amendment HA 1 to HB 154 - Passed In House by Voice Vote
6/8/23	Amendment HA 4 to HB 154 - Passed In House by Voice Vote
6/8/23	Passed By House. Votes: 33 YES 5 NO 1 NOT VOTING 2 ABSENT
6/8/23	Assigned to Banking, Business, Insurance & Technology Committee in Senate
6/27/23	Amendment SA 1 to HB 154 - Introduced and Placed With Bill
6/28/23	Reported Out of Committee (Banking, Business, Insurance & Technology) in Senate with 6 On Its Merits
6/28/23	Assigned to Finance Committee in Senate
6/29/23	Reported Out of Committee (Finance) in Senate with 4 On Its Merits
6/29/23	Amendment SA 1 to HB 154 - Passed By Senate. Votes: 21 YES
6/29/23	Passed By Senate. Votes: 15 YES 5 NO 1 NOT VOTING
6/30/23	Passed By House. Votes: 37 YES 3 NO 1 ABSENT
9/11/23	Signed by Governor

Legislation Detail Feeds

[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140388\)](#) ⓘ
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SPECIAL PROBLEMS FOR LAWYERS IN CHAPTER 13

Judicial Estoppel on Third Party Claims

-**Judicial Estoppel** is the longstanding judicial principle that prevents a party from asserting a claim in a legal proceeding that is inconsistent with the claim taken by that party in a previous proceeding.

-**In Bankruptcy**-the Bankruptcy Code imposes a duty to disclose all of one's assets. More specifically, this disclosure must include all of the debtor's known litigation claims, even those not yet asserted in court, because those claims have the potential to increase the value of the bankruptcy estate. Failure to disclose such an asset at the outset of the case may result in defendant's having a case dispositive defense which is extremely difficult to overcome.

Three General Considerations for Judicial Estoppel

1. Whether the party's later position was clearly inconsistent with its earlier position;
2. Whether the party succeeded in persuading the court to accept the earlier position, so that later judicial acceptance would suggest that the first or second court was deliberately misled;
3. Whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party.

SEE Supreme Court case **New Hampshire v Maine**, 532 U.S. 742, 753 (2001)

This issue arises most often when debtors fail to disclose and exempt a pre-petition claim on their schedules.

Pre-Bankruptcy Legal Claim is not Scheduled by Debtor

(Credit for case law summaries given to Lundin ON Chapter 13.com**)**

Ardese v. DCT, Inc., No. 07-7069, 2008 WL 2216965, at *3 (10th Cir. May 29, 2008)
(unpublished) (Murphy, McKay, Gorsuch)

(Applying *Eastman v. Union Pacific R.R. Co.*, 493 F.3d 1151 (10th Cir. 2007), debtor's failure to schedule claim against former employer is not excused by argument that her "attorney 'blew it'"; reopening bankruptcy case to disclose cause of action does not preclude **judicial estoppel** when amendment was triggered by defendant's pleading **judicial estoppel**).

***Weakley v. Eagle Logistics*, 894 F.3d 1244 (11th Cir. June 29, 2018) (Carnes, Marcus, Rosenbaum)**

Applying new rules for application of judicial estoppel in *Slater v. United States Steel Corp.*, 871 F.3d 1174 (11th Cir. Sept. 18, 2017) (en banc), district court appropriately considered all the circumstances and barred Chapter 13 debtor's civil actions based on failure to schedule. District court found evidence on summary judgment other than just the failure to schedule to support intent to game the system by not disclosing two lawsuits while disclosing others. Voluntary dismissal of Chapter 13 case did not cure judicial estoppel problem.

***Saili v. Waste Mgmt. of Kan., Inc.*, No. 22-3268, 2023 WL 6058710, at *2-*3 (10th Cir. Sept. 18, 2023) (Hartz, Tymkovich, Matheson)**

(Chapter 13 debtor is judicially estopped to maintain employment discrimination action that arose before the petition and was not revealed until years after confirmation and after defendant moved to dismiss. "Mr. Saili persuaded the bankruptcy court to confirm his Chapter 13 plan when he had not fully disclosed his assets. To counter the second **judicial estoppel** factor, he would need to show that the Chapter 13 plan would have been the same even if he had disclosed the possible litigation—that is, that the bankruptcy plan would have ignored his potential lawsuit had it been disclosed. We think that a bit far-fetched. Surely if the bankruptcy court had been advised of Mr. Saili's claim, it would have included a provision in the Chapter 13 plan that any recovery on that claim would be shared, at least in part, by his creditors. . . . We acknowledge that there may be special equitable considerations in applying **judicial estoppel** against a Chapter 13 debtor because of the potential impact on creditors. We note, however, that in essentially the same circumstances one of our fellow circuits held that the district court did not abuse its discretion in applying **judicial estoppel** even though any recovery by the plaintiff-Chapter 13 debtor would go first to pay creditors. See *Love v. Tyson Foods, Inc.*, 677 F.3d 258, 263–66 (5th Cir. [Apr. 4, 2012, as revised Apr. 12,] 2012) [(King, Wiener, Haynes)]."), *aff'g* No. 22-2060-DDC-KGG, 2022 WL 16742441 (D. Kan. Nov. 7, 2022) (Crabtree) (Debtor is judicially estopped to assert employment discrimination claim in 2021 when discrimination is alleged to have begun in 2017, Chapter 13 case was filed in 2019 and debtor did not amend schedules to reveal discrimination claim until after defendant filed motion to dismiss.).

***Camelo v. Pluese, Becker & Saltzman LLC*, No. 23-cv-12598, 2024 WL 4299504, at *10 (E.D. Mich. Sept. 26, 2024) (Leitman)**

(Chapter 13 debtor's claims of prepetition mistreatment by mortgage holder and its attorneys are dismissed in part for lack of personal jurisdiction and are barred by judicial estoppel. "Camelo had a motive to conceal her claims from the Bankruptcy Court. Indeed, '[i]t is always in a Chapter 13 petitioner's interest to minimize income and assets.' . . . Camelo should have raised any claims and/or concerns about the Defendants' alleged misconduct during her bankruptcy proceedings, and the Court discerns no reasonable excuse for the failure of Camelo and her counsel to have done so.").

***Barocio v. County of Fresno*, 659 B.R. 761, 765 (E.D. Cal. Mar. 27, 2024) (Thurston)** (Applying "default rule" in the district—"'[i]f a plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit from the bankruptcy schedules and obtains a discharge (or plan confirmation), **judicial estoppel** bars the action[]'"—Chapter 13 debtor is judicially estopped to maintain unscheduled employment discrimination action that arose before confirmation.).

***Snyder v. Polymer Mach. Co.*, No. 5:22CV1496, 2023 WL 2734687 (N.D. Ohio Mar. 31, 2023) (Pearson)**

(**Judicial estoppel** bars employment claims when Chapter 13 debtor did not reveal claims to trustee until after defendant moved to dismiss in district court. That Chapter 13 trustee joined application to employ counsel to prosecute the action is an after-the-fact effort to cure the debtor's breach of continuing duty to reveal assets and cannot rebut presumption of bad faith that applies in Sixth Circuit.).

***Hudson v. Skinner*, No. 3:22-CV-72-SA-JMV, 2023 WL 7391494 (N.D. Miss. Nov. 8, 2023) (Aycock)**

(**Judicial estoppel** bars debtor's unscheduled FLSA action filed two months after the Chapter 13 petition; amending schedules to reveal the action after omission was discovered by the defendant cannot overcome application of the doctrine. Debtor's claim of inadvertence is rejected based on contrary presumption in the Fifth Circuit. District court allows Chapter 13 trustee a brief opportunity to determine whether to intervene as a party in the debtor's lawsuit.).

***Lea v. Nissan Motor Acceptance Corp.*, No. 3:21-CV-2002-D, 2022 WL 537959 (N.D. Tex. Feb. 23, 2022) (Fitzwater)**

(Applying *Reed v. City of Arlington*, 650 F.3d 571 (5th Cir. Aug. 11, 2011) (en banc), **judicial estoppel** bars Chapter 13 debtor's prepetition age discrimination action when debtor failed to schedule or amend schedules to reveal known cause of action, bankruptcy court relied on nondisclosure by confirming plan and motive to conceal is implied under Fifth Circuit analysis.).

***Silva v. Pro Transp., Inc.*, No. 15-23028, 2016 WL 4809787 (S.D. Fla. Jan. 13, 2016) (Scola)**

(**Judicial estoppel** bars FLSA action when debtor did not amend schedules to reveal lawsuit until after confirmation of plan and after motion for summary judgment by defendant.).

***Flores-Febus v. MVM, Inc.*, 45 F. Supp. 3d 175 (D.P.R. Sept. 23, 2014) (Besosa)**

(Debtor judicially estopped to maintain prepetition employment discrimination claim when she failed to include claim in original or post confirmation schedules and plan was confirmed based on absence of claim. Federal law governs application of **judicial estoppel** in diversity cases.).

BUT SEE

***O'Connell v. Marshalls, Inc.*, No. 17-2438, 2017 WL 4539288 (E.D. Pa. Oct. 11, 2017) (Hey)**

(Slip and fall that occurred a year after Chapter 13 petition became property of the estate and debtor has standing under Bankruptcy Rule 6009 to bring lawsuit in nonbankruptcy court. **Judicial estoppel** does not bar the undisclosed slip and fall when affidavit of inadvertence of debtors precluded a finding of bad faith.).

***Nowling v. SN Servicing Corp.*, No. 19-CV-1605 (PJS/TNL), 2020 WL 1244809 (D. Minn. Mar. 16, 2020) (Schiltz)**

(Although factors under *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (May 29, 2001), are all present with respect to Chapter 13 debtors' undisclosed RESPA action against mortgage servicer, **judicial estoppel** is not appropriate because debtors had no motive to conceal the action. The likelihood of any substantial recovery was very low. Even if revealed, debtors could have amended exemptions to cover any likely damage award. And once revealed in Chapter 13 case—albeit after completion of payments and discharge—Chapter 13 trustee showed no interest in pursuing any potential recovery on behalf of unsecured creditors.).

***Teague v. Biotelemetry, Inc.*, No. 16-cv-06527-TSH, 2018 WL 5310793 (N.D. Cal. Oct. 25, 2018) (Hixson)**

Judicial estoppel does not bar debtor's action against former employer for unpaid commissions because Chapter 13 plan paid all creditors 100% in 15 months and failure to schedule the lawsuit did not result in any action by the bankruptcy court that would have been different had the lawsuit been scheduled.).

Dorgan v. Ethicon, Inc.*, No. 4:20-00529-CV-RK, 2020 WL 5372142 (W.D. Mo. Sept. 8, 2020) (Ketchmark) **Judicial estoppel* does not bar Chapter 13 debtors' unscheduled pelvic mesh lawsuit based in large part on affidavit of Chapter 13 trustee that lawsuit was a "post-completion" asset that would not have been pursued had it been scheduled and failure to schedule did not produce different outcome in Chapter 13 case. District court also found that defendant was not a creditor and did not realize any litigation detriment from debtors' nondisclosure in separate Chapter 13 case.).

Browne v. P.A.M. Transp., Inc.*, No. 16-CV-5366, 2019 WL 7373362 (W.D. Ark. Dec. 31, 2019) (Brooks) **Judicial estoppel* does not bar postpetition wage and hour claim when Chapter 13 debtor has not received a discharge, schedules were amended—admittedly after defendant moved to dismiss—to disclose cause of action and there is no other evidence of misconduct or abuse by debtor. Plan can yet be amended to account for any recovery. Bankruptcy Code and Rules do not set specific timeline for amending schedules to reveal a postpetition cause of action. Only discharge would

constitute judicial acceptance and 18-month delay in amending schedules did not allow the debtor an unfair advantage.).

KEY TAKE AWAYS

1. **Disclose, Disclose Disclose.** Debtor's Counsel should have robust questionnaire and should probe debtors for any possible pre-petition claims that are made or could be made. Certainly, PI Counsel should always do a Pacer search when retaining a new PI client to determine if they have a pending Bankruptcy.
2. Failure to Disclose a pre-petition cause of action will likely be barred by Judicial Estoppel even if schedules are amended when cause of action is discovered
3. Counsel should make sure debtors inform them any time a post-petition cause of action is to be asserted. If schedules are amended (as there is a continuing duty to the Court to disclose while the case is open) to include the post-petition claim, there is ample case law to support that judicial estoppel would not bar these claims.

DUTIES ON REPEAT/SERIAL FILERS

1. Clearly identify all prior filings on the Petition- this is often left blank or only partially completed by Debtors and/of debtor's Counsel.
2. Should immediately file to extend the automatic stay or reinstate the stay where appropriate.
3. Make sure all schedules and plan are timely filed to demonstrate that debtor is serious about making it work this time.
4. Consider default language in the plan for plan payments and/or future mortgage payments.
5. Verify that new information/creditors are included on schedules
6. Demonstrate good faith- present Trustee and/or the mortgage lender with plan payments or mortgage payments at outset of case.
7. Propose a plan that is feasible.

CASES

(Credit for caselaw summaries given to Lundin ON Chapter 13.com**)**

***In re Robertson*, No. 23-61014-JWC, 2024 WL 3738155 (Bankr. N.D. Ga. Aug. 8, 2024) (Cavender)**

Stanley Kakol is sanctioned under Bankruptcy Rule **9011** for having no factual or legal basis for filing seventh Chapter 13 case on eve of foreclosure with no prospect that debtor could deal with mortgage arrearage of more than \$286,000. Kakol represented same debtor in sixth case and scheduled mortgage arrearage in seventh case as \$21,000 notwithstanding claim filed in sixth case showing arrearage more than 10 times that amount. Plan proposed no payment of mortgage notwithstanding that debtor had made only three payments to mortgage holder in 11 years. Sanctions included disgorgement of all fees, payment of mortgage holder's attorney's fees, 15 hours of CLE and warnings about future sanctions.

***Vizconde v. Burchard (In re Vizconde)*, Nos. 16-60072, 16-60073, 2017 WL 5770034 (9th Cir. Nov. 29, 2017) (unpublished) (Thomas, Fletcher, Paez)**

Bankruptcy court appropriately imposed sanctions on counsel under Bankruptcy Rule **9011** for knowingly and willfully facilitating abuse of the Bankruptcy Code and for bad-faith manipulation of the bankruptcy process by filing Chapter 13 petitions that failed to disclose prior bankruptcies and then failing to file other required documents.

***Erickson v. Wilson-Aguilar (In re Erickson)*, No. 23-60037, 2024 WL 4273821 (9th Cir. Sept. 24, 2024) (not for publication) (Fletcher, Johnstone, Rakoff)**

(Bankruptcy court committed no error when it dismissed debtor's sixth unsuccessful Chapter 13 case with a two-year bar to refiling. Each petition was filed to defeat foreclosure and proposed plan modified rights of the mortgage holder by proposing no payment of the debt.), *aff'g* No. WW-22-1186-GFB, 2023 WL 2930057, at *6 (B.A.P. 9th Cir. Apr. 13, 2023) (not for publication) (Gan, Farris, Brand) (Bankruptcy court appropriately dismissed Chapter 13 case with two-year bar to refiling under § 349(a). "Debtor's long history of multiple bankruptcy cases, filed in response to adverse state court rulings, dismissed without confirmation, and designed to delay foreclosure constituted bad faith for purposes of § 349(a).").

***In re Kelly*, 649 B.R. 448, 452–90 (Bankr. W.D. Pa. Mar. 31, 2023) (Taddonio)**

Chapter 13 debtor's attorney violated Bankruptcy Rule 9011 by filing fourth and fifth petitions within a six-year period when attorney failed to comply with wet signature requirements of local rules, attorney knew that schedules copied from prior cases were inaccurate, attorney knew that plans were not feasible because debtor had failed in five basically identical cases without a material change in circumstances, plans filed by attorney were calculated to game the system in the district by buying the debtor a year in Chapter 13 before dismissal for noncompliance and last two cases served no purpose other than to garner additional fees for counsel.

The Court imposed monetary sanctions in the amount of \$8,000 In hindsight, none of the Debtor's payment-driven plans filed by Attorney Willis should have been confirmed. The fact that they were—consistently and without opposition—evidences systemic concerns The inescapable conclusion is that blind spots in the chapter 13 conciliation process enabled the Debtor's repeated manipulations. Equally clear is that the Court's review of chapter 13 plans has been inadequate to root out abuse. . . . Effectively, the chapter 13 trustee was tricked into treating these plans as miscalculated when they were actually a means to put off confirmable obligations in bad faith. This tactic allowed the Debtor to remain in chapter 13 much longer than his efforts should have warranted."

***In re Easley*, No. 21-00196-ELG, 2022 WL 965286 (Bankr. D.D.C. Mar. 30, 2022) (Gunn)**

Chapter 13 debtor's counsel violated Bankruptcy Rule 9011(b) and is sanctioned under Rule 9011(c) to pay the clerk of court \$2,200. Counsel did not query PACER and failed to reveal three prior bankruptcy cases, including a Chapter 13 case three months before the current filing. Debtor's address was not correct and the court was styled incorrectly in the initial petition. Counsel failed to appear at the meeting of creditors on Zoom and failed to list many creditors that would have been apparent from prior cases filed by the debtor. Proposed plan was inconsistent with many confirmation requirements and counsel's effort to blame the shortcomings on staff violated District of Columbia Rules of Professional Responsibility. Foreclosing creditor was entitled to *in rem* stay relief.

PROPER PREPARATION OF PETITION & SCHEDULE/BARE BONES FILINGS

-There has been a recent significant increase in the number of Bare Bones Chapter 13 Filings. While it is sometime necessary to file a case without schedules on an emergency basis, the high number of cases seems to indicate that this may be becoming a routine practice rather than the rare occurrence.

Delay in Filing Schedules

1. Causes issues for case administration by Trustee and the Trustee's office;
2. Causes issues for the Clerk's Office;
3. Causes Prejudice to Creditors;
4. Multiple reschedules of 341 Meetings;
5. Causes undue delay in administration of case
6. Filing Bare Bones Petitions with no Schedules or Plans should be an emergency and rare occurrence

****Putting the Bar on Notice that after the first Motion to Extend the Time to File Schedules, I will be objecting to **Second Requests to Extend** unless the Motion States in specificity the steps (with documentation and dates) that were taken to obtain the necessary information from the debtors and what information remains missing.****

Bankruptcy attorneys are expected to quickly and effectively obtain information from debtors and present accurate schedules and plans to the bankruptcy court, so that these cases can move forward.

CASES

(Credit for caselaw summaries given to Lundin ON Chapter 13.com**)**

***In re Kelly*, No. 06-71019-JB, 2006 WL 6591613 (Bankr. N.D. Ga. Nov. 28, 2006) (Bihary)**

Failure to file schedules and statement of financial affairs required by § 521(a)(1) within 45 days of petition triggers automatic dismissal effective on 46th day.

***In re Brief*, No. 19-00838, 2020 WL 598213 (Bankr. D.D.C. Feb. 6, 2020) (Teel)**

Motion to vacate dismissal order that resulted when Chapter 13 debtor failed to resolve filing fee and document-filing issues raised in show-cause order is denied because debtor has continued to fail to file documents required by § 521(a)(1)(B) and continuing delay is prejudicial to creditors. Alternatively, under § 521(i), on request of any party, the court

would declare the Chapter 13 case automatically dismissed based on debtor's **failure to file schedules** and other documents within 45 days of the petition. Although § 1307(c)(9) reserves to the U.S. trustee pursuit of motions to dismiss for failure to timely file documents required by § 521(a)(1), bankruptcy court has sua sponte dismissal authority under § 105(a) for the same reasons.

***In re Brief*, No. 19-00838, 2020 WL 598213 (Bankr. D.D.C. Feb. 6, 2020) (Teel)**

Motion to vacate dismissal order that resulted when Chapter 13 debtor failed to resolve filing fee and document-filing issues raised in show-cause order is denied because debtor has continued to fail to file documents required by § 521(a)(1)(B) and continuing delay is prejudicial to creditors. In any case, under § 521(i), on request of any party, the court would declare the Chapter 13 case automatically dismissed based on debtor's **failure to file schedules** and other documents within 45 days of the petition. Although § 1307(c)(9) reserves to the U.S. trustee pursuit of motions to dismiss for failure to timely file documents required by § 521(a)(1), bankruptcy court has sua sponte dismissal authority under § 105(a) for the same reasons.

***Lafayette v. Collins (In re Withrow)*, 405 B.R. 505, 512 (B.A.P. 1st Cir. May 26, 2009) (Vaughn, Kornreich, Tester)**

Bankruptcy court appropriately imposed \$3,585 sanction on debtor's attorney for violations of § 707(b)(4) and Bankruptcy Rule **9011** for failure to conduct reasonable investigation into accuracy of schedules. Attorney "had an affirmative duty to conduct a reasonable inquiry into the facts set forth in the Debtor's schedules, statement of financial affairs and [other pleadings] before filing them. There is evidence in the record, however, that Attorney . . . violated that obligation. It is undisputed that there were numerous errors and discrepancies in the documents filed by Attorney . . . on the Debtor's behalf."

***Reither v. Goduti (In re Reither)*, No. 18-1031, 2018 WL 5310658 (Bankr. D. Mass. Oct. 25, 2018) (Feeney)**

Sanctions imposed on debtor and attorney under Bankruptcy Rule **9011** for failing to schedule creditors, failing to provide correct addresses, filing frivolous complaint and empty-headed nonresponsiveness to problems revealed during Chapter 13 case.

***In re Bush*, No. 22-10043-GLT, 2023 WL 6543194 (Bankr. W.D. Pa. Oct. 6, 2023) (Taddonio)**

(Chapter 13 debtors' attorney is sanctioned for knowingly undervaluing personal injury asset in schedules, failing to promptly amend schedules and plan to inform the court when counsel became aware of large settlement dissipated by debtors, failing to timely file motion to employ special counsel and intentionally delaying informing court of secret settlement by debtors. Counsel claimed to be protecting ongoing negotiation of loan modification by not revealing settlement proceeds. Sanctions included disgorgement of fees, a small fine and public admonishment.)

***In re Mitchell-Fields*, No. 23-20721-GLT, 2023 WL 6396022, at *3 (Bankr. W.D. Pa. Sept. 29, 2023) (Taddonio)**

(Debtor's attorney inappropriately filed Chapter 13 case to stop a sheriff's sale after talking to debtor on the phone but without meeting debtor in person and without confirming debtor's identity. Ordinarily, debtor's failure to advance the case after filing naked petition would be ground for dismissal with prejudice to refiling, but attorney called into question the debtor's competence notwithstanding that counsel never met debtor face-to-face. Counsel violated various canons of professional responsibility, but no further sanctions were imposed. "Attorney Geisler has never met with the Debtor. A voice on the telephone asked him to file a chapter 13 petition and he did because he received \$500. Attorney Geisler neither knew this person nor confirmed their identity Now, to refute the appearance of bad faith and justify his client's consistent noncompliance with Court orders, Attorney Geisler suggests that 'she's not all there.' . . . [A]ttorneys must meet their clients. It is simply not possible to comply with the Pennsylvania Rules of Professional Conduct without doing so. . . . Confirming the identity of a client before filing a bankruptcy petition—an act with substantial legal consequences—easily falls within the definition of 'reasonably necessary' preparation. . . . Counsel needs to be sure on whose behalf they are filing a petition to satisfy both their ethical and legal obligations.").