

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

- - - - -x

In re: :

FRANCINE FISHER : BK No. 11-13554
Debtor : Chapter 13

- - - - -x

DECISION AND ORDER (1) GRANTING REQUEST FOR COURT EXCUSAL,
AND (2) DIRECTING DEBTOR'S COUNSEL TO SHOW CAUSE

APPEARANCS:

George E. Babcock, Esq.
Attorney for Debtor
574 Central Avenue
Pawtucket, Rhode Island 02861

John Boyajian, Esq.
Chapter 13 Trustee
BOYAJIAN, HARRINGTON & RICHARDSON
182 Waterman Street
Providence, Rhode Island 02906

BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

On January 27, 2012, George Babcock, Esq., moved for court excusal through April 1, 2012.¹ It is the practice of this Court to freely grant such requests, when reasons are included and if the Court is satisfied that: No matters are scheduled for hearing during the period of excusal, or that arrangements have been made, if necessary, for substitute counsel. Subject to those conditions, Babcock's request is **GRANTED**. At the same time, Babcock is reminded that he is excused from court appearances only, but not from complying with filing deadlines, attendance at Section 341 meetings, or ensuring that his client is adequately represented at all times.

In addition, and specifically in this case, Mr. Babcock is *not* excused from observing ordinary ethical standards, where, as here, Babcock's candor regarding continuances has been problematic. The details are discussed below.

¹ In deference to his health issues, I have overlooked that Babcock failed to state whether any matters were scheduled for hearing during the requested excusal period. See on the Court's website: ¶4 of Instructions for Filing Motion to be Excused from Court, www.rib.uscourts.gov. There was also no statement that arrangements had been made for substitute counsel during Babcock's absence. Curiously though, Babcock does state that "Counsel for MERS has not objected to the Motion for Continuance pending before this Court." In fact, no MERS cases are pending in the Bankruptcy Court, and this prompts the comment that, as of this writing, Babcock has not sought excusal for the same period from the District Court, where he is counsel of record in many pending MERS cases.

On January 17, 2012, the Chapter 13 confirmation hearing was scheduled to be held on January 25, 2012. On January 24, 2012, at 4:44 p.m., Babcock filed a Motion to Continue the hearing, which was denied automatically, by Rule of Court, and Babcock was so advised, immediately. Our Local Rule provides that for motions filed on the day before the scheduled hearing, the 3:00 p.m. filing deadline applies only to motions for continuance which are assented to by the parties. If, as here, fewer than all parties assent, "the motion shall set forth the reason(s) for the request, and be served upon opposing counsel at least four (4) business days before the hearing." R.I. LBR 5071-1. See attached Exhibit A. So, without properly seeking and obtaining relief, Babcock's request is defective and is a nullity.

Nevertheless, we will address Babcock's conduct in general, and point out how, in the Court's view, he has unnecessarily steered an otherwise routine motion for continuance into a potential problem for himself. On January 24, 2012, as grounds for a 14 day continuance, Babcock alleged "serious medical issues," and attached a letter from Phillip C. Song, M.D.² See attached Exhibit B.

² Documentation accompanying requests for court excusal, other than when information is voluntarily disclosed, are considered in camera to protect medical privacy rights.

Previously, on October 26, 2011, Babcock sought and obtained a 48 day court excusal for (unknown) medical reasons, which expired on January 2, 2012. I felt that the (January 25, 2012) hearing was likely to be brief (the average uncontested Chapter 13 confirmation hearing lasts two or three minutes), and that the medical condition asserted (without more) is not one that would inhibit Babcock from representing his client at a confirmation hearing, i.e., he would probably not have had to make a single utterance.

But there are several other things wrong with this picture:

Babcock's speech and vocal issues do not appear to have affected his attendance in other courts, or on talk radio.

Dr. Song's note of excusal is dated January 17, 2012, but it is unexplained why the continuance in question was requested literally at the eleventh hour, on January 24, 2012.

Babcock did not attend the January 25, 2012, hearing, but the Trustee represented that he had received an email from Babcock stating that "someone else would cover the hearing for him." When no one appeared for the Debtor at the call of the case, the matter was held for "second call," whereupon the Case Manager telephoned Babcock's office and was told that he was in attendance at the Kent County Courthouse. The attorney who was supposed to cover the bankruptcy matter for Babcock was detained in another court on

another matter, and did not appear in place of Babcock. The absence of the covering attorney, retained at the last moment to substitute for Babcock, is not at issue here. What is at issue, however, is Babcock's credibility before this Court. Specifically, by this time, Babcock's mixed bag of contradictions has raised substantial question about the veracity of his representations, which requires clarification.

Accordingly, George Babcock, Esq., is **ORDERED TO SHOW CAUSE, in writing, on or before April 16, 2012**, why he should not be sanctioned and/or reprimanded for what this Court views, at least on its face, as a violation or disregard of his duty of candor to the Court,³ as well as a lawyer's obligation to be truthful before any tribunal, and to other parties in the case.

So ordered.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 3/19/12

³ "A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Model Rules of Prof'l Conduct, R. 3.3(a)(1) (2006) (as adopted by Rhode Island's Disciplinary Rules of Professional Conduct).