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Ethical Issues Regarding the Use of the Media in High-Profile Cases

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ETHICAL ISSUES REGARDING THE USE OF MEDIA IN HIGH-PROFILE CASES¹

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I. ETHICAL ISSUES IN HIGH-PROFILE CASES

Ethical challenges are certainly not unique to situations involving persons of notoriety. Some ethical dilemmas, however, are perhaps more likely, or exacerbated, when a person of prominence is at the center. This article highlights some of these challenging issues.

A. Candor to Clients and Candor to the Tribunal

Lawyers are charged with exercising “independent professional judgment and render[ing] candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.”² Individuals with some amount of celebrity status are often surrounded by “yes” men and women. As such, rendering candid advice to these individuals might be particularly challenging.

The bankruptcy case of rapper Curtis Jackson, III (known by the stage name 50 Cent) appears to provide an example of a case in which the debtor-client may have been difficult to control. During his bankruptcy case, 50 Cent posted several photos of himself online in which he is surrounded by stacks of cash, apparently boasting about his financial status while in bankruptcy.³ After creditors alerted the bankruptcy judge, Jackson’s attorneys reportedly defended his actions, arguing that it was necessary for Jackson to portray the image of wealth in order to continue to secure more high-paying

² Model Rules of Professional Conduct R. 2.1 (2015). The American Bar Association Model Rules of Professional Conduct. The Model Rules are cited throughout these materials. Excerpts of the Model Rules are attached hereto.

³ Ben Kaye, *50 Cent’s Bankruptcy Lawyer Argues He Must Appear Rich Because Rap Fans are Poor*, Consequence of Sound (MARCH 14, 2016, 4:05PM) <http://consequenceofsound.net/2016/03/50-cents-bankruptcy-lawyer-argues-he-must-appear-rich-because-rap-fans-are-poor/>.

acting roles and endorsements.⁴ His attorney reportedly asserted that, “If Mr. Jackson conducted himself say with more discretion, more tact, he wouldn’t be getting people endorsing him for high premium items. He wouldn’t be getting movie parts. He wouldn’t be having great roles on TV.”⁵

A lawyer is also charged with candor to the tribunal and has some responsibility to affirm the accuracy of the information provided by his client.⁶ Given that information about a celebrity client may be more readily available to the attorney and to third parties, some may take the position that the duty to investigate is heightened in these cases. Regardless of whether the duty to investigate is heightened in cases involving individuals of notoriety, however, an attorney representing such a party undoubtedly has no desire to have information of which the attorney was not aware come to light, whether through the media or otherwise.

The bankruptcy case of Abby Lee Miller, star of the reality television show “Dance Moms”, provides a vivid example of the role the media can play in revealing pertinent information in high-profile cases. In connection with that case, Miller has been charged with fraud for failing to reveal several hundred thousand dollars of income. The investigation into her income reportedly began when the bankruptcy judge, while channel surfing, happened upon Miller on TV and suspected that she had to be making more than the \$8,899 in monthly income she claimed in her bankruptcy filings.⁷ Investigations into her income eventually revealed that Miller had failed to report several hundred thousand

⁴ *Id.*

⁵ *Id.*

⁶ Model Rules of Prof'l Conduct R. 3.3(2015); 11 U.S.C. § 526(a)(2); 11 U.S.C. § 707(b)(4)(C).

⁷ Associated Press, ‘Dance Moms’ star pleading guilty to fraud, Page Six (June 21, 2016, 2:14pm) <http://pagesix.com/2016/06/21/dance-moms-star-pleading-guilty-to-fraud/>.

dollars in income that she had made through appearances on “Dance Moms” and a spin-off show, “Abby’s Ultimate Dance Competition” and from personal appearances, dance sessions and merchandise sold through her website.⁸ Miller eventually pled guilty to fraud. She is set to be sentenced on May 8, 2017.⁹

B. Media Commentary and Marketing

Attorneys and other professionals involved in cases of notoriety are often presented with numerous opportunities to comment publicly on these cases. These opportunities may arise during the course of the bankruptcy proceedings, or after they have concluded. In some instances, an attorney may decide to make public comments or otherwise release information in the media with an intent to benefit his or her client. In many circumstances, however, an attorney may choose to discuss a case publicly for reasons unrelated to the interests of the client.

1. Public Statements Unrelated to the Interests of the Client

Although under some circumstances an attorney may be obligated to make public statements to best represent the interests of a client, under some circumstances attorneys, trustees or judges may be presented with opportunities to comment publicly on a case where the goals of such public commentary are not focused on advancing the interests of the parties involved in a dispute. These opportunities may include books deals, statements to the press, speaking engagements or marketing efforts. These opportunities raise numerous

⁸ *Id.*

⁹ Associated Press, Bankruptcy fraud sentencing for ‘Dance Moms’ star now May 8, Page Six (February 27, 2017, 9:24am) <http://pagesix.com/2017/02/27/bankruptcy-fraud-sentencing-for-dance-moms-star-now-may-8/>.

challenging issues to consider and address. The following issues and sources of guidance, among others, should be considered:

- The Duty of Confidentiality
- The Duty of Loyalty
- For trustees, the Trustee Guidelines on Public Statements
- For judges, the Model Code of Judicial Conduct

The O.J. Simpson murder trial is a prime example of a case, albeit outside the context of bankruptcy, that provided the host of attorneys involved with the case numerous opportunities to comment publicly on the case. Comments made by Robert Kardashian, a close friend and attorney to OJ Simpson, were perhaps some of the most publicized. In these statements, made some time after the not guilty verdict had been entered in the murder trial, Kardashian questioned Simpson's innocence. In one such instance, Kardashian reportedly said, "I have doubts. The blood evidence is the biggest thorn in my side; that causes me the greatest problems. So I struggle with the blood evidence."¹⁰ Some have questioned his decision to make such statements about a former client, particularly in light of the fact that Simpson still faced potential civil liability when these statements were made.

2. Statements Intended to Benefit a Client

In some circumstances, an attorney may be presented with circumstances in which the attorney may consider making public statements (either directly or indirectly) with an intent to benefit the client. Even in this context, however, a

¹⁰ Associated Press, *Robert Kardashian, a Lawyer for O. J. Simpson, Dies at 59*, New York Times (OCT. 3, 2003) <http://www.nytimes.com/2003/10/03/us/robert-kardashian-a-lawyer-for-o-j-simpson-dies-at-59.html?scp=1&sq=robert%20kardashian%20died&st=cse>.

variety of potential issues may need to be considered. Some of the potential issues and questions are noted below.

a) **Scope of Representation** –Model Rules of Professional Conduct Rule 1.2(a)

Respecting a client's decisions regarding objectives of representation and the means by which they are to be achieved may create conflicts or other ethical questions. Client objectives may extend beyond the legal result sought. Very often, client interests and objectives do extend to matters that are beyond the scope of the legal representation. For example, what role should an attorney play in creating or preserving a public image for a client? Even if an attorney determines it is appropriate to act on issues that are not squarely within the scope of the representation, questions may arise regarding whether and to what extent the attorney-client privilege applies.¹¹

b) **Conflicts of Interest** –Model Rules of Professional Conduct Rule 1.7

Issues may arise with respect to conflicts of interest when an attorney considers making public statements, even when those statements are intended to benefit the client. For example, may a lawyer consider the impact of public statements on his or her own professional image or the image of his firm? Similarly, may (or must) a lawyer consider the impact of public statements on the public perception of the legal system?

¹¹ See, e.g., Ann M. Murphy, Spin Control and The High-Profile Client--Should The Attorney-Client Privilege Extend To Communications With Public Relations Consultants? 55 Syracuse L. Rev. 545 (2005).

c) **Trial Publicity** - –Model Rules of Professional Conduct Rule 3.6

“Trial publicity” and its impact on the judicial system should be considered.

Model Rule 3.6 provides that, “A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows *or reasonably should know* will be disseminated by means of public communication and will have a *substantial likelihood* of materially prejudicing an adjudicative proceeding in the matter.”¹² Thus, before making public statements, an attorney must consider the impact that statement might have on an “adjudicative proceeding” in the case at hand. Of course, to what extent this duty might be different with a judge as the trier of fact should be considered.

Rule 3.6(c), however, provides that, under some circumstances, public, extrajudicial statements are warranted. It provides that:

Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity *not initiated by the lawyer or the lawyer's client*. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.¹³

¹² Model Rules of Prof'l Conduct R. 3.6(a) (2015)(emphasis added).

¹³ Model Rules of Prof'l Conduct R. 3.6(c) (2015)(emphasis added).

C. Control of Public Dissemination of Information

There are of course steps that may be taken to try to avoid, or at least lessen, the dissemination of information *via* the media. Some courts take steps that may help lessen the possibility of media wars regarding a public figure by instituting prohibitions against cameras and other recording devices.¹⁴

In addition, filings under seal and the entry of “gag orders” is sometimes possible. In all bankruptcy cases, there is a presumption that all papers filed with the court are public record. 11 U.S.C. § 107(a). Section 107(b)(1) limits this access by providing that, “On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—protect an entity with respect to a trade secret or confidential research, development, or commercial information.”¹⁵

II. CONCLUSION

This article highlights some of the various ethical dilemmas that may arise in the context of the use of the media in high-profile cases. Although in some circumstances, the “right” answer might be apparent, very often these issues will not have a clear right or wrong answer.

¹⁴ See *e.g.*, NDGA Bankr. L. R. 5073.1; NDGA Bankr. L. R. 5073.2.

¹⁵ 11 U.S.C. § 107(b)(1).

MODEL RULES OF PROFESSIONAL CONDUCT

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

- a. Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the scope **and objectives of representation** and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- b. A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- c. A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- d. A lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- a. A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the Court.
- b.
 - 1. A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:
 - i. to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;
 - ii. to prevent serious injury or death not otherwise covered by subparagraph (i) above;

- iii. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - iv. to secure legal advice about the lawyer's compliance with these Rules.
2. In a situation described in paragraph (b) (1), if the client has acted at the time the lawyer learns of the threat of harm or loss to a victim, use or disclosure is permissible only if the harm or loss has not yet occurred.
3. Before using or disclosing information pursuant to paragraph (b) (1) (i) or (ii), if feasible, the lawyer must make a good faith effort to persuade the client either not to act or, if the client has already acted, to warn the victim.
- a. The lawyer may, where the law does not otherwise require, reveal information to which the duty of confidentiality does not apply under paragraph (b) without being subjected to disciplinary proceedings.
 - b. The lawyer shall reveal information under paragraph (b) as the applicable law requires.
 - c. The duty of confidentiality shall continue after the client-lawyer relationship has terminated.

CLIENT-LAWYER RELATIONSHIP

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

CLIENT-LAWYER RELATIONSHIP

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing

signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

CLIENT-LAWYER RELATIONSHIP

RULE 1.9 DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

COUNSELOR

RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

RULE 3.3 RULE 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) 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;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

RULE 3.6 TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will

be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF GEORGIA

BLR 5073-1. TELEVISION AND RADIO BROADCASTING, TAPE RECORDING, OR PHOTOGRAPHING JUDICIAL PROCEEDINGS.

The taking of photographs and operation of tape recorders in the courthouse and radio or television broadcasting from the courthouse during the progress of or in connection with judicial

proceedings, including proceedings before a Bankruptcy Judge whether or not Bankruptcy Court is actually in session, is prohibited. A judicial officer may, however, permit: (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investiture, ceremonial, or naturalization proceedings.

Cameras and/or any electronic devices equipped with cameras, including cellular telephones, personal digital assistants and laptop computers, will not be allowed into the courthouses of this district except by court order or by direct escort and supervision of an employee of a federal agency whose offices are located therein.

To facilitate the enforcement of this Rule, no photographic, broadcasting, sound or recording equipment other than the recording equipment of the official court reporters, will be permitted to be operated on the floors of the courthouse occupied by the Bankruptcy Court, except as otherwise permitted by order of the judicial officer before whom the particular case or proceeding is pending.

Portable computers, cellular telephones, pagers and personal communication devices may be transported onto floors occupied by the Bankruptcy Court; however, these devices shall not be operated in any courtroom, nor shall they be operated in any public area, where their operation is disruptive of any court proceeding unless otherwise permitted by order of the Bankruptcy Court. All electronic photographic, broadcasting, sound or recording equipment brought into the courthouses shall be subject to inspection by the United States Marshals' Service.

BLR 5073-2. PROVISIONS FOR SPECIAL ORDERS IN WIDELY PUBLICIZED OR SENSATIONAL CIVIL CASES.

In a widely publicized or sensational case, the Bankruptcy Court, on motion of any party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties to a fair trial by an impartial jury; the seating and conduct in the courtroom of spectators and news media representatives; the management and sequestration of jurors and witnesses; and any other matters which the Bankruptcy Court may deem appropriate for inclusion in such an order.

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA

RULE 4.11 PHOTOGRAPHS; BROADCASTING OR TELEVISIONING; USE OF COMPUTERS AND COMMUNICATION DEVICES

(a)(1) As approved by the Judicial Conference of the United States at its March, 1979 meeting, the taking of photographs and the recording or taping of ceremonies for the investing of judicial officers and of naturalization proceedings and the possession of necessary equipment therefor is authorized in courtrooms of this Court and the environs thereof. At least three (3) hours prior notice of the use of recording or television equipment shall be given to the presiding judge who may control the placement of such equipment in the courtroom. (a)(2) Otherwise, the taking of photographs, the operation of recording or transmission devices, and the broadcasting or

televising of proceedings in any courtroom or hearing room of this Court, or the environs thereof, either while the Court is in session or at recesses between sessions when Court officials, attorneys, jurors, witnesses or other persons connected with judicial proceedings of any kind are present, are prohibited. (b) In order to facilitate the enforcement of subsection (a)(2) of this rule, no photographic, broadcasting, television, sound or recording equipment of any kind (except that of Court personnel and as authorized by subsection (a)(1) hereof) will be permitted in that part of any building where federal judicial proceedings of any kind are usually conducted in this District, as is designated by the resident judges of the Division in which such building is located. Such designation shall be made by order, filed in the office of the Clerk in such division. Except that of Court personnel, cellular telephones and computer equipment are likewise prohibited in that part of any building where federal judicial proceedings of any kind are usually conducted in this District, as designated by the resident judges in the manner set forth in the preceding sentence, unless otherwise permitted by the judicial officer before whom the particular case or proceeding is pending. This rule does not prohibit the possession of telephonic pagers in such locations, provided that such pagers are either switched off or placed in a silent activation mode while in such locations. (c) Employees of other federal agencies resident within the security perimeters of buildings in this District housing federal courts or proceedings, with valid agency identification, are permitted to transport any of the equipment identified above through security checkpoints for the purpose of using same, in their official capacities, within areas of such buildings not covered by subsection (b) of this rule. Said equipment shall be subject to inspection by the United States Marshals Service.

Federal Judicial Ethics

The Court explained that “[w]hile McKernan’s counsel’s belief that Judge Richette was the best option for his client at the beginning of trial may have been a reasonable strategic decision, by the time Judge Richette held the robing room conference and revealed herself to be actively concerned with her image on the internet and the victim’s family’s perception of her, any competent attorney would have realized that the strategy had to be revised.” McKernan v. Superintendent of Smithfield et al., No. 14-4506, 2017 WL 765793, at *4 (3d Cir. Feb. 28, 2017)

Code of Conduct for United States Judges

Canon 1: a judge should uphold the integrity and independence of the judiciary

- “A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved.”
- The commentary to canon 1 explains that “[t]he canons are **rules of reason. They should be applied consistently . . . in the context of all relevant circumstances.**”

Canon 2: a judge should avoid impropriety and the appearance of impropriety in all activities

- Subsection (B) provides that “[a] judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.”
- Canon 2A of the commentary provides that “an appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honest, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. . . . **A judge must expect to be the subject of constant public scrutiny** and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen.”

Canon 3: a judge should perform the duties of the office fairly, impartially and diligently

- Section A – Adjudicative Responsibilities
 - o Subsection (A)(1) provides that “**a judge** should be faithful to, and maintain professional competence in,

the law and **should not be swayed by . . . public clamor or fear of criticism."**

- o Subsection (A)(4) provides that "a judge should accord every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, **a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested.**
 - The commentary in Canon 3A(4) provides that "the restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. . . . A judge should make reasonable efforts to ensure that law clerks and other court personnel comply with this provision."
- o Subsection (A)(6) provides that "**a judge should not make public comment on the merits of a matter pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge's discretion and control.**"
 - The commentary in Canon 3A(6) provides that "the admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete."
- Section C - Disqualification
 - o Subsection (C)(1)(d) provides that "a judge shall disqualify himself or herself in a proceeding in which the judges impartiality might reasonably be questioned, including circumstances in which . . . the judge or the judge's spouse, or a person related to either within the third degree relationship, or the spouse of such person is
 - (i) a party to a proceeding, or an officer, director or trustee of a party;
 - (ii) acting as a lawyer in the proceeding
 - (iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

- (iv) to the judge's knowledge likely to be a material witness in the proceeding
 - (Social media provides many more avenues for a judge to passively obtain such knowledge)

Canon 4: a judge may engage in extrajudicial activities that are consistent with the obligations of judicial office

- "A judge may engage in extrajudicial activities, including . . . social . . . activities and may speak, write, lecture, and teach on both law-related and nonlegal subjects [unless the extrajudicial activities] detract from the dignity of the judge's office, interfere with the judge's official duties [or] reflect adversely on the judge's impartiality"
- Subsection (G) prohibits the judge from using judicial chambers, resources, or staff to engage in extrajudicial activities
- The commentary provides that "a judge should not become isolated from the society in which the judge lives" and that a judge is encouraged to contribute to society, so long as time permits and impartiality is not compromised.

Canon 5: a judge should refrain from political activity

**PAGES FROM THE CREDITOR'S DISCLOSURE STATEMENT
FILED IN THE CHAPTER 11 BANKRUPTCY CASE OF
CURTIS JAMES JACKSON, III A/K/A 50 CENT**

(iv) At various times subsequent to the Petition Date, the Debtor has posted pictures on his Instagram social media account reflecting what appears to be his retention of what would appear to be material amounts of cash, and his performance of services and/or performances, all of which are wholly unaccounted for, while at the same time claiming an ongoing inability to satisfy the claims of creditors, and failing to take any action to propose a plan for the payment of creditor claims. Under the Plan, the Trustee will be charged with the duty of reviewing and examining all such matters for the benefit of creditors. Set forth below are examples of the Debtor's actions as outlined above:

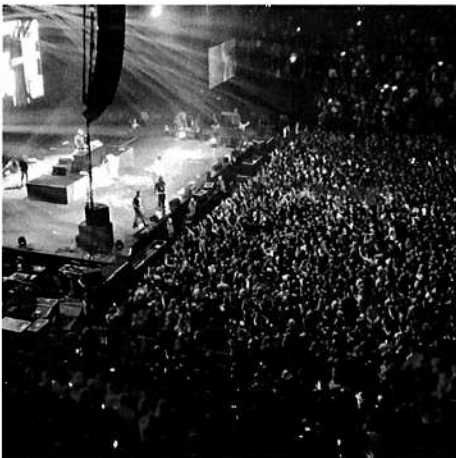
A. On November 26, 2015, the Debtor posted the following photograph on his Instagram account:



<https://www.instagram.com/p/-j4dt2sLyj/?taken-by=50cent>, (last visited December 23, 2015),

B. On December 3, 2015, the Debtor posted a video on his Instagram site, at <https://www.instagram.com/p/-0VL7kML8Z/> (last visited December 23, 2015), showing the Debtor opening a refrigerator to show his possession of large containers of cash.

C. On November 7, 2015, the Debtor posted the following photograph of his performance at a post-petition concert. The Debtor has provided no accounting for any revenues earned by this performance (or any other post-petition performance).



<https://www.instagram.com/p/9yHh9-sL3q/> (posted November 7, 2015, last visited December 23, 2015)

D. On October 14, 2015, the Debtor posted the following photographs:



<https://www.instagram.com/p/80Hm94sL2w/?taken-by=50cent> (last visited December 23, 2015).



<https://www.instagram.com/p/8zy-nCsLyL/?taken-by=50cent> (last visited December 23, 2015).

E. A further review of the Debtor's social media accounts reveal other similar photos posted post-petition revealing the Debtor's appearance at numerous and varied entertainment related events. The Proponents believe it is commonplace in the Debtor's industry for appearance fees and other remuneration to be received by the Debtor in connection with such appearances. The Debtor has provided no detail to creditors regarding any such matters.

F. In early September, 2015, various news and media sources reported that the Debtor, via social media, had disclosed that the Debtor was the owner of a residence in Africa that was in the stages of completion. As reported by the Huffington Post, the Debtor claimed, via Instagram, that "My crib is almost finished in AFRICA. I'm gonna have the craziest housewarming party ever." See, http://www.huffingtonpost.com/entry/50-cent-africa-home-after-bankruptcy_55f04c25e4b093be51bcf110 (last visited December 23, 2015). The Schedules and Statement of Financial Affairs make no mention of

this property. Similarly, the Debtor has failed to make any disclosure to creditors regarding this property, and has not amended the Schedules or Statement of Financial Affairs to provide information regarding this property.

3.4 Pre-Petition Litigation

As of the Petition Date, the Debtor was a party to certain pending litigation, as set forth in further detail in the Schedules and Statement of Financial Affairs, including, without limitation, an appeal relating to the Claims asserted by Sleek, a state court action against Sleek relating to corporate governance issues, and the action commenced by Lastonia Leviston. Since the Petition Date, to the knowledge of the Proponents, the Debtor has not sought relief from the automatic stay to actively prosecute such appeals, although the Debtor has filed certain post-trial motions in connection with the Leviston action. The Proponents question the economic benefit of continuing to prosecute any such matters, and believe that any such actions on the part of the Debtor in any event lack merit. The Proponents believe that incurring ongoing expenses to prosecute such matters is not in the best interests of creditors generally. Under the Plan, the Trustee will be charged with reviewing all such litigation, and will have the power to resolve all such litigation, including without limitation, the power to grant releases on behalf of the Debtor. Certain other litigation pending against the Debtor was stayed as a result of the commencement of the Chapter 11 Case.

3.5 Key Events Leading to Chapter 11 Filing

The Debtor's bankruptcy filing was unanticipated by the Proponents, and commenced without advance notice to, or pre-petition discussion with the Proponents. The Debtor, in pleadings filed with the Bankruptcy Court, has provided only the following statement identifying the factors contributing to the filing of the Chapter 11 Case: "As a result of the Debtor's success, he has been fortunate to acquire a significant amount of assets. Like many other celebrity entertainers that make their living in full view of the public eye, however, the Debtor has also accumulated a substantial amount of liabilities as well. Notwithstanding this fact, the Debtor's bankruptcy filing is not primarily a result of excessive current expenses exceeding his current revenues, but rather the substantial costs of litigation and resulting awards against him in the past year which total in excess of \$20 million. . .".

The Proponents believe that the foregoing explanation on the part of the Debtor is not complete, and is at least somewhat misleading. The judgments that have been entered against the Debtor are the result of (a) actions undertaken volitionally by the Debtor resulting in claims against him, and (b) volitional decisions of the Debtor to engage in litigation strategies that have refused to address good faith settlement proposals, resulting, instead, in trials and arbitration proceedings that were resolved adversely to the Debtor. Stated differently, it is the Proponents' view that the Debtor has chosen an ill-founded course of conduct and subsequent litigation tactics which have resulted directly in more than \$25,000,000 in judgments and jury verdicts being entered against him. Throughout that process, the Debtor has engaged in litigation tactics and incurred litigation expenses which have resulted in material expenditures of professional fees, with ultimately, little to no benefit to the Debtor. The Debtor has in some instances, simply refused to pay for professional fees incurred, resulting in some of the Claims asserted in the Chapter 11 Case. In addition, in the opinion of the Proponents, the Schedules and Statement of Financial Affairs reflect that the Debtor has lived an extravagant lifestyle at the expense of creditors, whose Claims the Debtor has steadfastly refused to pay, preferring instead an ongoing litigation strategy intended to defer payment of legitimate Claims for as long as possible. This behavior appears to have continued by the Debtor since the commencement of the Chapter 11 Case, as reflected earlier in this Disclosure Statement. Finally, the Proponents contend that public conduct undertaken by the Debtor since the Petition Date, as reflected in the foregoing provisions of this Disclosure Statement, belies any contention on the part of the Debtor that the Chapter 11 Case was filed for any legitimate reason, or that the Debtor

**PAGES FROM THE DEBTOR'S RESPONSE IN OPPOSITION
TO THE UNITED STATES TRUSTEE'S MOTION FOR AN ORDER
DIRECTING THE APPOINTMENT OF AN EXAMINER
FILED IN THE CHAPTER 11 BANKRUPTCY OF CURTIS JAMES JACKSON, III
A/K/A 50 CENT**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

IN RE:	§	CHAPTER 11
	§	
CURTIS JAMES JACKSON, III,	§	CASE NO. 15-21233 (AMN)
	§	
DEBTOR.	§	

**DEBTOR'S RESPONSE IN OPPOSITION TO THE UNITED STATES TRUSTEE'S
MOTION FOR AN ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER**

Curtis James Jackson, III (the "Debtor"), the debtor and debtor-in-possession in the above-captioned bankruptcy case, files this response in opposition to the United States Trustee's (the "UST") Motion for an Order Directing the Appointment of an Examiner (the "Motion") [Docket No. 352]. In support of this response, the Debtor submits the Declaration of Curtis J. Jackson III (the "Jackson Declaration"), attached as **Exhibit A**. In further support, the Debtor states as follows:

I. PRELIMINARY STATEMENT

1. The Debtor takes his obligations as a debtor-in-possession very seriously. The uncontroverted evidence discussed below demonstrates that, at all times in this case, the Debtor has complied with his reporting and disclosure requirements, maintained transparency with creditors, and promptly provided any information that has been requested of him. Since the filing of this case, the Debtor has restructured his business operations, reduced expenses, liquidated assets, and developed a business plan that forms the basis of a plan of reorganization supported by the vast majority of the holders of debt in this case. In short, the Debtor has complied with the obligations imposed by the Bankruptcy Code and made remarkable progress towards a successful reorganization in a timely manner.

2. The UST's suggestion in the Motion that the Debtor has been less than forthcoming is perhaps the most serious allegation an individual debtor can face. Despite the seriousness of the allegations and the grave consequences to the Debtor, the UST has conducted no investigation and presented no evidence to support his allegations beyond a series of social media postings by the Debtor that were referenced in the Disclosure Statement to the Joint Plan (the "Disclosure Statement") [Docket No. 308] of Sleek Audio, LLC, Suntrust Bank, and Lastonia Leviston (the "Major Creditors"). As explained below, the concerns raised in the Disclosure Statement have been addressed directly with the Major Creditors and any suggestion of impropriety based on the Debtor's social media activities is meritless. Simply put, the Debtor has complied with his obligations as a debtor-in-possession and fulfilled his fiduciary duties to creditors.

3. As explained in the Jackson Declaration, **the cash depicted in the social media postings is not real**. The postings, which amongst other things, make use of stage or prop money, are part of the Debtor's routine social media marketing activities and relate directly to the Debtor's various business interests. Prop money is routinely used in the entertainment industry, including in movies, television shows, videos, and social media postings.¹ Although the Debtor has millions of dollars in cash as a result of liquidating his stock positions and liquidating his positions in various funds at the UST's request (all of which has been disclosed), he would not—and did not—use hidden assets for his social media postings.² As demonstrated

¹ Prop money is used for several reasons, the most obvious being safety and the need to avoid these funds being stolen during the shoot. Moreover, prop money is made expressly for use under studio lights and cameras. In a movie or video, prop money actually resembles more closely the average person's perception of real money than would be the case if real currency were used. Prop money has been the industry standard for movies, videos and social media postings for years.

² The implication that the Debtor would photograph himself with undisclosed assets is highly prejudicial. If the Debtor was attempting to hide assets (which he has not done), one would think that those assets would never have been disclosed on social media for all to see.

below, the Debtor and his team of professionals have acted in a prudent manner that is both consistent with other entertainers in his industry and with his responsibilities as a debtor-in-possession.

4. Further, there is no evidence to suggest that the Debtor has not fully reported his assets and income. The Debtor specifically explained to the UST under oath at the Section 341 meeting that his business activities are operated through various related entities and that the income from those activities is received directly by the relevant entity. All of that income has been reported on the Debtor's monthly operating reports and periodic reports relating to the various business entities in which he has an interest. The UST can present no evidence to the contrary. All of this information was either provided to the UST or readily available to him before the Motion was filed. It appears, therefore, that the Motion is premised upon a misunderstanding of the Debtor's business and the role of social media in his marketing activities. That misunderstanding is addressed in this response.

5. The Debtor is on the verge of presenting to the Court what he believes will be a consensual plan of reorganization that will resolve the material disputes in this case and see the Debtor exit bankruptcy within a year of filing. Creditors asserting approximately seventy percent (70%) of the total debt in this case, do not support the UST's request for an appointment of an examiner, which would increase administrative expenses, delay the confirmation of a plan, and potentially reduce their expected recoveries. The UST has not carried his evidentiary burden to establish that the appointment of an examiner is necessary and appropriate in this case and the Motion should be denied.