**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL**

**OF THE NINTH CIRCUIT**

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| In re: | BAP Nos. EC-07-1068-JuNaMo |
| | EC-07-1119-JuNaMo |
| BETSEY WARREN LEBBOS, | (Consolidated) |
| Debtor, | Bk. Nos. 06-22225 |
| BETSEY WARREN LEBBOS, | |
| Appellant, | |
| v. | **M E M O R A N D U M**[1] |
| LINDA SCHUETTE, Trustee; UNITED STATES TRUSTEE, | |
| Appellees. | |

Argued and Submitted on October 26, 2007
at Sacramento, California

Filed - November 14, 2007

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Robert S. Bardwil, Bankruptcy Judge, Presiding

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Before: JURY, NAUGLE[2] and MONTALI, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1) it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] Hon. David N. Naugle, U.S. Bankruptcy Judge for the Central District of California, sitting by designation.

## I. INTRODUCTION

These consolidated appeals arise out of debtor's ex parte letter complaint to the judges of the bankruptcy court for the Eastern District of California, seeking disciplinary action against the chapter 7[3] trustee, Linda Schuette, and her attorney, Michael Dacquisto, for numerous acts of misconduct. Specifically, debtor sought an order to disbar the trustee and trustee's attorney in the bankruptcy court for the Eastern District.

The judge assigned to debtor's bankruptcy case construed her letter complaint as a motion to terminate the appointment of the trustee, to terminate the employment of trustee's attorney, and for other disciplinary relief and sua sponte issued an order setting a briefing schedule and a hearing. Following a hearing, the court issued Findings of Fact and Conclusions of Law which denied the motion. Debtor moved for reconsideration, which the court also denied. Debtor filed a timely appeal.[4]

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[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated on the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (generally October 17, 2005).

[4] Debtor filed a motion for reconsideration followed by a notice of appeal. The notice of appeal was forwarded to the BAP and assigned EC-07-1068. Subsequently, the bankruptcy court entered an order denying the motion for reconsideration. The notice of appeal was transmitted to the BAP a second time and was assigned a second appeal number, EC-07-1119. The BAP issued orders consolidating the appeals, denying debtor's motion for leave to appeal as unnecessary.

Debtor contends that the bankruptcy court erred in converting her letter complaint into a motion because doing so breached confidentiality, caused her attorney to withdraw, and forced her to proceed pro per. Debtor also contends that the bankruptcy court erred in its factual findings and in applying the law to the trustee's and trustee's attorney's alleged misconduct.

We find that the bankruptcy court did not err in converting debtor's ex parte letter into a motion because debtor requested affirmative relief against the trustee and the trustee's attorney. Therefore, the trustee and her attorney were entitled to notice of debtor's allegations against them. Further, the bankruptcy court had discretion whether to refer debtor's complaints to the United States Trustee or a disciplinary body.

We also find no error in the court's findings or application of the law with respect to removal of the trustee for "cause" or the disbarment of the trustee's attorney. The record supports the court's findings that neither the trustee nor her attorney committed any wrongdoing.

Because we find no reversible error, we AFFIRM.

## II. FACTS

Debtor is a former attorney who practiced law in California from 1975 until 1991 when she was disbarred. In February 1989, she started a business, Lawyer Defend Yourself, which assisted California lawyers with law office management plans, probation compliance and ethics, and provided briefs and motions for attorneys who represented themselves. Debtor sold her business in May 2006 to Michael A. Doran, who had a law office in Redding,

California. Debtor moved to Redding at about the same time to assist Mr. Doran in developing expertise for handling professional responsibility issues for attorneys.

Debtor filed her voluntary chapter 7 petition on June 26, 2006. At the time of her filing, debtor was being prosecuted for the unauthorized practice of law in the Santa Clara County Superior Court. Debtor was convicted and sentenced to electronic monitoring for nine months in Santa Clara County. Her house arrest commenced on August 28, 2006.

**A. The 341a Meeting of Creditors; Debtor's Nonattendance at Continued Meetings**

The trustee requested, through debtor's attorney, Darryll Alvey, that debtor produce documents by July 12, 2007, one week prior to the first 341a meeting of creditors. The day before the deadline, debtor sought, through her attorney, an extension of time from the trustee for the production of documents because she would have to travel to Long Beach to get the documents.

Debtor and her attorney appeared at the first 341a meeting on July 19, 2006. Debtor testified that she was sentenced in her criminal proceeding to probation, but it was conditioned on electronic monitoring for nine months. The debtor also testified that she was under a court order not to provide any legal documents, although no order to that effect is in the record. The trustee again requested debtor to produce documents, primarily tax returns, within twenty days (or by August 8, 2006). The 341a meeting was orally continued to October 18, 2006.

On August 4, 2006, debtor again requested her attorney to seek a continuance of the August 8, 2006 deadline. According to

the debtor, she could not travel to Long Beach or Ventura to get the remaining documents since she was working to prevent her incarceration on August 28, 2006. Debtor did provide some of her documents with her August 4, 2006 letter.

On October 9, 2006, the trustee's attorney wrote to debtor's probation officer requesting that she be allowed to travel to Redding to attend the October 18, 2006 continued 341a meeting. Alternatively, trustee's attorney requested that debtor be able to attend her 341a examination at the United States Trustee's office in San Jose.

At the October 18, 2006 continued 341a meeting, debtor's attorney appeared, but she did not. At that meeting, trustee's attorney informed the trustee and debtor's attorney that, if a request was made through the debtor's probation officer, the officer would advise debtor that she was required to attend her 341a meeting. The meeting was continued to October 26, 2006. The report of this 341a meeting erroneously stated that the debtor appeared for the hearing.

On October 20, 2006, trustee's attorney faxed a letter to the debtor's probation officer, seeking help in getting debtor to the October 26, 2006 continued 341a meeting. Debtor then advised her attorney that she would not appear at the continued meeting of creditors and that her probation officer would need a court order to take any further steps. Her attorney faxed a letter to the trustee, asked for a 45-day continuance, and advised her that debtor could not attend the October 26, 2006 meeting.

Neither debtor nor her counsel appeared at the October 26, 2006 meeting. Trustee's attorney also did not appear. The

meeting was continued to November 15, 2006. The report of the 341a meeting erroneously stated that debtor had appeared.

On November 14, 2006, the trustee filed amended reports of the 341a meeting to correct the errors regarding debtor's appearance. On November 15, 2006, neither debtor nor her attorney appeared at the continued 341a meeting. The meeting was continued to January 17, 2007.

**B. Debtor Moved to Terminate the Appointment of the Trustee and Disbar the Trustee's Attorney**

On October 30, 2006, debtor sent an ex parte letter to the judges of the bankruptcy court for the Eastern District of California. The judge assigned to debtor's bankruptcy case construed debtor's letter as a motion to terminate the appointment of the trustee, to terminate the employment of trustee's attorney, and for other disciplinary relief and sua sponte issued an order setting a briefing schedule and a hearing. The matter was set for hearing on January 3, 2007. After the hearing, the bankruptcy court took the matter under submission and issued an order and Findings of Fact and Conclusions of Law, denying debtor's motion. Debtor moved for reconsideration which the bankruptcy court denied on March 14, 2007. Debtor timely appealed.

## III. JURISDICTION

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(1) and (b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

## IV. ISSUES

1. Whether the court abused its discretion by sua sponte converting debtor's ex parte letter seeking disciplinary action against the trustee and the trustee's attorney into a noticed motion.

2. Whether the court abused its discretion by denying the debtor's motion to terminate the appointment of the trustee because no acts of misconduct were found.

3. Whether the court abused its discretion when it denied debtor's motion for disciplinary relief against, or disqualification of, trustee's attorney because no acts of misconduct were found.

## V. STANDARDS OF REVIEW

Removal of a trustee under § 324 is reviewed for an abuse of discretion. Dye v. Brown (In re AFI Holding, Inc.), 355 B.R. 139, 147 (9th Cir. BAP 2006). A bankruptcy court necessarily abuses its discretion if it bases its decision on an erroneous view of the law or on clearly erroneous factual findings. Id. It also abuses its discretion if it applies an incorrect legal rule. Id.

A disciplinary order is reviewed for an abuse of discretion. Peugeot v. United States Trustee (In re Crayton), 192 B.R. 970, 974-75 (9th Cir. BAP 1996). A court may disbar or suspend an attorney only upon the presentation of clear and convincing evidence. Id.

We review the denial of a motion for reconsideration for abuse of discretion. Weiner v. Perry, Settles & Lawson, Inc., 161 F.3d 1216, 1217 (9th Cir. 1998).

## VI. DISCUSSION

At the outset, we address debtor's argument that the bankruptcy court erred in converting her ex parte letter into a motion. We then set forth the standards for removal and the legal principles related to the bankruptcy court's authority to discipline attorneys appearing before it. Finally, although the standards for removal of a trustee for "cause" differ from the bankruptcy court's explicit and inherent power to suspend or disbar attorneys appearing before it, we apply those standards to the debtor's allegations against the trustee and her attorney jointly, as did the bankruptcy court.

### A. The Bankruptcy Court did not Err in Converting Debtor's Ex Parte Letter into a Motion

Debtor contends that the bankruptcy court erred in converting her ex parte letter, which she called an attorney disciplinary complaint, into a motion to terminate a non-lawyer trustee.[5] Specifically, debtor maintains that this procedure breached confidentiality, caused the debtor's attorney to resign, and forced the "victim" (herself) to prosecute her own complaint. Her main contention appears to be that she had to proceed in this matter without an attorney and, because her complaint was made public, she was unable to hire any attorney to represent her.

Initially we note that debtor's contentions on appeal are in direct contradiction to her earlier sworn declaration dated December 11, 2006, wherein she stated: "Judge Bardwil's conversion of my attorney disciplinary complaint into a motion to

[5] Debtor erroneously believed that the trustee was an attorney.

terminate Linda Schultze [sic] as trustee and Michael Dacquisto as her lawyer and to initiate disciplinary proceedings against them is an act of judicial courage and decency." Debtor expressed these views prior to the bankruptcy court's ruling on her motion. Thus, debtor's prior statements may properly be viewed as a waiver of any objection to the procedure employed by the court. see generally Groves v. Prickett, 420 F.2d 1119, 1125 (9th Cir. 1970)("A waiver is an intentional relinquishment or abandonment of a known right or privilege.")(citation omitted).

Debtor cites two cases in support of her argument. However, it is not apparent how these cases apply to the issues before us. In Liljeberg v. Health Serv. Acquisition Corp., 486 U.S. 847 (1988) the issue was the failure of a judge to recuse himself and, as a remedy for his failure to do so, a new trial. Debtor also cites Carlisle v. United States, 517 U.S. 416 (1996), but that case is a criminal case and addresses the issue of whether a court has authority to grant a motion for postverdict judgment for acquittal filed one day outside the time limit prescribed in Federal Rule of Criminal Procedure 29. The Supreme Court found that the district court had no authority to grant an untimely motion for many reasons that are inapplicable here. Debtor's citations do not support her argument.

**1. The Debtor Requested Affirmative Relief that Required Notice to the Trustee and the Trustee's Attorney**

We start from the general proposition that before a trustee may be removed, or an attorney disciplined, he or she is entitled to notice. Nonetheless, debtor improperly, and in violation of Rule 9003(a), which prohibits "ex parte meeting and

communications with the court concerning matters affecting a particular case or proceeding," sent the bankruptcy court an ex parte letter without notice to either the trustee or the trustee's attorney. Further, debtor sought affirmative relief from the bankruptcy court: she requested that the bankruptcy judges consider the letter as an official disciplinary complaint and concluded by thanking them for their "expeditious handling of this matter." Finally, her letter complaint set forth numerous acts of the trustee and her attorney that occurred in context of the ongoing proceedings before the bankruptcy court.

Because the removal of a trustee is an extreme remedy and has an impact on all parties involved, a motion to remove a trustee must be served on all parties. See United States Trustee v. Repp (In re Sheehan), 185 B.R. 819, 822 (Bankr. D. Ariz. 1995)(removal of trustee is extreme remedy even where trustee has acted negligently); Richman v. Straley, 48 F.3d 1139, 1143 (10th Cir. 1995)(recognizing that removal in one case would constitute removal in all current cases). Likewise, disbarment is an extreme sanction that is adversarial in nature and quasi-criminal, requiring notice and due process. Price v. Lehtinen (In re Lehtinen), 332 B.R. 404, 414 (9th Cir. BAP 2005)("Due process is, of course, required. An attorney subject to discipline is entitled to notice of the precise nature of the charges leveled against him and an opportunity to be heard.")(citations omitted); see also In re Medrano, 956 F.2d 101, 102 (5th Cir. 1992)(notice of allegations and disbarment proceeding must satisfy procedural due process). Accordingly, the bankruptcy court instructed the debtor, through her attorney,

to serve on the trustee, the trustee's attorney and the United States Trustee, a copy of her letter, declarations to support the requests, and any additional or supplemental pleadings necessary to support her request.

Because debtor's letter requested affirmative relief from the bankruptcy court that was extreme in nature, we agree with the court's assessment that there needed to be some type of motion, notice to the trustee, the trustee's attorney and the United States Trustee, and some formal pleadings filed with the court, before the court could consider the relief debtor requested. Anything less than the procedure initiated by the bankruptcy court would have deprived the trustee and her attorney of due process.

**2. The Record Does Not Support Debtor's Contention that Her Attorney Resigned Because of the Procedure**

The record does not support debtor's contention that her attorney resigned solely because of her motion and the procedure initiated by the bankruptcy court. For example, debtor stated in her September 6, 2006, declaration in support of her request for a continuance due to her incarceration that "My attorney...stated to me today that he is out of his element in dealing with my request for a continuance due to my imminent incarceration and the opposition to the appointment of an attorney. He stated that I should file Pro Per."

Her argument also conflicts with her attorney's declaration that was submitted in support of his motion to withdraw as debtor's counsel. He declared that "The debtor demanded that I

be relieved as counsel on August 31, 2006."[6] In sum, although her attorney's withdrawal coincided with this motion, there is no evidence that it influenced the court's decision.

**3. The Bankruptcy Court Had Discretion Whether to Refer the Trustee's Attorney's Alleged Misconduct to a Disciplinary Body**

Debtor contends that Local Rule 83-184[7] authorizes a judge to take disciplinary action against an attorney and contemplates referral of the complaint to a disciplinary body of the court. She argues that referral to a disciplinary body is the preferred choice as due process required that there be an adjudicator with some knowledge and experience in the area of the law involved. According to debtor, her complaints required an impartial adjudicator and the bankruptcy judge was self-interested as he had appointed trustee's attorney.

"There is no uniform procedure for disciplinary proceedings in the federal system. Instead, the individual judicial districts are free to define the rules to be followed and the

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[6] We take judicial notice of document #81 on the bankruptcy court's docket in debtor's bankruptcy case.

[7] The Eastern District's Bankruptcy Local Rule 1001-1(c) incorporates the District Court's Local Rule 83-184. That rule provides:

> [I]n the event any attorney subject to these Rules engages in conduct that may warrant discipline or other sanctions, any Judge...may initiate proceedings for contempt under 18 U.S.C. §401 or Fed. R. Crim. P. 42, or may, after reasonable notice and opportunity to show cause to the contrary, take any other appropriate disciplinary action against the attorney. In addition, or in lieu of the foregoing, the Judge...may refer the matter to the disciplinary body of any Court before which the attorney has been admitted to practice.

grounds for punishment." Crayton, 192 B.R. at 976 n.7. We have recommended that matters involving attorney discipline be referred to "independent bodies which have been specifically created to investigate charges of unprofessional conduct and prosecute disciplinary proceedings." Id. at 978. The rationale for this recommendation is that it "relieves a court from serving in the dual roles of prosecutor and arbiter in the investigation, prosecution and discipline of attorneys." Id.

Although a court must follow its own rules, In re Brooks-Hamilton, 329 B.R. 270, 286 (9th Cir. BAP 2005), debtor has not demonstrated that the district court rule that she relies upon requires the bankruptcy court to refer the matter to a disciplinary body. Rather, the rule gives the bankruptcy court discretion to do so.[8] Accordingly, we find no error in the procedure.

**4. The Record Does Not Support Debtor's Contention that She was "Forced" to Prosecute her own Complaint**

Debtor contends she was "forced" to prosecute her own complaint. The record, however, does not support her argument that she tried to engage counsel and was unable to do so. Further, although she chose to file pleadings in support of her motion, we note that the United States Trustee participated in the hearing. It is the statutory duty of the United States Trustee to appoint and supervise chapter 7 panel trustees. 28 U.S.C. § 586(b) and (d). The United States Trustee's opposition implies that it undertook any investigation that was needed and

[8] There was no evidence that the Eastern District has a disciplinary body.

concluded that debtor's allegations were without merit: "Based on the totality of circumstances of this case, the United States Trustee has concluded that neither the trustee, Schuette, nor her counsel, Dacquisto, have engaged in any improper conduct."[9]

In sum, for all the reasons stated above, we find no error in the procedure initiated by the bankruptcy court.

**B. Standard for Removal of a Trustee**

Section 324(a) provides that a chapter 7 trustee may be removed for cause. See 11 U.S.C. § 324(a); AFI Holdings, 355 B.R. at 148 ("[A] panel trustee can be removed from a pending case only if the bankruptcy court finds 'cause' after notice and a hearing.")(citation omitted). We have previously found that causes for removal may include "trustee incompetence, violation of the trustee's fiduciary duties, misconduct or failure to perform the trustee's duties, or lack of disinterestedness or holding an interest adverse to the estate. Such cause must be supported by specific facts." Id. (citations omitted). Generally, "cause" is "determinated on a case-by-case, totality-of-circumstances approach, subject to the bankruptcy court's broad discretion." Id. at 152.

The debtor, as the party seeking removal, has the burden of proving specific facts that constitute cause. Id. at 148. "A conclusory contention unsupported by specific facts does not constitute sufficient grounds for the removal of a trustee." Alexander v. Jensen-Carter (In re Alexander), 289 B.R. 711, 714

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[9] Objection of the United States Trustee to Debtor's Motion to Remove the Trustee and to Disbar the Trustee's Counsel dated December 15, 2006; 5:1-3.

(8th Cir. BAP 2003)(citation omitted).

**C. The Bankruptcy Court's Express and Inherent Authority To Disbar a Trustee's Attorney; Applicable Standards**

"Where a bankruptcy court approves an attorney's employment pursuant to § 327(a), it has the power to determine actual competence after employment to regulate the retention of the attorney." Crayton, 192 B.R. at 976.

"A bankruptcy court also has the inherent power to suspend or disbar attorneys." Id. (citations omitted); see also In re Snyder, 472 U.S. 634, 645 n.6 (1985)(noting that the state code of professional responsibility did not by its own terms apply to attorney sanctions in the federal courts, but that federal courts in exercising their inherent power under the standards imposed by federal law may charge attorneys with the knowledge of, and conformity to, the state codes). The United States Supreme Court has cautioned that courts must exercise their inherent power "with restraint and sound discretion." Chambers v. NASCO, Inc., 501 U.S. 32, 45 (1991).

A court may disbar or suspend an attorney only upon the presentation of clear and convincing evidence. Crayton, 192 B.R. at 974-75 citing Medrano, 956 F.2d at 102. The Fifth Circuit in Medrano explained that the clear and convincing evidentiary standard "'produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts' of the case." Medrano, 956 F.2d at 102 (citation omitted).

"[T]he moving party bears the burden of proving all elements of a violation." Id. Thus, debtor has a heavy burden to carry when attempting to prove that trustee's attorney's actions warranted the extreme sanction of disbarment in the Eastern District bankruptcy court.

**D. Analysis**

**1. The Bankruptcy Court did not Err in Finding No Wrongdoing in Connection with Employment of Trustee's Counsel**

Debtor contends that the bankruptcy court's findings regarding the employment of trustee's attorney on an ex parte basis are erroneous since California Rule of Professional Conduct 5-300(B) prohibits such a procedure.[10] Debtor argues that the bankruptcy court's reasoning that this is customary and there is no violation as trustees may hire lawyers without court approval when the law requires approval is an issue this panel should resolve.

Debtor's citation to California Rule of Professional Conduct 5-300(B) is inapplicable. The Federal Rules of Bankruptcy Procedure and the Bankruptcy Code govern the employment of a trustee's attorney. The bankruptcy court correctly noted that a noticed motion is not required for a trustee to employ counsel.

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[10] This section provides:

(B) A member shall not directly or indirectly communicate with or argue to a judge...upon the merits of a contested matter pending before such judge, except

1) In open court; or
2 With the consent of all other counsel in such matter; or
3) In the presence of all other counsel in such matter; or
4) In writing with a copy thereof furnished to other counsel; or
5) In ex parte matters.

Rather, the trustee may simply file an application. See Fed. R. Bankr. P. 2014.

Moreover, debtor received notice of the application and supporting declarations. Debtor opposed trustee's attorney's employment asserting the bankruptcy rules did not authorize the trustee to hire an attorney without grounds, specific facts, good cause, notice of the issues to be met, and an opportunity for the debtor to meet and respond to the issues before a motion to appoint a professional is filed. Thus, debtor has no reason to complain about the ex parte procedure.

Debtor also contends that trustee's attorney committed disbarable misconduct in filing eleven pleadings claiming to be the trustee's attorney when he had no court approval and § 327(a) requires it. The bankruptcy court found that the attorney-client relationship does not depend upon a court's order to exist. We agree. See generally Lister v. State Bar, 51 Cal. 3d 1117, 1126, 275 Cal. Rptr. 802 (1990)(finding that attorney-client relationship exists even absent a contract or payment of attorneys fees, where client asks attorney to file lawsuit, gives attorney all relevant documents and understands attorney to be working on the matter). The court correctly noted that the order authorizing employment establishes the attorney's relation to the estate and in this case the employment was effective as of July 20, 2006, "well before counsel engaged in any activity about which the debtor now complains." See Lamie v. U.S. Trustee, 540 U.S. 526, 538-39 (2004)(finding that if an attorney is to be paid from the estate in a chapter 7, he must be employed by the trustee and approved by the court).

Lastly, debtor contends that the bankruptcy court made clearly erroneous factual findings with respect to trustee's attorney since he submitted no declaration in opposition to her motion. However, as noted above, the procedure followed for the employment of the trustee's attorney was proper. Accordingly, we find no error in the bankruptcy court's findings of fact or conclusions of law with respect to his employment.

**2. The Bankruptcy Court did not Err in Finding No Wrongdoing in Connection with the Meeting of Creditors**

Debtor complains that the bankruptcy court erred in finding that she had notice of the continued meeting of creditors and that the trustee or her counsel fraudulently represented to her probation officers that debtor was required to appear by law at her meetings. The bankruptcy court found that the representations were entirely accurate. We agree.

The Bankruptcy Code provides that the debtor "shall appear and submit to examination under oath" at the meeting of creditors. See 11 U.S.C. § 343. Debtor misses the point by failing to acknowledge that her appearance at the meeting of creditors, whether the initial meeting or the continued meeting, was mandatory. Unless the bankruptcy court excused her appearance, she was required by statute to appear. See In re Bergeron, 235 B.R. 641, 644 (Bankr. N.D. Cal. 1999)(finding that bankruptcy court can excuse debtor's appearance at § 341 meeting of creditors despite unqualified directive in § 343 that the debtor "shall" appear.) We find that a trustee need not obtain a court order that a debtor appear at a continued 341a meeting of creditors when § 343 plainly requires her appearance.

Debtor contends she needed some type of notice of the continued 341a meeting even though her attorney was present at the October 18, 2006, meeting at which the October 26, 2006, meeting was announced. Debtor's complaint about the lack of notice for the continued 341a meeting is puzzling. The "Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines," which debtor does not dispute receiving, provides clearly on the back of the notice next to the notation "Meeting of Creditors" that The meeting may be continued and concluded at a later date without further notice. It was debtor's responsibility to read the back of the notice and stay informed regarding the continuation of her creditors' meeting.

Nonetheless, debtor's attorney was present at the continued 341a, even though she was not. The bankruptcy court found that her attorney's notice of the continued meeting was imputed to debtor, because clearly her attorney was acting as her agent at that time. We agree. See Shafer v. Berger Kahn et. al., 107 Cal.App.4th 54, 69, 131 Cal. Rptr. 2d 777 (2003)(finding that the relationship of attorney and client and is one of agent and principal under California law).

The bankruptcy court further found that trustee's attorney's statement to her probation officers that the meeting of creditors was a "court hearing" was in no way materially misleading. We note that some courts view the debtor's appearance and submission to examination under oath at the meeting of creditors to constitute an appearance before the court and the notice of such meeting has been said to be the equivalent to an order of the court. see 9A Am. Jur. 2d Bankruptcy § 1095 n.7 (2007). Thus,

we can find no error with the court's finding.

In sum, we cannot find on this record that the bankruptcy court committed any error in fact or law in finding that communications regarding the 341a meeting were appropriate.

### 3. The Bankruptcy Court did not Err in Finding No Wrongdoing in Communications with Debtor's Probation Officers

Debtor contends that trustee's attorney's communications[11] with her probation officer were an indirect communication with her that violates California Rule of Professional Conduct 2-100. Debtor argues on appeal the bankruptcy court erred as a matter of law when it found the trustee's attorney did not violate this Rule. Specifically, the bankruptcy court found that debtor's probation officers were not her agents and her attorney did not object to the communications. According to debtor "It nullifies the rule requiring adherence to California Rules of Professional Conduct Rule 2-100[12] and encourages further disbarable misconduct."

We find no error with the bankruptcy court's findings that debtor's probation officers were not her agents. We note that a probation officer may perform many roles, but we found no

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[11] Debtor also complained that the trustee's attorney engaged in ex parte communications with her directly by serving her with court-filed documents. The bankruptcy court found that because the applicable rules required service, her arguments were without merit. We agree and find no error with this finding.

[12] This section provides in relevant part:

> (A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.

instances where a probation officer would be considered the agent of the parolee. Nor has debtor cited any authority to support her theory that those officers were her agents. See generally United States v. Johnson, 935 F.2d 47, 50 (4th Cir. 1991)(noting that a probation officer is "a neutral, information-gathering agent of the court, not an agent of the prosecution.")(citation omitted). Further, to the extent that California Rule of Professional Conduct 2-100 applies, that rule states that communications with a public officer are not prohibited. Cal. R. Prof'l Conduct 2-100(c). "A probation officer is, of course, a public officer." People v. Quinn, 36 Cal.Rptr. 233, 246 (1963)(citations omitted).

We also find no error that there was implied consent by debtor's attorney for the communications with her probation officers. See Shafer v. Berger Kahn et. al., 107 Cal.App.4th at 69 (finding that the relationship of attorney and client is one of agent and principal under California law).

The bankruptcy court entered detailed Findings of Fact and Conclusions of Law; we see no need to repeat them here. We only need to conclude that the findings are supported by the record and the facts are applied correctly to the applicable law. We so conclude.

**4. The Bankruptcy Court did not Err in Finding that the Trustee did not Commit Perjury**

Debtor contends that the trustee's crimes of perjury warrant her termination. She complains that she provided evidence of twenty crimes of perjury, but the bankruptcy court addressed only two crimes.

The perjury debtor complains about generally relate to statements made in the trustee's declarations regarding debtor's failure to appear at the continued meetings of creditors, failure to produce documents, and the filing of so-called false reports with the court that indicated debtor had appeared at some of the 341a meetings when she had not. The bankruptcy court fully stated its reasons for finding that the statements made by the trustee were correct and her filing of the alleged "false" 341a reports was inadvertent, rather than wrongful alteration of court records. The record supports the court's findings.

Further, the bankruptcy court need not address each and every one of debtor's allegations in its Findings of Fact and Conclusions of Law. The court's findings need only be "explicit enough on the ultimate issues to give the appellate court a clear understanding of the basis of the decision and to enable it to determine the grounds on which the trial court reached its decision." Amick v. Bradford (In re Bradford), 112 B.R. 347, 353 (9th Cir. BAP 1990)(citation omitted). "A court's failure to make express findings does not require a remand if a complete understanding of the issues may be had from the record without the aid of separate findings." Id. (citations omitted).

On this record, we affirm the bankruptcy court's finding that debtor failed to demonstrate that the trustee had committed perjury before the court. It follows that the trustee's attorney could not be guilty of suborning the perjury of the trustee when no such perjury existed.

## VII. CONCLUSION

Debtor made serious allegations and requested extreme remedies on an ex parte basis against both the trustee and the trustee's attorney. We find no abuse of discretion in the procedure employed that gave the trustee and her attorney notice of the debtor's allegations against them especially in light of the fact that debtor requested affirmative relief from the bankruptcy court.

We also find that the bankruptcy court did not commit error in either its factual or legal findings in connection with the removal of the trustee or the disbarment of her attorney. The debtor failed to prove that cause existed for removal of the trustee. AFI, 355 B.R. at 151. The debtor also failed to carry her burden, by clear and convincing evidence, that the trustee's attorney engaged in misconduct that would warrant disbarment or any other disciplinary sanction. We, therefore, AFFIRM.