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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

DEREK LYNN SANDE,

Debtor.

In re

SANDE FARMS, LLC,

Debtor.

Case No. **19-61079-12**

**Substantively consolidated
With:**

Case No. **19-60962-12**

ORDER

At Butte in said District this 10th day of March, 2020.

In the above-referenced Chapter 12¹ bankruptcy cases, after due notice, a hearing was held March 6, 2020 in Great Falls to afford Jeffrey T. Wegner (“Wegner”) an opportunity to show cause why his authorization to appear before this Court *pro hac vice* should not be revoked for his and FBN’s failure to either comply with an Order of this Court, or request that he be excused from complying with an Order of this Court. ECF No. 144. Appearances at the hearing were noted on the record. A prior Order of this Court specifically provided: “Counsel for all creditors that have not resolved all their objections to the Plan by the time of the conference

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Civil Rule” references are to the Federal Rules of Civil Procedure.

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SHALL attend the conference in person (not by telephone)[.]”² ECF No. 115. Despite the Order’s clear requirement that counsel personally attend, Wegner did not attend the conference in person. Instead, he called in and participated by phone. Counsel for the other creditors with outstanding issues attended the conference in person. Notably, Wegner’s client FBN was the only creditor that failed to resolve their plan issues at the conference. ECF No. 143.

At the show cause hearing, Wegner referred to a series of emails he exchanged with the Debtor and Chapter 12 Trustee (“Trustee”) and explained that he believed he had reached an agreement with them that permitted him to attend the plan conference by telephone. Although initially inclined to construe Wegner’s failure to attend as a misunderstanding attributable to the Trustee³, ultimately, the Court concluded that Wegner’s decision not to attend the chapter 12 plan conference was solely attributable to his lack of familiarity with this Court, the customs and practices of this bar, and reflected at best an isolated lapse of judgment. Ordinarily, this Court would simply enter an Order discharging the Order to Show Cause. However, for the benefit of counsel who may be admitted *pro hac vice* in the future, the Court provides the following guidance.

² §§ 1221 and 1224 impose 90 and 45-day procedural deadlines in chapter 12 cases. If strictly construed a chapter 12 debtor should be well on their way to confirmation 135 days after the petition date. A protracted reorganization effort increases costs for all parties and benefits no one. To assist with the speedy, economical resolution of the case and to carry out the provisions of §§ 1221 and 1224, this Court has issued orders pursuant to § 105(a) requiring counsel to participate in person at chapter 12 preliminary plan conferences.

³ This initial inclination was wrong because it presupposed the truthfulness of Wegner’s representations without affording the Trustee an opportunity to respond or address the statements made to the Court.

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Pursuant to Local Bankruptcy Rule (“LBR”) 2090-1(c), admission *pro hac vice* to this Court requires application in accordance with L.R. 83.1(d) of the Local Rules of Procedure for the U.S. District Court for the District of Montana. L.R. 83.1(d) includes 6 subsections, and subsection (3), further specifies the precise information that must be included in the applicant’s *pro hac vice* application. An application to appear *pro hac vice* in this Court must provide the information required by subsection (3). An applicant’s failure to include the required information may be grounds to deny the application for admission *pro hac vice*.

Special attention should be given to subsection (2) of L.R. 83.1(d), which requires the applicant to associate with local counsel. It states:

An applicant attorney must obtain the name, address, telephone number, and written consent of local counsel who is a member of the bar of this court and with whom the court and opposing counsel may readily communicate regarding the conduct of the case, upon whom documents will be served, and who will be responsible to participate as required under subsection (6) of this rule.

L.R. 83.1(d)(2). Local counsel’s duties include:

Local counsel must participate actively in all phases of the case, including, but not limited to, attendance at depositions and court proceedings, preparation of briefs and discovery requests and responses, and all other activities to the extent necessary for local counsel to be prepared to go forward with the case at all times. Unless otherwise ordered, local counsel must sign all pleadings, motions, and briefs. The court, in extraordinary circumstances and on motion by local counsel, may suspend or modify local counsel’s duties. If the court alters local counsel’s duties or waives this rule—neither of which will occur routinely—all documents subsequently filed must be signed by counsel actively involved in the case.

L.R. 83.1(d)(6). LBR 2090-1(d) contemplates a waiver of the association of local counsel requirement on a case-by-case basis. However, when the requirement is not waived, “the local attorney shall be served with copies of all pleadings, shall attend all hearings or trials, shall be continually informed by the attorney admitted by *pro hac vice* of the current status of all negotiations and matters occurring in the case or proceeding.” LBR 2090-1(d).

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Although not addressed at the hearing, this case epitomizes the importance of these rules. First, although Wegner's application includes a designation of an attorney admitted to this bar as local counsel, the designated attorney lacks the requisite experience before this Court needed to provide meaningful assistance. A search of the Court's records demonstrates that the designated attorney has appeared in 2 adversary proceedings, excluding this case, that were dismissed without significant proceedings. Further, in this case, it does not appear that local counsel has appeared at any hearings or otherwise participated in a meaningful way, despite the inclusion of her name on each of the pleadings. Local counsel's failure to attend the hearings without leave of court violates LBR 2090-1(d).⁴ If Wegner had the benefit of experienced local counsel and had complied more fully with the spirit as well as the letter of the local rules, the Order to Show Cause likely would not have been necessary.

The applicable L.R. and LBR governing admission *pro hac vice* and practice before this Court by attorneys admitted *pro hac vice* and their local counsel are not merely a "box-to-check," as part of the application process. These are substantive requirements that have been adopted because past experience has shown that many counsel admitted *pro hac vice* rely on their experience in other courts, both to their benefit and detriment, and fail to read or understand our local rules and the nuances of practice in this District. Counsel admitted *pro hac vice* should consider their local counsel their guide in a strange land and resist the temptation to substitute their judgment for local counsel on matters of local procedure and practice. Further, local counsel who blindly permit their

⁴ The Court did not raise this issue in its Order to Show Cause or at the hearing and does not intend to take further action regarding this issue at this time. However, this flagrant disregard for the requirements of the local rules will have consequences for attorneys admitted *pro hac vice* in the future.

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signature to be added to pleadings and their role in the case to be marginalized, should consider whether the engagement is worth the consequences that may flow from it.

IT IS ORDERED that the Order to Show Cause is discharged without revocation of Jeffrey T. Wegner's *pro hac vice* admission.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana