

The pro se debtor filed a Chapter 13 case in March of 1992 which was assigned to Judge Radcliffe. There was a dispute between the debtor and the State of Oregon regarding the debtor's obligation for child support payments. The court ruled against the debtor and ordered him to file an amended plan within 30 days. The court stated that if no plan was received within the required time, the case would be dismissed without further notice. The debtor attempted to file an amended plan on the last possible day, but it was returned by the Clerk's office for noncompliance with local rules and the court dismissed the debtor's case.

The debtor subsequently filed motions to vacate the order of dismissal, to recuse Judge Radcliffe, and to change venue to Portland. Judge Alley denied all motions. In his opinion, Judge Alley stated that it is a fair construction that if an order is given that a document be filed by a certain date, that the document be filed by that date in a manner which complies with local rules. He also stated that the debtor waited an unreasonable amount of time before seeking to reverse the effects of the order. Any attempt to reopen the case under § 350 would also fail for the same reasons given regarding the motion to vacate. Additionally, as it appears that the debtor's primary interest in reopening the bankruptcy case would be to continue his dispute with the State, it would be more appropriate for him to pursue his state law remedies in a state forum.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE) Case No. 692-61338-fra13
)
TAD K. L. ENGMAN,) OPINION
)
_____) Debtor._____)

This matter comes before the Court on Debtor's ex parte motion. In his motion the Debtor seeks an order vacating the Court's order of October 17, 1994 dismissing the above-captioned case, an order recusing The Honorable Albert E. Radcliffe, and an order changing venue and moving the case to the Portland division of this Court.

I. Motion to Vacate Order of Dismissal

This case commenced in March of 1992, and generated over 200 separate documents before finally being dismissed. In July of 1994 the principal battleground appears to have been a dispute between the Debtor and the State of Oregon, acting through the Lincoln County District Attorney, with respect to Debtor's child support

1 obligations. Debtor filed a motion seeking to have this Court
2 abstain from determining amounts owed. The State, for its part,
3 moved to dismiss the bankruptcy case. The Court, The Honorable
4 Albert E. Radcliffe presiding, first heard the parties on July 8,
5 1994. The Court denied the motion to abstain and set the objection
6 to the claim itself, and the motion to dismiss, on for hearing.
7 This hearing took place on July 27, 1994. The Court, again acting
8 through Judge Radcliffe, allowed the State's claim, and ordered the
9 Debtor to file an amended plan reflecting the allowed claim within
10 30 days. The Court specifically stated that if no plan was filed
11 the case would be dismissed without further notice.
12

13 Debtor attempted to file a revised plan on August 26, the last
14 available date. However, the draft plan was rejected by the
15 Clerk's office for failure to comply with local rules. Thereafter
16 an order was entered dismissing the case. No appeal was taken from
17 that order.

18 A trial court may vacate its own orders if it appears that the
19 original order was entered in error. Vacation of orders lies
20 within the sound discretion of the court in the exercise of its
21 equitable powers. There is no basis for vacating the order at
22 issue here, either equitable or legal. It is a fair construction
23 of any court order to file a document within a given time that the
24 document be filed in a manner which complies with applicable rules.
25 The Debtor here failed to do so, and the case was dismissed. The
26

1 Debtor has waited an unreasonable period of time before seeking to
2 reverse the effects of the order.

3 The Debtor's motion might be construed as a motion to reopen
4 the case under Code § 350. However, much of the foregoing analysis
5 is also applicable to a motion under § 350. Moreover, while the
6 Debtor makes reference in his motion to "intended filings", it
7 appears that his only interest in reopening the bankruptcy case is
8 to continue his dispute with the State. He has substantial state
9 law remedies available, and should pursue them in the appropriate
10 state forum. The fact that he has caused the recusal of judges in
11 Lincoln County is immaterial.
12

13 II. Motion to Recuse Judge

14 A party may not require the recusal of a judge after that
15 judge has made substantive rulings in a case. For that reason
16 alone, the motion should be denied. In addition, this matter has
17 been reassigned to the undersigned Judge for administrative
18 purposes. Either way, the motion should be denied.

19 III. Change of Venue

20 Given the Court's disposition of the motion to vacate the
21 order closing the case, the request for change of venue is moot,
22 and just for that reason denied.

23 An order consistent herewith will be entered.
24
25
26

FRANK R. ALLEY, III
Bankruptcy Judge