

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

**July 28, 2022 at 11:30 a.m.**

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|-----------|---------------------------------------------|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1.</b> | <b><u>20-00202-E-0</u><br/><u>RHS-1</u></b> | <b>IN THE MATTER OF THOMAS<br/>OSCAR GILLIS, FEE RUBRIC</b> | <b>STATUS CONFERENCE RE:<br/>RECOVERY OF OVERPAYMENT OF<br/>LEGAL FEES AND ENFORCEMENT OF<br/>FEE RUBRIC ORDER AND RELATED<br/>ORDERS<br/>6-23-22 <a href="#">[248]</a></b> |
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Notes:

Set by order of the court filed 6/23/22 [Dckt 248]

Parties to appear: Thomas O. Gillis; David Cusick, Chapter 13 Trustee; Russell Greer, Chapter 13 Trustee; Michael Meyer, Chapter 13 Trustee; counsel from the U.S. Trustee's Office to whom the Gillis Fee Rubric and enforcement of the court's order for Mr. Gillis to pay the Clerk of the Court the amount of fees he was paid in excess of the amount authorized by the court. Telephone Appearances Permitted.

Status Conference statements, if any, to be filed and served on or before 7/21/22. Replies presented orally at the Status Conference.

Status Report of Thomas O. Gillis filed 7/6/22 [Dckt 250]; Exhibits [Dckt 251]

Status Conference Statement [Michael H. Meyer, Chapter 13 Trustee] filed 7/20/22 [Dckt 253]

United States Trustee's Status Conference Statement filed 7/20/22 [Dckt 255]

**JULY 28, 2022 STATUS CONFERENCE**

Status Reports for the July 28, 2022 Conference have been filed by Thomas Gillis, U.S. Trustee Tracy Hope Davis, and Chapter 13 Trustee Michael H. Meyer (a collective Report for the three Chapter 13 Trustees.

The Status Report filed by Thomas Gillis (Dckt. 250) is summarized by the court as follows:

A. Status Report

1. Mr. Gillis is considering dismissing his appeal of the Fee Rubric Order, believing that is it a mere academic exercise because he cannot disgorge the not allowed fees he was paid. However, since the Fee Rubric Order has his name on it, he may choose to prosecute the appeal for that purpose.
2. Mr. Gillis has resigned his law license to the California State Bar.
3. Mr. Gillis has commenced a Chapter 13 bankruptcy case, 21-90442, in the Eastern District of California, and has now confirmed a Plan. He reports that none of the 351 former clients have filed a claim for the fees he was paid beyond what was approved by the court.
4. Mr. Gillis takes the U.S. Trustee to task for filing frivolous motions against him. He references a motion to dismiss his most recent bankruptcy case, which motion was denied by the bankruptcy judge in that case.<sup>1</sup>
5. Mr. Gillis references what he believes to be other “frivolous motions” filed by the U.S. Trustee, citing to two of Mr. Gillis’ bankruptcy cases he filed for clients in the Northern District of California.
6. Mr. Gillis believes that about 240 of his 351 cases for former clients have been closed.
7. With respect to Mr. Gillis remaining to be counsel of record for his former clients, notwithstanding his inability to practice law, he believes that Judge Clement instructed the Clerk to keep Mr. Gillis on the notice list. The court notes that being on the notice list, like any non-lawyer party in interest, does not absolve a former attorney from substituting out as a former counsel of record.

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<sup>1</sup> In looking at the two Northern District Cases cited by Mr. Gillis for the “frivolous motions” by the U.S. Trustee, the court notes the following. In the *Guerrero* Case, Bankr. N.D. Cal. No. 1950871, the bankruptcy judge’s ruling was that \$5,300 were reasonable fees for the legal services provided to Mr. Gillis’ former client in that case. This is consistent with the rulings of this court, as ultimately embodied in the Fee Rubric that to the extent Mr. Gillis provided legal services, he was entitled to the reasonable fees relating thereto. To the extent that such fees remained to be paid, they were subject to being levied upon pursuant to the three Orders/Judgments of this court.

In the *Sandoval* case, Bankr. N.D. Cal. Case No. 16-31236, the bankruptcy judge noted that while the case had not been “butchered” by Mr. Gillis and a plan confirmed, the court would consider whether the fee should be adjusted to the amount as provided in the Eastern District of California Fee Rubric. *Id.*, Dckt. 72 (Audio recording of hearing). However, the court would not deny Mr. Gillis of all his fees. The court allowed the debtor in that case to either obtain a refund of \$800 from Mr. Gillis (using the E.D. California Fee Rubric) or having that debtor accept replacement counsel to be paid for by Mr. Gillis to conclude the case, there being only four plan payments due.

8. Mr. Gillis states that he has continued to provide services to former clients as a “paralegal” working for another attorney. He cites to doing that for attorney Mark O’Toole.
9. Mr. Gillis states that collection on the three orders (which are judgments) for disgorgement of fees for which the three Chapter 13 Trustee and the U.S. Trustee are authorized is all but impossible due to Mr. Gillis’ lack of assets and earning potential.
10. Mr. Gillis suggest that the \$13,538.00 in attorney’s fees owed by Mr. Gillis that were levied upon in enforcing the disgorgement orders should be used to pay for attorneys to represent some of Mr. Gillis’ former clients.

The Status Report filed by Chapter 13 Trustee Michael H. Meyers (Dckt. 253) is summarized by the court as follows:

- A. With respect to the \$13,538.00 in fees due Mr. Gillis that were levied upon pursuant to this court three orders, the Trustees recommend that monies be refunded to Mr. Gillis’ clients and not disbursed by the Trustee to Mr. Gillis’ other clients who are in the class of former clients to whom Mr. Gillis owes money.
- B. The Trustee agree with Mr. Gillis that the Clerk of the Court should unilaterally remove Mr. Gillis as counsel of record in cases for his former clients.

The Status Report filed by the U.S. Trustee is summarized by the court as follows:

- A. The U.S. Trustee reports that Mr. Gillis has confirmed his Chapter 13 Plan and the court in that case has modified the stay to allow Mr. Gillis to prosecute his appeal of the Fee Rubric Order. The U.S. Trustee notes that the stay has not been modified for the enforcement of the three orders issued for the disgorgement of the overpaid legal fees.
- B. Since Mr. Gillis is no longer a licensed attorney, he should be removed as the “attorney of record” for his former clients.

### **Thomas Gillis Chapter 13 Bankruptcy Case**

As stated by Mr. Gillis, he is prosecuting a Chapter 13 Plan in Case No. 21-90442. That Confirmed First Amended Plan provides for monthly plan payments of \$120.00 for the first six months and then \$225 a month for months seven through sixty. 21-90442; Plan § 7.1, Additional Provisions, Dckt. 68. The Plan does not provide for the payment of any secured claims in Classes 1 or 2 of the Plan or in the additional provisions. The Plan provides for the payment of any \$12,953.00 in priority unsecured claims (Plan, ¶ 3.12), and provides for not less than a 0% dividend for general unsecured claims. The \$12,953.00 priority amount is consistent with Amended Proof of Claim 3-1 filed by the Internal Revenue Service in Mr. Gillis’ bankruptcy case.

No opposition was filed to Mr. Gillis’ Motion to Confirm the First Amended Plan.

On Amended Schedule I Mr. Gillis lists his occupation as a paralegal working form “T. Mark Otoole.” The gross income from that employment and his Social Security Benefits provides Mr. Gillis with gross income of \$3,145.00 a month. *Id.*; Amd. Schedule I, Dckt. 70 at 166-167.

On his Petition, Mr. Gillis stated under penalty of perjury that he “lives” at 1006 H Street, Modesto, California. The 1006 H Street, Modesto, California address is the one that Mr Gillis identifies as the address for his law office that was closed in 2020 (*Id.*; Amd. Statement of Financial Affairs, ¶ 27, Dckt. 278) and the business address of his employer T. Mark O’Toole (*Id.*; Schedule I, Dckt. 70 at 166).

It is not clear where Mr. Gillis resides.

### **Enforcement of Court Orders/Judgments**

The three orders/judgments issued by this court for Mr. Gillis to pay \$148,948.62 (Dckt. 231), \$63,610.18 (Dckt. 232), and \$81,274.88 for the excessive fees received by Mr. Gillis from his former clients expressly provide that they be enforced in the same manner as a judgment by each respective Chapter 13 Trustee and the U.S. Trustee for Region 17. The Orders/Judgment further provide that any further fees that Mr. Gillis was owed in any of the bankruptcy cases to be paid through the confirmed Chapter 13 Plan were to be disbursed directly to the Clerk of the Court, with such monies to be held for disbursement to Mr. Gillis owed monies for having received fees in excess of what was allowed by the court. This constituted a levy pursuant to the Orders/Judgments on the income (which presumably has been properly tax reported as income to Mr. Gillis) owed to Mr. Gillis by some of his former clients.

While the Chapter 13 Trustee suggest that these monies should be gifted back to Mr. Gillis’ former clients who owed the money and whose payments were levied upon, the court cannot discern a legal basis for such “gifts.” These former clients owed the monies and the monies have been levied upon for Mr. Gillis’ former clients to whom he owes monies on the three Orders/Judgments.

It appears that neither the respective Chapter 13 Trustees or the U.S. Trustee filed proofs of claims in Mr. Gillis’ current Chapter 13 case. Those debts, without including any post-judgment interest, total \$293,833.26.

With only \$13,538.00 in monies due Mr. Gillis having been levied upon and there being \$293,833.26, that would represented a pro rata distribution of 4.6% to the former clients who are owed monies for the disgorgement of fees paid in excess of that allowed. Looking at the charts of fees owed attached to the Orders/Judgments, most seem to fall in the \$800 to \$1,200 range. With a 4.6% pro rata distribution, the distribution checks would be in the range of \$36.80 to \$55.20.<sup>2</sup>

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<sup>2</sup> For the Trustee Greer Cases, only 10 of the 91 former clients are owed less than \$800 each. For the Trustee Meyer Cases, 38 of the 202 former clients are owed less than \$800 each. For the Trustee Cusick Cases, only 7 of the 83 former clients are owed less than \$800 each. For some these, the lesser amount is \$600 to \$700. Additionally, there are a number of former clients owed \$1,200, \$1,300, and \$1,600 each. It may be that an economically *de minimis* opt in amount distribution protocol will have to be developed for the distribution of these monies to the former clients of Mr. Gillis to whom the monies are owed.

**Discussion at Status Conference re Disbursement of Monies  
to Former Clients Owed Disgorgement of Fees Paid by Mr. Gillis**

At the Status Conference, **XXXXXXX**

**Summary Review of Proceedings and Orders  
(which constitute judgments; Fed. R. Bank. P. 9001(7),  
9014(c), 7054, and Fed. R. Civ. P. 54)  
For Payment of Monies by Thomas Gillis**

On July 27, 2020, the Judges of this Court adopted and made applicable a Fee Rubric for determination of the proper amount of attorneys fees to be paid Thomas Gillis relating to bankruptcy cases in which he took payment in advance but was unable to provide the service due to the suspension of his ability to practice law as previously ordered by the California Supreme Court. Corrected (Fed. R. Civ. P. 60(a), Fed. R. Bankr. P. 9024) District-Wide Fee Rubric Order *Nunc Pro Tunc*, effective to June 26, 2020; Dckt. 234; entered on July 27, 2020.

The court entered separate orders for the respective Chapter 13 Trustee and U.S. Trustee to enforce the Fee Rubric Order and recovery of overpaid amounts. Dckts. 231, 232, 233. The cases and amounts of overpayment to be repaid by Mr. Gillis and to be recovered from fees allowed in other cases but not yet paid are identified in the court's Civil Minutes for each of the U.S. Trustee's three motions (one for each of the Chapter 13 trustees) for recovery of such amounts. Dckts. 218, 219, 230.

The Clerk of the Court's Fee Rubric May 31, 2022 closing date payment to the Clerk of the Court of fees from the Chapter 13 trustees to the Clerk discloses that \$13,538.16 has been disbursed to the Clerk of the Court. A copy of the Clerk's Report is attached hereto as Addendum A. The breakdown by Trustee is that \$5,002.07 has been disbursed by Chapter 13 Trustee David Cusick; \$1,000.39 by Chapter 13 Trustee Russell Greer; and \$7,535.70 by Chapter 13 Trustee Michael Meyer.

The Report reflects that Thomas Gillis has not made any payments to the Clerk of the Court for the fees he was overpaid and which were not allowed by the court.

It appears that substantially all of the projected monies to be disbursed by the Chapter 13 Trustees to the Clerk of the Court have been so disbursed. However, no monies have been paid by Mr. Gillis on the substantial amount of fees which he improperly received (not being able to provide the legal representation relating to such fees) in connection with the cases he filed in this court.

**Correspondence of Thomas Gillis  
To the Clerk of the Court**

On June 7, 2022, Mr. Gillis sent an email to the Clerk's Office questioning why his former clients' files were open and that if it was not promptly addressed "he" would have "one of his clients" file a writ of mandamus against the Clerk of the Court. A copy of his email is attached hereto as Addendum B.

He also stated that he too would likely file a motion in his Fee Rubric Miscellaneous case. No such motion has been filed, though the ten days expired on June 17, 2022.

What caused Mr. Gillis' consternation was that his "clients" were contacting Mr. Gillis to address why their bankruptcy cases were not being closed. The cases identified by Mr. Gillis for his former clients (Mr. Gillis being suspended from the practice of law) and a summary of the case statuses are:

<b>Case No. and Former Client(s) Name(s)</b>	<b>15-14241 Graciela Carrillo</b>		
Attorney of Record For Debtor	T. Mark O'Toole, Esq. <sup>3</sup>		
Status	Trustee's Final Report filed September 2020 - Plan Completed.  Order to Close Case Without Discharge entered June 7, 2022.  May 4, 2022 Order Entered Substituting Mr. O'Toole as Debtor's counsel in the Place of Thomas Gillis as Debtor's Counsel of Record.		
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders		\$0.00	
Actual Fees Paid to the Clerk of the Court			
<b>Case No. and Former Client(s) Name(s)</b>	<b>16-90976 Kurt and Maria Obispo</b>		
Attorney of Record For Debtor	Thomas O. Gillis <sup>4</sup>		
Status	Chapter 13 Discharge entered on April 25, 2022  Order to Close Case and Final Decree entered on June 7, 2022		

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<sup>3</sup> For the Carrillo Case, the court notes that Thomas Gillis never substituted out as counsel for Debtor following his January 2021 Suspension (the suspension having been stayed several times to allow Mr. Gillis to substitute out and find attorneys who could practice law in the State of California for his former clients).

<sup>4</sup> Though suspended from the practice of law in January 2021, Mr. Gillis never substituted out and continued as the attorney of record for the Debtor in this Bankruptcy Case.

Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders			\$0.00	
Actual Fees Paid to the Clerk of the Court				
<b>Case No. and Former Client(s) Name(s)</b>	<b>16-14351 Jesus Landeros and Victoria Buenavida</b>			
Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge entered on March 29, 2022  Order to Close Case and Final Decree entered June 7, 2022			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders			\$0.00	
<b>Case No. and Former Client(s) Name(s)</b>	<b>17-26879 Carlos and Claudia Barajas</b>			
Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge entered March 8, 2022 Order to Close Case and Final Decree entered June 8, 2022			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders			\$0.00	
<b>Case No. and Former Client(s) Name(s)</b>	<b>17-14509 Jose and Erika Ramirez</b>			
Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge entered November 15, 2021 Order to Close Case Final Decree Entered June 7, 2022			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders			\$0.00	
<b>Case No. and Former Client(s) Name(s)</b>	<b>18-15111 Jernan Pacheco Serna</b>			

Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge Granted March 29, 2022 Order to Close Case and Final Decree entered on June 7, 2022.			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders		\$0.00		
<b>Case No. and Former Client(s) Name(s)</b>	<b>18-15115</b> <b>Alfonso and Ana Bertha Ortega</b>			
Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge entered on March 29, 2022 Order to Close Case and Final Decree entered on June 8, 2022			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders		\$0.00		
<b>Case No. and Former Client(s) Name(s)</b>	<b>18-15114</b> <b>Miguel and Yolanda Becerra</b>			
Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge entered March 29, 2022 Order to Close Case and Final Decree entered on June 8, 2022.			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders		\$0.00		
<b>Case No. and Former Client(s) Name(s)</b>	<b>18-15110</b> <b>Dolores William Calles</b>			
Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge entered on April 26, 2022 Order to Close Case and Final Decree entered on June 7, 2022			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders		\$0.00		



<b>Case No. and Former Client(s) Name(s)</b>	<b>18-10233</b> <b>Jose Quinteros</b>			
Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge entered April 26, 2022 Order to Close Case and Final Decree entered on June 9, 2022			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders			\$0.00	
<b>Case No. and Former Client(s) Name(s)</b>	<b>19-13726</b> <b>Eduvuges Zarco Avellana</b>			
Attorney of Record For Debtor	Thomas O. Gillis			
Status	Discharge entered on March 29, 2022 Order to Close Case and Final Decree entered on June 7, 2022			
Amount of Fees to be Paid to the Clerk of the Court Pursuant to Fee Rubric Orders			\$0.00	

With respect to the “former” clients (for which Mr. Gillis retained his status as attorney of record for the “former” clients), it appears that Mr. Gillis’ concerns have been addressed, final decrees entered, and orders for the case to be closed. The court will, at the Status Conference address whether there is any reason why the Clerk of the Court should not proceed with closing case files after the Chapter 13 Trustee’s final report is approved and a discharge is entered, or no discharge is to be entered due to the debtor’s failure to fulfill his or her obligations relating thereto.

### **Issue of Attorney of Record**

In bringing to the Clerk’s attention the cases that had not been closed, and threatening to sue/have his “former” clients sue the Clerk, Mr. Gillis has also brought to the court’s attention that notwithstanding his being suspended from the practice of law by the California Supreme Court in January 2020 and his resignation from the practice of law, Mr. Gillis continues to be the attorney of record in a number of Federal Court cases. As reported by the State Bar, Mr. Gillis resigned (not merely suspended) from the practice of law in the State of California January 15, 2021.<sup>5</sup>

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<sup>5</sup> Recommendation of Resignation, California State Bar, filed August 20, 2021, State Bar Court Case No. SBC-21-Q-30043.

<https://discipline.calbar.ca.gov/portal/DocumentViewer/Index/kmhMzvKW797nXyWJlcHnT9V4WI9mYLHw5YJl2CKPAvqHON9BLpbeA8S0m8esubj-CCYY46yYzjdj6OXhTlCoAb0MgahQ>

Mr. Gillis has continued long after his suspension and then resignation as the “Attorney of Record” for a number of Debtors in Federal Court.

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