

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 14-55295

EUGENE NEALY,

Chapter 13

Debtor.

Judge Thomas J. Tucker

---

**OPINION AND ORDER DENYING DEBTOR’S MOTION TO ALLOW  
“ATTORNEY-IN-FACT” JANISS NEALY TO REPRESENT DEBTOR EUGENE  
NEALY AT THE 11 U.S.C. § 341 MEETING OF CREDITORS AND ANY AND ALL  
RELATED BANKRUPTCY HEARINGS**

This bankruptcy case is before the Court on Debtor’s motion entitled “Motion to Allow ‘Attorney-in-Fact’ Janiss Nealy to Represent Debtor Eugene Nealy at the 11 U.S.C. § 341 Meeting of Creditors and Any and All Related Bankruptcy Hearings” (Docket # 8, the “Motion”). In support of the Motion, Debtor has filed a document entitled “Power of Attorney for Finances” (the “Power of Attorney”), which Debtor alleges provides Janiss Nealy with legal authority to act on his behalf in bankruptcy proceedings.

The Court concludes that the Power of Attorney is defective, and therefore is ineffective, for the following reasons.<sup>1</sup>

1. The handwritten name of the appointed attorney-in-fact at the beginning of the document is not legible.
2. The signature of the principal is not dated, as required by Mich. Comp Laws Ann. § 700.5501(2) (“(2) A durable power of attorney under this section shall be dated and signed voluntarily by the principal[.]”)
3. The notary public did not comply with Mich. Comp. Laws Ann. § 5501(2)(b)(Unless it is

---

<sup>1</sup> In addition to the defects noted in the text above, the Court notes that the Motion does not present any evidence to show that the purported attorney-in-fact has complied with Mich. Comp. Laws Ann. § 700.5501(4), which requires that “[b]efore exercising authority under a durable power of attorney, an attorney-in-fact shall execute an acknowledgment of the attorney-in-fact’s responsibilities that contains all of the substantive statements in substantially the following form.” A lengthy form then follows in the statute.

Under Mich. Comp. Laws Ann. § 700.5501(6), however, an attorney-in-fact’s failure to comply with § 700.5501(4) “does not affect the attorney-in-fact’s authority to act for the principal as provided in the durable power of attorney. . . .”

signed in the presence of 2 witnesses, the power of attorney must be “[a]cknowledged by the principal before a notary public, who endorses on the durable power of attorney a certificate of that acknowledgment and the true date of taking the acknowledgment.”).

4. The notary public did not indicate the date the notarial act was performed, as required by Mich. Comp. Laws Ann. § 55.287(e).

The Court notes that of the defects identified above, numbers 2 and 3 do not apply if the Power of Attorney was executed before October 1, 2012. *See* Mich. Comp. Laws Ann. § 700.5501(7)(a). But there is no indication in the Power of Attorney of when it was executed.

For these reasons,

IT IS ORDERED that the Motion (Docket # 8) is denied.

**Signed on October 27, 2014**

**/s/ Thomas J. Tucker**  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**