UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
Q.C. ONICS VENTURES, LP	)	CASE NO. 06-10628
	)	
	)	
Debtor	)	

DECISION AND ORDER ON RESPONSE TO SHOW CAUSE

At Fort Wayne, Indiana, on May 17, 2007.

On March 21, 2007, the court held a hearing with regard to the issues raised by a motion for allowance of an administrative expense filed by Power & Signal Group and the objections thereto filed by the debtor and the creditors' committee. The debtor appeared for the hearing, through its counsel Wesley Steury, as did the committee, through its counsel Jason Cottrell. Other appearances included Matthew Wilkins, counsel for Delphi Automotive, Thomas Yoder, counsel for Yazaki North America, and Ellen Triebold, counsel for the United States Trustee. Counsel for Power & Signal Group, Julia Pettit, was nowhere to be seen. The court denied the motion and, on its own initiative, issued an order requiring Ms. Pettit to show cause in writing why she should not be sanctioned and/or required to pay the reasonable attorney fees incurred by counsel for the two objectors as the result of the scheduled hearing. Ms. Pettit filed a timely response to the order to show cause and it is that response which brings the matter before the court for a decision.

A court's most fundamental expectations of the attorneys who appear before it are to show up and be prepared. Thus, an attorney who fails to appear for proceedings scheduled because of something they have filed, or who appears but is substantially unprepared to participate in those proceedings, may be sanctioned either through the court's inherent authority or through Rule 16(f)

of the Federal Rules of Civil Procedure. See, G. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648, 651-53 (7th Cir. 1989); Matter of Sanction of Baker, 744 F.2d 1438 (10th Cir. 1984); Matter of Philbert, 340 B.R. 886 (Bankr. N.D. Ind 2006). In bankruptcy cases this is true for both adversary proceedings and contested matters. Philbert, 340 B.R. at 889.

The failure to appear is one type of conduct specifically identified by Rule 16(f) as the basis for sanctions. At least to the extent the opposing party should be compensated for the reasonable costs and expenses incurred because of counsel's non-compliance, the rule is almost, but not quite, mandatory. Unless non-compliance was "substantially justified" or other circumstances would make an award "unjust," the non-defaulting party is entitled to reimbursement. As a result, the imposition of sanctions under the rule does not depend upon a finding of bad faith, willfulness, or contumaciousness. Matter of Sanction of Baker, 744 F.2d 1438, 1440-41 (10th Cir. 1984). A negligent failure to comply will suffice. Id. at 1441. See also, Harrell v. U.S., 117 F.R.D. 86, 88 (D. E.D. N.C. 1987); Barsoumian v. Szozda, 108 F.R.D. 426 (D. S.D. N.Y. 1985).

The court has previously observed that its expectations of the attorneys who appear before it "are really quite simple: If the court needs to rule on something you have filed, you need to be there." In re Martin, 350 B.R. 812, 817 (Bankr. N.D. Ind. 2006). "Absent a concrete understanding with opposing counsel as to what that ruling should be – in other words something that had been affirmatively agreed to by both parties – an attorney needs to appear for proceedings they are responsible for having initiated." Id. at 816. See also, Philbert, 340 B.R. at 891(counsel's attendance is not optional).

Counsel's response to the order to show cause indicates that she did not attend the scheduled hearing because she believed there was a likelihood the case would be dismissed and, under those

circumstances, the costs associated with traveling from her office in Salt Lake City, Utah to Fort Wayne, Indiana, were too significant to justify attending. Counsel also states that she attempted to resolve the matter with the objectors and, when that proved to be unsuccessful, on the day before the scheduled hearing she filed a motion for continuance. That motion was denied as untimely by an order entered the following day.[1] The balance of the response argues that, since the court was also considering other issues in the case, the objectors have not really been harmed by counsel's absence and attempts to distinguish counsel's situation from that described in the court's previously published decisions on this issue.

Counsel's attempts to distinguish her actions from conduct this court has previously sanctioned under Rule 16(f) are unavailing. While the court appreciates counsel's candor, her efforts to communicate with the objectors in an effort to resolve the dispute, as well as her professed concern for the best use of the court's time, nothing can change the fact that she made a conscious decision not to attend a hearing which this court had scheduled in order to consider something she had filed. When sanctions can be imposed for negligently failing to meet a deadline, Rice v. Barnes, 201 F.R.D. 549 (D. M.D. Ala. 2001), carelessness, Chao v. Local 951 United Food and Commercial Workers, 2006 WL 2771771 (D. W.D. Mich. 2006), calendaring errors, Cuyos v. Texas Mobile Health, Inc., 10 F. Supp. 2d 750 (D. S.D. Tex. 1998); Barsoumian, 108 F.R.D. 426; and simple oversight, Ikerd v Lacy, 852 F.2d 1256 (10th Cir. 1988), conscious truancy cannot be justified and

[1]The court acknowledges that the reference to local bankruptcy rule B-5071-1(b) in the order denying the motion to continue was not appropriate. Yet, that does not mean the motion was not untimely. Any motion to continue filed on the day before the event in question is likely to be untimely. This is especially so where, as here, the facts and circumstances identified in support of the requested continuance are no different from those that existed on the date the hearing was scheduled.

will not be tolerated.

The court also feels compelled to comment upon counsel's attempt to justify her absence because of the costs associated with attending the proceedings. There has been no seismic shift in the continental plates since this case began. The relative positions of Salt Lake City, Utah, where counsel maintains her office, and Fort Wayne, Indiana, where this court sits, have remained unchanged since both cities were founded and definitely since October of 2006 when counsel filed her appearance. Counsel had to know from the very beginning of her involvement with this case that filing motions might result in hearings or other proceedings being scheduled to consider them; if so, her attendance might be required and, absent other arrangements, that would necessitate traveling to Fort Wayne. Despite this, it was not until the eve of the hearing that she thought about the possibility of retaining local counsel to assist her in this matter and sought a continuance of the hearing so that she could do so. See, Power & Signal Group's Motion to Continue, filed March 20, 2007, ¶ 6. By then it was too late. Had she acted with greater diligence and foresight, this entire situation could have been avoided.

This court does not require out of town attorneys to associate themselves with local counsel in order to participate in the cases pending before it. Nonetheless, our expectations are precisely the same for them as they are for more local members of the bar. Attorneys will be expected to leave their offices from time to time and come to court. When that happens attendance is not optional and counsel cannot assume that remote participation in the hearing will be possible – it may or may not be depending upon the court's calendar, what and how things have been scheduled. Neither should counsel expect the court to reschedule matters in order to fit their individual preferences. Whenever an attorney files an appearance in any case, in any court, they must know that they might actually

have to show up for proceedings, especially proceedings they are responsible for having initiated. If they are too busy, or too important, or too far away to appear in court when they are expected to do so they should retain other counsel to assist them, and, if they are not inclined to do that, they should think twice about accepting the engagement. Martin, 350 B.R. at 817.

Debtor's counsel and counsel for the creditors' committee were required to (and did) go to the trouble of preparing for and attending the hearing scheduled to consider Power & Signal's motion. That both of them were also in court to deal with other issues in the case does not mitigate Ms. Pettit's actions or justify her decision not to attend the hearing on the motion she had filed. At best, that may only the impact the "damages" they sustained as a result of her actions, not her "liability" for misconduct. Even then, calculating sanctions based upon opposing counsel's actual time and hourly rates is not always necessary. See, Ikerd, 1256 F.2d at 1259 (upholding sanctions of $500 to payable to each of the opposing attorneys present at a five minute conference). Furthermore, despite the other matters that necessitated opposing counsel's appearance on the 21st, they still had to prepare for the hearing on Ms. Pettit's motion. Because of her absence, their efforts were largely unnecessary and the court sees nothing unjust about requiring an attorney who has caused its opposition to unnecessarily devote time and trouble to a matter to reimburse them for the value of their labors. In the court's opinion such a result is necessary, not only as a matter of economic and procedural fairness, but also in order to impress upon litigants the importance of appearing and being prepared for proceedings scheduled with regard to the things they file. In re Philbert, 340 B.R. 886 (Bankr. N.D. Ind. 2006).

Julia Pettit shall, therefore, pay the reasonable attorney fees and expenses incurred by both the debtor and counsel for the Unsecured Creditor's Committee as a result of their preparing for and

attending the hearing held in this matter on March 21, 2007 as to Power & Signal's motion for an administrative expense. In order to compensate the United States for the costs she has unnecessarily imposed upon it and the additional time and attention she has required the court to devote to this matter, thereby depriving other litigants of its attention, and to deter similar conduct, see, BondPro Corp. v. Siemens Power Generation, Inc., 466 F.3d 562, 563 (7th Cir. 2006) ("The time has come to impose an exemplary public sanction in the hope of deterring further violations."), she shall also pay the clerk of this court the sum of $500. In light of the importance the court places upon counsel's attendance, the reason for her absence, and the sanctions imposed elsewhere for the failure to comply with procedural rules, the sanctions imposed by this order are probably a bargain. See, BondPro, 466 F.3d 562; U.S. v. White, 472 F.3d 458, 465-66 (7th Cir. 2006); Hill v. Porter Memorial Hospital, 90 F.3d 220, 225-27 (7th Cir. 1996) ($1000 sanctions imposed upon counsel for failing to comply with procedural rules concerning the content of appellate briefs).

The amounts due the clerk of this court shall be paid within fourteen (14) days. Debtor's counsel and counsel for the committee shall have fourteen (14) days from this date within which time to file and serve affidavits itemizing any recoverable fees and expenses. Ms. Pettit shall have ten (10) days thereafter in which to file any objections thereto. In the absence of objection the court will determine the reasonable amount of any fees and expenses without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court