

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF: )  
 )  
ANNETTE M. VANHOUTEN ) CASE NO. 06-40434  
 )  
 )  
Debtor )

**DECISION AND ORDER ON RESPONSE TO SHOW CAUSE**

At Fort Wayne, Indiana, on May 16, 2007.

On March 14, 2007, the court held a hearing with regard to confirmation of the debtor's proposed chapter 13 plan and the objections thereto filed by the trustee and Purdue Employees Federal Credit Union. The credit union appeared for the hearing, through its counsel James Gothard, as did the trustee, David Rosenthal. Debtor's counsel, Alfred McClure, was nowhere to be seen. As a result, the court denied confirmation, and, on its own motion, issued an order requiring Mr. McClure to show cause in writing why he should not be sanctioned and/or required to pay the reasonable attorney fees incurred by the trustee and Mr. Gothard as the result of the scheduled hearing. Mr. McClure 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. See also, N.D. Ind. L.B.R. B-9014-2(b).

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 that 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).

Counsel's response does not show that his failure to appear for the scheduled hearing was substantially justified or demonstrate that other circumstances would make an award unjust. The response he filed indicates that he failed to attend because the time of the hearing was not correctly placed on counsel's calendar. The hearing was scheduled to be held at 10:00, yet it was on his calendar for 11:00. According to counsel, his three-part procedure for verifying hearing dates and deadlines somehow failed. Counsel admits he does not know where, how, or why the error occurred.

The court acknowledges that Mr. McClure's absence was not willful or contumacious. It was, instead, simply negligent because whatever procedures his office had in place to identify and process the court's orders scheduling proceedings failed. That may make counsel's absence understandable, but it does not make it "substantially justified." Neither does it change the reality

that the trustee and the credit union's counsel were required to (and did) go to the trouble of properly preparing for and attending the scheduled hearing. Because of Mr. McClure's absence, their efforts were wasted and the court sees nothing unjust about requiring an attorney who has unnecessarily caused its opposition to devote time and trouble to a matter to reimburse them for the reasonable 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 for and being prepared for proceedings scheduled with regard to the things they file.

Alfred McClure shall, therefore, pay the reasonable attorney fees and expenses incurred by both the trustee and counsel for Purdue Employees Federal Credit Union as a result of their preparing for and attending the hearing held in this matter on March 14, 2007. In order to compensate the United States for the costs he has unnecessarily imposed upon it and the additional time and attention he 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."), he shall also pay the clerk of this court the sum of \$150.00. In light of the importance the court places upon counsel's attendance 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. The trustee and counsel for the credit union shall have fourteen (14) days from this date within which time to

file and serve affidavits itemizing any recoverable fees and expenses. Mr. McClure 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