

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

IN RE: CASE NO. 05-41771 )  
)  
JOHN W. MARTIN )  
LYNN M. MARTIN )  
)  
Debtors )  
)  
)  
BILL BINGHAM )  
)  
Plaintiff )  
)  
vs. ) PROC. NO. 06-4003  
)  
JOHN W. MARTIN )  
)  
Defendant )

**DECISION AND ORDER**  
**ON COUNSEL’S REQUEST TO CONSIDER SANCTIONS**  
**WITHOUT REQUIRING A COURT APPEARANCE**

At Fort Wayne, Indiana on May 30, 2007.

A hearing is currently scheduled in this adversary proceeding for June 6, 2007, at which time the court is to consider whether sanctions should be imposed upon Plaintiff’s counsel, Brian Belding, pursuant to Rule 16(f) of the Federal Rules of Civil Procedure, due to his failure to appear for a hearing held in this matter on May 2, 2007. On May 29, Mr. Belding filed a motion asking the court to consider the issue of sanctions without requiring his attendance at the sanctions hearing or to continue that hearing to a later date. In support of this request, Mr. Belding indicates that he has filed a written response to the court’s order to show cause and has nothing further to contribute beyond what that response contains. Additionally, Mr. Belding indicates that he has a prior conflict with the current hearing date because he is also scheduled to appear before the Area Plan

Commission of Jennings County Indiana on June 6, 2007, at 9:00 a.m.

To the extent Mr. Belding would like the court to reschedule the current sanctions hearing because of his prior conflict, the request is untimely. Pursuant to the local rules of this court, a request to reschedule a hearing because of a prior conflict “must be filed no later than ten (10) days after the issuance of the notice or order scheduling the matter sought to be continued.” N.D. Ind. L.B.R. B-5071-1(b). In this instance, Mr. Belding’s motion is more than two weeks late. The court’s order scheduling the hearing was issued on May 4, 2007. Ten days thereafter would have been Monday, May 14; yet, Mr. Belding’s motion was not filed until May 29, 2007. Presumably Mr. Belding knew as soon as he received the court’s order that he had a previously scheduled commitment. Under these circumstances, courtesy, if nothing else dictates that he immediately advise the court of the conflict. The court’s local rule simply reinforces this obligation by specifying the time within which that must be done. Mr. Belding has failed to comply with local bankruptcy rule B-5071-1(b) and his motion to reschedule the hearing of June 6, is therefore DENIED.

The second component of Mr. Belding’s request is that the court consider the issue of sanctions without requiring counsel’s presence. In support of this portion of the request he indicates that everything that he has to offer in defense of his actions is contained in his response to the court’s order to show cause which was also filed on May 29, 2007. The court frequently requires counsel to appear at sanctions hearings for several reasons. To begin with, the hearing gives both the court and counsel the opportunity to more thoroughly explore the sanctions issue than might be the case if the question is considered simply on a written response. For example, if such a response raises questions in the court’s mind, those questions can be asked and answered at the scheduled hearing. Without such a hearing the court must either content itself with having its questions unanswered or

delay resolution of the issue by scheduling further proceedings. Alternatively, if the court has misconstrued counsel's position, the hearing also gives counsel the opportunity to correct the court's perceptions.

There is also some virtue in requiring attorneys to appear in court in order to justify their conduct, particularly when the conduct in question involves the failure to appear for proceedings. If the bar comes to realize that they are either going to appear for the hearings scheduled to consider the issues raised by the things they have filed, or for a hearing to consider whether sanctions should be imposed because of counsel's absence, attorneys will eventually get the message that, absent some concrete understanding with the other side, they are probably going to have to appear in court one way or the other; so they might as well do so the first time around. Thus, the sanctions hearing helps to motivate the bar to live up to the court's expectations eliminating the need for future sanctions inquiries.

Finally, the court has come to realize that many attorneys seem to be adopting a coldly economic approach to the issue of whether or not they will attend scheduled proceedings. Many attorneys seem to have adopted a policy that, despite the fact they have filed something which the court views as requiring a hearing, it is simply too much trouble for them to attend such a hearing or the costs associated with doing so do not justify their appearing, so they will not do so. In other words, it is going to cost too much in time, attorney fees and travel expenses to bother with attending the originally scheduled hearing and so (presumably with the concurrence of the client) counsel decides not to attend. Furthermore, for attorneys adopting this cost based approach to the issue, the sanctions the court usually imposes in this situation, be they \$150.00, \$250.00 or \$500.00, may well be less than the value of the time counsel could otherwise bill by staying at the office. Depending

upon the amount of travel required, counsel may be ahead financially by paying the clerk of this court a \$500.00 sanction if, by doing so, that will allow him to bill three, four, five or more hours of time to another client. This case may even present an example of that very phenomenon. Through Mapquest, it appears that the estimated travel time between counsel's office in North Vernon, Indiana and the federal building in Lafayette, Indiana is approximately two hours and seventeen minutes, one way. So, counsel can reasonably expect to spend approximately four and a half hours on the road in order to attend his sanctions hearing. Add to that another half hour for the hearing itself, waiting for the case to be called, passing through security and moving between the federal building and counsel's car and counsel may very well spend five or more hours in connection with the court's sanctions inquiry – roughly the same amount of time that would have been associated with the hearing counsel failed to attend. If counsel has an hourly rate of \$200.00, this translates into \$1,000.00 of lost opportunity costs – the value of the time counsel could otherwise bill. On a purely economic level, even if the court imposes sanctions payable to the clerk at the highest level it is yet done, \$500.00, see, Matter of Q.C. Onics, Case No. 06-10628, Decision and Order dated May 17, 2007, Mr. Belding will still be \$500.00 ahead if he can avoid coming to the hearing in Lafayette.

With as much trouble as this court has had over the last year trying to impress upon the bar the need to appear (and be prepared) for hearings scheduled with regard to the things they file and the slowness with which the bar seems to be learning that lesson,<sup>1</sup> the court has no desire to create

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<sup>1</sup>Since February 13, 2006, the court has issued no less than twenty-six decisions or orders to show cause concerning sanctions under Rule 16(f) – five of them published in either West's Bankruptcy Reporter or on Lexis and Westlaw, see, In re Martin, 350 B.R. 812 (Bankr. N.D. Ind. 2006); In re Szymanski, 344 B.R. 891 (Bankr. N.D. Ind. 2006); In re Hein, 341 B.R. 903 (Bankr. N.D. Ind. 2006); In re Philbert, 340 B.R. 886 (Bankr. N.D. Ind. 2006); In re Shirar, 2006 WL

economic incentives for counsel not to appear. At the same time, the court does not wish to make the sanctions inquiry more burdensome than it needs to be. Therefore, in an effort to fashion an economically neutral approach to the issue, the court will give Mr. Belding his option. If he prefers not to attend the sanctions hearing and do something – anything – else he need not do so. If, however, he fails to appear and the court should determine that sanctions are appropriate, in addition to whatever sanction the court may conclude Rule 16(f) requires, Mr. Belding will also be expected to pay the clerk of this court an additional \$1,000.00, which the court estimates to be the value of the time that he would otherwise devote to attending the hearing. If Mr. Belding is not inclined to risk paying the clerk an additional \$1,000.00, he need only appear as scheduled and if sanctions are called for they will be limited to what Rule 16 requires. Either way this case will be called as scheduled on June 6, 2007.

SO ORDERED.

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

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2037327, 2006 Bankr. LEXIS 1502 (Bankr. N.D. Ind. 2006), yet, the problem shows little sign of abating. For example, this is the second time the court has held such a hearing with regard to Mr. Belding. See, Matter of Martin, Case No. 05-41771, Decision on Order to Show Cause dated July 17, 2006.