UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
DONALD WILLIAM LESLIE	)	CASE NO. 09-40128
CAROL ANN LESLIE	)	
	)	
Debtors	)	

DECISION AND ORDER ON ORDER TO SHOW CAUSE

At Fort Wayne, Indiana, on August 26, 2009.

On June 10, 2009, the court held a hearing with regard to confirmation of the debtors' proposed chapter 13 plan together with the objections thereto filed by the trustee. The trustee, David Rosenthal, appeared for the hearing. Debtors' counsel, Michael Cox, was nowhere to be seen. As a result, the court denied confirmation, and, on its own motion, issued an order requiring Mr. Cox to show cause, in writing, why he should not be sanctioned and/or required to pay the reasonable attorney fees and expenses incurred by trustee in connection with the scheduled hearing. Mr. Cox 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 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 expenses – "including attorney's fees" – 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. Although he received the electronic notice of the hearing, the response indicates that counsel failed to attend because the notice was not received by the person who places things on the office calendar. Thus, whatever procedures his office may have in place to process the court's electronic orders and notices failed. Although the reason for that failure is not explained, the Supreme Court has made it clear that internal office problems will not excuse an attorney's failure to comply with a filing deadline, Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 394-96, 113 S.Ct. 1489, 1498-99 (1993), and that same kind of excuse should not justify the failure to attend a scheduled hearing.

The court acknowledges that Mr. Cox's absence was not willful or contumacious. It was,

instead, simply negligent because whatever his office's internal procedures 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 was required to (and did) go to the trouble of properly preparing for and attending the scheduled hearing.[1] Because of Mr. Cox's absence, those 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.

Mr. Cox shall, therefore, pay the reasonable attorney fees and expenses incurred by the trustee as a result of preparing for and attending the hearing held in this matter on June 10, 2009. Furthermore, 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."), and in accordance with the court's order of July 30, 2003 in case number 02-15207, he shall also pay the clerk of this court the sum of $200.00.

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[1]To the extent Mr. Cox argues that the trustee would have been there anyway and thus the failure to appear did not cause the trustee any undue hardship or burden, that argument would more properly go to the issue of the reasonableness of any fees the trustee might seek, not in allowing the trustee the opportunity to recover any fees. It also overlooks the possibility that issues which could have been addressed or resolved in connection with the hearing remain unresolved and may have to be the subject of additional, otherwise unnecessary proceedings, in the future.

The amounts due the clerk of this court shall be paid within fourteen (14) days. The chapter 13 trustee shall have fourteen (14) days from this date within which time to file and serve affidavits itemizing any recoverable fees and expenses. Mr. Cox 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