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3
4 UNITED STATES BANKRUPTCY COURT

5 EASTERN DISTRICT OF CALIFORNIA

6
7 In re:

8 STEPHEN COLE,

9
10 Debtor.

Case No. 24-20976-A-7

FEC-3

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MEMORANDUM

Submitted on June 17, 2024

at Sacramento, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances: _____
None

Rule 9011(b)(1) prohibits filing bankruptcy for an "improper purpose," including "to cause unnecessary delay." Attorney Joseph Sandbank filed sequential skeletal Chapter 7 petitions for husband and for wife, invoking the stay. 11 U.S.C. § 362(a). Each case was later dismissed by the Clerk for failure to file the schedules and statements. Sandbank charged each debtor \$150. At the time of filing, did Sandbank intend to prosecute each case to conclusion?

I. FACTS

Stephen Cole and Vivian Cole are husband and wife. Respondent Joseph Sandbank ("Sandbank") is an attorney at law; Sandbank represented each of the Coles in separate Chapter 7 bankruptcies.

A. Stephen Cole's Bankruptcy

On March 12, 2024, Sandbank filed a skeletal Chapter 7 bankruptcy petition on behalf of Stephen Cole. Vol. Pet., *In re Stephen Cole*, No. 24-20976 (Bankr. E.D. Cal. March 12, 2024), ECF No. 1. The petition indicated that the debtor "will pay the entire [filing] fee" with the petition. *Id.* at § 8. The fee was not paid with the petition. The petition contends that the debtor received credit counseling prior to the date of the petition but that the debtor "do[es] not have a certificate of completion." *Id.* at § 15. It indicated that Stephen Cole had between "1-49" creditors and owed "\$100,001-\$500,000" in debts. *Id.* at § 20.

The creditors matrix included only three creditors. Verification of Master Address List, ECF No. 4.

The next day, March 13, 2024, the Clerk of the Court issued a Notice of Incomplete Filing, which specified the documents necessary to complete the filing: Form 122A, Schedules A/B-J, Statement of Financial Affairs and the Summary of Assets and Liabilities. Not.

1 Incomplete Filing, ECF No. 6. It also informed the debtor and
2 Sandbank that the remaining documents were due March 26, 2024. A day
3 later, an Amended Notice of Incomplete Filing was issued to add to the
4 list of missing documents the Disclosure of Compensation, Form B2030.
5 Am. Notice of Complete Filing, ECF No. 7. Both the notice and the
6 amended notice were served on Sandbank.

7 On March 15, and again on March 19, 2024, the Clerk of the Court
8 warned the debtor that the failure to file all the remaining schedules
9 and statements by March 26, 2024, would result in dismissal of the
10 case. Notice of Incomplete Filing, ECF Nos. 10, 15.

11 On Saturday, March 16, 2024, the Clerk of the Court also issued a
12 "Notice of Payment Due," ECF No. 11. That document warned that the
13 failure to pay the filing fee within three business days [Wednesday,
14 March 20, 2024] would result in an order to show cause.

15 When Sandbank did not file the Disclosure of Compensation, Form
16 B2030, on March 20, 2034, the Clerk of the Court issued an Order to
17 Show Cause why sanctions should not be imposed. Order to Show Cause,
18 ECF No. 16; LBR 2016-4 (instructing the Clerk of the Court to set the
19 matter before the Chief Bankruptcy Judge). The Clerk of the Court set
20 a hearing date for the Order to Show Cause of May 6, 2024. That order
21 stated:

22 THEREFORE, IT IS ORDERED the debtor's(s') attorney in this
23 bankruptcy case appear before the Court on the following
24 date, time and place [May 6, 2024, at 1:00 p.m.] and show
25 why sanctions should not be imposed on debtor's attorney or
26 other appropriate relief ordered this bankruptcy case for
27 failure to comply with the provisions of the Bankruptcy
28 Code, Federal Rules of Bankruptcy Procedure, and Local
Rules of Practice and local requirements.

Order to Show Cause, ECF No. 16.

On Friday, March 22, 2024, two days after the last date for

1 payment, Notice of Payment Due," ECF No. 11, the filing fee was paid.

2 Neither debtor Cole, nor Sandbank, filed the schedules and
3 statements, nor the certificate of completion for credit counseling.
4 Nor did the debtor, or Sandbank, seek an enlargement of time to do so.

5 On April 1, 2024, the Clerk of the Court dismissed the case for
6 failure to file the schedules and statements. Order Dismissing Case,
7 ECF No. 20.

8 Notwithstanding dismissal, on May 6, 2024, this court convened
9 the hearing on the Order to Show Cause for failure to file the
10 Disclosure of Compensation, Form B2030. Neither Sandbank, nor the
11 debtor, appeared. Civ. Minutes, ECF No. 26. The court imposed
12 monetary sanctions of \$1,000. Order, ECF No. 27.

13 On May 8, 2024, the day following the imposition of monetary
14 sanctions against him, Sandbank filed the Disclosure of Compensation.
15 Disclosure of Compensation, ECF No. 28. It stated:

16 Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b),
17 I certify that I am the attorney for the above-named
18 debtor(s) and that compensation paid to me within one year
19 before the filing of the petition in bankruptcy, or agreed
20 to be paid to me, for service rendered or to be rendered on
21 behalf of the debtor(s) in contemplation of or in
22 connection with the bankruptcy case is as follow:

23 For legal services, I have agreed to accept \$150.00.

24 Prior to the filing of this statement I have received
25 \$150.00.

26 Balance Due \$0.00.

27 ...

28 [Other provisions as needed] FEE OF \$150 FOR FILING OF
INITIAL PETITION, ADDITIONAL HOURLY FEES WOULD HAVE APPLIED
HAD CASE PROCEEDED TO CREDITOR MEETING, ETC.

Disclosure of Compensation para. 1, 5(e), ECF No. 28.¹

¹ The agreement between Stephen Cole and Sandbank also appears to split fees

1 Concerned that Stephen Cole and Sandbank filed the petition
2 without the intent of prosecuting the case to discharge, the court
3 ordered Sandbank to file the fee agreement with Stephen Cole. Order,
4 ECF No. 32. He has not done so. From that refusal, the court draws
5 the negative inference, i.e., that the fee agreement would show that
6 from the beginning Sandbank did not intend to prosecute the case to
7 conclusion.

8 **B. Vivian Cole's bankruptcy**

9 On April 2, 2024, the day following the dismissal of Stephen
10 Cole's bankruptcy, Sandbank filed a skeletal Chapter 7 bankruptcy on
11 behalf of Vivian Cole. Vol. Pet., *In re Vivian Cole*, No. 24-21359
12 (Bankr. E.D. Cal. April 2, 2024), ECF No. 1. Vivian Cole's bankruptcy
13 followed a nearly identical path to that of her husband. The petition
14 indicated that the debtor "will pay the entire [filing] fee" with the
15 petition. *Id.* at § 8. The fee was not paid with the petition. The
16 petition contends that the debtor received credit counseling prior to
17 the date of the petition but that the debtor "do[es] not have a
18 certificate of completion." *Id.* at § 15. It indicated that Vivian
19 Cole had between "1-49" creditors and owed "\$100,001-\$500,000" in
20 debts. *Id.* at § 20.

21 The creditors matrix included only four creditors. Verification
22 of Master Address List, ECF No. 4. Three of the four precisely
23 overlapped with the creditors listed by her husband, Stephen Cole.

24 The next day, on April 3, 2024, the Clerk of the Court issued a
25 Notice of Incomplete Filing, which specified the documents necessary
26 to complete the filing: Form 122A, Schedules A/B-J, Statement of

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28 unlawfully between pre-petition and post-petition work. *Gordon v. Hines (In re Hines)*, 147 F.3d 1185 (9th Cir. 1998); LBR 2016-3.

1 Financial Affairs and the Summary of Liabilities. Not. Incomplete
2 Filing, ECF No. 6. It also informed the debtor and Sandbank that the
3 remaining documents were due April 16, 2024. The notice was served on
4 Sandbank.

5 On April 5, 2024, the Clerk of the Court warned the debtor that
6 the failure to file all the remaining schedules and statements by
7 April 16, 2024, would result in dismissal of the case. Notice of
8 Incomplete Filing, ECF Nos. 9.

9 On Saturday, April 6, 2024, the petition, the Clerk of the Court
10 also issued a "Notice of Payment Due," ECF No. 10. That document
11 warned the that the failure to pay the filing fee within three
12 business days [Wednesday, April 10, 2024] would result in an order to
13 show cause. *Id.*

14 When Sandbank did not file the Disclosure of Compensation, Form
15 B2030, on April 10, 2024, the Clerk of the Court issued an Order to
16 Show Cause why sanctions should not be imposed. Order to Show Cause,
17 ECF No. 14; LBR 2016-4 (instructing the Clerk of the Court to set the
18 matter before the Chief Bankruptcy Judge). The Clerk of the Court set
19 a hearing date for the Order to Show Cause of May 20, 2024. That
20 order stated:

21 THEREFORE, IT IS ORDERED the debtor's(s') attorney in this
22 bankruptcy case appear before the Court on the following
23 date, time and place [May 20, 2024, at 1:00 p.m.] and show
24 why sanctions should not be imposed on debtor's attorney or
25 other appropriate relief ordered this bankruptcy case for
26 failure to comply with the provisions of the Bankruptcy
27 Code, Federal Rules of Bankruptcy Procedure, and Local
28 Rules of Practice and local requirements.

26 Order to Show Cause, ECF No. 14.

27 Neither debtor Cole, nor Sandbank, filed the schedules and
28 statements, nor the certificate of completion for credit counseling.

Nor did the debtor, or Sandbank, seek an enlargement of time to do so.

On April 22, 2024, the Clerk of the Court dismissed the case for failure to file the schedules and statements. Order Dismissing Case, ECF No. 19.

On April 22, 2024, the Clerk of the Court dismissed the case for failure to file the schedules and statements. Order Dismissing Case, ECF No. 19.

On May 8, 2024, the day following the imposition of monetary sanctions against him in *In re Stephen Cole*, No. 24-20976 (Bankr. E.D. Cal. March 12, 2024), Sandbank filed the Disclosure of Compensation. Disclosure of Compensation, ECF No. 21, in this case. It stated:

Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for service rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follow:

For legal services, I have agreed to accept \$150.00.

Prior to the filing of this statement I have received \$150.00.

Balance Due \$0.00.

...

[Other provisions as needed] FEE OF \$150 FOR FILING OF INITIAL PETITION, ADDITIONAL HOURLY FEES WOULD HAVE APPLIED HAD CASE PROCEEDED TO CREDITOR MEETING, ETC.

Disclosure of Compensation para. 1, 5(e), ECF No. 21.²

Also, on Wednesday, May 8, 2024, four weeks after the last day for paying the filing fee to avoid dismissal, the filing fee was paid.

² The agreement between Vivian Cole and Sandbank also appears to split fees unlawfully between pre-petition and post-petition work. *Gordon v. Hines (In re Hines)*, 147 F.3d 1185 (9th Cir. 1998); LBR 2016-3.

1 Concerned that Vivian Cole and Sandbank filed the petition
2 without the intent of prosecuting the case to discharge, the court
3 ordered Sandbank to file the fee agreement with Vivian Cole. Order,
4 ECF No. 32. He has not done so. From that refusal, the court draws
5 the negative inference, i.e., that the fee agreement would show that
6 from the beginning Sandbank did not intend to prosecute the case to
7 conclusion.

8 Notwithstanding dismissal, on May 20, 2024, this court convened
9 the hearing on the Order to Show Cause for failure to file the
10 Disclosure of Compensation, Form B2030. Neither Sandbank, nor the
11 debtor, appeared. Civ. Minutes, ECF No. 31. Because the Disclosure
12 Statement had been filed, the court dropped the matter without further
13 action. Civil Minutes, ECF No. 31.

14 **II. PROCEDURE**

15 This court issued an order to show cause to Joseph Sandbank,
16 attorney for the debtors; the gist of that order was whether Sandbank
17 should be sanctioned for filing Chapter 7 bankruptcies for Stephen
18 Cole and Vivian Cole for the purpose of causing unnecessary delay,
19 Fed. R. Bankr. P. 9011(b)(1), to wit: filing bankruptcy without the
20 intention of prosecuting the case to conclusion and/or discharge.
21 Sandbank has not filed opposition to the order to show cause. Nor did
22 Sandbank appear at the hearing on the order to show cause.

23 **III. JURISDICTION**

24 This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b);
25 see also General Order No. 182 of the Eastern District of California.
26 Jurisdiction is core. 28 U.S.C. § 157(b)(2)(A); *In re Carrera*, No.
27 2016 WL 4400652, at *5 (B.A.P. 9th Cir. Aug. 16, 2016), *aff'd sub nom.*
28 *In re Vizconde*, 715 F. App'x 630 (9th Cir. 2017).

1 **IV. LAW**

2 Federal Rule of Bankruptcy Procedure 9011 provides:

3 By presenting to the court (whether by signing, filing,
4 submitting, or later advocating) a *petition*, pleading,
5 written motion, or other paper, an attorney or
6 unrepresented party is certifying that to the best of the
7 person's knowledge, information, and belief, formed after
8 an inquiry reasonable under the circumstances,--

9 (1) *it is not being presented for any improper*
10 *purpose, such as to harass or to cause unnecessary*
11 *delay or needless increase in the cost of litigation;*

12 (2) the claims, defenses, and other legal contentions
13 therein are warranted by existing law or by a
14 nonfrivolous argument for the extension, modification,
15 or reversal of existing law or the establishment of
16 new law;

17 (3) the allegations and other factual contentions have
18 evidentiary support or, if specifically so identified,
19 are likely to have evidentiary support after a
20 reasonable opportunity for further investigation or
21 discovery; and

22 (4) the denials of factual contentions are warranted
23 on the evidence or, if specifically so identified, are
24 reasonably based on a lack of information or belief.

25 Fed. R. Bankr. P. 9011(b) (emphasis added).

26 Violations of Rule 9011 may form the basis of monetary sanctions.
27 Fed. R. Bankr. P., 9011(c); sanctions may be ordered after a motion by
28 a party in interest or sua sponte. Fed. R. Bankr. P. 9011(c) (1) (A) -
29 (B).

30 Where Rule 9011 sanctions are ordered sua sponte, a heightened
31 standard applies; the conduct that is the subject of the sanction must
32 amount to bad faith. *In re Nakhuda*, 544 B.R. 886, 899, 901 (9th Cir
33 BAP 2016). The filing of a bankruptcy petition for the purpose of
34 stalling creditors and without the intention of prosecuting the case
35 to discharge may form the basis of Rule 9011(b) (1) bad faith. *In re*
36 *Carrera*, No. 2016 WL 4400652, at *6-9.

1 **V. DISCUSSION**

2 **A. Bad Faith**

3 The court finds an improper purpose: a specific intent to
4 unnecessarily delay creditors. Sandbank filed the case to obtain the
5 stay, 11 U.S.C. § 362(a), and without the intention of prosecuting it
6 to conclusion and discharge. At least in this case, that conduct
7 rises to the level of the bad faith described in *Nakhuda* and *Carrera*.
8 The court draws that inference from the following direct evidence.
9 First, in each case, Sandbank exhibited stalling behaviors. Examples
10 include: the filing of two skeletal petitions without later effort to
11 complete the required schedules and statements; the 11th hour payment
12 of the filing fees to avoid dismissal; failure to obtain credit
13 counseling;³ and failure to file the Disclosure of Compensation until
14 after the court sanctioned counsel \$1,000.

15 Second, a pattern of delay exists between the petitions of Stephen
16 Cole and Vivian Cole; Sandbank was counsel of record for each of the
17 Coles. In almost every instance, spouses file a joint bankruptcy
18 petition. 11 U.S.C. § 302. Without apparent good reason, Stephen
19 Cole and Vivian Cole filed individual petitions. 11 U.S.C. § 301.
20 And the timing of those petitions strongly suggests an improper
21 purpose. Stephen Cole's Chapter 7 case was dismissed on April 1,
22 2024, and Vivian Cole's Chapter 7 petition was filed April 2, 2024.
23 By timing these petitions as Sandbank did, the debtor purchased the
24 stay, 11 U.S.C. § 362(a), without intervening gap for \$300⁴ for 42 days

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26 ³ Concededly, the petition represents that credit counseling was obtained
27 prior to the petition. Vol. Pet. § 15, *In re Stephen Cole*, No. 24-20976
28 (Bankr. E.D. Cal. March 12, 2024), ECF No. 1. But because the certificate of
 completion was never filed the court infers that credit counseling was not
 obtained prior to the filing of the petition.

⁴ Each debtor paid Sandbank a fee of \$150 for filing their case.

(March 12, 2024, to April 22, 2024, inclusive). Absent other reason, the filings of serial, sequential bankruptcy petitions are strong evidence of an improper purpose.

Third, Sandbank has not cooperated with the court in its effort to investigate the issue. For example, this court ordered Sandbank to file with the Clerk of the Court his fee agreement with each debtor. Order, *In re Stephen Cole*, No. 24-20976 (Bankr. E.D. Cal. March 12, 2024), ECF No. 32; Order, *In re Vivian Cole*, No. 24-21359 (Bankr. E.D. Cal. April 2, 2024), ECF No. 25. He has not done so. From the lack of cooperation, the court infers the most negative inference, i.e., that Sandbank specifically intended to unnecessarily delay creditors and that the fee agreement provides evidence of that fact.

Fourth, a fee of \$150 for filing a Chapter 7 suggests that Sandbank believed that little work would be required and that the case would last a limited time. While the fee agreement might provide evidence to the contrary, i.e., hourly charges for work thereafter, Sandbank has refused to provide the court a copy of the fee agreement. For each of these reasons, the court infers bad faith, i.e., a specific intention to unnecessarily delay creditors without the intention of pursuing either case to conclusion.

B. Sanction

The amount of the sanction should be sufficient to deter repetition of the conduct by the offending attorney and others. Fed. R. Bank. P. 9011(c)(2); *In re Carrera*, No. BAPNC151383KITAJU, 2016 WL 4400652, at *9 (B.A.P. 9th Cir. Aug. 16, 2016) (\$2,000 penalty upheld), *aff'd sub nom. In re Vizconde*, 715 F. App'x 630 (9th Cir. 2017). It should not be a serious penalty in the nature of criminal contempt. *Id.*

1 The court should consider a variety of factors.

2 To determine an appropriate sanction, the bankruptcy court
3 should consider: (1) whether the duty violated was to a
4 client, the public, the legal system or the profession; (2)
5 whether the lawyer acted intentionally, knowingly or
6 negligently; (3) whether the lawyer's misconduct caused a
7 serious or potentially serious injury; and (4) whether
8 aggravating factors or mitigating circumstances exist.
9 Crayton, 192 B.R. at 980.

10 Aggravating factors include considerations that justify an
11 increase in the degree of discipline imposed, such as a
12 prior disciplinary offense, multiple offenses, a pattern of
13 misconduct, and refusal to acknowledge the wrongful nature
14 of the conduct. *Id.* at 981. Mitigating circumstances
15 include considerations which justify a reduction in the
16 degree of discipline, such as the absence of a prior
17 disciplinary record, personal or emotional problems,
18 inexperience in the practice of law, or a timely good faith
19 effort to make restitution or to rectify the consequences
20 of the misconduct. *Id.*

21 *In re Brooks-Hamilton*, 400 B.R. 238, 252-53 (B.A.P. 9th Cir.
22 2009)

23 Considering the *Brooks-Hamilton* factors, the court finds that:

24 (1) the filing a bankruptcy with the sole intention of causing
25 unnecessary delay injures the public; (2) Sandbank acted
26 intentionally, rather than carelessly; (3) the injury to the public
27 was modest, i.e., a 42-day delay, not serious; and (4) aggravating,
28 not mitigating, factors exist. Aggravating factors include: multiple
offenses, i.e., two separate Chapter 7 cases; a pattern of misconduct,
i.e., stalling behaviors; and a refusal to acknowledge the wrongful
nature of the conduct, i.e., refusal to cooperate in the resolution of
the problem or to appear at any of the hearings noticed by this court.
For these reasons, the court imposes a sanction of \$2,000 in each
case.

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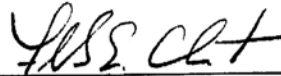
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1 **VI. CONCLUSION**

2 The order to show cause is sustained and a monetary sanction of
3 \$2,000 in each case is imposed.

4 **Dated:** June 17, 2024

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7 Fredrick E. Clement
8 United States Bankruptcy Judge
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ☐, via the U.S. mail.

Debtor(s)	Attorney for the Debtor(s) (if any)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814