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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

VIVIAN COLE,

Debtor.

Case No. 24-21359-A-7

FEC-2

**MEMORANDUM**

Submitted on June 17, 2024

at Sacramento, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances:      None

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

8 **I. FACTS**

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

12 **A. Stephen Cole's Bankruptcy**

13 On March 12, 2024, Sandbank filed a skeletal Chapter 7 bankruptcy  
14 petition on behalf of Stephen Cole. Vol. Pet., *In re Stephen Cole*,  
15 No. 24-20976 (Bankr. E.D. Cal. March 12, 2024), ECF No. 1. The  
16 petition indicated that the debtor "will pay the entire [filing] fee"  
17 with the petition. *Id.* at § 8. The fee was not paid with the  
18 petition. The petition contends that the debtor received credit  
19 counseling prior to the date of the petition but that the debtor  
20 "do[es] not have a certificate of completion." *Id.* at § 15. It  
21 indicated that Stephen Cole had between "1-49" creditors and owed  
22 "\$100,001-\$500,000" in debts. *Id.* at § 20.

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

25 The next day, March 13, 2024, the Clerk of the Court issued a  
26 Notice of Incomplete Filing, which specified the documents necessary  
27 to complete the filing: Form 122A, Schedules A/B-J, Statement of  
28 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.<sup>1</sup>

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<sup>1</sup> 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

27 \_\_\_\_\_  
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.

Order to Show Cause, ECF No. 14.

Neither debtor Cole, nor Sandbank, filed the schedules and  
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.<sup>2</sup>

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.

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<sup>2</sup> 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;<sup>3</sup> 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 \$300<sup>4</sup> for 42 days

25            \_\_\_\_\_  
26    <sup>3</sup> 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.

<sup>4</sup> 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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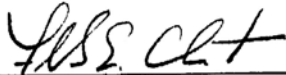
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1 **VI. CONCLUSION**

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

4  
5 **Dated:** June 17, 2024

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7 \_\_\_\_\_  
8 Fredrick E. Clement  
9 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)	<b>Office of the U.S. Trustee</b> Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814