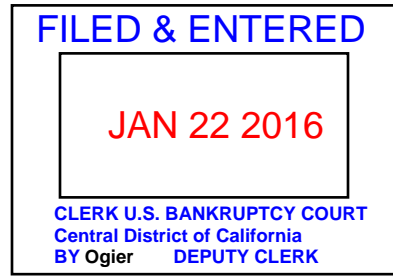


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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:
ROBERTO ANTONIO ESCOBAR,

Debtor.

Case No.: 1:12-bk-15509-MB

Chapter 13

**MEMORANDUM OF DECISION RE
SANCTIONS AGAINST L. WALKER
VAN ANTWERP III PURSUANT TO
LOCAL BANKRUPTCY RULES 9013-1(f)
and 1001-1(f)**

Hearing

Date: November 5, 2015
Time: 11:30 a.m.
Location: Courtroom 303
21041 Burbank Blvd
Woodland Hills, CA 91367

1 On October 15, 2015, the Court entered its *Order to Appear and Show Cause Why L.*
2 *Walker Van Antwerp Should Not Be Sanctioned Pursuant to Local Bankruptcy Rules 9013-1(l) and*
3 *1001-1(f)* (the “OSC”). Case Dkt. No. 128. L. Walker Van Antwerp III (“Van Antwerp”) is
4 counsel in this chapter 13 case to debtor Roberto Antonio Escobar.

5 As more fully set forth therein, the OSC indicated the Court’s intention to impose a
6 monetary sanction of \$2,500.00 on Van Antwerp for failure to comply with Local Bankruptcy Rule
7 9013-1(l) in connection with his second *Application for Supplemental Fees* filed on May 22, 2015
8 (the “Second Application”). See Case Dkt. No. 121.

9 In opposition to the OSC, Van Antwerp filed the *Declaration of L. Walker Van Antwerp re*
10 *OSC* (the “Van Antwerp Declaration”) and appeared at a hearing before the undersigned United
11 States Bankruptcy Judge on November 5, 2015 (the “Hearing”).

12 Having considered and reviewed the OSC, the Van Antwerp Declaration, and the arguments
13 and representations of Van Antwerp at the Hearing, the Court finds good cause to impose a
14 monetary sanction on Van Antwerp for his failure to comply with Local Bankruptcy Rules 9013-
15 1(l) and 1001-1(f) as more fully described below.

16 **I.**

17 **BACKGROUND**

18 On August 12, 2013, Van Antwerp filed his *Application for Supplemental Fees* Case Dkt.
19 No. 88 (the “First Application”) seeking \$7,290.00 in fees and \$141.84 in costs related to services
20 rendered for six lien avoidance motions. Case Dkt. Nos. 23, 60-64. The Court, through Judge Alan
21 M. Ahart, set the First Application for hearing on January 9, 2014.

22 No appearances were made at the January 9, 2014 hearing.¹ At the hearing, the Court
23 adopted its previously-posted tentative ruling, granting the First Application in part and denying the
24 First Application in part. The tentative ruling stated:

25
26
27 ¹ On January 8, 2014, Van Antwerp filed a declaration stating that he would not be attending
28 the hearing scheduled for January 9, 2014. Case Dkt. No. 94.

1 Allow an award of \$4870.00 in supplemental fees. Fees for 6.55
2 hours of noncompensable secretarial or clerical work have been
3 disallowed. Multiple entries totaling approximately 12.3 hours of lumped
4 billing include noncompensable or clerical work. The Court generally
5 reduced these requested fees by half to account for the noncompensable
6 clerical work and because lumped entries prevent the Court from fairly
7 evaluating whether individual tasks were expeditiously performed within a
8 reasonable time frame. The Court also notes LBR 2016-1 prohibits such
9 lumped billing. Finally, fees in connection with approximately 6.8 hours
10 billed to prepare new motions, notices, revisions of such, and notices of
11 withdrawal have been disallowed. The Court notes that the filing of
12 multiple motions would not have been necessary had counsel complied
13 with service requirements in his first two attempts. In any event, the Court
14 continued the second round of motions to correct service and thus the third
15 round of motions filings and notices of withdrawal were entirely
16 unnecessary.

17 No appearance is required.

18 Van Antwerp did not lodge an order in respect of the Court's ruling, and the Court did not prepare
19 its own order.

20 On May 22, 2015, following Judge Ahart's retirement from active service, Van Antwerp
21 filed his Second Application. Case Dkt. No. 121. In the Second Application, Van Antwerp
22 requested fees in the amount of \$12,000.00 and \$141.84 in costs for services relating to the same
23 exact six lien motions billed for in the First Application.² The Second Application, however, did
24 not disclose this fact. Nor did the Second Application disclose that Judge Ahart previously had
25

26 ² The Second Application also sought fees for services related to a *Motion to Reopen Case and Set*
27 *Aside Dismissal of April 3, 2014* Case Dkt. No. 104, which were not sought in the First
28 Application.

1 denied a substantial portion of the fees requested for those services. Instead, the Second
2 Application cryptically stated as follows: “Supplemental fees were tentatively awarded, and that
3 award was declined, so there are previous orders in the amount of \$00.00.”

4 II.

5 ANALYSIS

6 Local Bankruptcy Rule 9013-1(l) provides:

7 **Motion Previously Denied.** Whenever any motion for an order or other
8 relief has been made to the court and has been denied in whole or in part,
9 or has been granted conditionally or on terms, and a subsequent motion is
10 made for the same relief in whole or in part upon the same or any
11 allegedly different state of facts, it is the continuing duty of each party
12 and attorney seeking such relief to present to the judge to whom any
13 subsequent motion is made, a declaration of a party or witness or certified
14 statement of an attorney setting forth the material facts and circumstances
15 surrounding each prior motion including:

- 16 1. The date of the prior motion;
- 17 2. The identity of the judge to whom the prior motion was made;
- 18 3. The ruling, decision or order on the prior motion;
- 19 4. The new or different facts and circumstances claimed to exist,
20 which either did not exist or were not shown upon the prior
21 motion; and
- 22 5. The new or different law or legal precedent claimed to exist
23 which either did not exit or were not shown upon the prior
24 motion.

1 The failure to comply with the foregoing requirement is grounds for the
2 court to set aside any order or ruling made on the subsequent motion, and
3 subjects the offending party or attorney to sanctions.

4 Additionally, Local Bankruptcy Rule 1001-1(f) permits the Court to impose sanctions upon
5 the “failure of counsel or of a party to comply with these Local Bankruptcy Rules . . .”

6 In any request for relief, Rule 9013-1(l) requires a candid and detailed disclosure of a prior
7 request for the same or similar relief requested. Here, the Second Application sought compensation
8 for legal services that were the subject of a prior application that was denied in substantial part by
9 Judge Ahart. The Second Application, however, did not contain a declaration or certified statement
10 of Van Antwerp candidly disclosing any of the material facts and circumstances surrounding his
11 prior request and the Court’s prior ruling.

12 Van Antwerp argues that he complied with Rule 9013-1(l) by stating, “Supplemental fees
13 were tentatively awarded, and that award was declined, so there are previous orders in the amount
14 of \$00.00.” The Court disagrees. This cryptic statement does not disclose the details expressly
15 required by Rule 9013-1(l), or any of the other material facts and circumstances surrounding the
16 First Application: (i) the date of the prior motion, (ii) the identity of the judge to whom it was
17 made; (iii) the ruling, decision or order on the prior motion; (iv) the new or different facts and
18 circumstances claimed to exist, which either did not exist or were not shown upon the prior motion,
19 and (v) the new or different law or legal precedent claimed to exist which either did not exist or
20 was not shown upon the prior motion. Van Antwerp’s statement is materially incomplete.

21 Moreover, although not a necessary predicate to the imposition of sanctions under Rule
22 9013-1(l) for failure to comply with its requirements, the Court finds that Van Antwerp’s cryptic
23 sentence regarding a prior supplemental fee “award” was materially misleading. The statement
24 fails to disclose that the previous award pertained to the same legal services requested (in
25 substantial part) in the Second Application and that the fees “tentatively awarded” actually
26 involved the *disallowance* of nearly two-thirds of the fees requested for those services.

27 After consideration of the record in this case, and the extensive colloquy with Van Antwerp
28 at the Hearing, it appears to the Court that: (i) Van Antwerp did not agree with Judge Ahart’s ruling

on the First Application, and (ii) following Judge Ahart’s retirement, elected to file a second request for compensation of the same services, hoping to obtain a better result. The cryptic statement regarding a prior fee “award” appears calculated to have the veneer of a disclosure, but ultimately to obscure these facts.

Based on the foregoing, the Court finds good cause to impose a monetary sanction on Van Antwerp pursuant to Local Bankruptcy Rules 9013-1(l) and 1001-1(f), in order to encourage Van Antwerp's future compliance with the rules of this Court. After consideration of Van Antwerp's arguments at the Hearing regarding the amount of the monetary sanction, the Court determines in its discretion to impose a sanction of **\$1,500.00**, rather than the \$2,500.00 amount contemplated by the OSC. This monetary sanction shall be payable to the Court no later than 30 days after entry of the order effectuating this decision.

###

Date: January 22, 2016

Martin R. Barash

Martin R Barash
United States Bankruptcy Judge