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Rule 9011 of the Federal Rule of Bankruptcy Procedure

Nancy Bello, J.D. Candidate 2016

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Introduction

Rule 9011(b) of the Federal Rules of Bankruptcy Procedure,[1] the bankruptcy counterpart to Rule 11 of the Federal Rules of Civil Procedure ("Rule 11"), provides, that in presenting a pleading to the court, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that: (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.[2] Rule 9011(c) further provides that, if after notice and a reasonable opportunity to respond, the court determines that Rule 9011(b) has been violated, the court may, subject to certain stated

[1] Unless otherwise indicated, all Rules referenced in this article refer to the Federal Rules of Bankruptcy Procedure.
[2] FED. R. BANKR. P. 9011(b).

conditions, impose an appropriate sanction upon the attorney, law firm, or party that has violated Rule 9011(b) or is responsible for the violation.[3]

This Article discusses the requirements of Rule 9011 and the sanctions that may be imposed against a party that fails to satisfy those requirements. Section I of this Article discusses the first prong of Rule 9011, which prohibits the filing of a bankruptcy documents for an improper purpose. Section II discusses the second prong of Rule 9011, which forbids the filing of a bankruptcy petition that is not warranted in law. Section III explains the third prong of Rule 9011, which requires an attorney to conduct a reasonable inquiry before submitting a bankruptcy petition. Section IV explains the fourth prong, which requires an attorney to conduct a reasonable inquiry before submitting his defenses and denials. Section V discusses the sanctions a court may impose if an attorney fails to comply with Rule 9011. Section VI illustrates the procedural requirements of Rule 9011, particularly, the safe harbor provision. Lastly, Section VII considers the implications of Rule 9011.

I. Rule 9011(b)(1) – The "Improper Purpose" Clause

The improper purpose clause, Rule 9011(b)(1), is directed at curbing abusive litigation practices and encompasses papers filed to cause unnecessary delay, to increase litigation costs, or to harass.[4] In determining whether a paper has been submitted for an improper purpose, a court must make a subjective inquiry into why the petitioner pursued the litigation.[5]

Interposing a paper for any improper purpose is sanctionable regardless of whether it is supported by the facts and the law, no matter how careful the pre-filing investigation.[6] For

[3] FED. R. BANKR. P. 9011(c).
[4] *In re* Kitchin, 327 B.R. 337, 366 (Bankr. N.D. Ill. 2005)
[5] *In re* Collins, 250 B.R. 645, 661 (Bankr. N.D. Ill. 2000).
[6] *In re Kitchin*, 327 B.R. at 366.

example, in *In re Collins*,[7] the court sanctioned both the debtor and his attorneys because the court found that his chapter 7 petition was filed for improper purpose within the meaning of Bankruptcy Rule 9011(b)(1).[8] In *Collins*, the debtor had a net worth of at least $2.3 million and an annual income of more than $200,000.[9] Accordingly, the *Collins* court determined that the debtor was not in any financial distress or unable to pay his debts as they matured.[10] Therefore, the *Collins* court held that the debtor filed the petition for an improper purpose.[11] In particular, the court determined that the debtor and his attorneys filed the petition in an attempt to use the bankruptcy system to delay judgment against the debtor and to force his creditor to accept a relatively insignificant payment of its claim, in full satisfaction of prospective judgment debt.[12] Thus, the *Collins* court determined that sanctions were justified in the case.[13]

However, filing a paper with the intent to delay or frustrate a party does not, without more, constitute an improper purpose under Rule 9011(b)(1). For instance, in *In re Kitchin*,[14] the court refused to impose sanctions because the debtor failed to produce specific evidence showing that the plaintiffs intentionally sought to delay the debtor's bankruptcy case or to harass the debtor and his spouse.[15] In *Kitchin*, the debtor moved for sanctions against the plaintiff in an adversary proceeding against the debtor pursuant to Rule 9011(b)(1).[16] In particular, the debtor argued that the plaintiffs filed an adversary proceeding against him for an improper purpose, namely to harass him and delay his bankruptcy case.[17] The debtor offered the following as

[7] 250 B.R. 645 (Bankr. N.D. Ill. 2000).
[8] *Id.* at 663-64.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] 327 B.R. 337 (Bankr. N.D. Ill. 2005).
[15] *Id.* at 367.
[16] *Id.*
[17] *Id.*

evidence of improper purpose: (1) the plaintiffs' complaint was the same complaint used in the state court litigation, (2) the plaintiffs repeatedly filed for extensions of time in which to object to dischargeability in the bankruptcy proceeding, and (3) the plaintiffs made minimal discovery efforts.[18] The bankruptcy court, however, rejected the debtor's arguments, found insufficient facts to indicate the plaintiffs had filed the adversary proceeding or otherwise acted with an improper purpose, and thus, refused to impose sanctions on the plaintiffs under Rule 9011(b)(1).[19]

In so ruling, the *Kitchin* court noted that the similarity of the plaintiff's adversary complaint with that filed in the related state court litigation did not compel a finding of improper purpose because the adversary complaint contained colorable and nonfrivolous allegations.[20] Further, the *Kitchin* court reasoned that the fact that the plaintiffs repeatedly moved for extensions of the time in which to object to discharge did not indicate an improper purpose because other creditors, as well as the bankruptcy trustee, also moved for such extensions.[21] Moreover, the *Kitchin* court concluded that the debtor did not produce specific evidence showing directly that the plaintiffs intentionally sought to delay the debtor's bankruptcy case or to harass the debtor and his spouse.[22]

Similarly, sanctions pursuant to Rule 9011(b)(1)'s "improper purpose" clause are inappropriate where delay or frustration to creditors occurs because a debtor needs breathing room to legitimately pursue discharge or reorganization.[23] Such a result is consistent with providing a debtor a fresh start through a discharge or reorganization, which is a primary goal of

[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *In re* Parikh, 508 B.R. 572, 585 (Bankr. E.D.N.Y. 2014).

our bankruptcy rules. A court, however, may impose sanctions pursuant to Rule 9011(b) if the debtor filed a petition in bad faith.[24] "[A] petition may be deemed frivolous if it is clear that on the filing date there was no reasonable likelihood that the debtor intended to reorganize and no reasonable probability that it would eventually emerge from bankruptcy proceedings."[25] Accordingly, "[a] court should conclude that a debtor has no demonstrable intent to reorganize only if, upon considering the totality of the circumstances, there is substantial evidence to indicate that the debtor made a bad faith filing."[26] Without more, the filing of a bankruptcy petition with the intent to delay or frustrate creditors is insufficient to establish that a debtor lacked the intention to reorganize.[27] Courts, however, have noted that, "an entity may not file a petition for reorganization which is solely designed to attack a judgment collaterally — the debtor must have some intention of reorganizing."[28] Finally, while a debtor does not need to be in an extremely difficult financial situation in order to file a bankruptcy petition, "[the debtor] must, at least, face such financial difficulty that, if it did not file at that time, it could anticipate the need to file in the future."[29]

For example, the Second Circuit, in *In re Intercorp International, Ltd.*,[30] held that sanctions were warranted against a chapter 11 debtor, its principal who signed the petition on behalf of the debtor, the debtor's attorney who also signed the petition, and the law firm as the attorney's employer.[31] In *Intercorp*, the debtor filed a chapter 11 petition for the improper purpose of commencing an adversary proceeding in order to collaterally attack a state court judgment and to prevent the foreclosure of his property and the eviction of principal from his

[24] *In re* Intercorp, 309 B.R. 686, 693 (Bankr. S.D.N.Y. 2004).
[25] *Id.* at 697 (quoting *In re* Cohoes Indus. Terminal, Inc., 931 F.2d 222, 228 (2d Cir. 1991)).
[26] *Id.* at 694 (quoting *In re Cohoes,* 931 F.2d at 227).
[27] *Id.* (quoting *In re Cohoes,* 931 F.2d at 228).
[28] Id. (quoting *In re Cohoes,* 931 F.2d at 228).
[29] *Id.* (quoting *In re Cohoes,* 931 F.2d at 228).
[30] 309 B.R. 686 (Bankr. S.D.N.Y. 2004).
[31] *Id.* at 697.

home.[32] This was an improper purpose because "there was no reasonable likelihood that [the] debtor intended to reorganize and no reasonable probability that it would have eventually emerged from bankruptcy proceedings because [the] debtor had not engaged in business for years and failed to identify any prospects."[33] Therefore, since the *Intercorp* court determined that the petition was filed with an improper purpose, the court imposed sanctions against the debtor, its principal who signed the petition, the debtor's attorney, and the debtor's attorney's law firm.[34]

II. Rule 9011(b)(2) – The "Warranted in Law" Clause

A court may impose sanctions under Rule 9011(b)(2), where an attorney fails to make a reasonable inquiry into whether the claims asserted are "warranted in law."[35] This determination requires an objective bad faith standard, which considers the frivolousness of the claim.[36] A claim is frivolous when it "has no chance of success under existing precedents and . . . fails to advance reasonable argument to extend, modify or reverse law as it stands."[37] A petition may be deemed "frivolous," if it is clear that on the date the petition was filed, the debtor had no reasonable likelihood of reorganizing and no reasonable probability of eventually emerging from bankruptcy proceedings.[38] A court may not ordinarily consider a bankruptcy petition to be frivolously filed if the court itself previously rejected a motion to dismiss the petition.[39]

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[32] *Id.*
[33] *Id.* at 694.
[34] *Id.* at 697.
[35] *In re* Parikh, 508 B.R. 572, 584 (Bankr. E.D.N.Y. 2014).
[36] *Id.*
[37] *In re Cohoes,* 931 F.2d at 227; *see also In re* Weiss, 111 F.3d 1159 (4th Cir. 1997) (imposing 9011 sanctions on chapter 7 debtor's former business partner because his pleadings argued that a piece of property owned by the partnership became a part of the debtor's individual bankruptcy estate, a position consistently rejected by courts).
[38] *In re Cohoes,* 931 F.2d at 227.
[39] *Id.* at 229.

In the seminal case on the issue of sanctionable conduct of an attorney for filing a frivolous bankruptcy petition, the Second Circuit, in *In re Cohoes Industrial Terminal, Inc.*,[40] concluded that the debtor's petition did not rise to the level of sanctionable conduct under Rule 9011(b)(2).[41] The Second Circuit determined that the bankruptcy court's conclusion that the debtor had filed a petition solely to interfere with the enforcement of a state court judgment by making both a vexatious and unwarranted argument, and without a sincere intent to reorganize, to be erroneous.[42] In reaching such conclusion, the Second Circuit noted that the creditors failed to move for dismissal of the debtor's chapter 11 petition and instead joined in the motion to appoint a chapter 11 trustee.[43] The Second Circuit also noted that the fact that the bankruptcy court did not dismiss the petition and reconverted the case to chapter 11 "strongly indicated that the petition itself had some valid basis in law."[44] Moreover, the Second Circuit noted that if the creditor believed that the debtor would not eventually reorganize, it would have joined in the United States Trustee's motion to dismiss the petition.[45] Indeed, the creditor admitted that continuation of the chapter 11 case was advantageous to it because the proceeding afforded it a "convenient forum to litigate claims."[46] Consequently, the Second Circuit found that "a party that never moved to dismiss the chapter 11 case or otherwise alert the court to the purported frivolity of the petition, is estopped from asserting that the chapter 11 petition was frivolously filed."[47]

[40] 931 F.2d 222 (2d Cir. 1991).
[41] *Id.* at 229-30.
[42] *Id.*
[43] *Id.*
[44] *Id.* at 229.
[45] *Id.*
[46] *Id.*
[47] *Id.*

Conversely, in *In re Blagg*,[48] the Bankruptcy Appellate Panel of the Tenth Circuit imposed sanctions on the debtor's attorney who was found to be in violation of Rule 9011(b)(2). In *Blagg*, the debtor's attorney had intentionally filed the petition in the wrong district and then failed to cite a single case to the bankruptcy court supporting his position.[49] The *Blagg* court noted that the debtor's attorney persistently argued for a legal position regarding venue that had been almost uniformly rejected by the courts, and presented no authority or good faith argument for modification of the existing law other than saying prior cases were wrong and it was time for some court to so hold.[50] Therefore, the *Blagg* court concluded that the attorney's conduct was sanctionable because he clearly ignored the law and instead selected a venue that was most convenient for himself and his clients, despite his knowledge that there is no good faith basis for the assertion of venue in that convenient district.[51]

III. Rule 9011(b)(3) – The "Reasonable Inquiry" Clause for Factual Allegations and Contentions

Rule 9011(b)(3) provides that by signing a bankruptcy petition, an attorney certifies "to the best of [his] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."[52] Determining whether an investigation was reasonable pursuant to Rule 9011(b)(3) requires a case-by-case, fact intensive analysis dependent on all the

[48] 223 B.R. 795 (B.A.P. 10th Cir. 1998).
[49] *Id.* at 805.
[50] *Id.*; *See In re* Collins, 250 B.R. 645 (Bankr. N.D. Ill. 2000) (debtor's attorney was subject to sanctions under Rule 9011 because he relied on obscure, discredited cases without acknowledging the force of existing law); *In re* Baucom, 305 B.R. 712 (Bankr. S.D. Ill. 2004) (debtor's attorney caused unreasonable delay in the bankruptcy proceedings, as warranted the imposition of Rule 9011 sanctions, by maintaining a position unsupported by existing law).
[51] *In re Blagg*, 223 B.R. at 805.
[52] FED. R. BANKR. P. 9011(b)(3)

circumstances.[53] While there is no absolute definition of a "reasonable inquiry" into the factual sufficiency of a claim, a court will appraise an attorney's efforts according to how much time the attorney had for the investigation and the feasibility of publicly verifying the facts.[54] At a minimum, Rule 9011(b)(3) places on attorneys a duty to make at least some affirmative investigation into the facts represented in documents submitted to the court.[55]

While "the investigation performed by a signatory need not be to the point of certainty to be reasonable," a "signer must explore readily available avenues of factual inquiry."[56] Although an attorney may generally rely on objectively reasonable client representations, the attorney must independently verify publicly available facts to determine if the client representations are objectively reasonable.[57] If independent verification reveals inconsistencies or other problems, an attorney must "probe further — by asking questions, obtaining additional documents, or by some other means."[58] This inquiry need not be exhaustive, merely reasonable.[59] Some courts have held that "[t]he fact that the information contained in documents bearing [the attorney's] signature may have been accurate is not a defense to a Rule 9011 sanction."[60]

For example, in *In re Parikh*, a bankruptcy court imposed sanctions pursuant to 9011(b)(3) against a debtor's attorney who signed a chapter 7 petition which contained incomplete and incorrect information that was clearly refuted by the debtor's previous chapter 13

[53] *In re* Parikh, 508 B.R. 572, 585 (Bankr. E.D.N.Y. 2014).
[54] Televideo Systems, Inc. v. Mayer, 139 F.R.D. 42, 47 (S.D.N.Y. 1991).
[55] *In re* Obasi, 10–10494 SHL, 2011 WL 6336153, at *5 (Bankr. S.D.N.Y. Dec. 19, 2011).
[56] *Id.*
[57] *Televideo Sys*., 139 F.R.D. at 47; *In re* Withrow, 391 B.R. 217, 228 (Bankr. D. Mass. 2008) (In determining whether debtor's counsel has complied with Rule 9011 requirements, the essential question is whether the attorney did their level best to "get it right."); *In re* Seare, 493 B.R. 158, 209–11 (Bankr. D. Nev. 2013) (Where the client-provided information is internally or externally inconsistent, materially incomplete, or raises "red flags," the attorney is obligated to probe further).
[58] *In re Seare,* 493 B.R. at 211.
[59] *Televideo Systems, Inc.*, 139 F.R.D. at 47.
[60] *In re* Obasi, 10–10494 SHL, 2011 WL 6336153, at *6 (Bankr. S.D.N.Y. Dec. 19, 2011); *In re* KTMA Acquisition Corp., 153 B.R. 238, 249 (Bankr. D. Minn. 1993) ("Whether the signer's conduct was reasonable is an inquiry that focuses on what should have been done by the filer before filing rather than how things turned out; conduct rather than result.").

petition.[61] The *Parikh* court found that the inaccuracies and omissions in the debtor's chapter 7 petition should have been apparent to the debtor's counsel because the information was either publicly available or provided to the attorney by the debtor himself.[62] In particular, the *Parikh* court emphasized that had counsel adequately investigated and reviewed the chapter 13 petition and docket from a state court foreclosure action against the debtor before signing the chapter 7 petition, it would have revealed the discrepancies.[63] Additionally, the *Parikh* court rejected the attorney's argument that the "emergency" nature of the filing excused the deficiencies in the petition.[64] Therefore, the *Parikh* court held that the attorney's conduct was sanctionable.

IV. Rule 9011(b)(4) – The "Reasonable Inquiry" Clause for Factual Denials

Rule 9011(b)(4) provides that by signing a bankruptcy petition, an attorney certifies "to the best of [his] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."[65] While there appears to be no case law regarding Rule 9011(b)(4), the Rule functions in the same manner as Rule 9011(b)(3), except it applies to defenses and denials. Therefore, an attorney must make a reasonable inquiry into the veracity of its defenses and denials.

V. Rule 9011(c) – The Imposition of Sanctions

If an attorney or other party fails to comply with its duties imposed under Rule 9011(b), courts may impose sanctions against such attorney or other party pursuant to Rule 9011(c).[66] In

[61] *In re Parikh*, 508 B.R. at 578.
[62] *Id.* at 588.
[63] *Id.* at 594.
[64] *Id.*
[65] FED. R. BANKR. P. 9011(b)(4).
[66] FED. R. BANKR. P. 9011(b); FED. R. BANKR. P. 9011(c)

determining which sanction is appropriate, courts must exercise discretion.[67] Generally, courts should award the minimum sanction necessary to deter future sanctionable conduct.[68] Courts, however, may also consider factors including the reasonableness of costs and expenses incurred by the party seeking sanctions, prejudice suffered by the party seeking sanctions, the relative culpability of client and counsel, the degree to which the party seeking sanctions caused the expenses for which recovery is sought, whether the sanctionable conduct was a conscious disregard of duty, and the general reputation of the individual to be sanctioned.[69] Possible sanctions range from an award of attorney's fees, to reprimand or even disbarment.[70]

For example, in *In re Parikh*, the bankruptcy declined to impose monetary sanctions.[71] Instead, the *Parikh* court determined that publication of its decision was an appropriate sanction against the chapter 7 attorney and his firm because the attorney was a respected practitioner before the court.[72] Accordingly, the *Parikh* court indicated that it was confident that following its sanctions, the attorney would conduct sufficient inquiries under Rule 9011 in the future.[73]

Conversely, in *In re Withrow*,[74] the Bankruptcy Court for the District of Massachusetts ordered the debtor's attorney to pay $3,585.00 to the bankruptcy estate — three times the amount he intended to charge the debtor for his services.[75] The court imposed this seemingly harsh sanction on the attorney because this case was not the first time he failed to comply with Rule 9011.[76] In particular, in *In re LaFrance*,[77] the court described the attorney's practices as "sloppy,

[67] *In re Parikh*, 508 B.R. at 595.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.* at 595-96.
[73] *Id.*
[74] *In re* Withrow, 391 B.R. 217 (Bankr. D. Mass. 2008).
[75] *Id.* at 229.
[76] *Id.*; *See In re* LaFrance, 311 B.R. 1, 25 (Bankr. D. Mass. 2004).
[77] 311 B.R. 1 (Bankr. D. Mass. 2004).

careless and unprofessional."[78] As a result, the *LaFrance* court disgorged and discharged the attorney's fees, and the attorney was ordered to deposit all client compensation in his client trust account and not to withdraw funds absent allowance of a fee application, to be filed in each subsequently filed case.[79] The *LaFrance* court contemplated the duration of that procedure to be a year, at most.[80] Nothing changed, however, as the court denied "countless" fee applications by the attorney because the attorney continued to provide his clients with poor quality services.[81] Thus, the *Withrow* court found the sanctions imposed in *LaFrance* were insufficient to deter the attorney's conduct and imposed the harsher punishment of the $3,585 sanction payable to the bankruptcy estate.[82]

VI. Procedural Requirements of Rule 9011 – Safe Harbor Provision

Parties facing sanctions under Rule 9011 must be provided with "notice and a reasonable opportunity to respond."[83] Rule 9011(c) sets forth a safe harbor provision, which provides, "a motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate [Rule 9011(b)] . . . . The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected."[84] Importantly, the safe harbor provision requirements do not apply if the alleged conduct is the filing of a petition in violation of Rule 9011(b).[85] The procedural safeguard afforded by the safe harbor provision is "intended to reduce the number of motions for sanctions and to provide

[78] *Id.; In re Withrow,* 391 B.R. at 229.
[79] *In re LaFrance*, 311 B.R. at 25.
[80] *In re Withrow,* 391 B.R. at 229.
[81] *Id.*
[82] *Id.*
[83] FED. R. BANK. P. 9011(c)(1)(A).
[84] *Id.*
[85] *Id.*

opportunities for parties to avoid sanctions altogether."[86]

For example, in *In re Obasi*,[87] an attorney and his law firm that violated Rule 9011 were not held in civil contempt or sanctioned because the United States Trustee, the moving party, failed to comply with the safe harbor provision.[88] In *Obasi*, the attorney did not review a document prior to filing; rather, he authorized an associate under his supervision to sign his name to whatever document the associate produced.[89] While he set out a "checklist" for the associate to follow, he had no way of ensuring that the associate would comply with the checklist or that the resulting written product would otherwise meet the requirements of Rule 9011.[90] Accordingly, the United States Trustee moved for civil contempt and sanctions against the debtor's attorney and his law firm.[91] The United States Trustee, however, did not serve a copy of its motion on the attorney and his firm before filing it with the court.[92] Therefore, although the *Obasi* court found that the practice by the attorney and his law firm to be a clear violation of Rule 9011, the court nevertheless denied the United States Trustee's request for civil contempt and sanctions because the motion was not first served upon the attorney and firm as required by the safe harbor provision of Rule 9011.[93]

Further, the court can, on its own initiative, enter an order describing the conduct that appears to violate Rule 9011(b) and direct the offending party to show cause as to why it has not violated Rule 9011(b) with respect thereto. While the court is permitted to bypass the safe harbor provision when acting on its own motion, there is, nevertheless, a mandatory procedure that must be followed. The court must enter an order describing the specific conduct that

[86] Perpetual Secs., Inc. v. Tang, 290 F.3d 132, 141 (2d Cir. 2002).
[87] 10–10494 SHL, 2011 WL 6336153 (Bankr. S.D.N.Y. Dec. 19, 2011).
[88] *Id.* at *9.
[89] *Id.* at *5.
[90] *Id.*
[91] *Id.*
[92] *Id.* at *9.
[93] *Id.*

appears to violate Rule 9011(b) and issue an order to show cause, which requires the apparent offenders to indicate why they have not violated the rule.[94]

VII. Implications of Rule 9011

Rule 9011 prohibits an attorney from filing a petition or other bankruptcy papers in an attempt to cause unnecessary delay, to increase litigation costs, or to harass another party. Additionally, it prevents an attorney from filing frivolous petitions, motions, complaints, or other bankruptcy papers that fail to comply with existing precedents or advance reasonable arguments. These prohibitions are important because they are designed to prevent such claims or papers that only waste the court's time and limited resources. They also waste the other party's time and money responding to such claims or papers. Importantly, an attorney should not file any petition or other bankruptcy paper for an improper purpose even if his client demands that he file such petition or paper. If necessary, an attorney should seek to withdraw as counsel in the event that the client insists on taking such an improper course of action. Moreover, an attorney should, in light of the time constraints facing the attorney, take the necessary time to produce quality petitions and bankruptcy papers before filing such petition or papers with the court. When preparing such petitions and papers, attorneys should conduct efficient and competent legal research and incorporate that law, or a good faith argument for the extension of that law, into their petitions and papers.

Rule 9011(b) also imposes an affirmative duty on bankruptcy practitioners to conduct an inquiry into the facts presented in all petitions and pleadings that is reasonable under the circumstances. Such inquiry requires investigation into publicly available information, including previous bankruptcy filings. In practice, this requirement is not difficult to comply with since

[94] FED. R. BANKR. P. 9011(c)(1)(B); *see In re* Shubov, 253 B.R. 540 (B.A.P. 9th Cir. 2000) (holding Rule 9011 award was "procedurally defective" because the bankruptcy court did not issue an order to show cause).

previous bankruptcy filings are publicly available on PACER. In addition, a consumer bankruptcy attorney should, at a minimum, search publicly available court dockets and obtain credit reports to confirm the accuracy of the information provided to the attorney by the client. Even in an emergency, there is a "fine line" between zealous advocacy and conduct that is sanctionable.[95] If there truly is an emergency, an attorney should file a bare bones petition and file the schedules and SOFA at a later date, instead of filing them with factual inaccuracies. Ultimately, while an attorney can trust his clients, the attorney has a duty to take reasonable steps to verify the information provided to him by his clients before he files their petitions.

Counsel seeking sanctions must satisfy the safe harbor provision. Moreover, they should be aware that the court has wide discretion when deciding what sanction, if any, is appropriate. As such, the court may refuse to require that the sanctioned person pay the moving party in the event the moving party is successful.

Conclusion

Rule 9011 mirrors Rule 11. Rule 9011(b) prohibits an attorney from filing a petition, pleading, written motion or other paper for an improper purpose or filing a petition, pleading, written motion or other paper that is not warranted in law. Moreover, Rule 9011(b) requires an attorney to conduct a reasonable inquiry as to whether the allegations and other factual contentions contained in a petition, pleading, written motion, or other paper have evidentiary support before filing such papers with the court.

A party of interest may move for sanctions upon notice and a hearing. When bringing a sanctions motion, a party must be careful to comply with Rule 9011(c)'s procedural requirements. In particular, the moving party must satisfy Rule 9011(c)'s safe harbor provision,

[95] *In re Parikh*, 508 B.R. at 579.

which provides that the moving party must serve the sanctions motion on the person at least twenty-one days prior to filing the motion with the court. If the offending party has not withdrawn or appropriately corrected the challenged paper claim, defense, contention, allegation, or denial within twenty-one days, the moving party may file the sanction's motion with the court. Importantly, this safe harbor provision does not apply if the challenged conduct is the filing of a petition in violation of Rule 9011(b). In addition to a party moving for sanctions, the court, on its own initiative may enter an order describing the conduct that appears to violate Rule 9011(b) and directing the attorney, law firm, or party to show cause why it has not violated Rule 9011(b) with respect to such conduct.

When imposing sanctions, the court must exercise discretion as to the appropriate sanction. In particular, the court will only impose the minimum sanction needed to deter the sanctionable conduct in the future.