A Practitioner's Guide to Rule 9011

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At the 13th Annual Bankruptcy Bench Bar Conference
Austin, Texas
April 17-19, 2019

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I. Introduction

Rule 9011 of the Federal Rules of Bankruptcy Procedure is the bankruptcy counterpart to Rule 11 of the Federal Rules of Civil Procedure. Adapted from Rule 11, Rule 9011 is a means by which sanctions may be imposed on an unrepresented (or in some cases, represented) party or his or her attorney for the filing of a sanctionable pleading or other paper with the Bankruptcy Court. As will be demonstrated by this paper, what is sanctionable under Rule 9011 varies widely, and it is not always clear whether and to what extent conduct is sanctionable for the purposes of the Rule. This paper will discuss the different subsections and requirements of Rule 9011 and detail the type of conduct that may result in sanctions being imposed upon a practitioner under Rule 9011. Although this paper focuses solely on sanctions under Rule 9011, federal courts also are given the authority to impose sanctions by a variety of other means, including 28 U.S.C. § 1927,[1] the Court's inherent powers,[2] section 105(a) of the Bankruptcy Code,[3] the discovery rules, including Rules 7037 and 7026(g) of the Federal Rules of Bankruptcy Procedure,[4] and other specific statutes.[5]

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[1] 28 U.S.C. § 1927 ("Any attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.").

[2] *Caroll v. Abide (In re Carroll)*, 850 F.3d 811, 815 (5th Cir. 2017) ("Federal courts have inherent powers which include the authority to sanction a party or attorney when necessary to achieve the orderly and expeditious disposition of their dockets.") (internal quotations omitted).

[3] 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."); *Caroll v. Abide (In re Carroll)*, 850 F.3d 811, 815 (5th Cir. 2017) ("[A] bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of the bankruptcy code.") (internal quotations omitted).

[4] Fed. R. Civ. P. 26(g) (imposing regulations for the conduct of discovery); Fed. R. Civ. P. 37 (providing for the imposition of sanctions against a party that fails to cooperate in discovery). These rules are made applicable to adversary proceedings through Rules 7026 and 7037 of the Federal Rules of Bankruptcy Procedure.

[5] *See, e.g.*, 11 U.S.C. § 362(k) (providing for the imposition of sanctions for a willful violation of the automatic stay); 11 U.S.C. § 707(b)(4)(A) and (B) (regulating the conduct of a debtor's attorney in filing petition, schedules, pleadings, and written motions).

II. Purpose of Rule 9011

The purpose of Fed. R. Civ. P. 11 is to "deter baseless filings in district court."[6] Rule 11 is designed to "reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of attorneys and reinforcing those obligations through the imposition of sanctions."[7] Because Rule 9011 is substantially identical to Rule 11, Bankruptcy Courts addressing Rule 9011 often turn to authority developed under Rule 11.[8]

III. Rule 9011 in General

Rule 9011 provides a mechanism by which a party, or the Court on its own initiative, may seek to impose sanctions on an attorney or unrepresented party (or in some cases, a represented party) for his or her representations to the court. If the sanctions are sought by the opposing party, the opposing party must comply with the Rule's "safe harbor" provision by providing the offending attorney with a copy of the motion at least twenty-one (21) days *before* filing the motion for sanctions under Rule 9011 to give the party the opportunity to withdraw or correct the challenged representation.[9] Any motion filed under the Rule must "specifically" describe the offending conduct[10] and be filed separately from any other motion.[11] If the court seeks to impose

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[6] *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990); Advisory Committee Note (1993) ("Since the purpose of Rule 11 sanctions is to deter rather than to compensate, the rule provides that, if a monetary sanction is imposed, it should ordinarily be paid into court as a penalty.").

[7] *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 870 (5th Cir. 1988).

[8] *Grunewaldt v. Mut. Life Ins. Co. (In re Coones Ranch)*, 7 F.3d 740, 742 (8th Cir. 1993) ("The language of Rule 9011 closely tracks the language of Fed. R. Civ. P. 11 and law interpreting Rule 11 is applicable to Rule 9011 cases."); *In re Intercorp Int'l, Ltd.*, 309 B.R. 686, 693 (Bankr. S.D.N.Y. 2004) ("Rule 9011 parallels Rule 11 of the Federal Rules of Civil Procedure, and the jurisprudence under Rule 11 informs the interpretation and application of Bankruptcy Rule 9011.").

[9] Fed. R. Bankr. P. 9011(c)(1)(A).

[10] *Id.*

[11] *Id.*

sanctions on its own initiative, it must also satisfy due process by providing the offending attorney with notice and an opportunity to respond.[12] The imposition of sanctions under Rule 9011 is purely discretionary.[13] The court, if it decides the circumstances warrant it, may award to the prevailing party reasonable attorney's fees and expenses incurred in presenting or opposing the Rule 9011 motion.[14] The Rule contains four primary parts: (i) the requirement of an attorney signature on certain documents presented to the court;[15] (ii) a requirement that the attorney undertake a "reasonable inquiry" before filing or presenting a document to the court;[16] (iii) a requirement that the representations an attorney makes to the court, as well as the conduct he or she engages in, are not frivolous or being done for an improper purpose;[17] and (iv) provisions governing the imposition of sanctions if the court finds sanctionable conduct under the second part of the Rule.[18] Each of these subsections will be discussed in detail below.

IV. Signature - Rule 9011(a)

The first prong of Rule 9011 is fairly straightforward. It requires that every "petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name."[19]

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[12] Fed. R. Bankr. P. 9011(c)(1)(B).

[13] *In re Muma Servs.*, 279 B.R. 478, 491 (Bankr. D. Del. 2002).

[14] Fed. R. Bankr. P. 9011(c)(1)(A) ("If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.").

[15] Fed. R. Bankr. P. 9011(a).

[16] Fed. R. Bankr. P. 9011(b).

[17] Fed. R. Bankr. P. 9011(b)(1)-(4).

[18] Fed. R. Bankr. P. 9011(c).

[19] Fed. R. Bankr. P. 9011(a).

Explicitly absent is a requirement that all lists, schedules, statements, or related amendments, contain an attorney signature.[20] However, this does not mean that the filing or presenting of schedules or statements to the Court cannot subject the filing attorney to sanctions, as discussed below.

V. Representations to the Court – Rule 9011(b)

Subsection (b) of Rule 9011 contains the provision of the Rule that sparks the most litigation. Essentially, it contains four separate requirements for an attorney when he or she presents a document to the court. The Rule provides that "by presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, 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,"[21]

(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;[22]

(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;[23]

(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;[24] and

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[20] *See id.*

[21] Fed. R. Bankr. P. 9011(b).

[22] Fed. R. Bankr. P. 9011(b)(1).

[23] Fed. R. Bankr. P. 9011(b)(2).

[24] Fed. R. Bankr. P. 9011(b)(3).

(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.[25]

A. What type of conduct is governed by Rule 9011(b)?

The first part of Rule 9011(b) provides that, "by presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, 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 the attorney is not engaging in the offending conduct identified in subsections (b)(1)-(4) of the Rule.

i. Reasonable Inquiry Standard

Rule 9011(b) contains an initial mandate for an attorney presenting a document to the court that the attorney is certifying that "to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances" the attorney is not committing a violation of Rule 9011(b)(1)-(4) by presenting a document that is either frivolous or being presented for an improper purpose. The U.S. Court of Appeals for the Fifth Circuit has held that compliance with this rule is "measured by an objective, not subjective, standard of reasonableness under the circumstances."[26] This means that "an attorney's good faith is [not] enough to protect [him or her] from Rule 11 sanctions."[27] But a reviewing court will nevertheless consider the

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[25] Fed. R. Bankr. P. 9011(b)(4).

[26] *Thomas v. Capital Sec. Servs.*, 836 F.2d 866, 873 (5th Cir. 1988) (interpreting Rule 11).

[27] *Id.*

particular circumstances surrounding the attorney's conduct in deciding whether sanctions are warranted.[28]

In making a determination of whether an attorney has made a reasonable inquiry into the basis of a filing, a court considers a number of factors, including:

(1) the time available to counsel for investigation;

(2) the extent to which counsel relied on his or her client for the factual support of the allegations;

(3) the feasibility of prefiling investigation;

(4) the complexity of the factual and legal issues; and

(5) the extent to which the development of factual circumstances underlying the claim required discovery.[29]

"However, it does not appear that the court must work mechanically through these factors when it considers whether to impose sanctions. Rather, it should consider the reasonableness of the inquiry under all the material circumstances. [T]he applicable standard is one of reasonableness under the circumstances."[30]

It is notable that, despite not requiring an attorney's signature under Rule 9011(a), schedules, statements and other documents filed by a debtor's attorney may still subject the attorney to sanctions if those documents were filed without a reasonable investigation:

> Rule 9011(b) is not limited to statements below which appear an attorney's signature. Rather, the rule provides that filing, submitting or even advocating with respect to a document filed with a court has the same effect as signing the document.

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[28] *See id.*

[29] *SyncPoint Imaging, LLC v. Nintendo of Am., Inc.*, No. 2:15-CV-00247-JRG-RSP, 2018 U.S. Dist. LEXIS 216062, at *13-14 (E.D. Tex. Dec. 26, 2018) (citing *Smith v. Our Lady of the Lake Hospital, Inc.*, 960 F.2d 439, 444 (5th Cir. 1992)).

[30] *Bus. Guides, Inc. v. Chromatic Commc'ns Ents., Inc.*, 498 U.S. 533, 551 (1991).

> Therefore, it is well established that Bankruptcy Rule 9011(b) applies to debtors' attorneys even with respect to a debtor's schedules, statement of affairs and other documents disclosing assets, which debtors, but not counsel, are required to sign.[31]

In addition, 11 U.S.C. § 707(b)(4), which was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"),[32] extends the requirements of Rule 9011 to the conduct of debtor's counsel in preparing, signing, and filing certain documents in a bankruptcy case.[33] The statute mandates that debtor's counsel conduct a "reasonable investigation" before filing a petition, pleading, or written motion.[34] The statute also provides that the signature of a debtor's attorney on the bankruptcy petition constitutes a "certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect."[35] Thus, even though an attorney does not sign the schedules, the addition of this provision to the Bankruptcy Code leaves no doubt that a debtor's attorney is subject to sanctions if he or she fails to undertake a reasonable investigation into the information contained in the petition, schedules, and statements.[36]

If an attorney is found to have violated this provision, the statute provides that the debtor's attorney may be required to reimburse the trustee for "all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorney's fees" if the court (i) grants a motion to dismiss or convert the case; and (ii) finds that the attorney's conduct in filing the petition violated

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[31] *Lafayette v. Collins (In re Withrow)*, 405 B.R. 505, 511 n.6 (B.A.P. 1st Cir. 2009).

[32] Pub. L. 109–8, 119 Stat. 23, enacted April 20, 2005.

[33] 11 U.S.C. § 707(b)(4)(A).

[34] 11 U.S.C. § 707(b)(4)(C).

[35] 11 U.S.C. § 707(b)(4)(D).

[36] *See id.*

Rule 9011.[37] Section 707(b)(4)(B) further provides that "[i]f the court finds that the attorney for the debtor violated Rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and (ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any)."[38]

ii. Attorney Compliance with the Reasonable Inquiry Standard

To avoid the imposition of sanctions, it is prudent for a practitioner always to undertake certain investigatory steps before filing or presenting a document to the court. The failure to do so may subject the attorney to sanctions under Rule 9011, the court's inherent powers, or other rules or statutes.

For debtors' attorneys, courts have outlined a number of steps the attorney should take to satisfy the attorney's duty to conduct a reasonable inquiry before filing or presenting a paper to the court. The attorney should, at minimum, take the following steps:

1. Explain to the Debtor the requirement of full, complete, accurate and honest disclosure of all information required of the Debtor;

2. Ask probing and pertinent questions designed to elicit full, complete, accurate and honest disclosure from the Debtor;

3. Check the Debtors' responses in their petition, statements and schedules to be sure they are internally and externally consistent;

4. Demand of the client full, complete, accurate and honest disclosure of all information required by the debtor prior to the attorney's signature being placed upon the document; and

[37] 11 U.S.C. § 707(b)(4)(A).

[38] 11 U.S.C. § 707(b)(4)(B).

5. Seek relief from the court of the client representation in the event that the attorney learns that he or she has been misled by the client.[39]

In addition, the practitioner should not only meet with the client to discuss the case in detail before filing, but also undertake an independent investigation of the facts and circumstances surrounding the case.[40] The attorney should review the appropriate public records databases,[41] including PACER (to determine the existence of prior cases involving the debtor or litigant),[42] the secretary of state, and county real estate records, as each particular case may warrant.[43] The attorney should also carefully review all information provided by the client and verify that the information provided by the client is internally and externally consistent.[44] If the attorney is on notice of facts that should give pause in pursuing a matter, it is up to him or her to continue to investigate.[45] The failure to do so could result in sanctions being imposed.

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[39] *In re Matthews*, 154 B.R. 673, 680 (Bankr. W.D. Tex. 1993).

[40] *In re Stomberg*, 487 B.R. 775, 815 (Bankr. S.D. Tex. 2013) ("Attorneys have an affirmative duty to conduct a reasonable inquiry into the facts set forth in the Debtor's schedules [and] statement of financial affairs . . . before filing them. As a part of this reasonable inquiry, the attorney should sit down in person with his client and carefully review the Schedules, the SOFA, and any other documents to be filed with the court to ensure that all of the representations set forth therein are true and accurate.") (internal quotations omitted).

[41] *See Callahan v. Schoppe*, 864 F.2d 44 (5th Cir. 1989) (upholding district court's imposition of sanctions against plaintiff who failed to make "reasonable inquiry" and review public records to verify suit was filed against proper party).

[42] *See, e.g.*, *In re Weaver*, 307 B.R. 834, 844 (Bankr. S.D. Miss. 2002) (finding debtor's attorney failed to conduct reasonable inquiry before filing petition in violation of agreed order entered in prior dismissed chapter 13 case where attorney was on notice of existence of several other prior chapter 7 cases, but failed to check PACER and other public records to determine whether additional prior cases had been filed); *In re Oliver*, 323 B.R. 769, 773 (Bankr. M.D. Ala. 2005) ("I believe a PACER search should be done by every lawyer prior to filing a petition with this Court.") (quoting *In re Bailey*, 321 B.R. 169, 179 (Bankr. E.D. Pa. 2005)).

[43] *See generally Callahan v. Schoppe*, 864 F.2d 44 (5th Cir. 1989).

[44] *In re Seare*, 493 B.R. 158, 209-11 (Bankr. D. Nev. 2013); *In re Alessandro*, No. 10-12511 (AJG), 2010 Bankr. LEXIS 3116, at *7 (Bankr. S.D.N.Y. Sep. 7, 2010).

[45] *See, e.g.*, *In re Bradley*, 495 B.R. 747, 778 (Bankr. S.D. Tex. 2013) ("Attorneys, correspondingly, have an affirmative duty to conduct a reasonable inquiry into the facts set forth in a debtor's schedules [and] statement of financial affairs . . . before filing them."); *In re Weaver*, 307 B.R. 834, 844 (Bankr. S.D. Miss. 2002) (knowledge of prior chapter 7 cases filed by debtor should have prompted her attorney to do a more thorough pre-filing investigation to uncover the existence of all prior bankruptcy cases filed by debtor).

These steps are designed to reduce the occurrence of sanctionable conduct. Undertaking these steps will help the attorney avoid some of the common pitfalls by: (i) ensuring that the petition itself is not being filed in bad faith or for an improper purpose;[46] (ii) ensuring that the statements and schedules are accurate after a reasonable investigation;[47] (iii) ensuring that the debtor has signed the *original* schedules, statements, and other required documents;[48] and (iv) ensuring that, if the case is one under Chapter 11, 12, or 13, there is some potential or reasonable possibility of a successful rehabilitation.[49]

B. Rule 9011(b)(1) – Improper Purpose

The next prong of Rule 9011 requires a certification from the attorney (or unrepresented party) that by presenting to the court a petition, pleading, written motion, or other paper, the document 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."[50] Although several examples of sanctionable improper purposes are explicitly stated in the Rule, the presentment of a document

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[46] *In re French Gardens, Ltd.*, 58 B.R. 959, 964 (Bankr. S.D. Tex. 1986) ("In a Chapter 11 filing good faith requires that the debtor have a reasonable expectation of reorganization."); *In re Hesed Enters., LLC*, No. 16-10299-rlj7, 2017 Bankr. LEXIS 3322, at *25 (Bankr. N.D. Tex. Sep. 29, 2017) ("While many chapter 11 cases are filed in the face of a looming judgment, those filed without the genuine intent to reorganize are done for an improper purpose.").

[47] *In re Bradley*, 495 B.R. 747, 778 (Bankr. S.D. Tex. 2013).

[48] *In re Bradley*, 495 B.R. 747, 779 (Bankr. S.D. Tex. 2013) ("The verification requirement under Bankruptcy Rule 1008 relates to Bankruptcy Rule 9011(b) because, by failing to obtain the debtor's verification as to the accuracy of the documents he files, an attorney falsely represents to the court that 'the allegations and other factual contentions have evidentiary support.'").

[49] *In re Hesed Enters., LLC*, No. 16-10299-rlj7, 2017 Bankr. LEXIS 3322, at *28 (Bankr. N.D. Tex. Sep. 29, 2017) (in finding debtor's attorney violated Rule 9011 by filing Chapter 11 petition for improper purpose without having done any due diligence, the court noted that nearly every factor announced by the Fifth Circuit in the pivotal case of *Little Creek* was present). *See also In re Little Creek Dev. Co.*, 779 F.2d 1068, 1073 (5th Cir. 1986) (identifying a number of factors for courts to consider in determining whether a chapter 11 petition was filed in bad faith).

[50] Fed. R. Bankr. P. 9011(b)(1).

for ***any*** improper purpose is sanctionable.[51] What type of conduct qualifies as an "improper purpose" is subject to interpretation by the courts and will be discussed below.

Courts have held that an objective standard is used in determining whether a document was filed or advanced for an improper purpose. In the Fifth Circuit, courts have held that sanctions may be imposed where it is "objectively ascertainable" that an attorney has submitted a paper to the court for an improper purpose.[52] The Court has specifically rejected the notion that a finding of subjective bad faith is required in order to find that a document was presented for an improper purpose, stating that "purely subjective elements" should not be considered.[53] Instead, a court's focus must be on the "objectively ascertainable circumstances" that support an inference that a filing was made for an improper purpose.[54] "Although a district court is not to read an ulterior motive into a document 'well-grounded in fact and law,' it may do so in exceptional cases . . . where the improper purpose is objectively ascertainable."[55] Accordingly, a court may still find an improper purpose exists in the filing of a paper well-grounded in fact and law where the litigation conduct was nevertheless done for an improper purpose, such as to increase the costs of litigation or to harass another party (by, for example, the filing of excessive motions).[56]

Courts have found an improper purpose exists in a variety of circumstances. Examples of such instances include the following:

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[51] *See id.*

[52] *Whitehead v. Food Max of Miss., Inc.*, 332 F.3d 796, 805 (5th Cir. 2003).

[53] *FDIC v. MAXXAM, Inc.*, 523 F.3d 566, 580-81 (5th Cir. 2008).

[54] *Id.*

[55] *Id.*

[56] *Id.* at 584.

(a) The filing of a Chapter 11 petition filed by a non-operating business to prevent a foreclosure of property with no intent or concrete plans to reorganize;[57]

(b) A debtor's attorney misleading the court through multiple misstatements as to the law in motions and arguments before the Bankruptcy Court;[58]

(c) Filing a Chapter 7 petition without abiding by other bankruptcy requirements where the petition was filed solely to invoke the automatic stay, and not for any "bankruptcy purpose";[59] and

(d) A debtor's filing of an involuntary bankruptcy petition against *himself*.[60]

One of the most common scenarios is where a bankruptcy petition is filed for an improper purpose, such as solely to invoke the automatic stay or to delay creditor collection activity.[61]

In making a determination as to whether a bankruptcy petition was filed for an improper purpose, courts tend to look at both the prepetition and postpetition conduct of a debtor, including the history and purpose of the debtor's business or financial affairs, the history of litigation between the debtor and a third-party creditor, the efforts taken by the debtor postpetition to abide

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[57] *In re Intercorp Int'l, Ltd.*, 309 B.R. 686, 697 (Bankr. S.D.N.Y. 2004); *In re Hesed Enters., LLC*, No. 16-10299-rlj7, 2017 Bankr. LEXIS 3322, at *25 (Bankr. N.D. Tex. Sep. 29, 2017).

[58] *Baker v. Harrington (In re Hoover)*, 827 F.3d 191, 195 (1st Cir. 2016) (in upholding the Bankruptcy Court's imposition of sanctions against an attorney under Rule 9011(b) for misleading the court on the status of the law and in advancing frivolous legal arguments, the Court noted that the attorney, "in each instance, marshalled artifice to provide illusory support for positions that were otherwise without an apparent basis" and had a "record of using his knowledge and skills for improper purposes").

[59] *Schaefer Salt Recovery, Inc.*, 444 B.R. 286, 295 (Bankr. D.N.J. 2011) (finding that Chapter 7 bankruptcy petition, which was filed "bare bones," was not filed for any bankruptcy purpose, but instead solely to invoke the automatic stay to stall litigation).

[60] *In re Letourneau*, 422 B.R. 132, 138 (Bankr. N.D. Ill. 2010) ("There is no circumstance under which a debtor's filing of an involuntary case against himself can be proper.").

[61] *See, e.g., In re French Gardens, Ltd.*, 58 B.R. 959, 964 (Bankr. S.D. Tex. 1986) ("The filing of a petition under the Code solely to forestall a secured creditor from exercising foreclosure rights is an abuse of the bankruptcy code for which sanctions may be and should be imposed.").

by its obligations under the Bankruptcy Code, and steps taken to reorganize.[62] Although the filing of a bankruptcy petition with intent to thwart creditors does not by itself establish a lack of intent to reorganize,[63] if the debtor files a case with no bankruptcy purpose, with no reasonable possibility of a successful reorganization, and does not abide by its obligations under the Code, it is more likely that sanctions upon the filing attorney may be warranted.[64]

In other cases, courts are likely to find an improper purpose for post-filing litigation conduct, such as harassment and increasing the costs of litigation.

In the case of *Armstrong v. Davis*,[65] a district court upheld the imposition of sanctions against a debtor's attorney who was sanctioned for multiple violations of Rule 9011(b)(1), (2), and (3) for his improper conduct in preparing, filing, and prosecuting a Chapter 13 case for an affluent debtor. The Bankruptcy Court found that the debtor's attorney engaged in an "improper scheme" to obtain the equivalent of a Chapter 7 discharge by proposing a Chapter 13 plan representing that all creditors would be paid, while nevertheless intending to avoid paying the debtor's credit card debts by objecting to all proofs of claim solely on the basis that they "lacked" sufficient

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[62] *In re Hesed Enters., LLC*, No. 16-10299-rlj7, 2017 Bankr. LEXIS 3322, at *28 (Bankr. N.D. Tex. Sep. 29, 2017) (in finding debtor's attorney violated Rule 9011 by filing Chapter 11 petition for improper purpose without having done any due diligence, the court noted that nearly every factor announced by the Fifth Circuit in the pivotal case of *Little Creek* was present). *See also In re Little Creek Dev. Co.*, 779 F.2d 1068, 1073 (5th Cir. 1986) (identifying a number of factors for courts to consider in determining whether a chapter 11 petition was filed in bad faith).

[63] *In re Cohoes Indus. Terminal*, 931 F.2d 222, 228 (2d Cir. 1991) (reversing award of Rule 9011 sanctions imposed by bankruptcy court for the filing of frivolous chapter 11 petition where the bankruptcy court had previously denied the U.S. Trustee's motion to dismiss and instead appointed a Chapter 11 trustee, and explaining that a "court may not ordinarily consider a Chapter 11 bankruptcy petition to be frivolously filed if the court previously rejected a motion to dismiss the petition").

[64] *See, e.g.*, *In re French Gardens, Ltd.*, 58 B.R. 959, 964 (Bankr. S.D. Tex. 1986) ("In a Chapter 11 filing good faith requires that the debtor have a reasonable expectation of reorganization."); *In re King*, 83 B.R. 843, 847 (Bankr. M.D. Ga. 1988) ("Filing a bankruptcy petition simply to forestall and delay a state court action, with no intention to effectuate a legitimate reorganization, constitutes an abuse of the Bankruptcy Code."). *Cf. In re Cohoes Indus. Terminal*, 931 F.2d 222, 229 (2d Cir. 1991).

[65] 487 B.R. 764, 771 (E.D. Tex. 2012).

documentation.[66] In this case, the debtor and debtor's attorney proposed a Chapter 13 plan that provided that all creditors would be paid in full. But after confirmation, the debtor, through her attorney, filed objections to all of the creditors' claims solely on the basis that they lacked sufficient documentation, and therefore were somehow not in compliance with Rule 3001.[67] The Bankruptcy Court overruled all of the debtor's claim objections, stating that the claims substantially complied with Rule 3001 and that the debtor provided no facts, evidence, or substantive reason to support disallowance of the claims.[68] Due to debtor's perceived bad faith in filing the plan, the Bankruptcy Court also revoked the confirmation order and issued an order to show cause why the attorney should not be sanctioned under Rule 9011.[69]

In imposing sanctions against the debtor's attorney, the Bankruptcy Court found that the debtor's attorney "had participated in or facilitated a scheme to improperly manipulate the bankruptcy process."[70] The claim objections were not only made for an improper purpose designed to manipulate and abuse the bankruptcy process (by attempting to obtain the equivalent of a chapter 7 discharge for a wealthy individual who would not otherwise be eligible), but they also lacked both evidentiary and legal support.[71] The debtor had provided no evidence that the underlying claims were somehow invalid or in dispute, and the debtor's attorney insisted on maintaining his untenable position despite repeated warnings from the Bankruptcy Court.[72]

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[66] *Id.* at 767-68.

[67] *Id.* at 767.

[68] *Id.* at 768.

[69] *Id.*

[70] *Id.* at 770-71.

[71] *Id.*

[72] *Id.*

Accordingly, the debtor's attorney was sanctioned for violations of Rule 9011(b)(1)-(3) and these sanctions were upheld by the district court.[73]

C. Rule 9011(b)(2)-(4) – Legal and factual contentions have support

Subsections (b)(2)-(4) of Rule 9011 essentially require a certification that the legal and factual contentions, or factual denials, have support. Subsection (b)(2) requires the legal contentions to have support in existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law,[74] whereas subsections (3) and (4) require that both factual allegations and denials have, or will have, evidentiary support or are warranted on the evidence.[75]

Whether sanctions are warranted under subsections (b)(2)-(4) is governed by an objective standard.[76]

Courts do not always specifically identify under which subsection of Rule 9011(b) sanctions are being imposed. Sanctions can be imposed under Rule 9011(b)(2)-(4) in a variety of circumstances. Such instances include the following:

(a) An attorney violated numerous subdivisions of Rule 9011(b) by (i) failing to obtain debtor's signature on original Schedules and original Statement of Financial Affairs; and (ii) forging the debtor's electronic signature on the original Schedules and original SOFA;[77]

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[73] *Id.* at 775.

[74] Fed. R. Bankr. P. 9011(b).

[75] Fed. R. Bankr. P. 9011(b)(3)-(4).

[76] *In re Intercorp Int'l, Ltd.*, 309 B.R. 686, 694 (Bankr. S.D.N.Y. 2004) (Rule 11 "establishes an objective standard, intended to eliminate any 'empty-head pure-heart' justification for patently frivolous arguments.").

[77] *In re Stomberg*, 487 B.R. 775, 807-08 (Bankr. S.D. Tex. 2013); *In re Bradley*, 495 B.R. 747, 779 (Bankr. S.D. Tex. 2013).

(b) A debtor's attorney misleading the court through multiple misstatements as to the law in motions and arguments propounded before the Bankruptcy Court;[78]

(c) A debtor's attorney violated Rule 9011(b)(3) by filing a Chapter 7 petition and schedules with numerous errors and inconsistencies that the attorney would have known about had he conducted a reasonable inquiry prior to filing, particularly by reviewing the Chapter 13 petition and schedules filed by the debtor in a prior case;[79] and

(d) In violation of Rule 9011(b)(1), (2), and (3), a debtor's attorney filed a series of claim objections in a Chapter 13 case solely on the basis that the claims purportedly lacked sufficient documentation but without any evidence that the claims themselves were invalid or in dispute, and, despite repeated requests from the Bankruptcy Court, the attorney failed to provide any legal or factual support for the objections.[80]

In the case of *Robinson v. Lawrence (In re Lawrence)*,[81] the Bankruptcy Court sanctioned an attorney under Rule 9011(b)(2) for the filing of a frivolous complaint. The attorney, despite being on notice of the applicable deadline, filed a complaint objecting to the dischargeability of

[78] *Baker v. Harrington (In re Hoover)*, 827 F.3d 191, 195 (1st Cir. 2016) (in upholding the Bankruptcy Court's impositions of sanctions against an attorney under Rule 9011(b) for misleading the court on the status of the law and in advancing frivolous legal arguments, the Court noted that the attorney, "in each instance, marshalled artifice to provide illusory support for positions that were otherwise without an apparent basis" and had a "record of using his knowledge and skills for improper purposes").

[79] *Desiderio v. Parikh (In re Parikh)*, 508 B.R. 572, 594 (Bankr. E.D.N.Y. 2014).

[80] *In re Davis*, No. 09-42865, 2011 Bankr. LEXIS 1323, at *1 (Bankr. E.D. Tex. Mar. 31, 2011) ("This is a case about an affluent debtor who sought to manipulate bankruptcy procedures to accomplish what the Code prohibits - the elimination of all of her credit card debts despite her obvious ability to repay those debts over time."), *aff'd Armstrong v. Davis*, 487 B.R. 764, 775 (E.D. Tex. 2012) (upholding bankruptcy court's imposition of sanctions against debtor's attorney).

[81] 494 B.R. 525, 533 (Bankr. E.D. Cal. 2013).

certain debts under 11 U.S.C. § 523 after the time for bringing such actions had expired.[82] The court emphasized that the deadline to file complaints objecting to the dischargeability of a debt in every case is set out by Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, which provides that such complaints must be filed no later than 60 days after the first date set for the meeting of creditors, unless extended for cause in a motion filed ***before*** the expiration of the deadline.[83] Despite receiving notice of the chapter 7 case that included the deadline to file 523 complaints, the attorney did not timely file a complaint or file a motion to extend the deadline.[84] The court, in sanctioning the attorney, reasoned that an obvious affirmative defense (expiration of statute of limitations) applied to bar the filing of the complaint and, absent any colorable, non-frivolous argument in support of filing the complaint after the expiration of the deadline, the complaint was frivolous.[85] Because the attorney filed the complaint after expiration of the deadline with no "colorable, non-frivolous argument as to why the defense was inapplicable," the complaint was frivolous and sanctions were warranted under Rule 9011(b)(2).[86]

In another case, an attorney was sanctioned under both Rule 9011 and the Court's inherent powers for a pattern of offensive and abusive conduct directed at other attorneys and parties involved in a contentious chapter 11 case resulting from a class action securities lawsuit.[87]

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[82] *Id.* at 528.

[83] *Id.* at 530. (citing Fed. R. Bankr. P. 4004(b), 4007(c)).

[84] *Id.* at 533.

[85] *Id.* at 532-33.

[86] *Id.*

[87] *In re First City Bancorporation*, 282 F.3d 864 (5th Cir. 2002).

In the case of *In re First City Bancorporation*,[88] an attorney, despite continued warnings from the Bankruptcy Court about his conduct, repeatedly engaged in offensive and abusive behavior directed toward opposing parties and attorneys. As an example, the sanctioned attorney characterized other attorneys, including an Assistant United States Attorney, as a "stooge," "puppet," a "weak pussyfooting deadhead" who "had been 'dead' mentally for ten years," "various incompetents," "inept," "clunks", "falling all over themselves, wasting endless hours," "a bunch of starving slobs," and an "underling who graduated from a 29th-tier law school."[89] The attorney also directed other offensive and abusive verbal invectives at other parties, attorneys, and law firms involved in the case.[90]

In upholding the Bankruptcy Court's imposition of monetary sanctions against the attorney, the Fifth Circuit held that the Bankruptcy Court did not abuse its discretion in sanctioning the attorney for his irrelevant offensive and abusive conduct.[91] The court noted that some of the announced standards of litigation conduct for the Northern District of Texas, established in *Dondi Properties Corp. v. Commerce Savings & Loan Ass'n*,[92] were relevant to the complaints about the attorney's conduct, including:

(a) A lawyer owes, to opposing counsel, a duty of courtesy.

(b) Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility.

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[88] 282 F.3d 864 (5th Cir. 2002).

[89] *Id.* at 866.

[90] *Id.*

[91] *Id.* at 866.

[92] 121 F.R.D. 284 (N.D. Tex. 1988).

(c) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct.

(d) Ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

(e) Effective advocacy does not require antagonistic or obnoxious behavior.[93]

In agreeing with the Bankruptcy Court and district court that the imposition of sanctions against the attorney was warranted for the attorney's "egregious, obnoxious, and insulting behavior" in violation of the standards promulgated in *Dondi*, the Court explained that that the relevant inquiry was whether the statements were made, and the attorney was not justified in making the statements simply because, he argued, they were mostly correct, or the actions of the court or opposing parties somehow "caused" the sanctioned attorney to engage in these personal attacks.[94] Because there was no justification for the attorney's "wholly unprofessional conduct," the Fifth Circuit affirmed the Bankruptcy Court's imposition of sanctions.[95]

VI. How Sanctions May Be Imposed – Rule 9011(c)

There are two methods by which the imposition of Rule 9011 sanctions may be initiated. The first method is through motion by an opposing party. If the sanctions are sought by the opposing party, the opposing party must comply with the rule's "safe harbor" provision by providing the offending attorney with at least twenty-one (21) days' notice (plus three days if mailed)[96] of the motion *before* filing the motion for sanctions under Rule 9011 to give the party

[93] *In re First City Bancorporation*, 282 F.3d 864 (5th Cir. 2002) (quoting *Dondi Properties Corp. v. Commerce Savings & Loan Ass'n*, 121 F.R.D. 284, 287-88 (N.D. Tex. 1988) (internal quotations omitted)).

[94] *Id.* at 867.

[95] *Id.*

[96] Fed. R. Bankr. P. 9006(f).

the opportunity to withdraw or correct the challenged representation.[97] Any motion filed under this rule must "specifically" describe the offending conduct[98] and be filed separately from any other motion.[99] If the court seeks to impose sanctions on its own initiative, it must also satisfy due process by providing the offending attorney with notice and an opportunity to respond.[100] The court, if it decides the circumstances warrant it, may award to the prevailing party reasonable attorney's fees and expenses incurred in presenting or opposing the Rule 9011 motion. [101]

Most courts, including the Fifth Circuit, have held that the "safe harbor" provision is mandatory, and that a motion for sanctions must be served on an offending party at least 21 days' before the motion is filed with the court to give the party an opportunity to correct or withdraw the challenged document.[102] The Fifth Circuit subscribes to this approach.[103] The "safe harbor"

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[97] Fed. R. Bankr. P. 9011(c)(1)(A).

[98] *Id.*

[99] *Id.*

[100] Fed. R. Bankr. P. 9011(c)(1)(B).

[101] Fed. R. Bankr. P. 9011(c)(1)(A) ("If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.").

[102] *See, e.g.*, *Penn, LLC v. Prosper Bus. Dev. Corp.*, 773 F.3d 764, 767 (6th Cir. 2014) (holding that strict compliance of the notice provision is mandatory and a party must be served with a copy of the **motion** at least 21 days before it is filed; any informal warning through a letter or other type of notice is insufficient) (emphasis added); *Star Mark Mgmt. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d 170, 175 (2d Cir. 2012) ("safe-harbor provision is a strict procedural requirement"); *Gordon v. Unifund CCR Partners*, 345 F.3d 1028, 1030 (8th Cir. 2003) (finding that sanctions award was improper, in part, because the movant "did not serve a prepared motion on Appellant prior to making any request to the court"); *In re Gianasmidis*, 2016 Bankr. LEXIS 435, 2016 WL 556154, at *1 (Bankr. D. Mass. Feb. 11, 2016) ("The majority of courts has ruled that the safe harbor provisions must be strictly observed and that sanctions cannot be awarded where the prerequisites to filing have not been followed and where an opportunity to withdraw the pleading or motion has not been provided, including in circumstances where an order has been entered disposing of the offending pleading or motion.").

[103] *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 588 (5th Cir. 2008) ("We are not persuaded that informal service is sufficient to satisfy the service requirement of Rule 9011. Contrary to the holding in *Nisenbaum*, the plain language of Rule 9011 mandates that the movant serve the respondent with a copy of the *motion* before filing it with the court. There is no indication in Rule 9011 (or Rule 11) or in the advisory notes to support Cadle's contention that a motion for sanctions may be filed with the court without serving the respondent with a copy at least twenty-one days in advance."); *Elliott v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995) ("The safe harbor provision added to Rule 11

provision, however, does not apply to the filing of a petition commencing a case, which is explicitly excepted from this requirement.[104] Courts have explained that the filing of a petition has "immediate, serious consequences," including the imposition of the automatic stay under section 362 of the Bankruptcy Code, and "there is no absolute right to withdraw a chapter 7 or chapter 11 petition."[105] Accordingly, an attorney may be subject to sanctions for the filing of a petition without being provided an opportunity to withdraw or correct the document prior to sanctions being imposed.[106] But in all other cases, if a party seeks sanctions against an attorney for the violation of Rule 9011(b) without first serving the motion on the offending party 21 days' prior, a court is likely to deny the motion.[107]

There are many examples of reported cases where the imposition of sanctions was denied (or reversed) if the movant failed to strictly comply with the "safe harbor" provision of Rule 9011. The vast majority of courts explain that the safe harbor provision requires formal service of the actual motion for sanctions before it is filed. Service of informal or formal warning letters, emails, or other correspondence does not satisfy the Rule's safe harbor provision.

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contemplates such service to give the parties at whom the motion is directed an opportunity to withdraw or correct the offending contention. The plain language of the rule indicates that this notice and opportunity prior to filing is mandatory."). *But see Nisenbaum v. Milwaukee Cnty.*, 333 F.3d 804, 808 (7th Cir. 2003) (reversing decision of district court and finding that movants complied substantially with Fed. R. Civ. P. 11(c)(1)(A) in providing notice of their motion for sanctions to defendant Nisenbaum before filing because, even though the motion itself was not provided to defendant before filing, the movants did provide notice through a "letter" or "demand" and gave Nisenbaum more than 21 days to desist).

[104] Fed. R. Bankr. P. 9011(c)(1)(A) ("except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b)").

[105] *In re Intercorp Int'l, Ltd.*, 309 B.R. 686, 694 n.10 (Bankr. S.D.N.Y. 2004); *In re Bonilla*, 573 B.R. 368, 375 (Bankr. D.P.R. 2017).

[106] *See In re Intercorp Int'l, Ltd.*, 309 B.R. 686, 694 n.10 (Bankr. S.D.N.Y. 2004); *In re Bonilla*, 573 B.R. 368, 375 (Bankr. D.P.R. 2017).

[107] *See* Fed. R. Bankr. P. 9011(c)(1)(A); *In re Bonilla*, 573 B.R. 368, 375 (Bankr. D.P.R. 2017).

In the case of *Penn, LLC v. Prosper Bus. Dev. Corp.*,[108] the Sixth Circuit explained that "first and most important," the Rule specifically requires formal service of a *motion*.[109] The Court explained that the inclusion of the word "motion" in the Rule's safe-harbor provision "definitionally excludes warning letters."[110] In addition to the plain language of the Rule, the Court explained that its position was supported by the Advisory Committee Notes, which "clearly suggest that warning letters . . . are supplemental to, and cannot be deemed an adequate substitute for, the service of the motion itself."[111] The Court noted that policy considerations further cut against a more expansive reading of the Rule.[112] The requirement of actual service of a motion on the offending party stresses the seriousness of the situation and provides specific notice to the offending party of the alleged sanctionable conduct.[113] For these reasons, the Sixth Circuit affirmed the district court's denial of sanctions for the movant's failure to observe this mandatory procedure.[114]

A. Sanctions on the Court's Own Initiative

Even if an opposing party does not take action to seek sanctions, a court may nevertheless impose sanctions on an attorney *sua sponte* if it believes subsection (b) of Rule 9011 has been

[108] 773 F.3d 764, 767 (6th Cir. 2014).

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.* at 767-68 ("Permitting litigants to substitute warning letters, or other types of informal notice, for a motion timely served pursuant to Rule 5 undermines these goals. Whereas a properly served motion unambiguously alerts the recipient that he must withdraw his contention within twenty-one days or defend it against the arguments raised in that motion, a letter prompts the recipient to guess at his opponent's seriousness.").

[114] *Id.* at 768.

violated.[115] Although the 21-day safe harbor provision does not apply to situations in which a court desires to impose sanctions on its own, a court is nevertheless required to provide, usually by an order to show cause, the attorney with notice and opportunity to be heard before imposing sanctions.[116] A failure of a court to abide by this requirement is an abuse of discretion.[117]

B. Nature of Sanctions and Limitations

Subsection (c)(2) of the rule provides guidance on the type of sanctions that the Court may impose for a violation of subsection (b) of the rule. The Rule makes clear that sanctions should not be needlessly excessive, but instead should be "limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated."[118] Such sanctions "may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation."[119] In deciding what type of sanctions are warranted in a particular case, courts often consider the severity of the violation, the degree of willfulness, negligence, or frivolousness involved, the experience and past history of the offending attorney, the extent to which the offender continued to pursue an untenable position after being given fair notice that it

[115] Fed. R. Bankr. P. 9011(c)(1)(B).

[116] *In re Dobbs*, 535 B.R. 675, 681 (Bankr. N.D. Miss. 2015) ("an attorney facing potential sanctions must be given notice and a hearing").

[117] *In re First City Bancorporation*, 282 F.3d 864, 867 (5th Cir. 2002).

[118] Fed. R. Bankr P. 9011(c)(2).

[119] *Id.*

might violate Rule 9011, and the impact that the attorney's sanctionable conduct had on the court or other parties in the case.[120]

At first blush, the plain language of Rule 9011 seems to indicate that Rule 9011 sanctions may only be imposed on an attorney or *unrepresented* party.[121] But Rule 9011(c) states that if the court determines that subdivision (b) has been violated, it can impose sanctions upon the attorneys, law firms, or ***parties*** that have violated subdivision (b) **or** those that are ***responsible*** for the violation.[122] Accordingly, courts, in interpreting Rule 9011(c), have drawn a distinction between those who have "violated subdivision (b)" and those who are "responsible for the violation," and have imposed sanctions upon represented parties as persons "responsible" for the sanctionable conduct.[123] Sanctions may even be imposed on local counsel for the filing of a document in violation of Rule 9011(b) even if the document was signed and prepared by lead counsel.[124]

In coming to the conclusion that a debtor could be found responsible for a Rule 9011(b) violation despite being represented by an attorney, the Bankruptcy Court in *In re Collins*[125] reasoned that although a represented party is specifically excluded from the certification requirement of Rule 9011(b), it could nevertheless be found to be a "responsible person" for a certification violation committed by its attorney and subject to sanctions as provided by Rule

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[120] *Hermosilla v. Hermosilla (In re Hermosilla)*, 450 B.R. 276, 304 (Bankr. D. Mass. 2011).

[121] Fed. R. Bankr. P. 9011(b).

[122] Fed. R. Civ. P. 9011(c).

[123] Fed. R. Bankr. P. 9011(c) ("If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.").

[124] *Val-Land Farms, Inc. v. Third Nat'l Bank*, 937 F.2d 1110, 1118 (6th Cir. 1991).

[125] 250 B.R. 645, 660 (Bankr. N.D. Ill. 2000).

9011(c).[126] The court also reasoned that the specific exclusion in subdivision (c)(2)(A) that states that "[m]onetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2),"[127] provides support for the notion that sanctions against a represented party may still be allowed under the other subdivisions of Rule 9011(b).[128] Other courts, when faced with the issue, have adopted the reasoning provided by the Bankruptcy Court in *Collins* and allowed sanctions against a represented party for violations of Rule 9011(b)(1), (3), and (4).[129] As a practical matter, it is unclear whether this distinction is significant in practice since a court may still subject a represented party to sanctions under its inherent powers, and sanctions are most often sought against attorneys and law firms, rather than parties.[130] It appears that most courts hold that a represented party may be sanctioned under Rule 9011, except as to a violation of Rule 9011(b)(2).[131] Whether a represented party is sanctioned will typically depend upon its the level

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[126] *In re Collins*, 250 B.R. 645, 660 (Bankr. N.D. Ill. 2000) (Rule 11(c) provides that two groups may be sanctioned if Rule 11(b) has been violated. The first is the attorneys, laws firms, or parties that have actually violated the Rule. The second group is those attorneys, law firms, or parties who are responsible for the violation.").

[127] Subsection (b)(2) includes the requirement that "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."

[128] *In re Collins*, 250 B.R. 645, 661 (Bankr. N.D. Ill. 2000) ("The limiting precision which solely addresses this provision reflects that monetary sanctions may be imposed on represented parties for violations of the other sections of Rule 9011(b).").

[129] *See, e.g.*, *In re Wall*, No. 16-00763, 2019 Bankr. LEXIS 353, at *10 (Bankr. N.D. Iowa Feb. 8, 2019) ("Since monetary sanctions are disallowed against represented parties for violations of Rule 9011(b)(2), it follows that monetary sanctions are allowed against represented parties for violations Rule 9011(b)(1), (3), and (4)."). *But see In re David*, 487 B.R. 843, 869 (Bankr. S.D. Tex. 2013) (in declining to adopt the analysis in *Collins*, the bankruptcy court explained that "[t]he phrase 'attorney or unrepresented party' clearly limits the Rule and its application to only those two groups; represented parties have been expressly excluded. Thus . . . Rule 9011(b) definitively requires that the Rule apply to unrepresented debtors alone. Represented debtors may not be sanctioned under this particular Rule.").

[130] *See id.* ("The vast majority of 9011 sanctions actions are against attorneys and law firms.").

[131] *See, e.g.*, *In re Collins*, 250 B.R. 645, 661 (Bankr. N.D. Ill. 2000); *Indep. Fire Ins. Co. v. Lea*, 979 F.2d 377, 379 (5th Cir. 1992) (interpreting Rule 11).

of "involvement in the management of the litigation and/or decisions that resulted in the actions which the court finds improper."[132]

VII. Other Provisions of Rule 9011

There are three other subsections of Rule 9011 that have not yet been discussed. The first is subsection (d), which provides that subsections (a) through (c) of the Rule do not apply to discovery.[133] Subsection (d) states that the prior subsections "do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037."[134] This means that, if one is seeking sanctions for a violation of the discovery rules or for the conduct of an opposing attorney or litigant in discovery practice, he or she must do so using means other than Rule 9011, such as Rules 26(g) and 37 of the Federal Rules of Civil Procedure or the Court's inherent powers.[135]

The remaining two subsections of Rule 9011, subsections (e) and (f), address the necessity of verification in bankruptcy cases. Subsection (e) provides that papers filed under the Bankruptcy Code do not need to be verified unless otherwise specifically provided by rule.[136] Instead, whenever a verification is required by the Federal Rules of Bankruptcy Procedure, an unsworn declaration complying with the requirements of 28 U.S.C. § 1746 may be used.[137] In such instance,

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[132] *In re Jazz Photo Corp.*, 312 B.R. 524, 535 (Bankr. D.N.J. 2004) (quoting *Indep. Fire Ins. Co. v. Lea*, 979 F.2d 377, 379 (5th Cir. 1992)).

[133] Fed. R. Bankr. P. 9011(d).

[134] *Id.*

[135] *See* Fed. R. Civ. P. 37 and 26(g) (providing mechanism for the imposition of sanctions on a party for a failure to abide by the discovery rules).

[136] Fed. R. Bankr. P. 9011(e).

[137] *Id.*

subsection (f) indicates that copies of the original verification may be used in lieu of an original so long as they are "conformed" to the original.[138]

[138] Fed. R. Bankr. P. 9011(f).