

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**REFINEMENT OF ECF EVENTS
CONCERNING SANCTIONS AND OTHER
REQUESTS FOR DAMAGES OR PENALTIES**

The Court is required – by BAPCPA and the Judicial Conference – to gather statistics about the use of motions seeking damages for alleged conduct. Those statistics are supposed to be gathered passively – from data generated by the use of certain ECF events. However, comprehensive review of the use of the pertinent ECF events has revealed that confusion exists among filers and that some of the instructions related to the events are unclear. As a result, the data gathered from this District may not be accurate or complete. Therefore, ECF events have been refined, as further discussed below.

1. Elimination of Motion to Show Cause Event. The concept of a “Motion to Show Cause” seems to be ‘home-grown.’ The event did not exist in the national ECF dictionary, but was created locally because filers were using that title on certain motions. Close review of the Code and the Federal Rules of Bankruptcy Procedure establishes that while the Court can enter an order to show cause, the motion that may prompt the Court to issue a show cause order should be filed under a more specific event. Therefore, the Motion to Show Cause event is being retired effective May 5, 2014. The event will remain in the dictionary, but if selected will have a message directing filers to other events. Here is the message when Motion to Show Cause is selected from the menu:

This event is no longer available. A more appropriate event might be Motion for Sanctions or Motion for Order of Contempt. For example, if a party has failed to comply with a court order, the Motion for Order of Contempt event would be appropriate.

2. Revisions to Motion for Damages for Creditor Misconduct Event. This event is statistically significant but is limited to use when a debtor seeks damages under only two Code sections: §§524(i) and 707(b)(5). Section 524(i) concerns a creditor’s failure to properly credit plan payments. Section 707(b)(5) allows sanctions against a creditor who pursues a motion to dismiss under §707(b). The Motion for Damages for Creditor Misconduct event is being edited to include references to those Code sections in its title and to direct filers to more appropriate events if they determine the relief sought is not pursuant to one of the named Code sections.

3. Edits to Motion for Sanctions Event. The Motion for Sanctions event should be the most frequently used event when a party seeks damages from another for matters arising during the case. The event currently has the following radio buttons:

[a] Debtor's Attorney Misconduct (FRBP 9011)

[b] Other Attorney Misconduct (FRBP 9011)

[c] Violation of the Discharge Injunction [11 U.S.C. §524(a)]

[d] Violation of the Automatic Stay [11 U.S.C. §362(k)]

[e] Counsel's Liability for Excessive Costs [28 U.S.C. §1927]

On May 5th, an additional radio button will be added for those situations where a debtor seeks damages both for a creditor's alleged violation of the automatic stay and for alleged violations of the discharge injunction. However, the radio button for Violation of the Discharge Injunction will be removed. (See the Motion for Order of Contempt event below.)

4. Deficient Filing Notice for Improper Use of Motion to Compel. Effective May 5, 2014, improper use of the Motion to Compel event will result in a Notice of Deficient Filing for wrong event used. In the Federal Rules of Bankruptcy Procedure, "motion to compel" is mentioned only in Fed.R.Bankr.P. 7037 concerning discovery. Motion to Compel should not be used by a trustee seeking turnover from the debtor (of property or records) or for the failure of a debtor or other party to comply with a previous order in the case (such as an order for turnover).
5. Motion for Order of Contempt Pursuant to FRBP 9020 This event was edited not long ago for clarity. An order of contempt may be appropriate if a party has failed to comply with a previous order of the Court. Under recent 7th Circuit case law, this event would seem to be most appropriate when seeking damages for a violation of the discharge injunction. *Cox v. Zale Delaware, Inc.*, 239 F.3d 910 (7th Cir. 2001) and *In re Consolidated Industries Corp.*, 360 F.3d 712, 716 (7th Cir. 2004) hold that a party wronged by a violation of a court order is limited to contempt as a remedy, unless a different private right of action is specifically provided by statute, such as damages for an automatic stay violation found in 11 U.S.C. §362(k).

Questions about these changes can be raised by sending an email to Local_Rules_Comments@insb.uscourts.gov.

April 24, 2014

/s/ Kevin P. Dempsey
Clerk