

Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 08-13109)	
)	
JUSTIN LEE STUCKEY)	
TERESA ROSE STUCKEY)	
)	
Debtors)	
)	
)	
JAMES CRAVER)	
JANE CRAVER)	
)	
Plaintiffs)	
)	
vs.)	PROC. NO. 09-1046
)	
JUSTIN LEE STUCKEY)	
TERESA ROSE STUCKEY)	
)	
Defendants)	

DECISION AND ORDER

At Fort Wayne, Indiana, on March 11, 2010.

The matter before the court involves a motion, filed by the defendants, for sanctions under Rule 9011(c). Ordinarily, the court would wait for the plaintiffs to respond, see, N.D. Ind. L.B.R. B-7007-1(a), and then, if necessary, schedule the motion for such proceedings as may be appropriate. But, given the motion's deficiencies, it sees no reason to wait.

A motion for sanctions pursuant to Rule 11 must be made "separately from other motions or requests and shall describe the specific conduct alleged to violate" the rule. Fed. R. Civ. P. Rule 11(c)(1)(A); Fed. R. Bankr. P. Rule 9011(c)(1)(A). The motion may not be filed with or presented to the court unless the opposing party has first been given an opportunity, of at least twenty-one days, to withdraw the offending paper or claim. Fed. R. Civ. P. 11(c)(1)(A); Fed. R. Bankr. P. Rule

9011(c)(1)(A). This twenty-one day period, often referred to as the “safe harbor” provision, is a mandatory procedural prerequisite, see e.g., Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998); Waters v. Walt Disney World Co., 237 F. Supp. 2d 162, 168 (D. R.I. 2002); In re McNichols, 258 B.R. 892, 902-03 (Bankr. N.D. Ill. 2001), and not “merely an empty formality.” Divane v. Krull Electric Co., Inc., 200 F.3d 1020, 1026 (7th Cir. 1999). As such, the motion itself should somehow indicate that this requirement has been fulfilled. See, Wilson v. Kautex, Inc., 2009 WL 1657460 (N.D. Ind. 2009). See also, Martins v. Charles Hayden Goodwill Inn School, 178 F.R.D. 4 (D. Mass. 1997) (lack of compliance with safe harbor determined “based on the docket filings”).

Nothing about the present motion, or anything accompanying it, suggests that it was served on plaintiffs’ counsel at least twenty-one days prior to its filing or that the plaintiffs were given any kind of previous warning and opportunity to withdraw the claim that defendants’ counsel finds so deficient. The certificates of service accompanying the motion and its associated brief indicate they were served on the very same day they were filed with the court, and there are no allegations in the motion, or information in any exhibits attached to it, that suggest that the necessary pre-filing warning was given some other fashion. See, Nisenbaum v. Milwaukee County, 333 F.3d 804, 808 (7th Cir. 2003) (letter or other demand may substantially comply with the safe harbor requirement). Given the absence of such information, the motion does not comply with the requirements of Rule 11 and no purpose would be served by waiting for plaintiffs’ counsel to file a response.¹ See, Wilson v. Kautex, Inc., 2009 WL 1657460 (N.D. Ind. 2009) (where compliance with the safe harbor provision is not apparent from the filings, the court may rule without further notice or hearing). See

¹The court is actually doing defendants’ counsel a favor by acting now, without waiting for a response. A precipitously filed motion for sanctions is itself sanctionable conduct. See, Waters v. Walt Disney World Co., 237 F. Supp. 2d 162 (D. R.I. 2002).

also, Martins v. Charles Hayden Goodwill Inn School, 178 F.R.D. 4 (D. Mass. 1997) (motion served on the day it was filed had to be denied); Rubio ex rel. Z.R. v. Turner Unified School Dist. No. 202, 475 F. Supp. 2d 1092, 1101 (D. Kan. 2007). Defendants' motion for sanctions under Rule 11 is therefore DENIED.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court