NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:	)	
	)	
THOMAS SHANE ANDERSON	)	CASE NO. 15-40519
	)	
	)	
Debtor	)	

DECISION AND ORDER DENYING MOTION FOR SANCTIONS

At Fort Wayne, Indiana, on January 7, 2016.

The matter before the court involves a motion, filed by the debtor, for sanctions against Teachers Credit Union because a claim it filed allegedly violated Rule 9011(c). Ordinarily, the court would wait for Teachers Credit Union to respond, see, N.D. Ind. L.B.R. B-7007-1(a), or schedule the motion for a hearing. 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 the requirement has been fulfilled. See, Wilson v. Kautex, Inc., 2009 WL 1657460 (N.D. Ind. 2009); 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"). See also, Fed. R. Bankr. Rule 9013 ("motion shall state with particularity the grounds therefor").

Nothing about the present motion suggests that it was served on Teachers Credit Union at least twenty-one days prior to its filing or that the Credit Union was given any kind of previous warning and opportunity to withdraw its proof of claim. The certificate of service accompanying the motion indicates it was served on the same day it was 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's allegations do not satisfy the requirements of Rule 11 and no purpose would be served by scheduling a hearing or waiting for Teachers Credit Union to file a response. 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 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). Debtor's motion for sanctions under Rule 11 is therefore DENIED, without prejudice.[1]

SO ORDERED.

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

[1]In addition, the motion has not been accompanied by a separate brief in support thereof as required by the local rules of this court. See, N.D. Ind. L.B.R. B-7007-1(a).