AMERICAN BANKRUPTCY INSTITUTE

Annual Spring Meeting

CONCURRENT SESSION

Bad Debtors and Vexatious Litigants: How the Code, the Rules and the Courts Can and Can't Help

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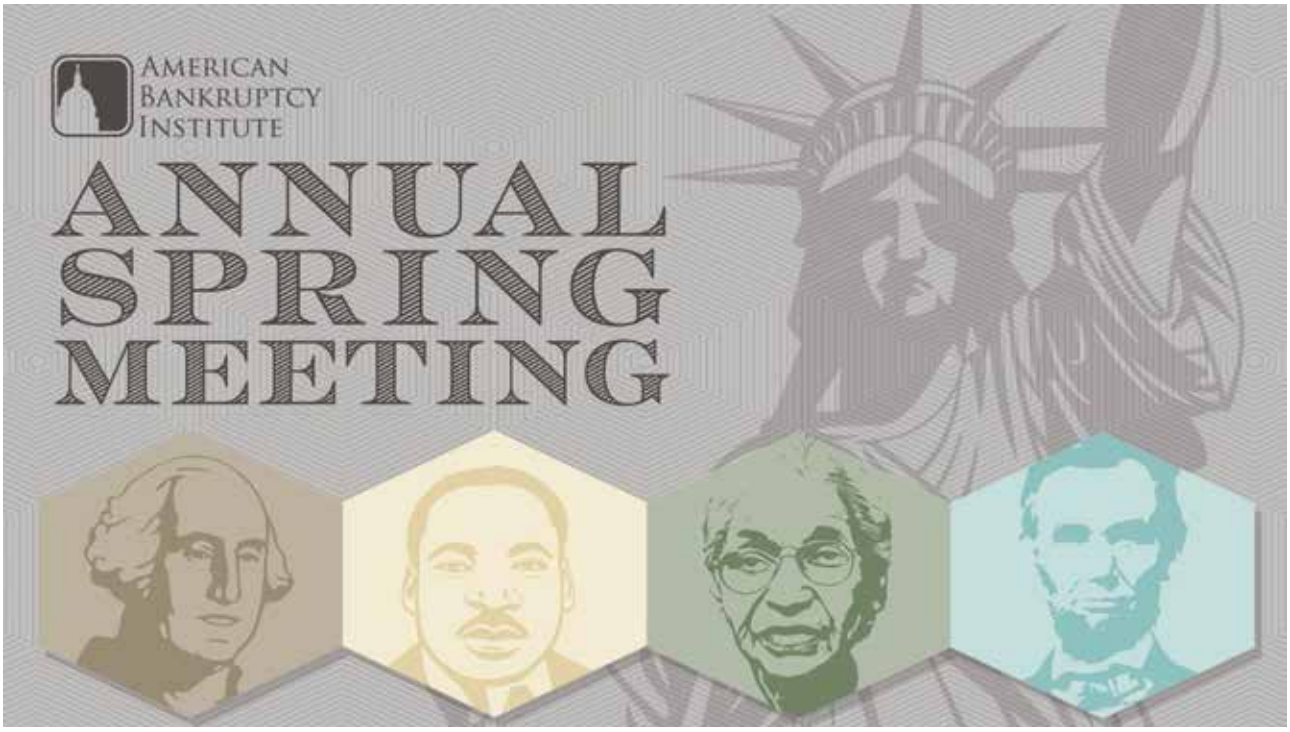
2025



Bad Debtors and Vexatious Litigants:

How the Code, the Rules, and the Court Can (and Cannot) Help

Friday, April 25, 2025
11:15 a.m. – 12:15 p.m.

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Who are we talking about?

Bad Debtors

Does not cooperate with counsel, the case trustee, or the United States Trustee; refuses or fails to turn over books and records or provides incomplete records; destroys records; hides or transfers assets; tries to disrupt, hinder, or delay the bankruptcy process, complicating it for the professionals and the court

Vexatious Litigants

Engages in or pursues litigation without good cause and/or solely to annoy, harass, or unduly burden the court and other parties

How the Code and Rules Can Help

A. Investigative Tools

1. Meeting of the Creditors – 11 U.S.C § 341(a)
   - The debtor(s) or debtor designee must answer questions under oath about assets, liabilities, and qualifications to file bankruptcy
   - Opportunities and Considerations
2. Examination of Any Entity – Fed. R. Bankr. Proc 2004
   - Bankruptcy Rule 2004 has a very broad scope and permits the examination of any entity (or individual); not limited to the debtor or its designee.
   - Opportunities and Considerations

How the Code and Rules Can Help

B. Providing Consequences: Termination / Absence of Automatic Stay

Secured creditors have the ability to eliminate one of the major benefits of bankruptcy – the protection afforded by the automatic stay

1. Repeat Individual Filers Within One Year – 11 U.S.C § 362(c)(3) and (c)(4)

- Under these sections, the automatic stay is either temporary or does not apply unless a debtor/party in interest requests it upon showing good faith as to the creditors impacted by the request, but there is a presumption of bad faith as to all creditors if:
- Opportunities and Considerations

How the Code and Rules Can Help

B. Providing Consequences: Termination / Absence of Automatic Stay

2. Other Bad Faith Filers – 11 U.S.C. § 362(d)(1)

- Bad faith constitutes cause for relief from the automatic stay under 11 U.S.C § 362(d)(1)
- Opportunities and Considerations

3. Claims Secured by Real Property – 11 U.S.C. § 362(d)(4)

- Creditors with claims secured by real property might be able to seek *in rem* relief
- Relief under § 362(d)(4)
- Opportunities and Considerations

How the Code and Rules Can Help

C. Providing Consequences: Conversion, Dismissal, Appointment of a Trustee, or Removal of the Debtor from Possession

In a Chapter 11 case, creditors and other parties in interest have the ability to remove a major benefit afforded to debtors: control of the case as debtor in possession

1. Appointment of a Chapter 11 Trustee 11 U.S.C § 1104(a)
   - United States Trustee or a party in interest may seek appointment of a Chapter 11 trustee.
   - Opportunities and Considerations
2. Conversion or Dismissal – 11 U.S.C. § 1112(b)
   - Court can convert a Chapter 11 to a Chapter 7 or dismiss the Chapter 11
   - Court may not convert or dismiss if unusual circumstances establish that conversion or dismissal will not serve the best interest of creditors and the estates, *and* the debtor or another interested party establishes that there is reasonable likelihood that a plan will be confirmed and grounds for conversion or dismissal include an act other than that found in §1112(b)(4)(A).
   - Opportunities and Considerations

How the Code and Rules Can Help

C. Providing Consequences: Conversion, Dismissal, Appointment of a Trustee, or Removal of the Debtor from Possession

3. Removal of Debtor from Possession – 11 U.S.C. § 1185(a)
   - Subchapter V of Chapter 11, in a Chapter 11, 11 U.S.C. § 1104 does not apply, the court lacks authority to appoint a Chapter 11 trustee. Under § 1185(a) the court can also remove the debtor from possession for cause
   - Cause includes: (i) fraud; (ii) dishonesty; (iii) incompetence; or (iv) gross mismanagement; or (v) for failure to perform the debtor's obligations under a confirmed plan
   - Opportunities and Considerations

How the Code and Rules Can Help

D. Providing Consequences: Objection to Discharge; Waiver/Revocation of Discharge

1. Exceptions to Discharge – 11 U.S.C. § 523(a)
   - Under § 523(a), a creditor may seek a judgment declaring its debt nondischargeable
   - § 523(a) offers a variety of grounds for a judgment of nondischargeability, including fraud (§ 523(a)(2)); fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny (§ 523(a)(4)); and willful and malicious injury (§ 523(a)(6))
   - Opportunities and Considerations

How the Code and Rules Can Help

D. Providing Consequences: Objection to Discharge; Waiver/Revocation of Discharge

2. Waiver of Discharge – 11 U.S.C. § 727(a)(10)
   - Under § 727(a)(10), bankruptcy courts may approve waivers of discharge that were executed by the debtor after entry of the order for relief
   - Opportunities and Considerations
3. Denial of Discharge – 11 U.S.C. §§ 727(a)
   - § 727(a) sets forth a variety of reasons why a court can deny a discharge in its entirety.
   - Opportunities and Considerations

How the Code and Rules Can Help

D. Providing Consequences: Objection to Discharge; Waiver/Revocation of Discharge

4. Revocation of Discharge – 11 U.S.C. § 727(d)
   - The court can revoke a previously issued discharge, if the party seeking revocation proves the existence of any of the grounds specified in §§ 727(d)(1)-(4). The timing of such requests is governed by § 727(e).
   - Opportunities and Considerations

How the Code and Rules Can Help

E. Providing Consequences: Taking Your Money *and* Your Freedom

The Bankruptcy Code and Rules provide many benefits and perhaps just as many ways to limit or eliminate those benefits for debtors who behave badly. The court has a great deal of discretion when it comes to sanctioning parties who fail to cooperate in the bankruptcy process or who otherwise misbehave.

1. Apprehending a Debtor for Examination – Bankruptcy Rule 2005
   - The court may issue an order requiring the U.S. Marshal or other authorized official to bring the debtor before the court for examination by the creditor or other interested party requesting the order.
   - Order must be supported by declaration or affidavit and if the court finds the allegations true, it must issue an order for examination.
   - Opportunities and Considerations

How the Code and Rules Can Help

E. Providing Consequences: Taking Your Money and Your Freedom

2. Sanctions, Civil Contempt, Recalcitrant Witnesses – Various Statutes
   - Civil Contempt and Sanctions
     - Willfully violate a court order, the court may impose civil penalties. The court must provide prior notice of alleged misconduct and an opportunity to respond.
   - Recalcitrant Witness – 28 U.S.C. § 1826
     - Where a witness fails to testify or fails to produce documents or other materials pursuant to court order, the bankruptcy court can declare the witness "recalcitrant" and order them detained for up to 18 months

Litigation Tools

A. Discovery Sanctions

1. Duties in Discovery
   - The Federal Rules of Civil and Bankruptcy Procedure impose upon the parties to litigation an affirmative duty to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of Rules 26 through 37 of the Federal Rules of Civil Procedure, which are incorporated in large part by Rules 7026 through 7037 of the Federal Rules of Bankruptcy Procedure.
2. Remedies for Discovery Abuses
   - Parties served with frivolous, vexatious discovery may seek sanctions under Fed. R. Civ. P. 26(g).
   - Courts possess wide latitude to issue a protective order for the purpose of protecting a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

Litigation Tools

A. Discovery Sanctions

2. Remedies for Discovery Abuses

- If a party fails to comply with discovery, the opposing party should file a motion to compel under Fed. R. Civ. P. 37(a).
- If a party fails to obey an order compelling discovery or disclosure, the opposing party may then file a motion for sanctions under Fed. R. Civ. P. 37(b).
  - Sanctions can include directing that designated facts be taken as established for purposes of the action, "striking pleadings in whole or in part", and the entry of default judgment.
- If the court finds that a party has failed to comply with its order, it must order payment of reasonable expenses, including attorneys' fees.
- The court must afford the noncompliant party an opportunity to be heard.

Litigation Tools

B. Bankruptcy Rule 9011

1. Obligations Imposed by Bankruptcy Rule 9011

- Bankruptcy Rule 9011(b) provides that, by filing a pleading or motion, the filer implicitly certifies that the pleading or motion meet certain requirements.
- Bankruptcy Rule 9011(b) imposes on attorneys and unrepresented parties the obligation to ensure that all submissions are truthful and submitted for proper litigation purposes

Litigation Tools

B. Bankruptcy Rule 9011

2. Frivolousness or Improper Purpose

- A frivolous paper is neither well-grounded in fact and warranted by existing law nor a good faith argument for the extension, modification, or reversal of existing law.
- A pleading has an improper purpose if filed to harass, cause unnecessary delay or needlessly increase litigation costs.

Litigation Tools

B. Bankruptcy Rule 9011

3. Sanctions Under Bankruptcy Rule 9011

- Sanctions for violations of Bankruptcy Rule 9011(b) are authorized by Bankruptcy Rule 9011(c)
- Courts may act *sua sponte*, afford notice and reasonable opportunity to respond and are limited to "what is sufficient to deter repetition of conduct or comparable conduct by others similarly situated".
- May include nonmonetary directive, monetary penalty paid to the court, payment of attorneys' fees and other costs.

Litigation Tools

B. Bankruptcy Rule 9011

3. Sanctions Under Bankruptcy Rule 9011

- Courts may not impose monetary sanctions for arguments made in good faith, or on its own unless it issues the show cause order before voluntary dismissal or settlement of the claims made by or against the party that might be sanctioned.
- Any order imposing sanctions must describe the sanctioned conduct and explain the basis for the sanctions.
- "Akin to contempt"
- Court may, but has no requirement to, consider the sanctioned party's financial situation.

Litigation Tools

C. Vexatious Litigant Designation and Pre-Filing Orders

1. What is a Vexatious Litigant?

- Generally, a vexatious litigant is one that files a large number of cases or motions that have little or no merit, that fail to comply with procedural requirements, and that are filed for an improper purpose, such harassment of the court or other parties.

2. Court's Authority to Regulate Vexatious Litigants

- Federal courts have "inherent power to file restrictive pre-filing orders against vexatious litigants with abusive and lengthy histories of litigation"
- In bankruptcy court, this inherent power finds its source in 11 U.S.C. § 105(a) and 28 U.S.C. § 1651(a) (The All Writs Act)

Litigation Tools

C. Vexatious Litigant Designation and Pre-Filing Orders

3. Pre-Filing Order
   - Pre-filing orders are – and should be – very difficult to obtain because they restrict a litigant's access to the courts
   - Most courts apply the *Safir* test, under which they must consider five factors in determining whether to declare a litigant vexatious and whether to issue a pre-filing order
   - The Ninth Circuit applies a four-factor test and looks to *Safir* as instructive
   - Pre-Filing Orders must be as narrowly tailored as possible

The Court's Role

A. Parties Need to be Realistic

1. The court's job involves interpreting and applying relevant law and deciding cases and controversies
2. Cases and proceedings involving vexatious litigants and other bad actors are just going to be much more difficult than other cases; more activity and more expense and more anger and frustration
3. There isn't much a court can do to manage emotion

The Court's Role

B. The Court's Toolkit

1. Courts have enormous discretion in managing their dockets, and there are things courts can do to ease the parties' burden
    - Deciding matters without oral argument, carefully monitoring of the case and adjusting deadlines where do so promotes efficiency.
2. But please be mindful that you're dealing with a single judge who might not have a lot of help. Every judge's willingness and ability to proactively manage a difficult case is going to be different.

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I. Who are we talking about?

A. Bad Debtors

Does not cooperate with counsel, the case trustee, or the United States Trustee; refuses or fails to turn over books and records or provides incomplete records; destroys records; hides or transfers assets; tries to disrupt, hinder, or delay the bankruptcy process, complicating it for the professionals and the court

B. Vexatious Litigants

Engages in or pursues litigation without good cause and/or solely to annoy, harass, or unduly burden the court and other parties

II. How the Code and Rules Can Help

A. Investigative Tools

A debtor involved in a fraudulent scheme is unlikely to accurately disclose all assets and transfers in its schedules. Consequently, creditors, trustees, and/or committees often have to conduct their own investigation into a debtor's assets and transactions. The Code and Rules provide opportunities ahead of commencing litigation and engaging in discovery.

1. Meeting of Creditors – 11 U.S.C. § 341(a)

a. The debtor(s) or debtor designee must answer questions under oath about assets, liabilities, and qualifications to file bankruptcy

b. Opportunities and Considerations:

i. Can be used by creditors (with or without counsel), trustees, and committees

ii. Offers an inexpensive way for a creditor to obtain information, but utility can be limited

aa. Often the debtor or debtor's designee does not have at hand the information needed to answer

difficult questions; promises to follow up with a more detailed response are rarely kept and hard to enforce

bb. Parties that wish to ask questions are at the mercy of the trustee running the meeting, who might place limits on questions or time[1]

cc. Witness is limited to the debtor or their designee, which might or might not be the party with the most knowledge about particular subject matter

2. Examination of *Any* Entity – Fed. R. Bankr. Proc. 2004

a. Bankruptcy Rule 2004 has a very broad scope[2] and permits the examination of any entity (or individual); not limited to the debtor or its designee

b. Subject matter of examination and/or production must relate to the debtor's acts, conduct, or property; the debtor's liabilities or financial condition; the administration of the estate; the debtor's right to a discharge; and (in cases under Chs. 11, 12, and 13) the operation of the debtor's business, sources of money and consideration given, and anything else related to the case or plan

c. Authorizes the issuance of a subpoena for the production of documents and other discoverable material and/or the examination of a non-debtor entity or individual; no subpoena is needed to obtain production from or to examine the debtor

[1] Pursuant to Rule 2003 of the Federal Rules of Bankruptcy Procedure, the United States Trustee may call a special meeting of creditors or may do so on the request of a party in interest.

[2] *In re Valley Forge Plaza Assocs.*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990) (Bankruptcy Rule 2004 "permits a party invoking it to undertake a broad inquiry of the examiner, in the nature of a 'fishing expedition'"); *In re Fearn*, 96 B.R. 135, 137-38 (Bankr. S.D. Ohio 1989) ("It is well-established that the scope of a [Bankruptcy] Rule 2004 examination is very broad and great latitude of inquiry is ordinarily permitted").

d. Motions or Applications requesting permission to conduct discovery under Bankruptcy Rule 2004 are typically handled *ex parte*,[3] but the target retains the right to object to the subpoena

e. Opportunities and Considerations:

   i. Allows a party to build a case without the assistance of the difficult party, e.g., obtain bank statements to assist with forensic analysis and tracing of funds

   ii. Can be used to collect documentation from multiple sources in order to locate assets and discover fraud

   iii. Consider seeking testimony/documents from employees, accountants, former attorneys of entity debtors – those who might have an incentive to separate themselves from alleged wrongdoing

   iv. Consider whether your questions would be better posed at the meeting of creditors or during an examination under Bankruptcy Rule 2004

      aa. Asking questions at the meeting of creditors allows you to take advantage of the element of surprise, while discovery pursuant to Bankruptcy Rule 2004 requires disclosure of the topics of the examination

   v. Cost – Thorough investigation, even through the use of Bankruptcy Rule 2004 is time-consuming and expensive; often, naughty debtors do not leave a nest egg to fund such an investigation by a committee or a trustee

[3] *In re Symington*, 209 B.R. 678, 689 (Bankr. D. Md. 1997) ("[Bankruptcy] Rule 2004 motions are generally granted ex parte . . . without the advance notice required to be given in a contested matter") (citation omitted).

B. Providing Consequences: Termination/Absence of Automatic Stay

Secured creditors have the ability to eliminate one of the major benefits of bankruptcy – the protection afforded by the automatic stay[4]

1. Repeat Individual Filers Within One Year – 11 U.S.C. § 362(c)(3)[5] and (c)(4)[6]

a. Under these sections, the automatic stay is either temporary or does not apply unless a debtor/party in interest requests it upon showing good faith as to the creditors impacted by the request, but there is a presumption of bad faith as to all creditors if:

i. Multiple cases were pending in the prior year;

ii. Dismissal within the 1 year period was based on failure to file or amend pleadings without substantial excuse (negligence is insufficient unless it was negligence of the attorney); provide ordered adequate protection; or perform under a confirmed plan; and

iii. There has not been a change in the personal or financial affairs since the next most previous case or reason to conclude the present case will be successful

b. Opportunities and Considerations:

i. Oppose the continuation or imposition of the automatic stay

[4] 11 U.S.C. § 362(a).

[5] The automatic stay terminates 30 days after the filing of a second case by an individual debtor within one year of dismissal of a prior case (unless dismissal occurred pursuant to 11 U.S.C. § 707(b) and the second case was filed under Ch. 11 or 13).

[6] No automatic stay arises in the third and any subsequent cases filed by an individual if their two prior cases were pending and dismissed within one year prior to the third or later cases (unless dismissal occurred pursuant to 11 U.S.C. § 707(b) and the second case was filed under Ch. 11 or 13).

ii. Contest facts alleged regarding whether a presumption of bad faith arises

iii. Even if no presumption of bad faith arises or is found, ask the court to impose conditions on the continuation or imposition of the automatic stay

iv. Following dismissal of a case, promptly enforce rights

v. Remember that creditors can see orders confirming termination of the stay or absence of a stay[7]

2. Other Bad Faith Filers – 11 U.S.C. § 362(d)(1)

a. Bad faith constitutes cause for relief from the automatic stay under 11 U.S.C § 362(d)(1)[8]

b. Opportunities and Considerations:

i. Requires a motion and a filing fee

ii. Even if the court declines to grant relief, ask the court to impose conditions on the stay[9]

3. Claims Secured by Real Property – 11 U.S.C. § 362(d)(4)[10]

a. Creditors with claims secured by real property might be able to seek *in rem* relief if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involves either: (i) transfer or all or part ownership of the

[7] 11 U.S.C. §§ 362(c)(4)(A)(ii) and (j).

[8] *In re Duvar Apt., Inc.*, 205 B.R. 196, 200 (B.A.P. 9th Cir. 1996) (citation omitted).

[9] *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992) ("[S]ection 362 gives the bankruptcy court wide latitude in drafting relief from the automatic stay, including the power to grant retroactive relief from the stay") (citation omitted).

[10] 11 U.S.C. § 362(b)(21) provides an exception to the automatic stay where a creditor seeks enforcement of any lien against or security interest in real property if the debtor was not eligible for relief in bankruptcy under 11 U.S.C. § 109(g) or if the debtor filed the case in violation of an order dismissing a prior bankruptcy case with prejudice (a temporary prohibition on filing future bankruptcy cases).

property without the consent of the secured creditor or the court; or (ii) multiple bankruptcy filings affecting the real property

b. Relief under § 362(d)(4) remains binding in subsequent bankruptcy cases for a period of two years following entry of the order granting relief, if the secured creditor properly records the order under state law

c. Entry of an order granting relief under § 362(d)(4) triggers an exception to the automatic stay in future cases for two years[11]

d. Dismissal of a case while a motion seeking relief under § 362(d)(4) is pending gives rise to a presumption of bad faith on the part of the debtor as to the movant in any subsequent cases filed within one year by the same debtor[12]

e. Opportunities and Considerations:

   i. Debtors can seek relief from orders granting relief from stay under § 362(d)(4) where the debtors show good cause or changed circumstances

   ii. Move for relief promptly and, if you obtain relief, take steps to properly record the order

   iii. Take advantage of any presumption of bad faith in subsequent cases

   iv. Oppose requests for relief from an order under § 362(d)(4)

[11] 11 U.S.C. § 362(b)(20).

[12] 11 U.S.C. §§ 362(c)(3)(C)(ii) and (c)(4)(D)(ii).

C. Providing Consequences: Conversion, Dismissal, Appointment of a Trustee, or Removal of the Debtor from Possession

In a Chapter 11 case, creditors and other parties in interest have the ability to remove a major benefit afforded to debtors: control of the case as debtor in possession

1. Appointment of a Chapter 11 Trustee – 11 U.S.C. § 1104(a)

a. The United States Trustee or a party in interest may seek appointment of a Chapter 11 trustee: (i) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the debtor's affairs, either before or after the commencement of the bankruptcy case; or (ii) if such appointment is in the interests of creditors, equity security holders, and other interests of the estate

b. Opportunities and Considerations:

i. Requires a noticed motion[13]

ii. Can only occur prior to confirmation of a plan[14]

iii. Under § 1104(a)(2), which permits appointment of a trustee if such appointment best serves the interests of creditors, equity security holders, and the estate, the court has very broad discretion[15]

iv. Best to seek this relief sooner, rather than later because, if a debtor is engaging in wrongful conduct, the longer that conduct continues the more damage might be done to the estate and the less likely creditors will see any significant recovery. Creditors and other interested parties might wish to share information in order to make the most

[13] 11 U.S.C. § 1104(a).

[14] *Id.*

[15] *Sunergy California LLC v. Official Cmte. of Unsecured Creditors*, 2021 WL 5015516, *2 (E.D. Cal. Oct. 28, 2021) (citing *In re Peak Serum, Inc.*, 623 B.R. 609, 620 (Bankr. D. Colo. 2020)).

convincing record possible in support of a request for appointment of a trustee

2. Conversion or Dismissal – 11 U.S.C. § 1112(b)

a. On request of a party in interest, the court *shall* convert a Chapter 11 case to one under Chapter 7 or dismiss the Chapter 11 case, whichever is in the best interests of creditors and the estate, for cause

b. § 1112(b)(4) sets forth a nonexclusive list of what constitutes cause

c. Court may not convert or dismiss if it finds and specifically identifies unusual circumstances[16] establishing that conversion or dismissal will not serve the best interests of creditors and the estates *and* the debtor or another interested party establishes that:

i. there is a reasonable likelihood that a plan will be confirmed within the timeframes established by §§ 1121(e) and 1129(e) (applicable to small business cases) or within a reasonable period of time; and

ii. the grounds for conversion or dismissal include an act other than that found in § 1112(b)(4)(A)[17]

aa. For which there exists a reasonable justification for the act or omission; and

bb. that will be cured within a reasonable period of time fixed by the court

[16] "Unusual circumstances" contemplates conditions that are not common in most Chapter 11 cases. *In re Hinesly Family Ltd. P'ship No. 1*, 460 B.R. 547, 552 (Bankr. D. Mont. 2011).

[17] Under 11 U.S.C. § 1112(b)(4)(A), "cause" for dismissal or conversion includes "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation."

d. Opportunities and Considerations:

i. Court must consider all available options – including appointment of a Chapter 11 trustee – and, if cause is shown, choose the option that best serves the interests of creditors and the estate[18]

ii. Requires notice and a hearing, although not necessarily an evidentiary hearing[19]

iii. The court must commence the hearing on the motion within 30 days after it was filed and must decide the motion within 15 days following the commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting these time limits[20]

iv. The court can issue an order requiring the debtor in possession to appear and show cause as to why the court should not dismiss the case, convert it to one under Chapter 7, or appoint a Chapter 11 trustee[21]

v. Appointment of a trustee will add a significant layer of administrative expenses

vi. Best to seek this relief sooner, rather than later because, if a debtor is engaging in wrongful conduct, the longer that conduct continues the more damage might be done to the estate and the less likely creditors will see any significant recovery. Creditors and other interested parties might wish to share information in order to make the most

[18] *In re Sullivan*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2014) (citations omitted).

[19] *Clear Blue Water LLC v. Oyster Bay Mgmt. Co. LLC*, 476 B.R. 60, 72-73 (Bankr. E.D.N.Y. 2012).

[20] 11 U.S.C. § 1112(b)(3).

[21] *In re Kingsway Capital Partners LLC v. Sosa*, 549 B.R. 897, 902-3 (N.D. Cal. 2016).

convincing record possible in support of a request for dismissal or conversion

3. Removal of Debtor from Possession – 11 U.S.C. § 1185(a)

a. In cases under Subchapter V of Chapter 11, § 1104 does not apply,[22] which means the court lacks authority to appoint a Chapter 11 trustee. Instead, under § 1185(a), the court, in addition to considering conversion or dismissal, may remove the debtor from possession for cause[23]

b. Cause includes: (i) fraud; (ii) dishonesty; (iii) incompetence; or (iv) gross mismanagement of the affairs of the debtor, either before or after the date of the commencement of the case; or (v) for failure to perform the debtor's obligations under a confirmed plan

c. If the court removes the debtor from possession, the SubV Trustee takes over and must perform the duties specified in § 1183(b)(5), which incorporates the duties set forth in §§ 1106(a)(1), (2), and (6) and 704(a)(8), and may operate the debtor's business

d. Opportunities and Considerations:

   i. Remember that, in SubV cases, only the debtor can file a plan.[24] If the debtor is removed from possession before they file a plan, the trustee's options might be limited

   ii. Cost – Removal of the debtor from possession will increase administrative expenses

[22] 11 U.S.C. § 1181(a).

[23] *In re Comedymx LLC*, 647 B.R. 457, 465 (Bankr. D. Del. 2022) (The fact that the Debtor's management "boast[s] that he 'doesn't give a damn about the law,' coupled with his open defiance of the injunctions entered by the California district court, lead this Court to conclude that the statutory purposes of chapter 11 cannot be fulfilled with this debtor remaining in possession.").

[24] 11 U.S.C. § 1189(a).

iii. Requires notice and a hearing, although not necessarily an evidentiary hearing[25]

D. Providing Consequences: Objection to Discharge; Waiver/Revocation of Discharge

Discharge rewards the honest but unfortunate debtor for participating in the bankruptcy process transparently and in good faith. Where the debtor engages in wrongdoing, they might see certain debts excepted from any discharge, they might never receive a discharge, or the court might revoke their discharge.

1. Exceptions to Discharge – 11 U.S.C. § 523(a)

a. Under § 523(a), a creditor may seek a judgment declaring its debt nondischargeable

b. § 523(a) offers a variety of grounds for a judgment of nondischargeability, including fraud (§ 523(a)(2)); fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny (§ 523(a)(4)); and willful and malicious injury (§ 523(a)(6))

c. Opportunities and Considerations:

i. As to most debts, once they have been declared nondischargeable, they will be nondischargeable in all subsequent bankruptcies[26]

ii. Creditor must prove nondischargeability by a preponderance of the evidence[27]

iii. Creditor must commence an adversary proceeding, which might require discovery, motion practice, and a trial, in order to obtain a judgment under § 523

[25] *Clear Blue Water*, 476 B.R. at 72-73.

[26] *In re Paine*, 283 B.R. 33, 41 (B.A.P. 9th Cir. 2002).

[27] *Grogan v. Garner*, 498 U.S. 279, 291 (1991).

iv. If you are litigating outside bankruptcy court and believe defendant is likely to seek relief in bankruptcy, you might wish to pad your judgment with language that will help you obtain a nondischargeability judgment later

2. Waiver of Discharge – 11 U.S.C. § 727(a)(10)

Under § 727(a)(10), bankruptcy courts may approve waivers of discharge that were executed by the debtor after entry of the order for relief

a. Opportunities and Considerations

i. Still requires commencement of an adversary proceeding

ii. Pre-petition waivers of discharge are not enforceable for public policy reasons[28]

3. Denial of Discharge – 11 U.S.C. §§ 727(a)

§ 727(a) sets forth a variety of reasons why a court can deny a discharge in its entirety.

a. Opportunities and Considerations:

i. Most of these grounds focus on the debtor's conduct during the bankruptcy case, but some focus on the debtor's pre-petition conduct[29]

ii. Objecting to a debtor's discharge generally requires the commencement of an adversary proceeding, but objections based on §§ 727(a)(8) or (a)(9) may be prosecuted via motion; regardless, pursuing denial of discharge can be expensive and time-consuming

[28] *In re Wank*, 505 B.R. 878, 887 (B.A.P. 9th Cir. 2014) (citing *In re Huang*, 275 F.3d 1173 (9th Cir. 2002)).

[29] 11 U.S.C. §§ 727(a)(7), (a)(8), and (a)(9).

iii. The case trustee, a creditor, or the United States Trustee may object to issuance of a discharge[30]

iv. The court may order the trustee to examine the acts and conduct of the debtor to determine whether grounds exist for denial of discharge[31]

v. Coordinating with the United States Trustee and/or the case trustee can be important. Often, if a court denies a discharge, the debtor stops cooperating with creditors or the trustee, which jeopardizes creditors' potential recovery

4. Revocation of Discharge – 11 U.S.C. § 727(d)

The court can revoke a previously issued discharge, if the party seeking revocation proves the existence of any of the grounds specified in §§ 727(d)(1)-(4). The timing of such requests is governed by § 727(e).

a. Opportunities and Considerations:

i. Revocation of discharge can be requested by the case trustee, a creditor, or the United States Trustee

ii. Requires commencement of an adversary proceeding

E. Providing Consequences: Taking Your Money *and* Your Freedom

The Bankruptcy Code and Rules provide many benefits and perhaps just as many ways to limit or eliminate those benefits for debtors who behave badly. The court has a great deal of discretion when it comes to sanctioning parties who fail to cooperate in the bankruptcy process or who otherwise misbehave.

[30] 11 U.S.C. § 727(c)(1).

[31] 11 U.S.C. § 727(c)(2).

1. Apprehending a Debtor for Examination – Bankruptcy Rule 2005

a. The court may issue an order requiring the U.S. Marshal or other authorized official to bring the debtor before the court for examination by the creditor or other interested party requesting the order

b. Any request for such an order must be supported by a declaration or affidavit alleging any of the following:

   i. the examination is necessary to properly administer the estate, and there is reasonable cause to believe that the debtor may flee to evade examination

   ii. the debtor has evaded service of a subpoena or order for examination

   iii. the debtor has willfully disobeyed a subpoena or order for examination

c. If the court finds the allegations true, it must issue an order requiring the immediate examination of the debtor and, if necessary, set conditions for further examination and for debtor's obedience

d. Opportunities and Considerations:

   i. Investigative *and* punitive

   ii. Such orders can be enforced outside the judicial district

   iii. Bankruptcy Rule 2005(b) contemplates, among other things, holding the debtor in custody as a means to ensure their attendance at the examination[32]

[32] *In re Fulcher*, 2010 WL 3087488, *5 (Bankr. E.D.N.C. Aug. 3, 2010) (ordering debtor detained until the latter of conclusion of their meeting of creditors or the case trustees in debtor's individual and corporate cases "have obtained any and all evidence necessary for the administration of the requisite bankruptcy estates").

iv. 18 U.S.C. § 3142 governs the court's determination of "what conditions will reasonably ensure attendance and obedience under [Bankruptcy Rule 2005]"

2. Sanctions, Civil Contempt, Recalcitrant Witnesses – Various Statutes

a. Civil Contempt and Sanctions

i. Where a party or counsel willfully violate a specific and definite court order, a finding of contempt and imposition of sanctions might be appropriate[33]

ii. Determining civil contempt does not require a finding of bad faith or subjective ill intent, but a finding of willfulness[34]

iii. Willfulness requires a finding that the alleged contemnor knew of the order and intended to take the actions that violated the order[35]

iv. Court may impose civil penalties against the contemnor, so long as they are compensatory or designed to coerce compliance[36]

v. Court must provide prior notice of the alleged misconduct and of the particular authority on which it relies, and must give the alleged contemnor an opportunity to respond[37]

[33] *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003).

[34] *Id.* at 1191.

[35] *Id.* (citing *In re Pace*, 67 F.3d 187, 191 (9th Cir. 1995), *amended* Oct. 11, 1995).

[36] *Id.* at 1192.

[37] *In re Nguyen*, 447 B.R. 268, 278 (B.A.P. 9th Cir. 2011); *In re DeVille*, 361 F.3d 539, 548 (9th Cir. 2004).

b. Recalcitrant Witness – 28 U.S.C. § 1826

i. Where a witness fails to testify or fails to produce documents or other materials pursuant to court order, the bankruptcy court can declare the witness "recalcitrant" and order them detained for up to 18 months[38]

III. Litigation Tools

A. Discovery Sanctions

Bad debtors and vexatious litigants often show their true colors during discovery, by abusing that process when they are on offense and refusing to cooperate when they are on defense. The Federal Rules of Civil and Bankruptcy Procedure include a number of tools that help litigants and the court address such a situation.

1. Duties in Discovery

a. The Federal Rules of Civil and Bankruptcy Procedure impose upon the parties to litigation an affirmative duty to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of Rules 26 through 37 of the Federal Rules of Civil Procedure, which are incorporated in large part by Rules 7026 through 7037 of the Federal Rules of Bankruptcy Procedure

b. Parties have a duty to cooperate and may not abuse the process[39]

2. Remedies for Discovery Abuses

a. Where are party fails to obey an order to provide or permit discovery, the court may impose sanctions, which can include "striking pleadings in whole or in part,"[40] and/or "directing that

[38] *In re Younger*, 986 F.2d 1376, 1378 (11th Cir. 1993); *see also In re Martin-Trigona*, 732 F.2d 170 (2d Cir. 1984).

[39] *MJG Enters., Inc. v. Cloyd*, 2012 WL 12964345, *2 (D. Ariz. Oct. 30, 2012) (citations omitted).

[40] Fed. R. Civ. Proc. 37(b)(2)(A)(iii).

the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims"[41]

b. In general, a court is required to order a disobedient party to pay the reasonable expenses, including attorneys' fees, caused by the party's failure to comply with discovery[42]

    i. In the bankruptcy context, monetary sanctions might do no good, as the sanctioned party's ability to pay might prove nonexistent

c. For good cause, a court may also issue an order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense[43]

    i. Such orders may forbid disclosure or discovery; specify terms governing disclosure or discovery, including alternative means of discovery; designating who may be present while discovery is conducted; requiring the sealing or redaction of deposition transcripts[44]

d. The court also has inherent authority to sanction a party for contempt and abuse of the judicial process[45]

e. Court must afford the noncompliant party an opportunity to be heard[46]

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[41] Fed. R. Civ. Proc. 37(b)(2)(A)(i).

[42] Fed. R. Civ. Proc. 37(b)(2)(C); *see also Sali v. Corona Reg. Med. Cntr.*, 884 F.3d 1218, 1222 (9th Cir. 2018) (analyzing sanctions under Rule 37(b) of the Federal Rules of Civil Procedure broadly, to extend to orders relating to discovery).

[43] Fed. R. Civ. Proc. 26(c).

[44] Fed. R. Civ. Proc. 26(c)(1)(A)-(H).

[45] *See* § III (E)(2)(a), above; *Chambers v. NASCO, Inc.*, 501 U.S. at 44; *Dyer*, 322 F.3d at 1189-90.

[46] *Paladin Assocs., Inc. v. Montana Power Co.*, 328 F.3d 1145, 1164 (9th Cir. 2003).

f. The noncompliant party can avoid sanctions by showing that it tried in good faith to comply with a discovery order, but was unable to do so due to circumstances beyond its control[47]

B. Bankruptcy Rule 9011 – HLB

Under Bankruptcy Rule 9011(a), every "petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto" shall be signed by counsel or, if the filing party is not represented by an attorney, by the filer. By filing pleadings with the court, an attorney or unrepresented party certifies to the best of their knowledge, information, and belief – formed after an inquiry reasonable under the circumstances – that the pleading or motion is presented for a proper purpose and otherwise justified.[48] Bankruptcy Rule 9011 evinces a policy choice that requires filers to exercise diligence and care prior to presenting motions or other pleadings to the courts.[49]

1. Obligations Imposed by Bankruptcy Rule 9011

a. Bankruptcy Rule 9011(b) provides that, by filing a pleading or motion, the filer implicitly certifies that the pleading or motion:

i. not presented for the purposes of harassment, undue delay, or needless increase in the cost of litigation

ii. the claims, defenses, and other legal contentions are warranted by existing law; or by a nonfrivolous argument for the extension, modification, or reversal of existing law; or by the need to establish new law

iii. 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

[47] *Sali*, 884 F.3d at 1223.

[48] Fed. R. Bankr. Proc. 9011(b)(1)-(4).

[49] *In re Kayne*, 453 B.R. 372, 382 (B.A.P. 9th Cir. 2011).

iv. 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

b. Bankruptcy Rule 9011(b) imposes on attorneys and unrepresented parties the obligation to ensure that all submissions are truthful and submitted for proper litigation purposes[50]

2. Frivolousness or Improper Purpose

a. A frivolous paper is neither well-grounded in fact and warranted by existing law nor a good faith argument for the extension, modification, or reversal of existing law[51]

b. A pleading has an improper purpose if it filed to harass, to cause unnecessary delay, or to needlessly increase litigation costs[52]

c. The court must consider frivolousness and improper purpose on a sliding scale, where the more compelling the showing as to one element diminishes the need to make a compelling showing of the other[53]

3. Sanctions Under Bankruptcy Rule 9011

a. Sanctions for violations of Bankruptcy Rule 9011(b) are authorized by Bankruptcy Rule 9011(c)

i. Court may act *sua sponte* or entertain a motion for sanctions[54]

[50] *In re DeVille*, 361 F.3d 539, 543 (9th Cir. 2004).

[51] *In re Brooks-Hamilton*, 400 B.R. 238, 248-49 (B.A.P. 9th Cir. 2009).

[52] *Id.*

[53] *Id.*

[54] Fed. R. Bankr. Proc. 9011(c)(2) and (c)(3).

ii. Court must afford notice and a reasonable opportunity to respond[55]

iii. Sanctions are limited to "what is sufficient to deter repetition of conduct or comparable conduct by others similarly situated"[56]

iv. Sanctions may include:[57]

aa. a nonmonetary directive

bb. ordering a monetary penalty paid to the court

cc. if imposed on motion (rather than on the court's initiative) and warranted for effective deterrence, an order requiring payment by the sanctioned party of all or part of the movant's attorneys' fees and other costs arising from the violation

v. Court may not impose monetary sanctions:[58]

i. against a represented party for making arguments based on their good faith understanding of existing law, for modification of existing law, or for establishment of new law

ii. on its own, unless it issue the show cause order before voluntary dismissal or settlement of the claims made by or against the party that might be sanctioned

[55] Fed. R. Bankr. Proc. 9011(c)(1).

[56] Fed. R. Bankr. Proc. 9011(c)(4)(A).

[57] *Id.*

[58] Fed. R. Bankr. Proc. 9011(c)(4)(B).

vi. Any order imposing sanctions must describe the sanctioned conduct and explain the basis for the sanctions[59]

vii. The standard for court-initiated sanction is "akin to contempt"[60]

viii. The bankruptcy court has wide discretion in determining what sanctions are appropriate and may, but is not required to, consider the sanctioned party's financial situation[61]

C. Vexatious Litigant Designation and Pre-Filing Orders – HLB

1. What is a Vexatious Litigant?

a. There is no hard and fast definition of who or what constitutes a vexatious litigant

b. Generally, a vexatious litigant is one that files a large number of cases or motions that have little or no merit, that fail to comply with procedural requirements, and that are filed for an improper purpose, such harassment of the court or other parties.[62]

[59] Fed. R. Bankr. Proc. 9011(c)(5).

[60] *In re Nakhuda*, 544 B.R. 886, 901 (B.A.P. 9th Cir. 2016) *aff'd* 703 Fed. App'x 621 (9th Cir. 2017).

[61] *Kayne*, 453 B.R. at 386.

[62] *Procup v. Strickland*, 792 F.2d 1069, 1070 (11th Cir. 1986) (acknowledging as vexatious a *pro se* litigant who filed 176 cases in one court alone, none of which were tried on the merits and most of which repeated prior claims and failed to comply with court orders and procedures); *Briggs v. Comfort Inn of Washington*, 923 F.2d 847, *2 (4th Cir. 1991) (recognizing a "pattern of vexatious litigation" where a litigant filed 38 *in forma pauperis* actions in one month, all of which were dismissed as baseless, and engaged in abusive, disruptive behavior toward clerk's office employees) (*per curiam*); *In re Koshkalda*, 622 B.R. 749, 754 (B.A.P. 9th Cir. 2020) (finding "no error in the bankruptcy court's findings that [debtor] was a vexatious litigant" where they filed several dozen motions and other pleadings in bankruptcy case and related proceedings that repeated previously rejected arguments, were factually or legally baseless, and were filed in bad faith and for purposes of harassment); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1061 (9th Cir. 2007) (affirming district court's finding that plaintiff was a vexatious litigant where they filed more than 400 lawsuits asserting the same claims based on factual assertions that were grossly exaggerated or totally false for the purpose of coercing settlements).

2. Court's Authority to Regulate Vexatious Litigants

a. Federal courts have "inherent power to file restrictive pre-filing orders against vexatious litigants with abusive and lengthy histories of litigation"[63]

b. In bankruptcy court, this inherent power finds its source in 11 U.S.C. § 105(a) and 28 U.S.C. § 1651(a) (The All Writs Act)[64]

3. Pre-Filing Orders

a. Pre-filing orders are – and should be – very difficult to obtain because they restrict a litigant's access to the courts[65]

b. Most courts apply the *Safir*[66] test, under which they must consider five factors in determining whether to declare a litigant vexatious and whether to issue a pre-filing order:

i. the litigant's history of litigation and in particular, whether it entailed vexatious, harassing, or duplicative lawsuits

ii. the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing

iii. whether the litigant is represented by counsel

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[63] *Molski*, 500 F.3d at 1057 (citations omitted); *In re Stimwave Tech., Inc.*, 2024 WL 4626221, *3 (D. Del. Oct. 30, 2024) (same); *Safir v. U.S. Lines, Inc.*, 792 F.2d 19, 23-24 (2d Cir. 1986) *cert. den.* 479 U.S. 1099 (1987) (same).

[64] *Stimwave*, 2024 WL 4626221 at *3 (citations omitted); *In re Bertran*, 2018 WL 1704306, *5 (B.A.P. 9th Cir. Apr. 6, 2018) (citations omitted).

[65] *Molski*, 500 F.3d at 1057 ("pre-filing orders are an extreme remedy that should rarely be used") (citation omitted); *Ringgold-Lockhart v. County of Los Angeles*, 761 F.3d 1057, 1061 (9th Cir. 2014) (acknowledging that "[f]ederal courts can regulate the activities of abusive litigants by imposing carefully tailored restrictions . . . under appropriate circumstances" and that "[r]estricting access to the courts is . . . a serious matter") (internal quotation marks and citations omitted).

[66] 729 F. 2d at 24 ("[u]ltimately, the question the court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties"); *Tucker v. Seiber*, 17 F.3d 1434, *1 (4th Cir. 1994) (following *Safir*) (*per curiam*)

iv. whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel and

v. whether other sanctions would be adequate to protect the courts and other parties.

c. The Ninth Circuit applies a four factor test and looks to *Safir* as instructive[67]

i. the litigant must be given notice and a chance to be heard before the pre-filing order is entered

ii. the court must compile an adequate record for review, which "should include a listing of all the cases and motions that led the [court] to conclude that a vexatious litigant order was needed"[68]

iii. the court must make substantive findings about the frivolous or harassing nature of the litigation and

iv. the vexatious litigant order must be narrowly tailored to closely fit the specific vice encountered

d. Pre-Filing Orders must be as Narrowly Tailored as Possible

i. Appellate courts will vacate or modify pre-filing orders that are overbroad, where lesser sanctions would have served as an adequate deterrent, or where the order otherwise infringes on a litigant's right of access to the courts[69]

[67] *Molski*, 500 F.3d at 1057-58 (setting out four-factor test and recognizing the *Safir* test as "a tool for analyzing some of the factors we set forth").

[68] *Ringgold-Lockhart*, 761 F.3d at 1063 (citation omitted).

[69] *Koshkalda*, 622 B.R. at 769 (vacating pre-filing order entered in bankruptcy case because it did not expressly limit its restrictions to that case, potentially infringed on [the vexatious litigant's] right to appeal from future orders in the bankruptcy case, and provided for a merits screening of any newly filed actions); *Stimwave*, 2024 WL 4626221 at *8 (affirming pre-filing order that included a merits screening protocol); *Safir*, 792 F.2d at 22 (modifying pre-filing order to preclude without prior leave of court only the commencement of additional federal lawsuits relating to the same facts and circumstances that gave rise to the vexatious litigation); *Procup*, 792 F.2d at 1074 (vacating and

IV. The Court's Role – HLB

A. Parties Need to be Realistic

1. The court's job involves interpreting and applying relevant law and deciding cases and controversies

2. Cases and proceedings involving vexatious litigants and other bad actors are just going to be much more difficult than other cases; more activity and more expense and more anger and frustration

3. There isn't much a court can do to manage emotion

B. The Court's Toolkit

1. Courts have enormous discretion in managing their dockets, and there are things courts can do to ease the parties' burden. These include:

a. Deciding matters without oral argument – where *pro se* motions haven't been properly served or noticed; where facts are not seriously in dispute or where a motion is facially baseless (which is rare)

b. Careful monitoring of case

c. Adjusting deadlines where doing so promotes efficiency

2. But please be mindful that you're dealing with a single judge who might not have a lot of help. Every judge's willingness and ability to proactively manage a difficult case is going to be different.

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remaining where pre-filing order prohibited vexatious litigant from filing any complaint without the assistance of counsel).

Faculty

Hon. Hannah L. Blumenstiel is a U.S. Bankruptcy Judge for the Northern District of California in San Francisco. Prior to her appointment on Feb. 11, 2013, Judge Blumenstiel was an associate (2003-08) and then a partner (2008-12) with Winston & Strawn LLP, where she focused her practice on creditors' rights litigation in state and federal court, including bankruptcy court. From 2001-03, Judge Blumenstiel was an associate with Murphy Sheneman Julian & Rogers LLP, where she represented debtors, creditors and trustees in bankruptcy cases and adversary proceedings. She served as a law clerk to Hon. Charles M. Caldwell of the U.S. Bankruptcy Court for the Southern District of Ohio (Eastern Division) from 1998 to 2001, and from 1997-98, she represented the State of Ohio's interests in bankruptcy cases as an assistant attorney general with the Revenue Recovery Section of the Ohio Attorney General's Office. Judge Blumenstiel is ABI's Vice President-Research Grants and serves as an Executive Editor of the ABI Journal. She received her J.D. from Capital University Law School in 1997 while working full-time for the Columbus Bar Association as director of its pro bono initiative, "Lawyers for Justice," and her B.A. from Ohio State University in 1992.

Brittany B. Falabella is a partner in Hirschler Fleischer, P.C.'s Litigation group in Richmond, Va., where her practice focuses on representing debtors, creditors and chapter 7 trustees throughout the bankruptcy process. She also advises clients regarding financial restructuring. Ms. Falabella's practice also includes corporate litigation, contracts, licensing agreements and creditors' rights. In her role as a legal advisor, she assists clients in resolving conflicts that have the potential to jeopardize their strong financial position. Previously, she served as a judicial intern for the Magistrate Judge in the U.S. District Court for the Eastern District, commonly known as the Rocket Docket. Ms. Falabella is a 2024 ABI "40 Under 40" honoree and has been listed in *The Best Lawyers in America* as one of its "Ones to Watch" for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law since 2022. She also was named to *Virginia Business*'s "Legal Elite" for Bankruptcy Creditors Rights from 2020-22 and in 2024, and in *Virginia Super Lawyers* for Bankruptcy: Business from 2023-24. Ms. Falabella received her B.A. from the College of Charleston and her J.D. from the University of Richmond School of Law, where she was admitted to the Order of the Coif, served as an articles editor of the *University of Richmond Law Review*, and received the Nina R. Kestin Service Award. While in law school, she volunteered at the Carrico Center for Pro Bono Service, where she argued a case before a writ panel of the Virginia Supreme Court.

Christina M. Sanfelippo is an attorney with Cozen O'Connor in Chicago, where she focuses her practice on financial restructuring and bankruptcy law. She represents debtors, trustees and creditors in a range of chapter 7 proceedings, including preference and fraudulent-transfer actions, as well as complex bankruptcy litigation. Ms. Sanfelippo also assists debtors and official committees of unsecured creditors in chapter 11 proceedings, and she handles commercial disputes, including contract claims and business torts. She is actively involved in the International Women's Insolvency & Restructuring Confederation (IWIRC) and currently serves on IWIRC's international board of directors as U.S. Programs Committee co-director. Ms. Sanfelippo was elected as the chair of the board of directors for its Chicago Network for 2023 and 2024. In 2018, she received the prestigious Rising Star Award for her exceptional leadership and contributions to IWIRC's mission of enhancing the professional status of women in the insolvency and restructuring profession. An active member of

ABI, Ms. Sanfelippo is a coordinating editor of the *ABI Journal*'s Benchnotes column and serves on the advisory board for its Central States Bankruptcy Workshop. She also co-chairs ABI's Young and New Members Committee. Ms. Sanfelippo is a 2024 ABI "40 Under 40" honoree, and she has been listed in *The Best Lawyers in America* as one of its "Ones to Watch" since 2021. She also was named a *Super Lawyers* "Rising Star" for 2025. Ms. Sanfelippo received her B.S. in 2012 from the University of Minnesota and her J.D. *cum laude* in 2015 from Loyola University Chicago School of Law.

Nicholas R. Troszak, CPA, CFF, CIRA is a managing director with Development Specialists, Inc. in Los Angeles, and has more than 20 years of experience providing services in bankruptcy, forensic/investigative accounting, and litigation support. He has served in numerous bankruptcy and insolvency matters, including court appointments as accountant to the trustee, accountant to the liquidating estate manager, accountant to the debtor, and financial advisor to the official committee of unsecured creditors. Mr. Troszak has advised trustees in operating chapter 11 companies, developing cash-flow projections, budgeting, and managing other day-to-day accounting activities. His experience includes the investigation of alleged insider dealings, investigation and pursuit of preferences, fraudulent transfers and other causes of action, tracing of funds, financial data reconstruction, liquidation analyses, plan preparation, solvency analyses, claims resolution, and liquidation of assets. Mr. Troszak testified before a federal grand jury regarding a debtor conducting and operating an alleged Ponzi scheme, and he testified in federal bankruptcy court as to the accuracy of a debtor's financial records and accounting procedures. Prior to joining DSI in 2018, he was an associate director at Berkeley Research Group, LLC, and prior to that, he was a managing consultant at LECG, LLC and a staff accountant with Neilson Elggren LLP. Mr. Troszak is a member of ABI and the American Institute of CPAs (AICPA), the Association of Insolvency and Restructuring Advisors (AIRA) and the Los Angeles Bankruptcy Forum (LABF). He received his B.A. in accounting from Michigan State University.