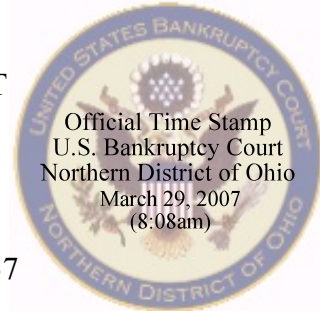


[NOT FOR COMMERCIAL PUBLICATION]

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 04-11537  
 )  
BARRY RICE, ) Chapter 7  
 )  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 ) **MEMORANDUM OF OPINION**  
 ) (Not For Commercial Publication)

Debtor Barry Rice moves under federal rule of bankruptcy procedure 9011 for the imposition of sanctions against Donna McGinnis and her attorney, James Burns. (Docket 105). The debtor alleges that Ms. McGinnis and her attorney filed a complaint in this court that was factually inaccurate and then failed to amend the complaint after becoming aware of those inaccuracies. Ms. McGinnis and her counsel respond and assert that they did not act in a way which violates rule 9011. (Docket 112). As discussed below, the court finds that the motion must be denied on procedural grounds.<sup>1</sup>

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

**FACTS**

Donna McGinnis, fiduciary of the estate of Jesse Green, filed a complaint in this court to determine the dischargeability of a debt allegedly owed by the debtor under 11 U.S.C.

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<sup>1</sup> This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

§ 523(a)(6). *See McGinnis v. Rice*, adv. no. 05-1177, docket 1. James Burns served as Ms. McGinnis's counsel. The debtor moved for summary judgment on the complaint and Ms. McGinnis did not oppose the motion. On January 5, 2007, the motion for summary judgment was granted and judgment on the complaint was entered in favor of the debtor. *Id.* at docket 55, 56. The debtor filed his motion for sanctions on February 26, 2007 and the attached certificate of service indicates that the motion was served the same day. *See* docket 105.

### DISCUSSION

Every attorney who files a motion certifies to the court that the motion is filed for a proper purpose and that it is filed only after an inquiry that is reasonable under the circumstances. *See* FED. R. BANKR. P. 9011; *Ridder v. City of Springfield*, 109 F.3d 288, 293 (6<sup>th</sup> Cir. 1997). An attorney who violates these principles is potentially liable for sanctions, and rule 9011 sets out the procedure that must be followed before seeking sanctions:

(c) **Sanctions.** 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.

(1) *How Initiated.*

(A) **By Motion.** A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). 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.

\* \* \* \* \*

FED. R. BANKR. P. 9011(c)(1)(A). The Sixth Circuit interprets rule 9011 strictly, requiring a party to “follow a two-step process: first, serve the Rule 11 motion on the opposing party for a designated period (at least twenty-one days); and then file the motion with the court.” *Ridder*, 109 F.3d at 294 (discussing federal civil rule 11 which has the same language as bankruptcy rule 9011). Additionally, the Sixth Circuit has stated, “‘a Rule 11 motion cannot be made unless there is some paper, claim, or contention that can be withdrawn,’ [and] it follows that a party cannot wait to seek sanctions until after the contention has been judicially disposed.” *Id.* at 295 (quoting Georgene M. Vairo, *The New Rule 11: Past as Prologue?*, 28 Loy. L.A. L. Rev. 39, 65 (1994)). This court’s ability to impose sanctions is limited by the procedures set forth in the rule.

The debtor’s motion for sanctions is procedurally faulty because it was filed with the court and served on the same day and the requisite two-step process was not employed.<sup>2</sup> Moreover, the motion was untimely because it was filed after the adversary proceeding had been disposed of and at a time when there was no pending claim or contention for Ms. McGinnis to withdraw. Consequently, the debtor may not recover sanctions under rule 9011 and his motion must be denied.<sup>3</sup>

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<sup>2</sup> This is surprising as debtor’s counsel previously filed a motion for sanctions against a creditor and was advised of this requirement. *See* docket 100, 101 (memorandum of opinion and order denying debtor’s request for the imposition of sanctions under rule 9011 on procedural grounds).

<sup>3</sup> The court notes that this is not the analysis put forward by Ms. McGinnis and her counsel in their response to the debtor’s motion for sanctions. That response is the subject of a motion by the debtor to strike which is rendered moot by this decision. *See* docket 115.

**CONCLUSION**

For the reasons stated, the debtor's motion for sanctions under rule 9011 is denied. A separate order will be entered reflecting this decision.



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Pat E. Morgenstern-Clarren  
United States Bankruptcy Court

[NOT FOR COMMERCIAL PUBLICATION]

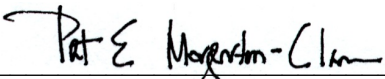
UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
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In re: ) Case No. 04-11537  
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BARRY RICE, ) Chapter 7  
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Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 ) **ORDER**  
 ) (Not For Commercial Publication)

For reasons stated in the memorandum of opinion entered this same date, debtor Barry Rice's motion under bankruptcy rule 9011 for the imposition of sanctions against Donna McGinnis and her attorney, James Burns is denied. (Docket 105).

IT IS SO ORDERED.

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Court