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Brainstorming Ways to Stop Serial Abusive Filers

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On October 23, 2019, as part of Judge McEwen's continuing series of quarterly mentoring programs, the Tampa Division hosted a town-hall type meeting for stakeholders to brainstorm ways we can curb abusive serial filers. Abusive serial filers cause unnecessary work for both the bankruptcy court and state court staffs. And they hinder and delay creditors for no well-intentioned purpose. These filers use the bankruptcy system solely to stop a foreclosure, with no intent to complete the bankruptcy case and obtain the valuable relief bankruptcy can provide them. These filers often exhibit common traits: the filing of a bare-bones petition and no filing fee paid. Their Holy Grail is a set of numbers constituting a bankruptcy case number. Some abusive serial filers ping-pong between bankruptcy judges with staggered filings by spouses, timed so as to prevent having to disclose a pending related case—because no related case is then pending, which allows the string of filings to escape detection by the judge who has just one of the two spouses in her fold.

Invitees to the program included representatives from all the state judicial circuits whose footprint is within or overlaps the counties within the Tampa Division's territory as well as lawyers who represent debtors or creditors in consumer cases. The Tampa Division's fifth-floor training room was pretty packed. In attendance was at least one state circuit judge and some representatives of state court clerks' offices.

One takeaway from the program is that creditors have to be more involved in bringing abusive serial filers to the bankruptcy court's attention, especially when filings straddle two different bankruptcy judges. And creditors need to be more proactive in clueing in the state court clerks when the bankruptcy court has issued an order banning a subsequent filing and/or barring the automatic stay from going into effect (collectively, "Bar Order").

Another, major takeaway from the program was that state court clerks are not attuned to implementing a Bar Order—even when such order is filed in the state court record. One suggestion was that if a foreclosing creditor has entered an appearance in the bankruptcy case in which a Bar Order is entered, then the creditor should be ordered to file a copy of the Bar Order in the state court record with a title

on the notice of filing that calls attention to what is being filed (e.g., Notice of Filing Bankruptcy Court Order Preventing Bankruptcy Stay from Going into Effect to Stop a Foreclosure). Another suggestion was that the bankruptcy judges should serve a copy the Bar Order on the chief judge of the state court and the state clerk's lawyer. Yet another suggestion was that the Bar Order be attached and referred to in a state court motion to set or re-set the foreclosure sale and that the proposed order setting the sale also include a copy of the Bar Order and refer to it. And finally, a bankruptcy judge could include in a Bar Order a directive to the bankruptcy court's clerk not to accept a petition from a banned debtor, in which case the quest for the Holy Grail will be stopped, as no case number would be available to show a state court clerk.

Our work on stopping abusive serial filers is not done. We need to keep the dialogue among stakeholders going. We welcome other suggestions for improvement in how we process Bar Orders. And we still have to figure out a way to stop abusive filings triggered by unethical real estate professionals who tell their client to file a bare-bones bankruptcy petition so that the realtor can attempt to achieve a short sale. But that's an article for another day.