6-04/030.70 Effect of Bankruptcy on Civil Bench Warrant

When a debtor fails to appear for a judgment debtor examination, the court issues a bench warrant. The Sheriff is subsequently tasked with arresting the debtor and bringing him/her to court, so the debtor can show cause why he/she should not be held in contempt. In the vast majority of cases, the court releases the debtor without posting bail, resets the debtor examination and does not conduct a contempt hearing. If the debtor files a petition in bankruptcy, an automatic stay is created pursuant to 11 USC 362(a) (1) which prevents creditors and levying officers from commencing or continuing a judicial action or proceeding (including a debtor examination) against the debtor. However, 11 USC 362(b) delineates exceptions to the automatic stay. Specifically, 11 USC 362(b) (4) excludes from the automatic stay "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory powers." Case law generally recognizes the court's contempt power to uphold the dignity of the court as an exception to the automatic stay. Consequently, the debtor may be arrested for contempt but not subjected to a debtor examination.