6-29/108.42 Two or More Prior Dismissed Cases

There is no automatic stay if a debtor files a case after two or more cases were dismissed in the previous year. However, the court may order, after notice and a hearing, that the stay take effect upon a showing that the new case is filed in good faith. (11 USC 362(c)(4))

There is a presumption that the new case is filed in bad faith if:

- the debtor filed more than one prior case in the preceding year, or
- a prior case was dismissed for failure to file documents without substantial excuse, failure to provide adequate protection, or failure to perform the terms of a confirmed plan, or
- there has been no substantial change of circumstances since the last dismissal that would make the new case likely to be successfully concluded, or
- a prior case was dismissed after a creditor had filed a motion for relief from the automatic stay.