

SOME THOUGHTS ON THE PROPER REPRESENTATION OF CHAPTER 7 DEBTORS

by Alan Jaroslovsky, U.S. Bankruptcy Judge

As part of the recent conversion of my court to electronic filing, I have come into contact for the first time with a subset of bankruptcy lawyers I was hardly aware of before: attorneys who file Chapter 7 petitions for debtors but rarely or never appear in my court or file motions.

To be honest, I don't fully understand how it is possible to represent debtors properly without appearing fairly frequently in court. I represented a wide variety of debtors when I was a lawyer and have considerable familiarity with both the routine matters and the unusual situations which can arise and I was in court all the time. However, I have no particular reason to believe that anyone is not doing a proper job. I just have a little uneasiness, which has prompted these thoughts on the proper representation of debtors.

The primary skill of a bankruptcy lawyer in any case is to make sure that the schedules are complete and accurate, as incomplete schedules are the most frequent source of problems and loss of discharge. Often debtors do not recognize creditors who must be listed (e.g. debts they have guaranteed for another or co-debtors like former spouse or business partners) and assets they have (e.g. causes of action, inheritance rights, and other intangibles). The bankruptcy lawyer must, by skillful questioning, ferret out all assets and debts.

The responsibility of debtor's counsel does not end with the schedules. Any debtor's counsel who does not understand the vital importance of attending the meeting of creditors with the debtor is in desperate need of further education. Not only is the meeting the best opportunity to discover and take care of problems which invariably arise (a forgotten creditor, or one still sending bills, etc.), but discharges are often won or lost at the meeting of creditors. If you are far from court and find it more cost-effective to hire a local attorney to appear for you, I have no problem with this as long as the attorney you hire is experienced, knows your client's case, has a copy of the schedules, consults with your client to discover any problems, and reports back to you after the hearing.

In addition to the schedules and meeting of creditors, there are several other responsibilities which I expect debtor's counsel to take care of *regardless of the fee charged*. These include amendment of schedules, addressing stay relief motions, avoiding simple household good liens, reaffirmations and redemptions. These are normal occurrences in Chapter 7 cases and should be routinely handled by counsel. Please note that you can appear in my court by telephone, so the effort is minimal no matter where you are located. If a debtor has equity in his or her home, a simple telephonic court appearance can sometimes buy the debtor an extra month or so, thereby

saving the debtor the amount of your fees. *I expect you to make this effort.* I can also guarantee you a special invitation to appear in person and justify your fees if one of your clients comes to court unrepresented in a stay relief motion.

Regarding reaffirmations, I expect you to fully counsel the debtor as to the consequences and discourage the debtor from reaffirming where it is not necessary (e.g. the debtor is not and has never been in default), when the debtor is receiving no concessions from the creditor (e.g. reduction of interest rate, extension of term, etc.) or when the value of the security is significantly less than the amount being reaffirmed.

It is permissible to charge extra for a few things, like avoidance of judicial liens and representation in adversary proceedings. However, the attorneys I admire the most do not charge extra for lien avoidance unless it is contested and will sometimes represent their clients in adversary proceedings for little or no fee if they feel the adversary proceeding lacks merit.

Your fee, whatever it is, includes answering the debtor's basic questions. For example, even if there is no equity in the debtor's home and no basis for contesting a stay relief motion you should educate your client, without additional fee, as to how the foreclosure process works and how long your client might expect to be able to continue living on the property. It is an embarrassment to you if your client shows up in court and asks me these questions.

I want to see all lawyers who practice in this court be well compensated for their services and all debtors who hire lawyers be well represented. I look forward to seeing all Chapter 7 debtor's counsel in court, or making a telephonic appearance, or filing appropriate motions, as the need arises.

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