Best Practices in a Chapter 13 Case: What Does the Trustee Want, and How Does Debtor's Counsel Respond?

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Educational Materials

What the Chapter 13 Trustee is Looking For From You:
Debtor's Counsel's Responsibilities
Throughout the Life of the Chapter 13 Case

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Debtors who opt to proceed *pro se* in a chapter 13 have virtually no chance of success. Yet a debtor's success in a chapter 13 bankruptcy is not necessarily assured merely because a debtor elects to retain counsel. More often than not, a debtor's success is dependant on the competence and ability of debtor's counsel, and counsel's appreciation of the responsibilities and obligations of the attorney-debtor/client relationship.

Since 2005, and the ensuing economic calamities that have fallen upon the country, chapter 13 practice is and has been a "moving target." The play ground is ever shifting; the rules are ever changing. Homeowners that might feel despair one week may find optimism the next with the advent of a new government or lender program. When the family home is on the line, chapter 13 debtors need capable and competent counsel not only the day they decide to pick up the telephone to speak with a bankruptcy attorney, but for every month throughout the course of the chapter 13 plan.

The courts, trustees and creditors also rely on debtor's counsel throughout the plan period. When creditors have a question or concern, they call debtor's counsel. When trustees file a motion to dismiss, it is debtor's counsel who must respond, appear and when appropriate, defend. Without doubt, debtor's counsel plays an integral role in the chapter 13 process. This paper discusses the importance of that role, and identifies the myriad of tools and options that counsel has when things do not go as expected.

It Can Happen to Anyone…

Let's assume that a chapter 13 debtor is 49 months into their confirmed 60 month plan. Seemingly out of the blue, debtor's counsel receives a Motion for

Relief from Stay filed by the mortgagee alleging that post-petition mortgage payments have not been made in several months. A few days following later, debtor's counsel receives a Motion to Dismiss filed by the chapter 13 trustee alleging that the debtor is behind several months in plan payments. Counsel learns about all of this for the first time when those motions are received.

Next, counsel files a response and then sends a letter to the debtor:

> Enclosed is a copy of the Motions received. I have filed a response to the motion to protect your rights and to force a hearing on the matter.
>
> To attempt to resolve this situation, there is a legal fee of $350. Payment is due within ten (10) days from the date of this letter on [date]. The legal fee is for the time and preparation of the Response, but also for the time spent in Court for the upcoming hearing. If you simply wish to allow the foreclosure, please contact me immediately so I can withdraw your Response (no legal fee).
>
> Either way, please contact me to discuss this matter. <u>If I do not hear from you by 24 hours prior to the upcoming hearing, I will be forced to withdraw your Response to this action, thus, the Bank will be granted authority to foreclosure.</u>

Counsel makes no other effort to communicate with this debtor.

May debtor's counsel charge for this service? May debtor's counsel refuse to appear in court to defend these important motions if the fees are not paid? What if the debtor does not respond to the letter at all? What can/should debtor's counsel do?

The Case Law

An important local decision discussing debtor's counsel's responsibilities throughout the course of a bankruptcy case is *In re Cuddy*, 322 B.R. 12 (Bankr. D. Mass. 2005).[1]

This case involved a chapter 7 debtor who also required a defense in a adversary proceeding brought by a creditor pursuant to § 523(a)(2)(B) and §§

[1] A copy of the decision follows.

727(a)(2)(A) and 727(a)(5). Approximately 5 months after filing his appearance, counsel sought to withdraw as counsel for the defendant/debtor even though no successor counsel had filed any appearance. The grounds: nonpayment and breach of the fee agreement.

The Bankruptcy Court noted that "[a]ttorneys practicing in the Massachusetts courts are bound by the Massachusetts Rules of Professional Conduct …." Mass. R. Prof. Con. 1.1 requires an attorney to "provide competent representation to a client." The rule also provides that "[c]ompetent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."[2] While the Local Bankruptcy Rules in Massachusetts allow a debtor to limited representation in certain circumstances, the court noted that an agreement may not be "so limited in scope as to violate Rule 1.1." See also, MBLR 9010-3(d).[3]

In addition to discussing Judge Robert Grant's decision in *In re Edsall*, 89 B.R. 772 (Bankr. N.D. Ind. 1988), and as well as the reasons for denying the debtor's attorney's request to withdraw, Judge William Hillman made this analogy to the relief debtor's counsel sought:

> A professional swim instructor takes on a new student with this understanding: You have paid me my initial fee. For that money I will lead you to the swimming pool, show you how to enter the water, and explain the basic elements of swimming. If, however, you should begin to drown, of if some other serious problem arises, I will leave you to your own resources unless you pay me more money.
>
> Even if this message is clearly conveyed to the student, if the desire to learn to swim is strong enough (just as if the need for the

[2] See Massachusetts Rules of Professional Conduct and Comments, Rule 1.1, Supreme Judicial Court Rule 3:07.

[3] Maine Local Bankruptcy Rule 9010-1(a) provides that "[n]otwithstanding any purported limitation of appearance, entry of an appearance by debtor's counsel constitutes a general appearance for all contested matters and adversary proceeding pending or thereafter filed to which the debtor is a party, including actions to determine dischargeability, to deny discharge or to revoke discharge." Compare Massachusetts Local Bankruptcy Rule 9010-3(d): "An attorney representing a debtor in a bankruptcy case is required to represent the debtor in any adversary proceeding filed within the bankruptcy in which the debtor is a named defendant unless the debtor expressly agrees otherwise in writing at the commencement of the representation."

> bankruptcy remedy is strong enough for the debtor *in extremis*) the student will accept the terms. It looks like and sounds like a contract of adhesion, with all of the unlovely baggage that phrase carries. It is contrary to my view of the higher obligation of an attorney.

Does our hypothetical letter to the debtor violate this prescript? The letter contemplates (or at least implies) that no services will be provided if the fee is not paid.[4] In keeping with Judge Hillman's *Cuddy* illustration, it appears that counsel's response filed with the court as well as the letter to the debtor are little more than the tossing of a flimsy floatation device to our drowning swim student.[5]

On Fees & Agreements

In a typical no-asset chapter 7 case, a properly prepared petition and schedules are filed. A creditor's meeting is scheduled and convened. Issues (which in most cases can be and are anticipated prior to filing) may be resolved. Sometimes there's a reaffirmation agreement. Sometimes there's a call or inquiry from the US Trustee. But in most well-prepared chapter 7s, the case is over in 4-6 months.

The same cannot be said of chapter 13s. They are not merely really big chapter 7s. Chapter 13s can last anywhere from 36-60 months after the filing of the case. Counsel – and debtor – must prepare accordingly.

While most jurisdictions have a "no look" fee, there is no standard or universal fee for a chapter 13 case.[6] No chapter 13 case can be considered the

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[4] See New Hampshire's Local Bankruptcy Rule 2014-2: "Subject to the provisions of [Local Bankruptcy Rule 2091-1] an attorney, who represents a debtor at the time a petition under Chapter 13 is filed or when a case under another chapter of the Bankruptcy Code is converted to Chapter 13, has a continuing duty to represent the debtor in all matters until the occurrence of the earliest of (a) Dismissal of the case. (b) Entry of an order allowing the attorney to withdraw from further representation fo the debtor. (c) The order allowing claims is final. (d) Closing of the case." See also, New Hampshire Local Bankruptcy Rules 2016-1 and 2091-1.

[5] A response such as this also presents another issue. See footnote no. 10.

[6] See e.g., New Hampshire Local Administrative Order 2016-1, "Fee and Expense Guidelines"; Massachusetts Local Chapter 13 Rule 13-7 (b); and Rhode Island Local Bankruptcy Rule 2016-1 and Appendix IV, see also, Rhode Island Local Bankruptcy Rule 2017-1.

similar or "boilerplate." And since most chapter cases are not the same, a flat-fee assembly-line approach to representation may be counterproductive for both the debtor and counsel.[7]

While prudent and local practice may have justified written agreements between debtor and counsel prior to October 17, 2005, BAPCPA imposed a universal obligation for written retainer agreements.[8] In addition, some jurisdictions require a standard retainer agreement that identifies the nature of the services to be performed, as well as the duties and responsibilities of the parties.[9]

Unless the written fee agreement dictates otherwise, if the fees in a given case exceed the ceiling imposed by the local "no-look" rules, counsel may seek fees as necessary and appropriate subject to court approval via a properly prepared, filed and served Application for Compensation. This precise practice will vary by local rule, practice and custom.

In our example above, let's assume that nothing was filed other than the required local form, in this case Massachusetts Official Local Form 8. A review of the form reveals that our debtor has not kept up their end of the bargain. It states in pertinent part:

> AFTER THE CASE IS FILED:
>
> The DEBTOR agrees to:
>
> * * *
>
> 2. Contact the attorney if the debtor….has other financial problems (the attorney may be able to have the Chapter 13 plan payment reduced or suspended in those circumstances)….

[7] That's not to say it cannot be done however, unforeseen complications will not abrogate counsel's responsibilities if a flat fee arrangement proves regrettable.

[8] § 528

[9] See e.g., Local Bankruptcy Rules, United States Bankruptcy Court, District of Massachusetts, Official Local Form 8, Chapter 13 Agreement Between Debtor and Counsel, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

In a best case scenario, our debtor should have picked up the phone, called counsel and reported the financial problems *before* the motions were even filed. But before we continue blaming the debtor, the form also reveals what counsel's obligations are.

In pertinent part, the form states:

> AFTER THE CASE IS FILED:
>
> * * *
>
> The ATTORNEY agrees to provide the following legal services in consideration of the compensation further described below:
>
> * * *
>
> 7. Represent the debtor in motions for relief from stay.
>
> * * *
>
> 9. Provide such other legal services as necessary for the administration of the case.
>
> * * *
>
> The initial fees in this case are $_____. Any and all additional terms of compensation and additional services agreed to be rendered, if any, are set forth in writing and annexed hereto. If the initial fees are not sufficient to compensate the attorney for the legal services rendered in this case, the attorney further agrees to apply to the court for additional fees. If the debtor disputes the legal services provided or the fees charged by the attorney, an objection may be filed with the court and the matter set for hearing.

In our factual scenario, the responsibilities dictated by Official Form 8 indicate that the debtor's attorney was *obligated* to represent the debtor with regard to the issues raised by the Motion for Relief from Stay. Since the chapter 13 trustee's motion to dismiss is directly related to the administration of the case, debtor's counsel was similarly *obligated* to represent the debtor on the motion to dismiss.

What Went Wrong?

Let's assume a best case scenario for counsel where the debtor was ignoring counsel's attempts to communicate. Few would disagree that counsel cannot do their job if the debtor is not cooperating. If that's the case, did debtor's counsel act in accordance with his professional and ethical responsibilities?

No.

1. Receipt of the motion

When the motion was received, it was important to diary it for a response deadline. But the receipt of the motion does not necessitate the filing of a blanket response that merely denies the allegations and, for lack of a better term, "forces" a hearing. Indeed, doing so might invite some untended consequences under Bankruptcy Rule 9011.[10]

2. Communicate

Unless the only letter sent is certified and the return receipt is signed by the debtor (which would indicate that the debtor is aware of the arising issues in their case), every effort should be made to reach the debtor by any means possible. Leave phone messages. Send emails. When those efforts prove fruitless, the Massachusetts local rules give counsel an opportunity to file something (other than filing a form response to "force" a hearing).

Local Massachusetts Chapter 13 Rule 13-6(b) provides that

> If an attorney for the debtor is unable to contact the debtor in connection with any matter, the attorney *shall* file a statement informing the Court of this fact, which statement shall include the efforts the attorney has made to contact the debtor. The attorney shall serve a copy of the statement on the debtor at his or her last known address.
>
> [emphasis added].

[10] Filing a blanket response that merely denies the allegations and provides nothing more is not good practice, especially if it is done without making any reasonable inquiry into the nature of the allegations or responses. The following is recommended reading: *In re Thomson*, 329 B.R. 359 (Bankr. D. Mass 2005).

This has been nicknamed a "Certificate of No Contact." The certificate should follow the rule by detailing the efforts counsel undertook to communicate with the debtor.[11] For a sample Certificate, see Exhibit B.

Since the rule does not expressly provide for the statement to be filed in lieu of a response, best practices might justify the filing of a motion seeking an extension of time to confer with the debtor, make reasonable inquiry and file a response.

Best Practices

1. Establish Expectations

At the first meeting with the debtor, set the tone. Explain the importance of open and honest communications no just in preparation for the filing, but throughout the case. Remind them:

a. "It's very important you open your mail. Especially from me."
b. "Speaking of mail, you're also going to get mail directly from creditors, attorneys, the court and the chapter 13 trustee. Open it. Read it. If you have questions, please call me."
c. "It's very important that you call me if you lose you job or if you think you cannot make a payment."
d. "It's important that you know that if you miss a payment and I have to go to court, that may increase the costs of your case, and it might jeopardize the relief you're seeking. It's important that I know at the earliest opportunity when you are experiencing difficulty in your chapter 13 case. I may be able to help you when these issues arise, and it's best I hear about them from you at the earliest opportunity."

Document those expectations. Include language in fee agreements that stress the need for cooperation and communication. Remind them what can

[11] Nothing in the rule contemplates that counsel disclose *what* was communicated to the client. Counsel should always be mindful of their obligations under Mass.R.Prof.Con. 1.6.

happen when the chapter 13 case is dismissed, and the consequences and responsibilities of being a repeated filer.

2. Remember Those Expectations

While you may want to establish expectations for the debtor, it's important to remember that debtors will have expectations too. Their biggest and most important expectation is that counsel will do not only what they say they will do, but what they are *obligated* to do.

Never demand more money before going to court, filing a responsive pleading, or taking any action necessary to protect your client's rights. Why? The easy answer: it is professionally irresponsible. But a perhaps more surprising answer is because a debtor may appear in court, and if the docket reflects the appearance of an attorney of record, expect legitimate questions to be raised by the court, by the chapter 13 trustee, and/or by the United States Trustee (and perhaps even Bar Counsel).

3. Keep the Line of Communications Open

There are a number of reasons why debtors may not wish to stay in contact with counsel, or respond to inquiries. Among them may be their feeling the same shame and fear that may have fueled their decision to seek bankruptcy protection.

Communication is particularly important if formal process has been started. If a motion for relief from stay or a motion to dismiss is filed, debtors are expected to file a response. A good response follows counsel's ability to make a reasonable inquiry. Keep the line of communications open with the debtor.

4. Remember Your Obligations and Your Options

A debtor's lack of response will be understood by the court and the trustee as it not being a reflection on debtor's counsel (or counsel's other clients). If debtor does not respond, the local rules allow debtor's counsel to identify the efforts made to communicate with the debtor. It is imperative that

contemporaneous records be kept that demonstrate the means and methods by which communication was attempted.

Once the “Certificate of No Contact” is filed, three things can occur: (1) relief requested can enter because of the debtor’s failure to cooperate based on counsel’s assertions; (2) a hearing may be scheduled which might afford an opportunity for the debtor to communicate with counsel prior to or at the hearing; or (3) provide further opportunity for the court to continue the matter if, for example, the court is not satisfied that appropriate efforts have been exerted to communicate with the debtor.

While these steps at a glance might appear a bit onerous, they are an essential element of being a good chapter 13 practitioner. Following these steps can help ensure that debtors remain aware of what their obligations are in the chapter 13 case and can protect counsel from negligence and/or ethical complaints. It can also help ensure that the chapter 13 process runs as it should for all parties involved.

C

United States Bankruptcy Court,
D. Massachusetts.
In re Lawrence E. **CUDDY**, Jr. and Betsy J. Graf **Cuddy**, Debtors.
Danvers Savings Bank, Plaintiff,
v.
Lawrence E. **Cuddy**, Jr., Defendant.
Bankruptcy No. 04-12166-WCH.
Adversary No. 04-1208.

March 24, 2005.

Background: Chapter 7 debtors' attorneys moved for leave to withdraw from representing debtor based on debtor's nonpayment of attorneys' fee.

Holding: The Bankruptcy Court, William C. Hillman, J., held that debtor's failure to replenish his bankruptcy attorneys' retainer as he had promised in fee agreement did not constitute "cause" for allowing attorneys to withdraw from representation, notwithstanding that fee agreement expressly provided that attorneys could withdraw if debtor did not timely pay attorneys' fee.

Motion denied.

West Headnotes

[1] Attorney and Client 45 76(1)

45 Attorney and Client
45II Retainer and Authority
45k76 Termination of Relation
45k76(1) k. Act of Parties. Most Cited Cases
Chapter 7 debtor's failure to replenish his bankruptcy attorneys' retainer as he had promised in fee agreement did not constitute "cause" for allowing attorneys to withdraw from representation, notwithstanding that fee agreement expressly provided that attorneys could withdraw if debtor did not timely pay attorneys' fee.

[2] Attorney and Client 45 76(1)

45 Attorney and Client
45II Retainer and Authority
45k76 Termination of Relation
45k76(1) k. Act of Parties. Most Cited Cases
If fee agreement between Chapter 7 debtor and law firm that was representing him in bankruptcy case were construed only under basic principles of contract law, then provision in agreement indicating that firm could withdraw if debtor failed to timely pay firm's fees would have been waived, when law firm entered general appearance in adversary proceeding without payment of its promised fees.

[3] Attorney and Client 45 32(2)

45 Attorney and Client
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k32 Regulation of Professional Conduct, in General
45k32(2) k. Standards, Canons, or Codes of Conduct. Most Cited Cases
Massachusetts attorneys are bound by Massachusetts Rules of Professional Conduct when practicing in federal courts in Massachusetts, including in bankruptcy court. S.J.C.Rule 3:07, Rules of Prof.Conduct, Rule 1.1 et seq.

[4] Attorney and Client 45 77

45 Attorney and Client
45II Retainer and Authority
45k77 k. Scope of Authority in General. Most Cited Cases
Provision in fee agreement between Chapter 7 debtor and law firm that was representing him in bankruptcy case, indicating that firm could withdraw if debtor failed to timely pay firm's fees, did not qualify as express agreement *ab initio* to limit scope of representation, for purposes of local bankruptcy rule providing that an attorney representing debtor in bankruptcy case is required to represent debtor in any adversary proceeding filed in that case, unless debtor expressly agrees otherwise at commencement of the representation.

[5] Attorney and Client 45 76(1)

45 Attorney and Client
45II Retainer and Authority
45k76 Termination of Relation
45k76(1) k. Act of Parties. Most Cited Cases
When attorney moves for permissive withdrawal from representing client, motion is addressed to discretion of trial court.

[6] Attorney and Client 45 76(1)

45 Attorney and Client
45II Retainer and Authority
45k76 Termination of Relation
45k76(1) k. Act of Parties. Most Cited Cases
In ruling on motion by Chapter 7 debtor's attorneys for leave to withdraw from representation of debtor, bankruptcy court was concerned not only with competing interests of debtor and attorneys, but with interests of bankruptcy court; lawyers who agreed to represent debtor in bankruptcy proceedings thereby assumed responsibility to court as well as to debtor-client.

[7] Attorney and Client 45 106

45 Attorney and Client
45III Duties and Liabilities of Attorney to Client
45k106 k. Nature of Attorney's Duty. Most Cited Cases
Once lawyer accepts retainer to represent client, he is obliged to exert his best efforts wholeheartedly to advance client's legitimate interests with fidelity and diligence until he is relieved of that obligation either by his client or by court; failure of client to pay for lawyer's services does not relieve lawyer of his duty to perform them completely and on time, save only when relieved of that obligation by client or court.
***13** Donald H. Adler, Dennis Ford Eagan, Newburyport, MA, for Finneran & Nicholson, P.C.

Astrid Stevens Daly, Wears, NH, Robert L. Marder, Lynn, MA, for Danvers Savings Bank.

Phoebe Morse, Gary L. Donahue, Boston, MA, for the United States Trustee.

Decision on Motion to Withdraw as Counsel to Defendant

WILLIAM C. HILLMAN, Bankruptcy Judge.

Introduction

The issue before me is whether Donald H. Adler, Thomas G. Nicholson, and the firm of Finneran & Nicholson, P.C. ("Movants") are entitled to withdraw from their representation of Lawrence E. **Cuddy**, Jr. ("Defendant") as a result of Defendant's nonpayment of fees. For the reasons stated below, I will enter an order denying the motion.

Facts

On March 17, 2004, Defendant and Betsy J. Graf **Cuddy** ("Mrs. **Cuddy**") filed a petition under Chapter 7. The schedules indicated that there were no secured or priority creditors and general creditors' claims totaled $1,006,966,[FN1] of which $200,000 was owed to Danvers Savings Bank ("Danvers").

FN1. The total includes some debts to taxing authorities.

At the time of filing, Defendant and Mrs. **Cuddy** were both represented by the same counsel. He moved to withdraw on May 14, 2004 due to a conflict. I granted the motion on May 21, 2004. In the meantime, on May 14, 2004, new counsel entered an appearance in the main case for Mrs. **Cuddy** only.[FN2] On May 10, 2004, Defendant entered into a written "Legal Services-Fee Agreement" (the "Fee Agreement") and an Engagement Letter with Movants. The Movants did not introduce a copy of the Engagement Letter.

FN2. Mrs. **Cuddy** is not involved in this adversary proceeding.

The Fee Agreement provided for an initial retainer of $2,500 and included a provision allowing Movants to withdraw in the event that the Defendant failed to replenish the retainer or failed to pay any outstanding invoices. Specifically, paragraph 5 of the Fee Agreement

provides as follows:

" **Withdrawal from Representation Where Non-Payment.** It is agreed that if any retainer is not replenished (for the initial Matter and/or any and all subsequent and/or additional legal services requested to be performed and performed by the Firm) to the amount requested by the Firm within 15 days of the date of the bill requesting the replenishment and/or interim or final statement, bill or invoice for services rendered is not paid, when and as due, the Firm may immediately cease providing services under this Agreement and **the Client will not oppose the Firm from withdrawing its representation *14 of the Client and, if requested, Client will consent in writing to the Firm removing any court appearance it may have filed in connection with representation of the Client. This is an essential and vital agreement to the Firm's agreeing to provide services rendered.**" FN3

FN3. Boldface in original.

Donald H. Adler entered his appearance for Defendant in the main case on May 25, 2004.

On June 25, 2004, Danvers filed an Adversary Complaint against Defendant, objecting the Defendant's discharge under 11 U.S.C. §§ 727(a)(2)(A) and 727(a)(5) and to the dischargeability of Defendant's debt to it under 11 U.S.C. § 523(a)(2)(B).

On July 26, 2004, Thomas G. Nicholson filed a "limited notice of appearance" "for the sole and limited purpose of filing the parties' Assented to Motion to Extend Time...." FN4 Notwithstanding that additional agreed compensation had not been paid, he filed a general appearance for Defendant on August 9, 2004.

FN4. He cited to MLBR 9010-3 in support, but that rule does not reference limited appearances. MLBR 9010-3(a) merely makes an entry of appearance unnecessary where another pleading is filed. Messrs. Nicholson and Adler appear to be members of the same firm.

Movants filed a motion to withdraw as counsel to Defendant (the "Motion") on January 4, 2005.FN5 No successor counsel has entered an appearance for Defendant. As grounds, Movants assert that as a condition precedent to their representation of Defendant in the adversary proceeding, Defendant agreed to pay an additional retainer, and that Defendant has not paid the second retainer or any additional sums for which he was billed by Movants. Under those circumstances, Movants contend that Defendant has breached the Fee Agreement and they are entitled to withdraw on that basis. In their statement of compensation, which Movants filed on February 23, 2005,FN6 they acknowledge having received $12,811.91 in the principal case with a balance remaining unpaid of $2,659.51, and having received $2,836.09 in the adversary proceeding, with a balance remaining due of $1,459.10, both as of January 20, 2005.

FN5. The Motion bore the captions of both the main case and the adversary proceeding and was docketed in the latter only, A.P. No. 04-1208, Docket No. 17 but I will treat it as applicable to both.

FN6. The United States Trustee argued that Movants' failure to file the statement of compensation required by 11 U.S.C. § 329 and Fed. R. Bankr.P.2016(b) was grounds for denying the Motion. That argument is mooted by Movants', albeit tardy, filing.

Defendant did not oppose the Motion. I held a hearing on the Motion and took it under advisement. Movants, Danvers, and the United States Trustee filed post-hearing briefs.

Discussion

[1][2] If the Fee Agreement is to be construed only under the basic principles of contract law, the Motion should be denied. While it allows Movants to withdraw in the event of non-payment, Movants waived that right when they entered a general appearance in the adversary proceeding without payment of the promised additional

fees. This is not a simple contract dispute. It involves principles of ethics and the administration of justice.

[3][4] Attorneys practicing in the Massachusetts courts are bound by the Massachusetts Rules of Professional Conduct ***15** ("RPC").[FN7] Massachusetts attorneys are bound by those same standards when practicing in the local federal courts.[FN8] In addition, of course, they are bound by the rules of this Court, including MLBR 9010-3(d):

> FN7. Massachusetts Rules of Professional Conduct and Comments, Supreme Judicial Court Rule 3:07.
>
> FN8. *Chimko v. Lucas (In re Lucas)*, 317 B.R. 195, 200 (D.Mass.2004). *See* Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit, Rule IV-A; Local Rule 83.6(4)(B) (D.Mass.).

> An attorney representing a debtor in a bankruptcy case is required to represent the debtor in any adversary proceeding filed within the bankruptcy case in which the debtor is a named defendant unless the debtor expressly agrees otherwise at the commencement of the representation.

In the case at bar only the generalized "pay-or-we-will-quit" language was applicable, and I hold that the language of the Fee Agreement does not satisfy the local rule for an express agreement *ab initio*.

MLBR 9010-3(d) is an implementation of RPC Rule 1.2(c) which, as presently in force in Massachusetts, provides that "[a] lawyer may limit the objectives of the representation if the client consents after consultation." The comment to that provision as relevant here provides:

> [5] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1....

Rule 1.1 directs the lawyer to "provide competent representation to a client." It continues "[c]ompetent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."[FN9]

> FN9. The Model Rule was amended in 2002 to read that a lawyer is permitted to "limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." *See* ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT 36 (5th ed.2004). "The amendment was intended to clarify the allowance-and regulation-of limited-representation agreements." *Ibid*.

Assuming without deciding that Defendant's signature on the Fee Agreement constitutes "consultation" within the meaning of the quoted rule, I turn to whether it provides sufficient basis for the granting of the Motion.

RPC Rule 1.16(a) provides instances where withdrawal of counsel is mandatory; it is not involved here. RPC Rule 1.16(b) provides that a lawyer *may* withdraw from representing a client upon certain specified grounds. As relevant here they are:

> ...if withdrawal can be accomplished without material adverse effect on the interests of the client, *or if* [italics supplied]:
>
> ....
>
> (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled....

Thus, under the RPC standards, an attorney is allowed to withdraw from a matter even though the withdrawal will have a material adverse effect on the interests of the client, if the client has violated the type of payment agreement before me. The only check on this broad power is contained in RPC 1.16(c), which provides

> if permission for withdrawal from employment is required by the rules of a tribunal a lawyer shall not

withdraw ***16** from employment in a proceeding before that tribunal without its permission.

This Court has such a requirement, found in MLBR 2091-1(a):

"An attorney may withdraw from a case or proceeding without leave of the Court by serving a notice of withdrawal on the client and all other parties in interest and filing the notice, provided that:

(1) such notice is accompanied by the filing of a notice of appearance of successor counsel;

(2) there are no motions pending before the Court; and

(3) no trial date has been set."

Unless these conditions are met, an attorney may only withdraw from a case or proceeding with leave of the court. No successor counsel has appeared in this proceeding, hence the necessity for the Motion.

In considering the Motion, I find myself joining in concerns voiced by Judge Grant some years ago:

[T]he motion comes at a time when the court has been indulging in a high degree of self examination with regard to the circumstances which warrant giving an attorney permission to withdraw from the representation of his client. Because of this, the court feels it is appropriate to thoroughly discuss these concerns, so that members of the bar can not only understand the reasons for the court's action (even if they do not agree with it) but so they also can understand what will be expected of them when they undertake the representation of a bankruptcy debtor.[FN10]

FN10. *Colter v. Edsall (In re Edsall)*, 89 B.R. 772, 773 (Bankr.N.D.Ind.1988).

[5][6] Where permissive withdrawal is sought by an attorney, the motion is addressed to the discretion of the trial court.[FN11] Withdrawal will not necessarily be appropriate in all circumstances.[FN12] In exercising my discretion, I am concerned with the competing interests of Movants, Defendant, and the Court, for, as Judge Keeton has said, "An attorney who agrees to represent a client in a court proceeding assumes a responsibility to the court as well as to the client."[FN13] It is a delicate balancing act:

FN11. *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 135 (1st Cir.1985), *cert. denied* 476 U.S. 1172, 106 S.Ct. 2896, 90 L.Ed.2d 983 (1986).

FN12. *V.H. v. J.P.H.*, 62 Mass.App.Ct. 910, 911, 815 N.E.2d 1096, 1097 (2004).

FN13. *Hammond v. T.J. Litle and Co.*, 809 F.Supp. 156, 159 (D.Mass.1992). *See also Hasbro, Inc. v. Serafino*, 966 F.Supp. 108 (D.Mass.1997).

[E]ach case must be assessed to determine a result that will be fair to the client, the attorney and the court, taking the rights and interests of each into account.[FN14]

FN14. N.Y. State Bar Assn Comm. Prof. Ethics Op. No. 598 *1, 1989 WL 252367 (1989).

On the one hand, Movants had a reasonable expectation that they would be paid for services to be rendered. Anticipating the possibility of Defendant's failure to pay, they expressly reserved the right to withdraw from the representation in the event of non-payment. But this may not provide adequate grounds for the granting of the Motion:

An attorney who undertakes to represent a client assumes obligations toward his client which are not excused merely because the client is unable to pay fees demanded by the attorney.[FN15]

FN15. *Goldstein v. Albert (In re Albert)*, 277 B.R. 38, 46 (Bankr.S.D.N.Y.2002).

***17** The primary reason for the additional services required of Movants was the adversary proceeding filed by Danvers under 11 U.S.C. §§ 523 and 727. Such actions are not common.[FN16] To quote Judge Grant

again:

FN16. Statistics drawn from the records of this Court indicate how seldom counsel will be required to defend such actions:

Year	Non-Business Cases Filed	§727	§523	Total	%
2002	14,165	60	181	241	1.7
2003	15,070	60	211	271	1.7
2004	15,168	36	163	199	1.3

Counsel who initiate bankruptcy proceedings on behalf of their clients can reasonably expect that the debtor's right to discharge either all or any of its debts will come under scrutiny and may be challenged in an adversary proceeding. For this reason, a complaint pursuant to either § 523 or § 727 should come as no great surprise to any debtor's attorney.[FN17]

FN17. *Edsall, supra,* at 774. I appreciate that Movants were not the original counsel for Defendant, but, as successors, they have assumed the mantle.

Defendant appreciated that he required the services of counsel in pursuing his bankruptcy case, in my mind an entirely sensible approach.[FN18] After his original counsel withdrew, he hired the Movants.

FN18. Writing for a lay audience, I once devoted an entire chapter to this subject, ending with the italicized admonition "*YES, you do need a lawyer in a bankruptcy case*." WILLIAM C. HILLMAN, PERSONAL BANKRUPTCY 23 (2nd ed.1995).

And from the viewpoint of the bench, a *pro se* debtor presents often monumental problems of case administration. Judge Grant again:

Pro se litigants present the court with important concerns. More often than not, they are unfamiliar with legal procedures or the formality of trial practice. For this reason they are to be indulged. Frequently, they lack a workable knowledge of the finer points of the issues being litigated. Thus, at trial, a line of questioning or chain of reasoning may not be pursued because they do not understand its significance-something which usually would not escape the attention of a skilled attorney, In such a situation, the court is confronted with the difficult choice between raising unspoken questions and advancing silent arguments or adopting a more passive role. To follow the first course, while often promoting a decision based on the underlying merits of a case, may tarnish the appearance of judicial impartiality. The second path, while preserving appearances, may result in an unwarranted victory almost by default. Representation by counsel generally eliminates this dilemma.

More important than the difficulties they present to the court is the fact that pro se litigants, in a very real sense, can be a danger to themselves. Without an understanding of the importance of facts in issue, the applicable law, or why their discharge has even been challenged, they often flounder helplessly at trial, aimlessly pursuing meaningless points and arguments. From the standpoint of a debtor whose discharge has been challenged, to proceed pro se presents the very real possibility that the creditor will

> prevail for the sole reason that its opponent did not understand the facts in issue or how to defend against the allegations raised.[FN19]

FN19. *Edsall, supra,* at 775.

The image that has come to my mind most insistently while working on this opinion is this: A professional swim instructor takes on a new student with this understanding: You have paid me my initial fee. For that money I will lead you to ***18** the swimming pool, show you how to enter the water, and explain the basic elements of swimming. If, however, you should begin to drown, of if some other serious problem arises, I will leave you to your own resources unless you pay me more money.

[7] Even if this message is clearly conveyed to the student, if the desire to learn to swim is strong enough (just as if the need for the bankruptcy remedy is strong enough for the debtor *in extremis*) the student will accept the terms. It looks like and sounds like a contract of adhesion, with all of the unlovely baggage that phrase carries. It is contrary to my view of the higher obligation of an attorney.

> Once a lawyer accepts retainer to represent a client he is obliged to exert his best efforts wholeheartedly to advance the clients [*sic*] legitimate interests with fidelity and diligence until he is relieved of that obligation either by his client or the court. The failure of a client to pay for his services does not relieve a lawyer of his duty to perform them completely and on time, save only when relieved as above.[FN20]

FN20. *State Bar of Michigan v. Daggs,* 384 Mich. 729, 732, 187 N.W.2d 227, 228 (1971).

The resistance of courts to the practice of offering limited services (the nonce word appears to be "unbundling") is evident in a number of recent cases. The most comprehensive is *In re Egwim,*[FN21] in which Judge Bonapfel carefully and extensively explained the applicable principles. He points out

FN21. 291 B.R. 559 (Bankr.N.D.Ga.2003).

> three fundamental requirements that must be met before an attorney may properly limit the scope of services to be provided to a client. First, the attorney must consult with the client about the limited representation that will be provided. Second, the client must provide informed consent, and this consent should be evidenced by a writing. Most important, the limitation must be reasonable in the circumstances or, in terms of the Georgia Rule, the engagement must not be so limited as to prevent competent representation.[FN22]

FN22. *Id.* at 571. The "Georgia Rule" is the same as RPC Rule 1.2.

After explaining what complications can and do arise in the context of consumer bankruptcy cases, he concludes:

> An attorney desiring to limit the scope of an engagement has the burden of demonstrating compliance with all of the conditions required for the validity of the limitation. *In the context of representing a consumer in an area of law as complex as bankruptcy, it will be the unusual case where the burden can be met.*
>
> ....
>
> In summary, the principles and authorities addressed above establish that an attorney representing a chapter 7 debtor ordinarily may not limit the scope of that engagement.[FN23]

FN23. *Id.* at 572 (emphasis added).

A narrower but related example, *In re Johnson*,[FN24] involved an attorney whose contract with clients provided that, in consideration of a reduced fee, he would not attend the § 341 meeting. The practice was condemned as a matter of public policy and the attorney was sanctioned.[FN25]

FN24. 291 B.R. 462 (Bankr.D.Minn.2003).

FN25. To the same effect, *see In re Castorena*, 270 B.R. 504 (Bankr.D.Idaho 2001); *In re Ban-*

croft, 204 B.R. 548 (Bankr.C.D.Ill.1997).

***19** I hold that, in this case, the failure to replenish the retainer does not constitute cause for withdrawal.

Conclusion

For the reasons stated, I will enter a separate order denying the Motion.

Bkrtcy.D.Mass.,2005.
In re Cuddy
322 B.R. 12

END OF DOCUMENT

Exhibit B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re

DONALD DEBTOR,
(SS. NO. XXX-XX-1111)

Debtor.

Chapter 13
No. 09-88888
Judge Feeney

DEBTOR'S COUNSEL'S STATEMENT PURSUANT TO LOCAL CHAPTER 13 RULE 13-6(b)

Pursuant to Local Chapter 13 Rule 13-6(b), the undersigned, as counsel for the Debtor, DONALD DEBTOR, hereby states that he has been unable to contact the Debtor in connection with the Motion for Relief from Stay filed by XYZ Loans, Inc. (document no. 42) and the Motion to Dismiss filed by the Chapter 13 Trustee (document no. 45).

In furtherance, the undersigned's efforts in contacting the debtor included:

1. On October 2, 2009 the undersigned sent a written letter via USPS to the Debtor's address of record (which is also the last known address).
2. On October 3, 2009, the undersigned called and left a message on the Debtor's home and mobile phone voice mail.
3. On October 4, 2009, the undersigned send an email to the Debtor to the email address provided to the undersigned by the Debtor.
4. On October 8, 2009, the undersigned's assistant sent an email to the Debtor to the email address provided to the undersigned by the Debtor.
5. On October 9, 2009, the undersigned again called the Debtor and left a message on his home and mobile voice mail.

Respectfully submitted:
THE DEBTOR
Donald Debtor

DATED: October 9, 2009

/s/ William J. McLeod
William J. McLeod, BBO 560572
McLEOD LAW OFFICES, PC
77 Franklin Street
Boston, MA 02110
617.542.2956/phone
617.695.2778/fax
wjm@mcleodlawoffices.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 9, 2009 in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules of this Court, I caused to be served a true copy of this document to the following participants in the Court's ECF system:

For the United States Trustee: John Fitzgerald
USTPRegion01.BO.ECF@USDOJ.GOV

For the Chapter 13 Trustee: Carolyn Bankowski
13trustee@ch13boston.com

I also certify that a true copy of this document (with attachments, if any) was sent via US Mail, First Class Postage Prepaid to the individuals below who do not participate in the Court's ECF system:

Pursuant to Local Bankruptcy Rule 13-6(b), on the Debtor at the last known address:

The Debtor:
Donald Debtor
P.O. Box 00000
Pocasset, MA 02559

/s/ William J. McLeod
William J. McLeod
Counsel for the Debtor

CHAPTER 13 MEANS TEST FORM
WHAT THE CHAPTER 13 TRUSTEE LOOKS FOR

I. Report Of Income And Determination of Actual Anticipated Income For Plan

i. review Schedule I and pay advices and compare to B22C Part I
ii. make sure the debtor is properly including all income on Schedule I and the B22C
iii. ask debtor at 341 meeting to explain the reason for any inconsistencies
iv. if there is a material difference between B22C and debtor's actual anticipated income, trustee will use the actual anticipated income for determining whether the debtor's plan satisfies the best efforts test set forth in 11 U.S.C. sec. 1325(b)(1)(B)

See In re Kibbe, 361 B.R. 302 (1st Cir. 2007). While Kibbe is a below median income debtor case, Kibbe's holding (the income component of "projected disposable income" as set forth in sec. 1325(b)(1)(B) is the anticipated actual income of the debtor, subject to the Income Exclusions, during the plan commitment period) can be applied to both above and below median income debtors. See Kibbe at 314.

II. Calculation Of Commitment Period

i. check annualized current monthly income to determine if debtor is above median income
ii. compare household size with debtor's tax return and Schedule I
iii. make sure if household member is claimed and has income that such household member's contribution is accounted for under the Report of Income under the B22C

III. Calculation Of Deductions

i. make sure correct standardized deductions are listed
ii. 25B.b. make sure any mortgage expenses claimed on line 47 are listed on line 25B.b.
iii. lines 27 – 29 - make sure vehicle deductions claimed are consistent with the number of vehicles owned on Schedule B and that debt payments are properly deducted on lines 28.b. and 29.b.
iv. line 30 – compare deduction claimed with Schedule I, pay advices and tax return and make adjustment for any increase or decrease in deduction due to actual anticipated income adjustment
v. lines 34 – 35 – compare amounts claimed with Schedule J

expenses

vi. line 36 – compare with Schedule J and make sure debtor has properly deducted the amount already deducted on line 24B

vii. line 39 – compare with Schedule I and pay advices

viii. line 47 – compare payments claimed with Schedule D and Schedule J and check if debtor is including claims which are no longer paying under plan, i.e., avoided mortgages and liens, automobile claims which are being paid through the plan, payments on secured claims for property being surrendered

ix. line 48, 49 and 50 – make sure the amount claimed is consistent with the amounts set forth in the Plan

x. line 55 – compare with pay advices and Schedule I

xi. review and obtain documentation of any special circumstances deductions and additional expense claims

xii. multiply line 59 by 60 months and make sure that sum is being paid towards the holders of general unsecured claims

DOs AND DON'Ts FROM THE TRUSTEE'S PERSPECTIVE

Carolyn A. Bankowski, Esq.
Chapter 13 Trustee, Boston, MA
Patricia Remer, Esq., Boston, MA

POST CONFIRMATION AMENDED PLAN DOs AND DON'Ts

1. The following actions need to be taken before drafting the Amended Plan:

   (a) review claims filed;

   (b) check the claims paid to date by the Trustee and the payments received in order to properly incorporate the information into the Amended Plan. These items can be accessed through www.bankruptcylink.com. Please contact the Trustee's office if you do not already have a password for this service.

2. Make sure the term of the Plan is correctly calculated. The term of the Plan and number of months remaining are not the same. This should be done by looking at the effective date set forth in the confirmation order and comparing it to the Amended Plan. Note: the original confirmation date never changes and is the starting point for calculating the term of the Plan.

   Example 1: An Amended Plan is filed. The effective date in the Confirmation Order is September 1, 2005 and the Amended Plan was filed in October 2006 and states that it is effective November 1, 2006. 14 months would have elapsed since the Plan was confirmed (9/1/05 – 10/1/06 = 14 mos.). If 22 months remain, the Term of the Plan reflected on the first page should be 36 months.

   Example 2: An Amended Plan is filed after a sale. The Debtor is making a lump sum payment. The effective date in the Confirmation Order is September 1, 2005. The Debtor has sold the property and files an Amended Plan. The lump sum payment was made in October 2006. The term of the Plan should be 14 months.

3. Compare claims set forth in Amended Plan to the claims register and on bankruptcy link to make sure all claims are properly treated.

   Example 1: The claims bar date has passed. Make sure total amount of all claims are correct. The secured, priority and unsecured claims should be consistent with what is reflected on the claims register. Also, check docket to see if any claims objections were filed.

   Example 2: Sale or refinance Plan. Make sure that Amended Plan reflects the secured claims that were paid before the Debtor made the payments directly to the secured creditors. For e.g., arrears owing to Ameriquest were $12,000. Before the sale or refinance the Trustee paid $2,000. The $2,000 needs to be included in the secured claims. In addition, make sure that the Plan provides for the full amount of the commission to the Trustee even though $10,000 was paid directly to the creditor.

Example 3: Debtor files amended Plan reducing dividend to unsecured creditors. Need to make sure that Trustee has not already paid more than the Debtor is proposing to pay.

4. Review liquidation analysis from previous Plan and Schedules A and B to make sure Debtor is paying more than creditors would receive from if the Debtor were liquidated.

5. If amending Plan to include plan payments that are in arrears, do not add the Plan arrears into the calculation. Subtract the total amount the Debtor has paid the Trustee to date from the total cost of the Plan and divide amount owing over the number of months remaining under the Plan. Adding in the arrears improperly inflates the cost of the plan.

6. If plan payment changes, need to amend Schedules to demonstrate the feasibility of the Plan.

7. Set forth in the Amended Plan all changes from the previous plan.

8. File a Motion with the Court to approve the Amended Plan and set forth in the Motion the reason for the filing of the Amended Plan.

9. Review the proposed confirmation order to make sure it sets forth the proper treatment of claims under the Plan.

DOs AND DON'Ts FOR MOTIONS TO SELL OR REFINANCE

DO:

Review MLBR 4001-2 and 6004-1 and follow all requirements including attaching a copy of the loan agreement or including all terms if refinancing, completing a notice of sale if selling, and including all terms of the sale or refinance.

Make sure an application to employ the real estate broker is timely filed with the Bankruptcy Court.

Include a list of all payments to be made for the proceeds.

If any claim is paid at closing that is listed in the plan as being paid through the Trustee, include a statement that the Trustee will be paid her commission on the balance of those claims being paid from the proceeds. This can either be paid directly at closing by separate check to the Trustee.

If you are planning to payoff the plan with a lump sum, unless your plan is a 100% plan, or already provides for a sale/refinance and lump sum payment, you must file an amended plan reflecting the claims paid at closing and reflecting the lump sum payment. Include a statement in your Motion as to whether the proceeds are being used to payoff the plan, and include a statement that an amended plan reflecting the lump sum will be filed following the closing date.

If you are not planning to payoff the plan with a lump sum, unless your plan is a 100% plan, you must not only file an amended plan reflecting the claims paid at closing and the remaining claims, but must file an amended I and J reflecting the change in circumstances in the Debtor's finances as a result of the sale/refinance. Include a statement in your Motion that amended schedules I and J will be filed with the amended plan following the closing date.

If there is an exemption for the sale proceeds, state that in the Motion. If there is no exemption, state that the proceeds are not exempt and will be turned over to the Trustee.

If you need a payoff, send a written request for payoff to the Trustee *at least* two weeks prior to your closing date. If the request is coming from anybody other than you or your client, make sure there is a signed authorization with the request. The turnaround time for payoff requests at this time is ten days. REMEMBER: we cannot provide a payoff on a case that is pre-confirmed.

State in your Motion that a copy of the HUD will be provided to the Trustee. We must have a copy of the HUD to determine what was paid at closing so that we can stop payments through our office. If you do not provide us with a HUD, then we will continue to make payments on the claims until we are provided with evidence that the claim has been paid in full outside of the plan.

DON'T:

File a Motion that does not include a list of all claims being paid at closing and include all of the terms of the transaction.

Refer a mortgage broker, real estate agent, closing agent, closing attorney, or anyone else connected with the closing to our office for any information related to payoffs and/or pay history. We only give payment information to the Debtor and/or their attorney, and only provide a payoff in confirmed cases upon receipt of a written request from the Debtor, their attorney or someone who has an authorization from the Debtor.

Request authorization from the Trustee to sell or refinance. Only the Court can give authorization and you must file a motion in order to obtain court authorization. The Trustee will review your motion and if there are any objections or issues, will file a responsive pleading.

Allow the closing to occur without court authorization.

Assume that because you filed a motion and received no responses that the Court will grant the motion. Judges often have questions related to the interest rate, closing costs, and other issues, and may hold a hearing and ultimately deny your motion even if there are no objections. If you find out that the Debtor went ahead with a sale or refinance without authorization, immediately notify the court and Trustee by filing a motion to approve the transaction *nunc pro tunc*, and send a copy of the HUD to the Trustee.

Include additional attorneys' fees to be paid from the closing proceeds that total more than $2,500.00. If your total fee, including any amounts already paid or included in the plan, total more than $2,500.00 you must file a fee application.

341 MEETING DOs and DON'Ts

DO:

Send the Trustee no later than seven (7) days prior to the 341 meeting the following documents:

1. copies of all pay advices received within sixty (60) days prior to the petition date. Make sure they are the pay advices received within the sixty (60) days before the Petition Date.

2. copy of most recently filed tax return.

3. evidence of value for all real estate.

4. copy of recorded homestead and deed.

5. evidence of income from any and all sources the Debtor receives income including family contributions, rental income, social security, etc.

6. evidence of insurance for all real estate. Check expiration date and make sure coverage is presently in effect.

7. for self employed business debtors, make sure you review Chapter 13 Rule 13-2 in Appendix 1 of the Massachusetts Local Bankruptcy Rules. Self employed debtors must provide a year to date profit and loss statement up to the Petition Date, evidence of business insurance and evidence that a debtor-in-possession checking was opened at the time of the filing of the petition.

Make sure your client brings proof of identification and social security number.

Make sure your client brings certified funds for the first plan payment if not already mailed to the Trustee. Inform your client that the Trustee does not accept cash, personal checks, third party checks, or on-line payments.

Review with your client any differences in income as reported on the B22C, Schedule I and the Statement of Financial Affairs. The Trustee will ask for an explanation for variances. In addition, if there has been a change in income since the Petition Date, make sure you bring evidence of the new income.

Review the plan and check the plan calculations prior to the meeting to make sure the cost of the plan and payment amount is correct.
Check PACER and make sure that the schedules, petition, and plan that you have in your file match what is actually filed with the Court. Software programs frequently generate draft and final versions of documents, and you are responsible for making sure the final versions are what is uploaded and filed with the Court.

Review your exemptions on Schedule C. If you are claiming federal exemptions, check the amounts claimed under §522(d)(1) and (d)(5). If

you use a bankruptcy software program do not assume that the amounts listed by the program are correct.

Arrive early enough to complete the Tax and DSO affidavit and fill out the plan payment for the Trustee prior to the meeting being called. These items should be completed prior to the meeting.

Make sure that the certificate of service for the Chapter 13 Plan has already been filed with the Court.

DON'T:

Use tax return as evidence of social security number. Proof of social security must be from an independent source.

Ask for a continuance of the 341 meeting unless the Debtor has made first payment.

Request the Trustee to go forward with a meeting if the case has been dismissed and there is a pending motion to reinstate. Until the Court reinstates the case, the Trustee cannot take any action in a chapter 13 case.

Ask the Trustee to accept an affidavit of the Debtor as evidence of income. The schedules are sworn to under oath, and an affidavit supporting the schedules does nothing but confirm what the Debtor already stated. The Trustee needs documentation of any and all income listed on Schedule I.

If you use a bankruptcy software program, don't assume that the program is always right. Use your calculator.