

Balancing the Practice of Consumer Bankruptcy Law and Running a Business

Creditors Breakout

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BALANCING THE PRACTICE OF CONSUMER BANKRUPTCY WITH RUNNING A BUSINESS

1. Client expectations of Creditor's attorneys:
 - a. Fast and timely service: immediate turn-around on referrals & client queries
 - b. Fixed fee representation (competitors can be viewed on the web)
 - c. Immediate reporting of court results and feedback on ongoing tasks
 - d. State of the art technology & infrastructure
 - e. Adherence to client's internal privacy policies
 - f. Adherence to client's internal security policies
 - g. Audits: flexibility with & availability for regular audits
 - h. "Cradle to Grave" Service
2. Court expectations of Creditor's attorneys
 - a. Low fees: since many judges believe that all creditor attorney tasks are routine & can be completed, mistake-free, in mere minutes (after all, completing a Proof of Claim, for example, has been referred to as "only putting numbers on a piece of paper.")
 - b. Liability for the mistakes of our clients: expectation that creditor attorneys audit all clients' information in the few seconds it takes them to transfer their info to paper
 - c. Debtors' attorneys are not held to the same standard: belief that debtors should not suffer for the mistakes or failings of their own attorneys; debtors' attorneys are given nearly unlimited opportunities to get it right; debtor attorney fees are overwhelmingly approved for the full fee request without itemization (\$3,500 - \$4,000 for a Chapter 13 in IL,) while in some courtrooms, creditor attorney fees in excess of \$350 have to be itemized & are routinely cut.
3. Debtors' attorney expectations of Creditor's attorneys
 - a. Unlimited continuances to obtain info or funds from their clients & unlimited opportunities to amend the petition, schedules &/or Chapter 13 plan.
 - b. Minimal fees charged for filing MFRs, Objections, Claims, etc., despite number of court appearances

- c. Assistance with additional loss mitigation efforts & continued pursuit of loan modifications
 - d. Generous repayment agreements on post-petition mortgage defaults
4. Partner expectations of a Creditor's attorney
- a. That the practice will be profitable
 - b. That the practice will highly leverage technology
 - c. That the amount spent on computer systems & IT support will be exorbitant
5. Specific Issues Facing a Creditor's attorney
- a. All of the above
 - b. Clients following "outside" counsel guidelines
 - c. Clients not responding timely to document and information requests, but nonetheless charging grade demerits for the attorney's failure to immediately file documents and pleadings. This results in continuous "touching" of the file for monitoring purposes taking resources. We will not file until we have all necessary documents.
 - d. Different teams at different servicers. So you can talk to several different teams during the life of a case.
 - e. Fixed fee payments for all services with no reimbursement for costs
 - f. Attorney fees slashed by judges
 - g. Continuous, pre-confirmation Chapter 13 plan reviews & docket reviews for the filing of modified plans due to stealth claim treatment by debtors' attorney & lien stripping issues
 - h. Ongoing review of lien stripping and cram-down adversaries, motions and plan provisions (each judge has different requirements on what should be filed,) including continuous checking of the court docket for improperly noticed pleadings
 - i. POC preparation and needing breakdowns from the client, all of which are customized

- j. Servicers referring POC preparation to one firm while sending objections to plan confirmation to another firm.
- k. Having to file objections to the Chapter 13 plan arrearage figures.
- l. Having to constantly review Chapter 13 plans every 30 days for up to 5 years with no fee.
- m. Repeated loss mitigation requests, including requests for permanent loan modifications & loan modifications over only the life of the Chapter 13
- n. Checking the accuracy of the information from the clients on MFR cases
- o. Supervision of staff work & use of attorney log-on & password in electronic filing
- p. Naturally, the ethical issues
- q. Bankruptcy Rule 9011 (Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers) and 28 U.S.C. §1927 (Counsel's Liability for Excessive Costs)

Balancing the Practice of Consumer Bankruptcy Law and Running a Business: A Frank Discussion of Issues Facing Debtors' Attorneys When Balancing the Need to Run A Business and Counsel Clients

1. Asset Investigation and Disclosure:

- A. Can you trust your client's representations?
- B. How much investigation is required?
- C. How to investigate for troublesome assets such as Personal Injury suits and EEOC claims.

2. Pre-Bankruptcy Planning:

- A. Where is the line between zealous advocacy for your client and improper pre-bankruptcy planning?
- B. Pre-filing transfers?
- C. Pre-filing conversion of property to exempt property?
- D. Re-budgeting with an eye toward means test allowed deductions?
- E. Pre-filing title loans in light of *Ransom*.

3. Attorney's Fees:

- A. In Chapter 7s? What if there is unexpected and extensive litigation required in the Chapter 7?
- B. Ethical or legal obligation to represent a client in parallel state court matters.
- C. Balancing the desire to get paid in full up front with the need of the client to file within a particular time frame.
- D. Collection of unpaid attorneys fees in a dismissed Chapter 13, in state court? In a subsequent Chapter 13?

4. Discharge and Dischargeability issues

- A. Should client file if they may face discharge or dischargeability issues? Checking prior cases and discharge time frames. Advising on risks of denial of discharge or exception from discharge.
- B. Credit card issues and negotiating to settle claims.

C. Representation in adversary proceedings. Negotiating separate fee agreement, filing same under local rules.

D. Advising clients with possible criminal issues. Should they file or not?

E. Are there malpractice issues if you miss a problem?

5. Advising clients with assets.

A. Obtaining and providing appraisals for assets with possible equity. Claiming exemptions to minimize equity.

B. Negotiating with trustees for Debtor to buy assets net of exemptions.