2018 Annual Spring Meeting

CONCURRENT SESSION

Consumer: Threats To and Opportunities For the Consumer Practice

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2018

THREATS TO AND OPPORTUNITIES FOR THE CONSUMER PRACTICE

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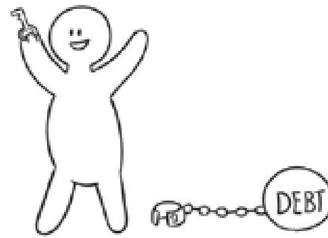
Pro Bono in the Digital Age: Upsolve

UPSOLVE



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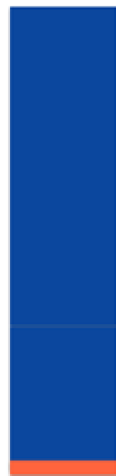
UPSOLVE

The Problem



19,200,000
would benefit

3% filed in 2016

Sources: M. White, *Why Don't More Households File for Bankruptcy?*, Journal of Law, Economics, and Organization (1998), US Courts 2016

3

The Problem

Too hard to file unassisted

Lawyer costs $1,500

Legal aid can only serve a fraction of demand

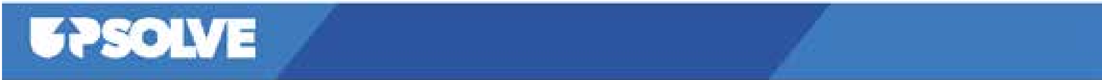
4

Mission

Upsolve aims to multiply the number of legal aid clients who get a fresh start through Chapter 7 bankruptcy.

2

5



TurboTax for pro bono bankruptcy

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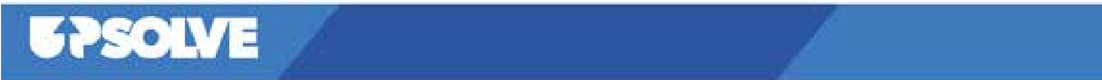


Product

UPSOLVE About Contact Team Donate

Follow these Steps to File for Bankruptcy

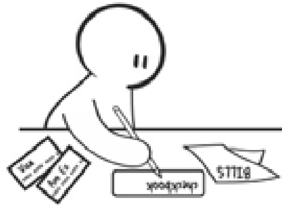
Have questions? Contact us

Step 1	List Your Creditors
Step 2	Upload Documents
Step 3	Pre-Filing Course
Step 4	Take Survey
Step 5	Attorney Review + File
Step 6	Post-Filing Course
Step 7	Prepare for Court

7

Product

→ Do you have over $10,000 in credit card debt and medical bills?*



Y Yes

N No

8

George

Anne

Dionne

9

UPSOLVE

Test Phase

Discharged over $2 million

Over 50 fresh starts

Diagnosed 1000 debtors

10

UPSOLVE

States with Upsolve Applicants

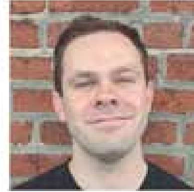
11

11

Team

Jonathan Petts
Chief Executive Officer

Rohan Pavuluri
Chief Product Officer



Kevin Moore
Chief Technology Officer

14

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Select Advisors

Nick Sinai
Fmr. U.S. Deputy CTO

Prof. Jim Greiner
Harvard Law School

Hon. Henry Callaway

Hon. Allan Gropper

Hon. Robert Gerber

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Funding

14

Goals

Cement partnerships

Expand to 50 states

Erase 30M in debt

15

Hear from our users...

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Market Issues Affecting the Consumer Practice

Market Issues Affecting the Consumer Practice

I. Practical economics of a consumer practice

a. Large proportion of consumer attorneys are solo practitioners or at a small firm

i. Time needed to meet with client to make sure that all regulatory and administrative requirements are met can be substantial.

1. If the flat fees charged were looked at as an hourly billing, it would be very small in comparison to other practice areas
2. Attorneys at such firms often struggle with overhead and other costs that eat up time and income

ii. Clients have little to no ability to pay fees up front for Ch. 7

1. Many courts, such as Kansas, have interpreted Lamie v. United States Trustee, 540 U.S. 526 (2004), as requiring fees to be paid in full before filing a Ch.7 bankruptcy.
2. In some jurisdictions, the UST will pursue attorneys who attempt to collect Ch 7 fees after filing.
3. This can lead to Ch. 13 where only debt being paid is the attorney
   a. Berliner v. Pappalardo (In re Puffer), 674 F.3d 78 (1st Cir. 2012)
   b. Sikes v. Crager (In re Crager), 691 F.3d 671 (5th Cir. 2012)
   c. In re Brown, 742 F.3d 1309 (11th Cir. 2014)
   d. All 3 of these courts held that a fee-only scenario is not *per se* prohibited by the Code

b. Issues with consumer bankruptcy "mills"

i. Allegations that the attorneys in these firms do not fulfill their legal and ethical duties and that responsibilities are pushed onto paralegals or other non-attorney personnel

ii. Allegations that the attorneys are unnecessarily short-filing petitions and have not done appropriate diligence before filing

iii. Cases by UST against Upright Law

1. Robbins v. Delafield, et al., Adv. No. 16-07024 (Bankr. W.D. Va. Feb. 12, 2018)
2. Robbins v. Morgan, et al., Adv. No. 16-05014 (Bankr. W.D. Va. Feb. 12, 2018)

iv. Cases by UST and Court against Critique Services, LLC

1. In re Reed, et al., Case No. 14-44818-705 (Bankr. E.D. Mo. April 20, 2016) – 250 page opinion finding fraud, false statements to the court, theft from the estate and the unauthorized practice of law

c. Consumer practices are being impacted by increased number of pro se filers

i. Change to bankruptcy forms on 12-1-15

1. At NABT Annual Meeting in summer of 2015, the forms committee explicitly stated that the forms were modified to make it easier for pro se filers to fill them out.

Enforcement Issues

I. Enforcement

a. As noted herein, consumer bankruptcy practitioners face intense market price point pressure. Most notably, the cost of providing competent consumer debtor representation is in constant conflict with what the majority of potential consumer debtors are able to pay for those services. As a result, the more "requirements" that are placed on a consumer practitioner, the less likely it is that the consumer practitioner can sustain its economic business model and continue to provide acceptable legal services to its consumer debtor clients.

b. "Requirements" can come in various forms, including, but not limited to:

i. The Bankruptcy Code and Rules (i.e., the BAPCPA amendments, which many see as "hurdles" deliberately placed into the process to make it harder for consumer debtors to file bankruptcy, and make it more costly and harder for consumer practitioner to represent them).

ii. State law rules of professional conduct.

iii. Guidelines and other positions from the Office of the United States Trustee and Chapter 13 Trustees.

iv. Local Rules and case law from local Bankruptcy Courts.

c. Many of these requirements, including those set forth in the Bankruptcy Code and Rules, have so-called gray areas, where interpretive positions, whether set forth by the Bankruptcy Court (or any appellate courts), the United Trustee or others, will serve to drive consumer practitioners out of the practice if not balanced with the practical difficulties of the consumer practice. This will be detrimental to consumer debtors, generally, who will then become increasingly reliant on questionable petition preparers and/or will proceed with their bankruptcy filing on

a pro se basis. This harms both consumer debtors and the bankruptcy process generally.

i. An example of this issue is reflected by Section 528 of the Bankruptcy Code, which reads in relevant part:

A debt relief agency shall – (a) not later than 5 business days after the first date on which such agency provides bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explain clearly and conspicuously –

* * *

(b) provide the assisted person with a copy of the fully executed and completed contract . . .

ii. Section 528 clearly requires a debt relief agency to send a prospective consumer debtor an executed engagement letter within five business days of providing the consumer with bankruptcy assistance services.

iii. However, Section 528 does not expressly state that the five business day time limit applies to execution of the engagement agreement by both the lawyer and the client.

1. It has been argued by some that the five business day requirement applies to the execution of the engagement agreement by both attorney *and client*, though it is not clear from the statutory language that was the intent of Section 528.

2. Client responsiveness is an issue in all representations, but particularly so in the consumer practice. This means that the more restrictive interpretation identified above, namely that the consumer attorney must also receive the executed engagement letter from the client within five business days, increases the likelihood of the consumer attorney being in violation of Section 528(a) and (b) through no fault of their own, and despite diligent follow up with their client. *See In re Eskew,* 2012 WL 4866687, at fn.2 (Bankr. C.D. Ill. 2012).

3. As such, a practical interpretation and enforcement of the Section 528(a) and (b) requirements would be that the five business day rule applies only to the provision of the agreement to the client executed by the attorney. This tenable position would still address the disclosure concerns that are at the heart of this requirement, while not placing the consumer attorney in the position of violating section 528 as a result of the inaction of their client. In addition, it would eliminate the apparent necessity of terminating a client relationship if a client did not return the engagement letter within the proscribed five business day period, and, presumably, having to start the process all over again if the consumer practitioner was "reengaged" by the client.

4. A similar issue arises under the definition of "bankruptcy assistance services," the provision of which is the trigger point for

the commencement of the five business day period and is subject to multiple interpretations. *See, e.g. In re Humphries,* 453 B.R. 261, 267 (E.D. Mich. 2011).

d. Parties Relevant to this Threat (Excluding the Consumer Practitioner)

i. State Bar Associations/Ethics Boards

1. It is understood by most bankruptcy practitioners that the Rules of Professional Conduct were primarily drafted in the context of traditional two sided disputes, where adverse parties are usually delineated by a bright line, and are not as easily applied to multi-party litigation such as bankruptcy cases that have many gray areas as to which parties are adverse to others at any particular time. As such, the rote application of the Professional Rules of Conduct without regard to the practicalities of the bankruptcy practice can harm all bankruptcy practitioners.

2. One of the areas of state professional conduct rules that is often at issue in the consumer practice is the use of para-professionals and other non-attorneys on client matters, and what constitutes proper supervision of those non-attorneys. Proper supervision of non-attorneys is necessary, particularly in the consumer debtor practice where para-professionals and other non-attorneys often work with clients to assist them in gathering information required for a bankruptcy filing and/or preparing and reviewing necessary papers with clients. However, the concept of proper supervision is a

subjective term that is often in the eye of the "enforcer." To the extent that rules about attorney supervision are applied unilaterally to all attorneys without regard to the necessities of, and standard of practice in a particular area of law, it can place an unrealistic burden on that area of practice.

ii. Office of the United States Trustee/Chapter 13 Trustees

1. Whether a coincidence or not, since the enactment of BAPCPA, the Office of the United States Trustee appears to have increased its enforcement activities with regard to consumer bankruptcy attorneys (which is not surprising, as that seems to have been one of the goals behind BAPCPA). This perceived shift in focus seems to be at the expense of the Office of the United States Trustee's effort to work collaboratively with consumer practitioners to make the consumer bankruptcy process work better for all of its constituents.

2. The enforcement issue can be problematic for consumer practitioners, as the standard fee in each of their cases is often less than it would cost to prepare even a basic response to an enforcement action. Accordingly, a consumer practitioner can easily be "litigated to death" by parties such as the United States Trustee or Chapter 13 Trustees who have the ability to file enforcement actions on the same issue in multiple cases. This threat is exacerbated by the fact that neither the Office of the

United States Trustee nor Chapter 13 Trustees have the same economic pressure points as the private consumer practitioner.

3. In addition, some of the enforcement actions brought by the United States Trustee and/or Chapter 13 Trustees against consumer practitioners are based on extreme readings of the Bankruptcy Code and Rules, which are neither necessary nor otherwise mandated by the language of the Bankruptcy Code and Rules itself.

   - For example, please see the Section 528 discussion set forth above.
   - Another example lies in Rule 2016 and other related compensation disclosure provisions of the Bankruptcy Code and Rules. Those provisions require the disclosure of the amount and date of payment of fees received (or to be received) on account of the debtor representation. These provisions are silent on whether that means installment payments should be reflected in the aggregate or on a piecemeal basis, and also be broken down by particular date or the range of payment dates. In certain regions, the United States Trustee has taken the position that disclosure of the total amount paid, if paid in installments, must be broken down by installment and set forth the amount and date of each installment payment. This becomes an

arduous task that does not appear to serve any particular purpose other than creating an additional burden on the consumer practitioner, particularly in those districts and cases where installment payments for a portion of attorneys' fees can continue post-petition.

- Similarly, certain Chapter 13 Trustees have taken the position that if payment of attorney's fees are incorporated into the Chapter 13 Plan, then that constitutes a change in payment terms that must be disclosed in a new disclosure (and possibly in a new agreement with the debtor). Setting aside all other issues with this position, it too seems to do nothing more than place an additional burden on counsel, as the information that would be disclosed in the additional disclosures and client agreement would already be disclosed (and agreed to by the client) as a result of the Chapter 13 plan.

4. Ultimately, the Office of the United States Trustee and Chapter 13 Trustees, if they so choose, have the ability to render the practice of consumer bankruptcy law economically unfeasible for most consumer practitioners. This would be a terrible blow to the consumer bankruptcy process and the concept of access to justice, as it would inevitably result in more consumer debtors turning to petition preparers for assistance or choosing to file for bankruptcy

protection pro se. However, this threat could be mollified with a more collaborative effort by the United States Trustee, Chapter 13 Trustees and consumer attorneys – through which all constituents work together to address compliance issues for the betterment of the entire system. In line with this view, it would be reasonable to consider implementation of a process similar to that imposed under Rule 9011 that requires an opportunity for enforcement issues to be resolved outside the Court prior to the filing and presentation of an enforcement action. Such a rule would serve to limit the filing of enforcement actions to those necessary to address immediate risk of harm to the public, or compliance issues that cannot be resolved by agreement of the parties after a legitimate effort to reach such an agreement.

iii. The Courts

1. Obviously, the Bankruptcy Courts (and applicable appellate courts) play an important role in the enforcement of the Code and Rules as they pertain to consumer practitioners.
2. As such, the Bankruptcy Courts have the ability to interpret the Code and Rules within the context of the realities of the consumer practice, and can temper the detrimental effect of burdensome, unnecessary legal positions.
3. Similarly, the Bankruptcy Courts also have the ability to avoid permitting bad facts make bad law – by not allowing the legitimate

need to sanction or otherwise reprimand a particular consumer practitioner or firm create per se rules and punishments that may not be necessary in all instances of non-compliance and, if enforced across the board, could cause great harm to the consumer practice generally.

Chapter Choice, Attorneys' Fees & Race

Chapter Choice, Attorneys' Fees & Race[1]

I. Bankruptcy Chapter Choice

A. Chapter 7 versus Chapter 13

1. In chapter 7, non-exempt assets are sold for the benefit of creditors and debtor receives a relatively quick discharge.[2]

2. In chapter 13, debtors keep all their assets but must pay their "disposable income" to their creditors over a period of either three years or five years under a chapter 13 plan.[3] If all plan payments are completed, the debtor is granted a discharge at the end of the applicable period.

   a. Chapter 13 is often chosen by a debtor because it permits the debtor to retain collateral (usually a home or car) and make up over time any existing arrears on their debt secured by such collateral.[4]

3. Data suggest that debtors filing for relief under chapter 7 are more likely to obtain a discharge than under chapter 13.

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[1] The title and analytical framework for this discussion outline derive from the recent article by Professors Pamela Foohey, Robert M. Lawless, Katherine Porter and Deborah Thorne, "No Money Down" Bankruptcy, 90 S. Cal. L. Rev. 1055 (2017) [hereinafter "No Money Down"].

[2] *See* Katherine Porter, The Pretend Solution: An Empirical Study of Bankruptcy Outcomes, 90 Tex. Law Rev. 103, 107, 116 (2011) [hereinafter "Pretend Solution"] (on average chapter 7 debtors receive a discharge within 4 months).

[3] *See* Jean Braucher, Dov Cohen and Robert M. Lawless, Bankruptcy and Race: Is There a Relation?: Race Disparity in Bankruptcy Chapter Choice and the Role of Debtors' Attorneys, 20 Am. Bankr. Inst. L. Rev. 611, 613 (2012).

[4] *Id.* Although chapter 13 is often considered the most favorable means of holding on to a home or car that serves as collateral for a debt, "the reality is that chapter 7 debtors who are or who can become current can typically also do so, either with court protection or by creditor acquiescence in continuation of payment or creditor agreement to a reaffirmation of the debt." *Id.* at 612-13.

a. Multiple studies have shown that only about one-third of consumers who enter chapter 13 actually complete their payment plans and obtain a discharge.[5]

b. By contrast, about 95% of consumers that filed a chapter 7 case received their discharge, usually within 4 months.[6] Chapter 7 is more popular nationwide, accounting for two-thirds of all bankruptcy filings.[7]

4. Research shows that a chapter 7 liquidation case is less expensive than a chapter 13 reorganization case. Following the enactment of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), one study found that the mean attorney fee for a chapter 13 case is $2,564.[8] The same study found that post-BAPCPA the mean attorney fee for a chapter 7 case was about $1,072 for asset cases and $968 for no asset cases.[9]

B. “No Money Down” Bankruptcies

1. Professors Foohey, Lawless, Porter and Thorne recently have written about the phenomenon of “No Money Down” Bankruptcies, in which debtors opt to file a chapter 13 case—which is more expensive and less likely to result in a discharge—because they don’t have enough money to pay an attorney up front for a chapter 7 case.[10]

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[5] *See* Sara S. Greene, Parina Patel, and Katherine Porter, Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes, 101 Minn. L. Rev. 1031, 1032 (2017) & nn.3 & 4 (surveying prior research) [hereinafter “Cracking the Code”].

[6] *See* Foohey et al, No Money Down Bankruptcy, 90 S. Cal. L. Rev. at 1061; Jean Braucher, Dov Cohen, and Robert M. Lawless, Race, Attorney Influence, and Bankruptcy Chapter Choice, 9 J. Empirical Legal Stud. 393, 394 (2012) [hereinafter “Attorney Influence”]; Porter, Pretend Solution, 90 Tex. Law Rev. at 116.

[7] Foohey et al, No Money Down Bankruptcy, 90 S. Cal. L. Rev. at 1063.

[8] *See* Lois R. Lupica, The Consumer Bankruptcy Fee Study: Final Report, 20 Am. Bankr. Inst. L. Rev. 17, 30 (2012).

[9] *Id.*

[10] Foohey et al, No Money Down Bankruptcy, 90 S. Cal. L. Rev. at 1066-67.

a. The reason that attorneys require payment up front has its roots in *Lamie v. United States Trustee*, 540 U.S. 526 (2004), in which the Supreme Court held that only an attorney employed by a trustee in bankruptcy may be paid from bankruptcy estate funds.

   i. Further, an attorney's claim for unpaid fees existing as of the petition date is subject to discharge in the chapter 7 case itself. Thus, if an attorney is not paid in advance of a bankruptcy filing by a chapter 7 debtor, the attorney risks not being paid at all.[11]

b. "[S]ome bankruptcy attorneys have looked to chapter 13 as a way to help people who do not have the means to pay attorneys' fees in full prior to filing. It is common practice for debtors to pay their attorneys' fees through the chapter 13 plan." [12]

   i. Some attorneys require a chapter 13 debtor to pay a portion of the fee upfront, with the balance being paid through the plan. [13]

   ii. Some attorneys allow their clients to pay all of their fee through the plan. [14]

c. Professors Foohey, Lawless, Porter and Thorne suggests that this renders chapter 13 "suboptimal" for certain debtors.[15]

   i. Where the debtor has few unencumbered assets relative to the amount of the debt outstanding "chapter 13 plans effectively only pay attorneys' and other fees."[16]

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[11] *Id.*

[12] *Id.* at 1068-69.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 1069.

[16] *Id.*

ii. Filing such cases as chapter 7 cases likely would have resulted in the categorization of such cases as "no asset" cases and the prompt entry of a discharge.[17]

iii. They also note the criticism of courts that have described them as "veiled chapter 7 cases" benefitting no one other than counsel.[18]

d. Their research indicates that people who paid "no money down" to file under chapter 13 had financial characteristics making them look more like the typical chapter 7 debtor, rather than the typical chapter 13 debtor. The "no money down" chapter 13 debtors:[19]

i. Had assets "worth far less than those who paid at least a portion of attorneys' fees before filing chapter 13";

ii. Owed "their creditors less than those people who filed chapter 7"; and

iii. Were "less likely to be to be homeowners than debtors who filed traditional chapter 13."

e. The research also indicates that "no money down" chapter 13 cases are more prevalent in judicial districts in which debtors are more likely to file chapter 13 cases.[20]

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[17] *Id.* at 1069. Among the case sampling analyzed, dismissal of "no money down" chapter 13 cases was five times higher than the percentage of chapter 7 cases dismissed. The authors observed that if these debtors had filed chapter 7 they likely would have received a discharge. *Id.* at 1093.

[18] *Id.* at 1069 & nn.74-76 (citing cases).

[19] *Id.* at 1078.

[20] *Id.* at 1080.

C. Racial Disparity.

1. Bankruptcy Outcomes and Chapter Choice.

a. Research indicates that African Americans are more likely to file for bankruptcy relief than white Americans.[21] But they are less likely than whites to receive a bankruptcy discharge.[22] For instance, one study of data from bankruptcies in 2001 showed that "Overall, 69.1% of blacks who entered bankruptcy in 2001 eventually obtained a discharge, compared to 87.5% of whites."[23]

b. A study published in 2017 of chapter 13 cases, in particular, found that "Blacks have less than half the chance of bankruptcy success as non-blacks. . . . More than amount of debt, prior bankruptcies, or having a job – all features that the bankruptcy system does account for in considering a person's eligibility for chapter 13 – race matters."[24]

c. One factor that has received considerable attention is chapter choice, i.e., the disproportionate selection by African American debtors of chapter 13, which generally is more costly and less successful in realizing a bankruptcy discharge. One study found that for "a debtor with median characteristics, an African American is about twice as likely to file Chapter 13 as compared to debtors of all races, even after controlling for a multitude of financial, demographic and legal factors."[25]

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[21] *See* Paul Kiel and Hannah Fresques, Data Analysis: Bankruptcy and Race in America, ProPublica (September 27, 2017) [hereinafter "Bankruptcy and Race"].

[22] *See* Rory Van Loo, A Tale of Two Debtors: Bankruptcy Disparities By Race, 72 Alb. L. R. 231, 232 (2009) (citing prior research); *see also* Paul Kiel and Hannah Fresques, How the Bankruptcy System Is Failing Black Americans*,* ProPublica (September 27, 2017).

[23] Van Loo, Tale of Two Debtors, 72 Alb. L. R. at 234 & n. 18 (citing the 2001 Consumer Bankruptcy Project).

[24] Greene, et al, Cracking the Code, 101 Minn. L. Rev. at 1036.

[25] *See* Braucher, et al, Attorney Influence, 9 J. Empirical Legal Stud. at 395; *see also* Kiel and Fresques, Bankruptcy and Race, ProPublica (September 27, 2017) ("From 2008 through 2015, 72 percent of the filings in white zip codes were under Chapter 7, while debtors in black zip codes chose Chapter 7 only 49 percent of the time.").

i. The same study found that after 10 to 14 months, more of the chapter 13 cases filed by African Americans had been dismissed or converted to chapter 7, compared to those of other races, 36.2 percent to 25.5 percent.[26]

ii. Another study found that "for debtors living in black areas, the odds of having a Chapter 13 case dismissed were about 50 percent higher those of debtors living in white areas."[27]

d. Research indicates that one of the reasons for the disproportionate selection of chapter 13 by African Americans was "chapter steering" by attorneys. For instance, one study found that attorneys recommended Chapter 13 for black couples 47 percent of the time and only 32 percent of the time for white couples.[28]

i. Attorneys also were more likely to recommend chapter 13 to African American clients expressing a preference for chapter 7 (44.8 percent) than they were to

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A follow-up analysis to the study by Braucher, Cohen and Lawless showed (i) that this race effect exists across a broad range of incomes, although it recedes at the extremes of the income distribution and (ii) although Black debtors are nearly three times more likely than non-Black debtors to have had a prior bankruptcy, their inclination to select chapter 13 was not a consequence of this circumstance. *See* Theodore Eisenberg, Bankruptcy and Race: Is There a Relation?: The CBP Race Study: A Pathbreaking Civil Justice Study and its Sensitivity to Debtor Income, Prior Bankruptcy, and Foreclosure, 20 Am. Bankr. Inst. L. Rev. 683, 699 (2012).

[26] *See* Braucher, et al, Attorney Influence, 9 J. Empirical Legal Stud. at 421.

[27] Kiel and Fresques, Bankruptcy and Race, ProPublica (September 27, 2017). The same study found generally that for such a debtor, the odds of having a bankruptcy case under any chapter dismissed "were about twice as high as those of debtors living in white areas." *Id.* In one judicial district, those odds were *four* times as high. *Id.* (discussing the Northern District of Illinois).

[28] *See* Braucher, et al, Attorney Influence, 9 J. Empirical Legal Stud. at 411-413, 420 (discussing why a substantial portion of the racial gap in chapter choice can be attributed to attorney recommendations and attitudes).

recommend chapter 13 to whites who actually expressed a preference for chapter 13 (37.5 percent).[29]

e. Research data also suggest that this disparity in attorney recommendations is based on differing standards and expectations of attorneys based on the race of their clients.

i. Attorneys "are more likely to view African Americans as competent when they prefer Chapter 13 and whites as competent when they prefer Chapter 7. They are also more likely to view African Americans as having good values when they choose Chapter 13. For whites, [attorneys] are more likely to view them as having good values if they prefer Chapter 7 or have no preference than if they express a preference for Chapter 13.[30]

ii. "Further, attorneys are far more likely to assume that African Americans and those with no race specified (as compared to whites) prefer the outcomes provided by Chapter 13. They are more likely to accede to whites' assumed preferences for Chapter 7 (and are relatively reluctant to follow the assumed preferences of African Americans). And to the extent that attorneys believe in guiding the client toward the right choice, they guide white clients toward Chapter 7—but do not do so for African-American clients."[31]

f. But researchers "caution that correlation is not causation." [32] As one study explained: "As an empirical matter, not just a theoretical one, blacks do not get the debt relief from bankruptcy that non-blacks enjoy. . . . While we are confident

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29 *Id.* at 421.

30 *Id.*

31 *Id.* Although attorneys seem to "believe that their African-American clients differentially prefer Chapter 13, [it] is unclear whether they are correctly reading their clients when making this assumption. To our knowledge, there is at present no research to document that such a racially-based preference exists." *Id.* at 423.

32 Greene, et al, Cracking the Code, 101 Minn. L. Rev. at 1062.

in the association between being black and not completing chapter 13, our data cannot explain the reason for that outcome."[33]

2. Race and "No Money Down" Bankruptcies.

    a. The recent work published by Professors Foohey, Lawless, Porter and Thorne confirms not only that African Americans are more likely to file chapter 13 cases, but that they are more likely to file "no money down" chapter 13 cases than debtors of other races.[34]

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[33] *Id.* (discussing, among other theories, the possibility that black debtors are steered into chapter 13 even though it is not suited for their financial profile).

[34] *Id.* at 1082.