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The Basics of Representing Debtors and Creditors In Consumer Bankruptcy Cases

Written by:
John C. Akard

The Basics of Representing Debtors and Creditors

In Consumer Bankruptcy Cases¹

By John C. Akard
United States Bankruptcy Judge (retired)

Please read the attached article “Five Lessons of Practicing Bankruptcy Law” by Ron Satija (used by permission of the author).

First a question: **Who is your most important client?** Think about that for a moment. Is your most important client:

- Your Aunt Sally?
- Your best buddy from high school?
- The client who is going to pay a big fee?

The answer is – the persons sitting across the table from you at that very moment -- To those persons, they are the *most important clients you will ever have!*

- The clients have probably been worrying about their financial problems for years. The clients could have gone elsewhere, but they did you the honor of coming to you to find a solution to those financial problems. You have the training and skills to help them.²
- Most clients come into your office like the character in the comics with a cloud over his head. You have the ability to lift the cloud from over the clients’ head and direct them toward a new beginning in their financial life.
- Don’t make light of the clients’ problems or tell them “this is a routine bankruptcy.” It is a traumatic event in their lives and you need to show them that you understand their hurt and empathize with them.³

Counseling with the debtor is one of the most important things you will do in a bankruptcy case.

- Most clients are emotionally shattered when they come to your office. First you need to **LISTEN** to them and let them vent. This will go along way toward calming them down and thus begin their road to recovery.

¹ The thrust of these comments is toward a Chapter 7 case, but many of the principles apply in all bankruptcy chapters. These comments are largely based upon lessons learned during several years of representing debtors and creditors in El Paso, Texas before I became a Bankruptcy Judge. When I was appointed a Bankruptcy Judge, my father, who was not a lawyer, told me he was glad that I had “finally gotten a steady job.”

² When you go to a doctor, you want the doctor to feel that your problem is important. Your clients want you to feel that their problem is important.

³ I taught part time at Texas Western College [now the University of Texas at El Paso]. One student told me of his divorce. His lawyer [a competent and highly respected El Paso lawyer] tried to calm the student by telling him it was a “routine divorce.” To the lawyer it was; there were no children and little property. But that comment devastated the student. The divorce was a very traumatic event in his life and he wanted the lawyer to appreciate that.

- Ask them to explain what problems they are having. This will often signal problems you will have to handle in their case. Again: **LISTEN SYMPATHETICALLY.**
- Explain the benefits and drawbacks of filing for bankruptcy, including the possibility of nondischargeable debts or denial of the discharge.
- GET PAID or make arrangements to get paid⁴ and then give your clients a (procedure) sheet with items that need to be done before filing. Go over that sheet carefully with them and let them take it as a reminder.
- Point out that any property the debtor⁵ in bankruptcy becomes entitled to inherit within 180 days of the filing becomes property of the bankruptcy estate §541(a)(5).⁶ Your clients should talk to parents or anyone else who might leave them an inheritance. That person should change his/her will to leave the property in trust for the clients' children or to someone else. After the 180 day time passes and after your client gets a discharge, that person can change the will again, making your client the beneficiary.⁷
- Be on the lookout for “overlooked” assets or interests. For example: check to make sure your client is not the beneficiary of a trust [either currently or upon the happening of a certain event], or of any remainder interest in property or property in which they have an interest but do not consider to be theirs.

The most important documents in any bankruptcy case are the schedules. Time spent getting the schedules complete and accurate will save lots of trauma, time and expense later. You don't want to have to amend the schedules later because of something overlooked or something raised at the creditors' meeting.

- **Getting the information** – in addition to the “procedure” sheet described above,
 - Give your clients a sheet to help list their assets, with the information needed in the schedules.
 - Give your clients a sheet that basically asks the questions in the statement of financial affairs. Don't just give them the bankruptcy forms. Those are written in legal ease; use plain English. My experience is that the clients will bring back about 1/3 of the information needed, but it will get them to thinking. Your secretary can use that information to prepare a draft of the statement of financial affairs for you go over with the clients. Sometimes it takes about three times going over the questions with the clients to get all of the information.

⁴ Attorney's fees for filing bankruptcy become a debt when the client hires the lawyer. If they are not paid before filing, they are discharged along with the other debts of the client.

⁵ The person or entity that files a bankruptcy case is called a “debtor” § 101 (13). References to section numbers are to the Bankruptcy Code, 11 USC §101 *et. seq.*

⁶ Note this is measured by the time the debtor becomes entitled to the property; not the date (usually later) when the debtor actually gets the property. This section also includes property received in a divorce property settlement.

⁷ If the will is lengthy, the testator may want to make a codicil. The codicil can be revoked after the 180 days and the discharge is granted. The testator might also make your client the beneficiary of a spendthrift trust, but the distributions to your client should be clearly limited (income for life – for example).

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Also available as part of the eCourse

[Consumer Bankruptcy Primer: The Basics, plus Tips from the Bench and Bar](#)

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