

UT Law CLE
17th Annual Conference on Consumer Bankruptcy Practice

Ethics for Judges and Trustees

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ETHICS FOR BANKRUPTCY TRUSTEES

FACT SCENARIO #1

Gil Bates recently went through a divorce and had to file Chapter 13. His ex-wife, Belinda, calls the Chapter 13 Trustee's office and is somehow able to speak to the Trustee directly. She says, "I can't believe Gil filed bankruptcy, he owes me so much money! I called his lawyer's office and they told me to call you, that you can help me since you represent the unsecured creditors. So what should I do? And by the way, I know for a fact he has more money than he says he has because his new girlfriend has been driving a Porsche all over town! And let me tell you about her!!!!..."

- Question 1: Does the Trustee represent Belinda as a general unsecured creditor?
- Question 2: Can the Trustee give Belinda any legal advice? How to file a claim?
- Question 3: Can the Trustee ask Belinda about her knowledge of Gil's financial affairs?
- Side Question: Who does the Trustee's staff attorney represent? The Trustee or the Trusteeship?

ETHICS FOR BANKRUPTCY TRUSTEES

FACT SCENARIO #2

Gil Bates is ANGRY. The Court just denied confirmation of his Chapter 13 Plan after sustaining the Trustee's bad faith objection for failing to disclose a Porsche, a beachside condominium and four-wheeler (in East Texas, all the debtors want to keep their 4-wheelers). He calls the Trustee's Office and screams, "How dare you put all my business in public! My attorney told me it's your fault that I might lose everything. You know what? I think you're stealing my money! I want an accounting of every cent I've sent you! I want to see who you've paid! And you better tell me what I have to do to get this Plan confirmed!"

- Question 1: Can the Trustee or anyone from the Trustee's office even talk to Gil since he is represented by an attorney?
- Question 2: Can the Trustee give Gil a record of his payment history and disbursement record? Is the Trustee required to provide Gil with these documents?
- Question 3: Can the Trustee explain his confirmation objections to Gil and potential resolutions?

Unrelated but Important Question: If the Chapter 13 Trustee raises his or her fee, does that mean they are getting paid more? How are Chapter 13 Trustees compensated?

ETHICS FOR BANKRUPTCY LAWYERS

FACT SCENARIO #1

Attorney represented Husband and Wife in filing a joint Chapter 13 bankruptcy petition. Husband disappeared, leaving Wife responsible for the entire Chapter 13 payment plan. The plan payment includes payments for vehicles for both Husband and Wife. Wife called Attorney and informed him that Husband had disappeared and Wife could no longer make the Chapter 13 plan payments alone. She asked Attorney for his advice.

Sub scenario A: Attorney believes that it would be best for Wife if she stopped making the Chapter 13 plan payments. The case would be put on the dismissal docket and notice of dismissal would be sent to both spouses. If Husband does not respond to the notice of dismissal, the court has the option of dismissing the case as to Husband and retaining it as to Wife. Attorney can then modify the plan for Wife to include only the debts for which Wife is liable. If Attorney cannot assist Wife in this way, Wife will have to hire another lawyer at an added expense to her.

May Attorney continue to represent Wife?

ETHICS FOR BANKRUPTCY LAWYERS

FACT SCENARIO #1

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Sub scenario B: Attorney believes to best help Wife, the joint case should be severed, the Wife's case should be given a new case number and the old case number should be left with Husband. This would allow Wife to address her obligations in her case and Husband would be left to address his obligations in his case. Failure to pay by either individual towards their plan would lead to the dismissal of the respective case.

May Attorney continue to represent Wife?

ETHICS FOR BANKRUPTCY LAWYERS

FACT SCENARIO #2

Husband and Wife hire Attorney to file a Chapter 13 bankruptcy petition. While the proceeding is pending, Husband and Wife separate and ultimately divorce. Husband and Wife want Attorney to continue to represent them jointly and they want to continue to pay creditors pursuant to the Chapter 13 plan. Husband and Wife have reached an agreement on how they will make the mortgage payment and the Chapter 13 plan payments. They believe that they can resolve amicably any other issues that may come up in the case. Attorney has discussed the potential conflict of interest that might arise due to his common representation. Husband and Wife indicated that they cannot afford to hire other lawyers and that they consent to the common representation.

1. May Attorney continue to represent Husband and Wife under these circumstances until an issue upon which they cannot agree arises?
2. Should Attorney get something in writing about the issue.
3. The law of privilege and disclosure requirements for a bankruptcy proceeding may be different than the ethical constraints on Attorney arising out of the Rules of Professional Conduct. In light of this, is Attorney required to ask the bankruptcy court for permission to stay in the case?

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First appeared as part of the conference materials for the
17th Annual Conference on Consumer Bankruptcy Practice session
"Ethics for Judges and Trustees"