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CONSUMER BANKRUPTCY

Lawyers File for Bankruptcy, Too

Attorneys Are Not Immune From Debt Problems

by Craig D. Robins, Esq.

At least once or twice a year, for the past twenty years, I have represented, as clients, debt-laden fellow attorneys with the filing of bankruptcy petitions. All jokes aside, attorneys are like everyone else - some have serious debt problems.

Typically, attorneys as clients ask me a number of particular questions. Can attorneys file for bankruptcy relief? Is doing so a violation of professional ethics? Can an attorney continue to practice law after filing?

Although all of my 80+ columns to date have dealt with providing you with information to help you assist your clients with their bankruptcy needs, this month's column is devoted to those of my brethren attorneys who may have their own overwhelming debt issues and are considering bankruptcy as

an option.

It Is Not Unethical for an Attorney to File for Bankruptcy. A Nassau County Bar Association Ethics Opinion directly addressed this issue and concluded that it is not unethical for an attorney to file for bankruptcy, and anyone who does may certainly continue to practice before the courts of the State of New York. Opinion 95-8 (1995).

A Lawyer Has a Constitutional Right to File for Bankruptcy. Article I, Section 8 of the United States Constitution provides that Congress shall have the power to establish uniform laws on the subject of bankruptcies throughout the United States. The Bankruptcy Code clearly provides



CRAIG D. ROBINS, ESQ.

that any person may voluntarily file a petition in bankruptcy. This means that anyone, even an attorney, can file for bankruptcy relief.

Law Students Can File, but Should Be Cautious. I have also represented a number of law students. With them, the concern is whether a bankruptcy would impede their admission to the Bar as they must be screened by the Character and Fitness Committee. Generally speaking, a bankruptcy filing does not, in and of itself, prevent admission to the Bar.

The New York Court of Appeals has addressed the issue of filing a petition for bankruptcy, as it reflects on the moral character of an applicant to the Bar. *Matter of*

Anonymous, 74 N.Y.2d 938, 549 N.E.2d 472, 550 N.Y.S.2d. 270 (1989) aff'd 79 N.Y.2d 782, 587 N.E.2d 286, 579 N.Y.S.2d 648 (1991). In *Anonymous*, the Court affirmed the denial of the applicant's admission. However, the decision was not based solely on the fact that the applicant had previously filed for bankruptcy. The Court held that, "A determination of unfitness must rest not on the fact of bankruptcy, but on conduct reasonably viewed as incompatible with a lawyer's duties and responsibilities as a member of the bar." (the Court concluded that the applicant therein lacked the "character necessary to discipline himself to control his standard of living and the amount of his indebtedness, thus showing a lack of financial responsibility necessary for an attorney") - *Anonymous*, 74 N.Y.2d 938 at 939, 550 N.Y.S. 270 at 272.

It should also be noted that Bankruptcy Code section 525 provides protection against discriminatory treatment to debtors. It follows that barring attendant circumstances surrounding a bankruptcy, it would be violative of the Bankruptcy Code to deny an applicant admission to the bar based solely on the fact that the applicant had filed a petition for bankruptcy. This section provides that a governmental unit may not refuse to grant a license solely because the applicant is or has been a debtor in bankruptcy.

Assets Unique to Attorneys that a Trustee Will Scrutinize. In Chapter 7 cases, trustees are motivated to look for non-exempt assets that can be liquidated and distributed to creditors. Chapter 13 trustees look for the same assets, but to determine the percentage a debtor must repay his unsecured creditors.

A trustee will therefore inquire about uncollected accounts receivable owed by clients, uncollected referral fees owed by

other attorneys, and pending personal injury cases with potentially large recoveries. If an attorney-debtor has his own practice, the trustee may inquire about the value of office equipment and any assets owned by the practice. If the attorney is a partner, the trustee will look at the value of the partnership interest. Depending on the situation, the trustee might want to also examine the attorney-debtor's financial books and records, which is something a trustee might do with any consumer filer who has his own business.

If the attorney-debtor is employed by a firm, the trustee might inquire about the likelihood of receiving bonuses.

Attorneys Who File for Bankruptcy Should Be Able to Continue Their Practices. Although a law practice is technically a non-exempt asset, it is a personal services business bound by ethics laws that a trustee could not realistically sell. Thus, sole practitioners filing for bankruptcy relief are usually able to continue their practices without any problem.

Unique Issues Attorney-Debtors May Encounter. Since attorneys have the potential for earning substantial income, both the case trustee and the Office of the United States Trustee, which is the governmental agency that oversees bankruptcies, may want to make sure that an attorney who files for Chapter 7 relief is doing so in good faith. In other words, they want to make sure the attorney-debtor will not be in a position to earn a hefty salary after filing that could have enabled him to make some payments to creditors. If that was the case, the attorney-debtor can still file for bankruptcy, but he would have to consider a case under Chapter 13 instead, which would involve a payment plan. Incidentally, almost all of the filings I have made representing other

attorneys were cases under Chapter 7.

Attorney-Debtors Should Not File Pro-Se. One trustee suggested that although an attorney-debtor can obviously represent himself, it would be much more advisable to be represented by counsel. Knowledgeable and experienced bankruptcy counsel will know the laws, practices, procedures and customs and would be in the best position to facilitate the case to a beneficial conclusion.

Will Attorneys Who File for Bankruptcy Be Treated Any Differently in Court? In my experience, trustees treat attorney-debtors the same way as any other debtor. Attorney-debtors do not receive any special treatment, nor are they disparaged or made to feel embarrassed in any way. If anything, trustees are able to communicate better with attorney-debtors because they both understand concepts and terminology pertaining to the practice of law.

Conclusion: Attorneys in Dire Financial Condition Should Consider their Bankruptcy Options. As long as there are no issues of dishonesty, fraud or deceit in filing a bankruptcy petition, attorneys with debtor problems should consider bankruptcy as an option.

Editor's Note: (revised 2008):
Craig D. Robins, Esq., a regular columnist, is a bankruptcy attorney who has represented thousands of consumer and business clients during the past twenty years. He has offices in Medford, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: CraigRobinsLaw.com.