



AMERICAN
BANKRUPTCY
INSTITUTE

2017 Midwestern Bankruptcy Institute

Consumer Track

Best Ethical Practices for the Consumer Lawyer

Richard P. Carmody, Moderator

Adams and Reese LLP; Birmingham, Ala.

Shelley L. Forrest

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Topeka*

Hon. Cynthia A. Norton

U.S. Bankruptcy Court (W.D. Mo.); Kansas City

Best Ethical Practices

*For the Consumer Bankruptcy
Attorney*



Richard P. Carmody, Birmingham, AL, Moderator
Shelley Forrest, Columbia, MO
Stan Hazlett, Kansas Disciplinary Administrator, Topeka, KS
Hon. Cynthia A. Norton, W.D. MO

Bankruptcy Attorney



Meets Client



Explains Duties

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

X

Signature of Attorney for Debtor

Date

MM / DD / YYYY

Explains Bankruptcy Crimes



BK Petition Signed & Filed



Undisclosed Assets?



§ 341-- Swears to Tell the Truth



Debtor's Facebook Page



I need wine, fast! I just found out my bankruptcy client is driving a brand new motorcycle. I remember now he paid me in cash! What should I do?

Lawyer Call to Debtor



.

Lawyer Call to Mother



.

Lawyer Call to Debtor



You



Ethical Issues



1: What actions is counsel ethically required to undertake?



#2: What if Debtor won't agree to amend?



#3: How much to disclose to the court?



#4: Continuing Crime? Crime/Fraud exception to confidentiality?



#5: Candor vs. Confidentiality?



CANDOR

#6: Is Anything Confidential in BK?



7: Was it OK to seek help from another lawyer about what to do?



#8: What if case is discharged/closed?

CASE CLOSED

Questions?



NCBJ/ABI PANEL DISCUSSION ON NON-DISCLOSURE OF ASSETS

A prospective debtor meets with his counsel to discuss filing a Chapter 7 petition. Counsel explains to him that such a filing requires a full disclosure of all of his assets, liabilities, and income in a sworn statement to the Bankruptcy Court and that counsel is required to certify that she has no knowledge after reasonable investigation that the information in the schedule is incorrect. She also explains that concealing assets is a bankruptcy crime and grounds for denial of a discharge.

The debtor fills in the schedules and gives his counsel originals of the documents that must be submitted. Counsel reviews the information for consistency and prepares the petition and schedules for filing.

The debtor does not disclose that his mother holds title to two mobile homes located in a local trailer park for which the debtor supplied the purchase money several years ago and that the mother gives him the monthly rental payments in cash each month. The debtor uses part of the cash to pay the property taxes on the mobile homes. He never deposits the rental payments in his bank account.

After the debtor receives the clerk's §342 Notice and the petition and schedules are signed and filed, the debtor and counsel appear before the U.S. Trustee at the first meeting of creditors. The debtor testifies under oath that the petition and schedules are true and correct. Again, there is no disclosure about the mobile homes and the debtor's arrangement with his mother.

Based on the debtor's disclosures, neither the Court nor the U.S. Trustee believe that grounds exist to pursue a dismissal or conversion under 11 U.S.C. §707(b). The debtor has not yet been granted a discharge, and his case is still active.

Subsequently, the debtor visits his counsel's office to retrieve his original records. One of counsel's staff members mentions to counsel that the debtor was driving a new Honda motorcycle. Counsel checks the debtor's Facebook page and sees a photo of the recently-purchased motorcycle. A quick check of the Department of Motor Vehicles records confirms his recent purchase with no lien on the title. She then remembers that the debtor paid his legal fee and filing fee in cash. She decides to inquire and calls the debtor. He tells her that he got the cash from his mother and provides his mother's name. Counsel calls the mother, and she discloses her role in managing the mobile homes for her son and paying him the rents. Counsel confronts the debtor with this information, and he states that his mother owns the trailers and that she is very generous. He does not see a need to disclose these assets on his bankruptcy schedules since his mother is the legal owner of the mobile homes and the rents.

1. What actions is counsel ethically required to undertake?
2. If the debtor refuses to amend his schedules to disclose his apparent equitable interest in the assets, what is counsel's next step?
3. If she files a motion to withdraw, how much information can she disclose?

4. Is this debtor's failure to disclose a continuing bankruptcy crime? Does the crime fraud exception to the confidentiality rules allow counsel's disclosure?
5. Does counsel's duty of candor to the Court override counsel's duty to preserve her client's confidences?
6. Can there be any client confidences with respect to assets, liabilities and income in a bankruptcy proceeding?
7. Would any of your answers be different if the debtor had already been granted a discharge? What if the case had been closed?