Consumer Track

Chapter 7 Panel

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HOW TO PROPERLY PREPARE A CHAPTER 7 CASE: HOW TO HAVE A SMOOTHER RIDE IN CHAPTER 7

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I. *How to properly prepare a chapter 7 case before filing it:*

Generally

Businesses are usually organized and managed to operate as ongoing entities. However, sometimes a business can reach a point where the entity cannot operate as a going concern and the best result is for the entity to cease operations, liquidate its assets, and settle its obligations, with any remaining resources distributed to its owners.

A liquidation may be a voluntary decision based on business or economic conditions, or an involuntary act brought about by an entity's creditors, the Bankruptcy Court or other parties in interest.

Liquidation Basis of Accounting – Overview

A liquidation is the process by which an entity converts its assets to cash or other assets and settles its obligations with creditors in anticipation of ceasing all activities. During the process of liquidation, cash and other assets are used to settle claims with any remaining assets distributed to the owners of the entity.

The need for relevant and adequate financial reporting is critical when business is liquidating, regardless of the reason for the liquidation. This is so because the needs or goals of users of the financial information of a liquidating business are far different from those of an ongoing entity with business concern. *See, FASB Concepts Statement No. 1*

For example, information about operating results and cash flows of a liquidating entity is not particularly relevant for the user of those statements. On the other hand, information about the liquidating entity obligations and the cash or other resources on hand that can be used to satisfy the obligations is particularly useful to the users of these financial statements. As such, the financial reporting of a liquidating entity must reflect the resources available to satisfy the obligations of the entity as well as the expected settlement of those obligations.

On 2013, FASB issued Accounting Standard Update (ASU) 2013-07, Liquidation Basis of Accounting, which amends Accounting Standard Codification (ASC) 205, Presentation of Financial Statements. The main objective of this amendment was to clarify when an entity should apply the liquidation basis of accounting, provide principles for the measurement of assets and liabilities in liquidation by an entity and to establish financial reporting requirements once an entity is in liquidation.

Liquidation Basis of Accounting - Applicability

An entity is required to use the liquidation basis of accounting to present its financial statements when it determines that liquidation is imminent, unless liquidation is the same as the plan specified in an entity's governing documents created at inception (e.g. Articles of Incorporation).

Liquidation would be considered imminent in either of the following situations:

- A plan of liquidation has been approved by the person or persons with authority to make such plan effective, and the likelihood is remote that either of the following will occur:
    - Execution of the Plan will be blocked by other parties
        - NOTE: If an entity is operating under a Chapter 11 proceeding, the liquidation basis of accounting would not apply, as liquidation only becomes imminent after the bankruptcy court has confirmed a plan of liquidation
    - The entity will return from liquidation
- A plan for liquidation is imposed by other forces (e.g. involuntary bankruptcy liquidation plan confirmed by the Bankruptcy Court) and the likelihood I remote that the entity will not return from liquidation.

Whether liquidation is imminent should be carefully considered in light of the facts and circumstances and the actions by management regarding its plans for the entity. It will also depend on the laws of the state of incorporation where the entity was formed as well as the content and extent of its bylaws. However, the liquidation basis of accounting should not be adopted until management approves the liquidation since that is the time where the liquidation becomes "imminent"

Under ASC 205-30 an entity is required to adopt the liquidation basis of accounting as soon as its liquidation meets the definition of "imminent", even if the actual liquidation event over one 1 year in the future. However, sometimes management should carefully consider if it

has met the requirement of ASC 205-30 when the liquidation process is expected to occur over a long period of time and significant operating decision would need to be made during that time.

Liquidation Basis of Accounting – Requirements

An entity's financial statements prepared under the liquidation basis of accounting should contain information about its resources and obligations upon liquidation.

- Assets should be reflected at the amount the entity expects to receive in cash or other consideration.
    - In certain circumstances, if the expected consideration to be collected approximates fair value, the entity may measure the asset at fair value
    - Previously unrecognized assets that the entity intends to sell during the liquidation are required to be recognized and measured.

- Expected aggregate liquidation and disposal costs expected to be incur during the liquidation are presented separately from the assets.
    - Expected future costs and income to be incurred or realized should be accrued if and when the entity has a reasonable basis for estimating these amounts.
    - Liabilities (excluding accruals recorded for disposal costs and ongoing expenses) should be measured using other applicable US GAAP.

In terms of presentation and disclosure, a statement of net assets in liquidation needs to be presented, as well a statement of changes in net assets in liquidation. In addition, disclosure needs to be made to the extent that the financial statements are prepared using the liquidation basis of accounting, including the facts and circumstances surrounding the adoption of the liquidation basis of accounting and the entity's determination that liquidation is imminent.

Additional disclosures include a description of the entity's plan for liquidation, including a description of: (i) the manner by which the entity expects to dispose of its assets; (ii) the manner by which the entity expects to settle its liabilities; and the expected date by which the entity expects to complete its liquidation. Disclosures will also include the method and assumptions used to measured assets and liabilities and the type and amount of costs and income accrued in the statement of net assets in liquidation, as well as the period over which those costs are expected to be paid or income earned.

FRBP 2014

Generally

(a) Application for an Order of Employment.

An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(b) Services Rendered by Member or Associate of Firm of Attorneys or Accountants.

If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation or individual may act as attorney or accountant so employed, without further order of the court.

327. Employment of professional persons

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.
(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest

adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

(f) The trustee may not employ a person that has served as an examiner in the case.
The proposed professional must submit a verified statement setting forth all connections with the debtor, creditors, any other party in interests their attorneys, accountants, US Trustee and US Trustee employee

Section 521 of the Bankruptcy Code

What does § 521 require?

Three general categories of documents are addressed by the relevant provisions of Section 521:

a) General documents relating to the commencement of the case (Sections 521(a) and 521(i))
b) Pre-petition tax documents
c) Post-petition tax documents

1) The documentation and information required by Section 521(a)(1) of the Code and which is subject to the automatic dismissal under Section (i)(1) includes:
   - A list of creditors
   - A schedule of assets and liabilities
   - A statement of financial affairs
   - A certificate of the attorney for the debtor in the petition indicating that the attorney delivered to the debtor the notice required by § 342(b), if applicable
   - Copies of all payment advices or other evidence of payment received within 60 days pre-petition by the debtor from any employer of the debtor
   - A statement of the amount of monthly net income, itemized its calculation
   - A statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition

If *any* of these documents is not filed by the end of the 45th day after the date the petition is filed, then the case is *automatically dismissed* on the 46th day unless debtor files a motion to extend time setting forth the justification for such extension or the trustee decline to dismiss the case.

2) The pre-petition tax documents requirement are governed by §521(e)(2) of the Code and requires the debtor to provide a copy of the most recent federal income tax return (or, at the election of the debtor, a transcript of such return) to the trustee and any creditor that requests a copy of the return or transcript.

If the debtor fails to provide the aforementioned tax returns, as required by §521(e)(2), the Court shall dismiss the case unless the debtor demonstrates that the failure to comply with such requirements is due to circumstances beyond his/her control.

3) The post-petition tax documents are governed by § 521(j) of the Code. Pursuant thereof, debtor need to be up to date in its post petition tax documents and filing. However, if the debtor fails to file, or request the appropriate extension, a tax return that becomes due after the commencement of the case, the taxing authority may request to the Court an order converting or dismissing the case.

Beware of avoidable transfers/suits against officers by Trustee.

Generally, a preferential transfer occurs when a debtor transfers money or an interest in the debtor's property to a creditor that is greater than what the creditor would have received in a Chapter 7 liquidation. Preferential transfers differ from fraudulent transfers in that the transferee in a preference is a creditor rather than someone who is helping the debtor to hide or protect assets. Section 547 of the Bankruptcy Code governs preferential transfers in bankruptcy.

Since preferences are contrary to the policy of equal treatment of creditors under bankruptcy, the bankruptcy trustee is given great powers to avoid preferences by requiring the preferred creditors to pay back the preference to the bankruptcy estate or by removing liens on the debtor's property.

The trustee can avoid transfers that occur within 90 days of the bankruptcy filing date or within 1 year if the transferee is an insider, such as a relative or a friend. There is a longer period for insiders because generally insiders will be more knowledgeable about the debtor and will probably see the debtor's slide into bankruptcy long before other creditors, and so an insider would have an advantage over other creditors in receiving payment or securing a debtor's assets. A transfer can be avoided even if it was not done in bad faith.

There are 5 elements, listed in §547(b) that must be satisfied for a transfer to be avoidable. If any one of the elements is not satisfied, then the transfer cannot be avoided:

1) There must have been a transfer of an interest in property from the debtor either to the creditor or for the benefit of the creditor.
    a. Not necessarily needs to be money. It can be a transfer of a security interest in a property.
2) The transfer was made because of an antecedent debt, even if the debt was only incurred a short time before the transfer was made.
3) The debtor must have been insolvent at the time of the transfer.
    a. The Balance Sheet Test defines insolvency for these purposes. As such, if the fair valuation of non-exempt assets minus liabilities is zero or less, then the debtor is insolvent under this test.
4) The transfer must have occurred within the prepetition avoidance period, which is the 90 days immediately preceding the bankruptcy filing date. However, if the transferee is an insider the avoidance period extends to 1 year before the filing date.
    a. There is a presumption of insolvency during the 90-day period that creditor needs to rebut. On the other hand, there is no presumption of insolvency between 91 days and 1 year for a transfer to an insider. The trustee would have to prove insolvency.
5) The transfer improved the creditor's position over what the creditor would have otherwise received in a Chapter 7 liquidation if the transfer had never happened.

Business track: Provide historical financial statements.

Each Chapter 7 Trustee appointed has a statutory duty to liquidate assets and investigate the financial affairs of each debtor. Specifically, the Bankruptcy Code states that:

> § 704. Duties of trustee.
> (a) The trustee shall--
> (1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;……
> (4) investigate the financial affairs of the debtor;…

Under the basic assumption that a third party will review in detail the financial affairs of the estate then the first requirement for any attorney preparing a Bankruptcy 7 case is to obtain and review in advance all relevant historical financial information:
Then, what is relevant from the standpoint of a Trustee?

1. Practitioners need to bear in mind that there is no exhaustive list of documents or information since this will depend on the facts of each estate.
2. We can state that any document or information, either internally generated or held by any third parties that will serve to discover assets or otherwise administer the estate is always relevant to the Trustee.
3. Within the typical documentation requested:

a. Financial Statements for the last four years prior to the filing, with notes and supplemental disclosures prepared by external accountants.
b. Internal Accounting Records for these periods such as General Ledger, trial balances, aging reports, property plant and equipment details, among others.
c. All tax returns and business declarations filed with governmental authorities.
d. Always pay additional attention to transfers of any kind, related parties or intercompany accounts and unrecorded assets
e. As to documents generated by third parties, be sure to review all insurance policies, contracts and complaints filed by or against the debtor.

4. The Most Important Rule on a Chapter 7 case is to Avoid Surprises. Always expand your due diligence by consulting external sources. In these days the Debtor is not the only source of information.

    a) You have available public records and electronic searches.
    b) Importance of Social Media Sources
    c) Specialized people and complaints filed by or against the debtor.

Consumer track: *Protection of personal information and confidentiality.*

Trustee's Handbook Pages 5-14 to 5-16:

A Chapter 7 Trustee is required to keep the case data secured. The Trustee's handbook requires the following from all Chapter 7 Trustees:

a. COMPUTER SECURITY MEASURES

(1) The trustee, employees, and independent contractors must have unique passwords for the case management system and the Bankruptcy Court's CM/ECF system. Passwords must be changed at least quarterly and when a person leaves or no longer works on chapter 7 matters. 28 U.S.C. § 586.

(2) Access to the case management system must be limited according to the duties performed by the user. The ability to set up and change passwords and access settings must be limited to the trustee. 28 U.S.C. § 586.

(3) All users are to be familiar with the computer system user's manual. The manual must explain the system's features and how it operates.

(4) Computer equipment, including desktop computers and portable equipment with memory capability (e.g., laptops, personal digital assistants (PDAs), and removable drives such as USB flash drives and CD-ROMs), must be safeguarded from unauthorized access and use. Further, when portable equipment is not in use, it should be kept in a secure, limited access area. Certain peripherals (such as a MICR toner cartridge) must be kept under

lock and key. Only authorized users are to have access to the chapter 7 computer programs and data via the terminal, network or modem.

(a) The trustee must not allow remote access to the trustee's computer system (including the Internet or wireless Local Area Networks (LANs)) unless the trustee has taken appropriate steps to ensure that the remote connection is secure. 28 U.S.C. § 586. A Virtual Private Network (VPN) is recommended.

(b) Only chapter 7 software vendor-provided laptops and storage media should be used to remotely access the chapter 7 software vendor-provided computer system. The trustee should confirm with the vendor, or an independent computer security consultant, that the proposed remote access solution meets industry security standards which generally include:

i. A VPN solution that authenticates remote users and encrypts network communications to the trustee's office network.

ii. A VPN solution that supports two-factor authentication and uses the most current Federal Information Processing Standard (FIPS) compliant encryption module.

iii. A service that is installed on a dedicated server (such as a VPN appliance) along with an appropriately configured firewall.

iv. Separate user accounts and passwords for VPN access and the trustee's computer system access.

v. The inability of users to change or set security or access rights to trusted systems remotely.

(5) The data within the case management system and all electronically maintained estate files must be backed-up daily. A copy of the back-up must be transferred to a secure off-site location at least weekly. The trustee is responsible for ensuring that the data and estate files are protected and recoverable. The trustee also needs to ensure the continued availability of the software needed to access the files.

(a) If the back-ups are conducted by the software provider, the trustee must obtain written assurances from the provider regarding data integrity, security, and recovery within a reasonable amount of time (e.g., 24 - 48 hours). 28 U.S.C. § 586. The trustee may want to keep local back-ups for use in the event that the service provider cannot restore the data within the necessary time frame.

(b) The trustee must ensure that the backup and recovery procedures are tested periodically. 28 U.S.C. § 586. The trustee is advised to routinely back up computer files that are not part of the daily back up described above.

(c) If the trustee upgrades the chapter 7 computer software or hardware, or converts to a new system, the trustee must ensure continued access to archived electronic case information. 28 U.S.C. § 586. This may require retention of the prior hardware and/or software. As a security matter, unused prior software generally should not be retained on the new system.

(6) The computer system and data must be protected from viruses, intrusion via the Internet, and power disruptions. The trustee must have virus protection software that is updated daily. 28 U.S.C. § 586.

(7) Hard drives of all laptops must be encrypted. The encryption tool must meet industry standards such as the most current FIPS. 28 U.S.C. § 586.

(8) Mobile storage media (for example, USB thumb drives) or the files on them must be encrypted. 28 U.S.C. § 586.

Practice pointers:

1. Use the Trustee's offered upload document system.
2. Redact all confidential information or identifiable information, like date of birth, name of minors, bank account numbers (leave only the last four digits), social security numbers (last four digit numbers).
3. Look out for the old deeds! They also contain the social security numbers! Redact them.

i. *Domestic support obligation information.*

The Handbook also has specific provisions on how the duties set forth in 11 U.S.C. §704(a)(10) must be carried out.

Handbook for Chapter 7 Trustee pages 4-34 and 4-35:

1. **PROVIDE NOTICES OF DOMESTIC SUPPORT OBLIGATIONS (DSOs), 11 U.S.C. § 704(a)(10)**

The trustee must provide the two statutorily required written notices to the holder of a DSO claim and the appropriate State child support enforcement agency. The first notice to a DSO claim holder advises of the right to payment in the bankruptcy case, the right to use the collection services of the State child support enforcement agency of the State where they reside, and the contact information for the agency. While the Bankruptcy Code is silent on the timing of the first required notices, the trustee should send these notices generally **no later than three business days after the meeting of creditors is held**. However if the information is otherwise

available to the trustee, the trustee may send the notices at any time prior to the meeting of creditors.

The trustee must send the second required notice to the DSO claim holder and the State child support enforcement agency when a discharge is granted. This notice must contain the debtor's last known address, the last known name and address of the debtor's employer, as well as contact information for certain creditors whose claims were either reaffirmed or not discharged. The notices shall be sent within a reasonable period of time following the granting of the debtor's discharge. If the case is closed by the trustee while an applicable section 523 dischargeability action is pending against the debtor, the trustee shall send the discharge notice and include the name of the creditor, with a notation that an action to determine the dischargeability of the creditor's claim is pending.

In order to assist State child support enforcement agencies in identifying debtors with DSOs, the trustee must include the debtor's full Social Security number on those notices going to the State child support enforcement agency, except where prohibited by State law or regulation. 28 U.S.C. § 586. The United States Trustee must be notified immediately if the trustee is not in compliance with this requirement based upon a State statute or regulation that prohibits the full disclosure of Social Security numbers. The debtor's full Social Security number is not be included on the notices going to the DSO claim holder. If the trustee chooses to file the notice with the court, the trustee must ensure that the first five digits of the debtor's Social Security number are redacted from the notice. 28 U.S.C. § 586.

Question and answers regarding Domestic Support Obligations provided by the UST Office to Bankruptcy Trustees:

Q: How does a trustee carry out his/her DSO notice duties if the DSO claimholder does not want the debtor to know where he/she lives?

A: If a DSO claimant's address does not appear in the bankruptcy schedules and it is still unknown after the trustee's inquiry at the § 341 meeting, the trustee does not have to send the notice to the DSO claimant. However, if the claimant's State of residence is known, then the trustee should send the notice to the State agency.

Q: When should the required DSO notices be sent?

A: While BAPCPA is silent on the timing of DSO notices, trustees should send the first notice generally no later than three business days after the § 341 meeting. However, if the information is otherwise available to the trustee, the trustee may send the notice at anytime

prior to the § 341 meeting. Trustees must send a second notice to DSO claim holders and State child support enforcement agencies when a discharge is granted.

Q: Can the two required DSO notices be combined?

A: No. Two separate notices are required – an initial notice and a discharge notice.

Q: Does a trustee need to file a DSO notice or a certification of notice with the court?

A: Because of privacy concerns, a trustee should not file DSO notices or certifications of notice with the court. If the court requires filing of the notices or certifications, the trustee should redact all privacy sensitive data. For example, the first five digits of a debtor's Social Security number must be redacted.

Q: When a DSO does not include a child support component, does the required notice still need to be sent to the State Child Support Enforcement Agency?

A: The definition of domestic support obligations in 11 U.S.C. §101(14A) includes obligations other than child support, so it is possible to have a DSO without a child support obligation. The obligation of a trustee under both § 704 and § 1302 is to provide notice to the holder of the claim advising "of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support." Accordingly, the notice is required regardless of whether a child support obligation exists.

Q: What information is required to be included in the first DSO notice?

A: Sections 704(a)(10) and (c), 1202(b)(6) and (c), and 1302(b)(6) and (d) require trustees to provide written notices to domestic support obligation claim holders concerning their rights to payment in bankruptcy cases, their rights to use the collection services of the State child support enforcement agency of the State where they reside, and contact information for such agencies. These sections also require trustees to notify the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the claim holder resides and provide the agency with the claim holders' contact information.

Q: What information is required to be included in the second DSO notice?

A: Trustees must send a second notice to DSO claim holders and State child support enforcement agencies when discharges are granted. The notice must include the last known addresses for the debtor and the debtor's employer, as well as contact information for certain creditors whose claims were either reaffirmed or not discharged.

Q: Is a trustee required to send the second DSO notice after the discharge even when a non-dischargeability action is pending against the debtor?

A: 11 U.S.C. §§ 704(c)(1)(C) and 1302(d)(1)(C) provide that a DSO notice is to be sent "at such time as the debtor is granted a discharge." Accordingly, the discharge notice must be given by the trustee after the discharge is granted. The trustee can determine from the docket the names of creditors asserting § 523(a)(2), (4), or (14A) claims or whose debt was reaffirmed under § 524(c). To the extent an applicable § 523 discharge action has not been resolved, the trustee should proceed to send the discharge notice and include the name of the

creditor, with a notation that an action to determine the dischargeability of the creditor's claim is pending.

Q: To satisfy the requirements in 11 U.S.C. § 704(c)(1)(C) that a trustee list certain debts that were reaffirmed or not discharged in the notice that is sent to a DSO claimant at the time of discharge, can a trustee simply attach the docket to the notice?

A: No. Since only certain creditors are to be listed, the trustee must review the docket, identify the applicable creditors, and specifically set forth their names in the discharge notice.

Q: If a debtor fails to complete an approved course in personal financial management and the case is closed, does a trustee need to be reappointed to give the DSO notice upon entry of the discharge?

A: 11 U.S.C. § 704(c)(1)(C) and 1302(d)(1)(C) require a trustee to send the discharge notice to both the DSO claimant and the State child support enforcement agency "at such time as the debtor is granted a discharge." If the case is closed without the granting of a discharge because of the debtor's failure to comply with the debtor education requirement, but the debtor subsequently complies and files the appropriate motion to have the case reopened so that a discharge can be entered, any order reopening the case should direct the United States Trustee to appoint a chapter 7 trustee so the proper DSO notice can be given.

Q: Is the chapter 13 trustee responsible for filing a motion to dismiss on issues related to domestic support obligations?

A: The chapter 13 trustee is responsible for monitoring DSO issues and for taking appropriate action when a debtor fails to meet DSO obligations.

Q: Are sample DSO notices available?

A: Sample DSO notices have been provided to the U.S. Trustee Program's field offices for dissemination to trustees. They are provided here as well:

Q: Should Social Security numbers be shown on DSO notices to State child support enforcement agencies or to the holder of the claim?

A: Full Social Security numbers should be shown on notices going to the State child support enforcement agency. However, notices to the holder of the domestic support obligation claim should not show a debtor's Social Security number.

Q: Where can the addresses of State child support enforcement agencies be found?

A: The addresses for the State child support enforcement agencies are posted on the Program's Web site at: http://www.usdoj.gov/ust/eo/private_trustee/ds/index.htm. Each State and territory has two addresses: one for inclusion in the notice going to the domestic support obligation claimant and another for the trustee's notice to the State agency.

Q: Can the DSO notice simply refer the recipient to a Web site where address and contact information for the State support contacts can be found?

A: No. The address and contact information of the State child support enforcement agency must appear on the notice.

Q: Can DSO notices be sent to the State agencies by email?

A: Notice to the State child support enforcement agency must be sent by United States mail consistent with Fed. R. Bankr. P. 2002(b),(f), and (h).

Practice Pointers:

1. At the initial interview ask if the Debtor is obligated to provide support for children that do not live with him or her.
2. Look out for grandparents who provide support by court order to grandchildren.
3. The Trustee needs a mailing address. Communities in rural areas (barrios or Carreteras) are not sufficient addresses for mailing.
4. Look out for parents who are still obligated to provide support directly to children over 21 years of age due to their college enrollment.

II. Meeting of creditors: preparation and compliance.

a. *Production of documents to Trustee.*

All Trustees require the same documentation. See attached list of documents to be provided to the Trustee in Consumer and in corporate cases. These documents should be gathered before the Bankruptcy Petition is filed and sent to the appointed Trustee immediately after the filing of the Petition. The earlier they are sent, the best the chances are the Trustee will have an opportunity to review the same and ask for any additional documents prior to the initial 341 Meeting of creditors. This will avoid the need for continuances.

b. *Continuation of 341 hearings - Avoid the continuance for incomplete production of documents.*

Avoid continuances for incomplete production of documents. If you follow the steps above, the probability of having your meeting continued by the Trustee is significantly reduced. However, be aware that old bank statements do not allow the Trustee to determine the value of the bank account(s) on the date of filing the Petition. Ask your client to keep updated bank statements until the Trustee has an opportunity to review the same.

Watch out for those Social Security beneficiaries! They do not think they have a bank account even when the check is directly deposited into a savings or checking account. Ask at the initial interview.

c. *Prepare the client for the hearing and explain the role of the Trustee.*

Before the Meeting of Creditors, discuss with your clients what is going to happen at the 341 Meeting. Explain why a Trustee was appointed and that yes, amongst other things, that we will be looking for potential assets. Ask them the same questions we ask at the meeting, hear their answers.

Listen to your client! You will be surprised how much information comes out after 5 minutes at the 341 Meeting that you did not know.

> **Tip**: Your client is probably nervous and has not slept in days in preparation for the 341 Meeting of Creditors. Remind them to bring their original social security card and identification. Try to put them at ease by performing a five minute 341 meeting drill before the meeting. **See** attached Mandatory Questions for Debtors.

d. *Provide all the information, complete all the schedules.*

The fact that you scan the schedules will not provide either the court or the Trustee with sufficient data to file the reports to the United States Trustee Office. Please let the vendor program upload the Schedules. This will help in avoiding incomplete data entry in our systems.

III. *Administration vs. Abandonment*:

a. *Abandonment*:

Practical Implications on Abandonments of Property

As part of the administration of estate assets a Chapter 7 Trustee can and will abandon property of the estate. Specifically section 554 of the Code provides:

a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

i. *Revesting property back to Debtor*.

Property abandoned under section 554 reverts to the debtor, and the debtor's rights to the property. Notwithstanding, the trustee may abandon property to any party with a possessory

interest in it. Normally, the debtor is the party with a possessory interest. However, in some cases, it may be a secured creditor who has possession of the property when the trustee abandons the estate's interest. It is only after abandonment that the trustee is divested of control of the property because it is no longer part of the estate. Modification of the automatic stay provisions does not necessarily divest the property from the estate. In most instances, the Chapter 7 Trustee initiates the abandonment of property. Notwithstanding, although other parties may move to have the trustee abandon property. However, the Trustee will always abandon property that is of inconsequential value and of no benefit to the estate. The Trustee needs to support each abandonment as a business decision.

b. *Administration:*

i. *Proper record keeping.*

In order to assist your client, the attorney must verify that a debtor has kept prepetition financial records. See list attached of required documents. The failure to maintain records is a reason for the objection to discharge. Consider this when filing a bankruptcy petition for your client. There is an excellent article recently published by the Puerto Rico Bar Association titled "The Initial Debtor Interview in Puerto Rico: Factors to Consider for Bankruptcy Filing and Documents-Gathering Process". The article is enclosed in the Appendix. The same provides an in-depth study of the responsibilities of the Attorney in the preparation of a bankruptcy petition, the documents required, and the preparation of a bankruptcy client.

ii. *Attorney fiduciary duty.*

The administration of assets in Chapter 7 is one of the primary duties of a Chapter 7 Trustee. The proper and orderly administration of these assets will greatly depend on the cooperation of the Debtor's Attorney. The legal knowledge of bankruptcy laws, property laws, and commercial transactions is essential for the Bankruptcy Attorney. The preparation an attorney will give its Chapter 7 client prior to filing a Bankruptcy Petition is fundamental for a smooth sailing into the bankruptcy maze. Section 11 U.S.C. §707(b)(4)(D) of the Bankruptcy Code, sums in one line the obligations of a bankruptcy attorney when filing a voluntary petition for its client(s): **"The Signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.**" Still today, I see attorneys that did not even do the

minimum of reviewing the Debtor's credit report prior to filing the bankruptcy. The extent of an attorney's inquiry will greatly depend on the complexity of the case.

In other words, it is the obligation of the attorney to verify that what his or her client is telling him to complete the schedules is true and correct. Sanctions can be imposed against the attorney and an attorney can even lose its license to practice law over a bankruptcy case. The responsibility of the attorney goes beyond assisting its client in filing out the Schedules.[1] The attorney should have sufficient knowledge of computer engine searches to verify the accuracy of the information provided by its client. In addition, the attorney must have the legal knowledge to recommend or not and when to file bankruptcy.

iii. *Filing claims after bar date.*

Late file claims can be accepted!!!!! Creditors should always file their claims, even if the bar date has passed. Particularly unsecured creditors. Trustees have at least 3-4 cases per year in which they are ready to do the distribution and have no unsecured creditors in the claims registry. Chapter 7 Trustees do not pay secured creditors. However, unsecured creditors will be paid and even late filed claims, if after the timely filed unsecured claims are paid in full and there is additional funds to pay unsecured creditors. See Section 726(a) of the Bankruptcy Code.

iv. *Transfers of claims and unclaimed funds.*

Please make sure that you notify the Trustee of the transfers of claims, which happen after the bar date. It is for your benefit that payments on distribution are sent to the correct parties and address. The constant transferring of claims affects the internal administration of the case at the Trustees offices. Trustees have to review the claims prior to filing the Trustee's final report. If a creditor files a transfer of claims after the Trustee's Final Report is filed, please make a point to notify the Trustee. Changes will have to be made prior to issuing the distribution checks. In addition, the Trustee's Final account will change accordingly.

IV. *Other factors to consider when filing a bankruptcy petition:*

Included as part of these materials is a recent law review article with practical tips on how to conduct an initial debtor interview with potential clients. Although the article is tailored

[1] See the case of In Re Pereira Santiago, Case No. 11-00661 (ESL) Opinion and order entered on May 3, 2011. Honorable Judge Enrique S. Lamoutte, states that an attorney as a "Debt Relief Agency" must conduct a face to face interview with its client prior to the filing of a bankruptcy.

to Puerto Rico's statutory provisions, most concepts are universal for use in all jurisdictions. The Panel would like to express our gratitude to the Puerto Rico Bar Association (Colegio de Abogados y Abogadas de Puerto Rico) and the Puerto Rico Bar Association's Law Review Editorial Board for allowing us to include materials and information from the article titled "*The initial debtor interview in Puerto Rico: Factors to consider for a bankruptcy filing*" in the 76th Volume of the Law Review published on November 25, 2015 titled "Bankrutpcy".

López-Moreno, Wilbert and Carlos Alsina-Batista "The Initial Debtor Interview in Puerto Rico" *Revista del Colegio de Abogados y Abogadas de Puerto Rico. Bankruptcy.* Vol. 76, Núm. 1 (2015): 98-131. Print.

THE INITIAL DEBTOR INTERVIEW IN PUERTO RICO: FACTORS TO CONSIDER FOR A BANKRUPTCY FILING AND THE DOCUMENTS-GATHERING PROCESS

Wilbert López Moreno and Carlos Alsina Batista

"One of the purposes of the bankruptcy act is to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start a fresh free from the obligations and responsibilities consequent upon business misfortunes. (…) It gives to the honest but unfortunate debtor… a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."

Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)

"A lawyer shall act with reasonable diligence and promptness in representing a client."

Rule 1.3 Model Rules of Professional Conduct, A.B.A.

Perhaps like every specialized legal branch, bankruptcy law generates a fair amount of bewilderment and concern in the mind of almost every potential client requesting representation for a proceeding under the highly technical Bankruptcy Code. It is certainly one of areas of law which generates more bias and stigma, in light of its close relationship with important socio-economic problems, such as your everyday financial troubles and the loss of homes resulting from the current economic crisis experienced shortly after the outset of our 21st Century.

When a person finally seeks bankruptcy advice is usually because her debt problem is already causing sleeplessness and even thinking straight is hard under creditors' pressures. In the majority of cases, debtors come too late to our offices, namely, they are already suffering from severe depression, deep anxiety, sometimes considering divorce and in particularly worse scenarios, contemplating suicide. Fighting against the stigmas shadowing bankruptcy benefits, which are the product of creditor and financial institutions' propaganda, our offices are filled with young and old, from the indigent to the once well-paid, employees and businesspersons, single, married or separated, a great number of them, single mothers. The common denominator: lack of financial capacity to sustain their basic living needs, while paying their contractual obligations.

The clients we receive in our office is riddled with much anxiety, often time disoriented, and seeks in us the solution to their financial trouble, in order to be able to sleep better. When he or she decides to visit us, they have no idea of how bankruptcy law operates, except for maybe the often advertised benefit that it helps to stop creditors and that it is a probable answer to financial problems. Nevertheless, he or she is a client who was probably taught as religious dogmas that: (1) a person should always have good credit; and (2) not paying bills is a moral problem of the worst kind. Such situation confronts bankruptcy practitioners with the challenge of needing to immediately reduce the client's stress level by showcasing a probable bankruptcy solution, while underscoring that his or her financial trouble is part of a bigger economic dilemma which has affected countless others in similar conditions, including top business enterprises such as the well-known General Motors Corp., Kmart, Supermercados Grande, Borders Bookstores, among many others. Not only these, but many municipal governments themselves, have filed for bankruptcy relief, in order to survive budget deficits and seek

solutions to the national economic crisis, which, in the case of Puerto Rico, has even caused our Government to legislate a local bankruptcy relief option, popularly known as the "QuiebraCriolla," recently declared unconstitutional by the United States District Court for the District of Puerto Rico.[1]

It is of paramount importance that the bankruptcy practitioner is before an "honest but unfortunate" debtor who is willing to make the corresponding lifestyle adjustments and adhere to a budget. In this fashion, we may be able to design the distinct alternatives such debtor has in order to resolve his financial problems and the debtor face the responsibilities and obligations the bankruptcy process will impose upon him, especially in a reorganization proceeding, in order to obtain a discharge and thus, the "fresh start," free from the pressures of his creditors. Determining whether bankruptcy is an alternative, how and when to file for such protection, is one of the most important aspects that a bankruptcy practitioner must bear in mind when fashioning any particular client's bankruptcy relief.

The Bankruptcy Code defines who may be a debtor. The term "**debtor**" meansperson or municipality concerning which a case under [Title 11 U.S.C.] has been commenced.See11 U.S.C 101 (13). The term "**person**" includes individual, partnership, and corporation, butdoes not include governmental unit. See11 U.S.C. 101 (41). " a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title."11 U.S.C. § 109.

Understanding Section 109 of the Code is essential, since it defines which persons or entities may be a debtor under bankruptcy law. Said section defines the threshold requirements in order to be entitled to relief under each of the bankruptcy chapters, and so there can be no recommending any type of bankruptcy without this threshold determination. Please consider that the bankruptcy requirements and limits suffer yearly and even shorter-lived amendments and so, reviewing the current version of the Code is crucial. For instance, Section 109 establishes the maximum amount of secured and unsecured debt a debtor may owe in order to qualify for Chapter 13 relief. Pursuant to 11 U.S.C. § 104, the threshold amounts vary every three years on April 1.As of this writing, the unsecured debt limit amount is $383,175.00, and the secured debt limit amount is $1,149,525.00. Even before considering whether debt limits disqualify a consumer for Chapter 13 relief, it must be underscored that not every person who walks in for an interview qualifies for any bankruptcy relief. We must be very rigorous in this determination in order to save our potential client even bigger economic troubles.

> "*Bankruptcy is a time honored practice which provides a way for honest debtors to obtain debt relief and a fresh financial start. No matter what type of bankruptcy they file, whether it is a Chapter 7, 11, 12, or 13, the bankruptcy system requires that all debtors be honest and forthright throughout the entire bankruptcy process. If a debtor voluntarily files for bankruptcy under any Chapter of the United States Bankruptcy Code, they are in essence*

[1]At the time of this publication, the final outcome of the Puerto Rico bankruptcy statute case remained *sub judice;FRANKLIN CALIFORNIA TAX-FREE TRUST v. Commonwealth of Puerto Rico*, No. 14-1518 (FAB) (D.P.R. Feb. 6, 2015), after an appeal to the United States Court of Appeals for the First Circuit, No. 15-1218 and the First Circuit's confirmation of the appealed decision, the Puerto Rico Government is pondering whether to seek review by the United States Supreme Court.

subjecting all of their business and/or personal financial affairs, to the jurisdiction of the United States Bankruptcy Court. In turn they are expected to comply with the Bankruptcy Rules & Code in order to receive the benefits of Bankruptcy protection."[2]

After our professional assessment that a client may file for bankruptcy relief, and such decision by the client under any of the bankruptcy relief chapters, he or she must understand that they are subjecting themselves to the jurisdiction of a federal court, the bankruptcy court, and to all the requirements and obligations imposed by the Bankruptcy Code and other federal statutes, including statutes proscribing criminal conduct when bankruptcy proceedings are used in a fraudulent manner, i.e., 18 U.S.C. § 151-158.

A bankruptcy proceeding is not limited to filling out and filing forms, but is a very complex process which requires from us debtor's attorneys not only considerable legal knowledge, but of basic accounting and economics. Chapter 11's and business Chapter 13's require filing of monthly accounting reports, for which hiring an accountant is usually required. However, even in your standard consumer case, in the initial debtor interview, we have to perform a basic accounting of assets and liabilities, income and expenses, and the debtor's ability to proffer reorganization and payments plan that the Bankruptcy Court will deem feasible.

We must know and understand every such legislation which in one way or another regulates the contractual relationship between the consumer and his creditors. Such statutes are closely related to the financial issues faced by our client, such as: mortgage foreclosures as to real and personal property; repossession of motor vehicles, either owned or leased by a client; hostile communications in the collection of debts by financial institutions; and the holier-than-thou credit'sdowngrade and repair. The following is a list of some of the federal statutes that must be considered when evaluating and determining if there are non-bankruptcy litigation solutions to consider before even considering a bankruptcy filing:

1- Fair Debt Collection Practices Act – 15 U.S.C. 1692-

2- Fair Credit Reporting Act – 15 U.S.C. 1681-

3- Truth in Lending Act – 15 U.S.C. 1601-

4- Fair Housing Act – Title VIII of the Civil Rights Act of 1968

5- Bankruptcy Code – 11 U.S.C. 101-

Aside from these important statutes, the competent bankruptcy practitioner must have prudent knowledge of mortgage law and foreclosure proceedings, the statutes regulating vehicle repossession,as well as laws regulating lien creation over personal and real property, including, among others, wage garnishments.We must have a basic understanding of federal and state tax laws regulating tax liability on income and property, as well as sales taxes, and a general understanding of corporate law. Representing commercial and corporate clients will require even more thorough understanding of commercial transactions and corporate law, since representing a self-employed debtor or one owning a business entity will require more maneuvering in such areas of the law than representing debtor who is exclusively an employee. The Code itself will establish more exhaustive and complex requirements in such business-oriented cases. There are at least two fundamental entities that will come up again and again in your typical interview of

[2]See Atkinson, R.J., *Bankruptcy Crimes*, http://www.rjabankruptcy.com/articles/bankruptcycrimes.html.

potential commercial clients: the Puerto Rico Treasury Department and the Internal Revenue Service of the United States. Namely, potential commercial clients will almost always owe such institutions, and the practitioner should have a clear picture of the dischargeable or non-dischargeable nature of the many tax debts affecting potential bankruptcy clients, including Code treatment of penalties and interests.

With the bankruptcy code amendments of 2005, known as the "***Bankruptcy Abuse Prevention and Consumer Protection Act"*** (BAPCPA), even the most typical bankruptcy case became a more rigorous and complex proceeding than its pre-BAPCPA analog, since it imposed upon practitioners representing bankruptcy debtors more obligations and responsibilities, including higher potential liability. As such, the determination whether to represent a debtor in bankruptcy court now requires even further analysis and pondering on the part of the attorney.[3] Such is an additional factor for the practitioner to now weigh: his or her own heightened responsibility before the Bankruptcy Court.

The bankruptcy code, 11 U.S.C. §§ 101 et seq., the Federal Rules of Bankruptcy Procedure and the Local Rules of each bankruptcy court are specific sources regulating the conduct of attorneys representing a client in any stage the proceedings before the bankruptcy court. The attorney's signature in any pleading or document filed with the Court generates various ethical duties and obligations which may entail sanctions and civil penalties to the less than circumspect practitioner who does not remain watchful of the following:

11 U.S.C. sec 707(b)(4)(C*)*

"*The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has--*

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(ii) determined that the petition, pleading, or written motion--

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect."

Federal Rules of Bankruptcy Procedure- 9011(b)

"b) Representations to the court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is

[3]The Bankruptcy Court for the District of Puerto Rico has held that the debtor's attorney, as a debt relief agency, must personally provide face to face legal advice to a client, as an assisted person, prior to the filing of the petition and at every critical stage of the bankruptcy proceedings; such task cannot be delegated to a non-lawyer assistant. SeeIn re Pereira-Santiago, 457 B.R. 172, 175-76 (Bankr.D.P.R. 2011)

certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."

Local Bankruptcy Rules

RULE 9011-2: Signing of Electronically Transmitted Pleadings, Representation to the Court Top

(a) Responsibility for Use of Login and Password. *An attorney or other person who is assigned a court-issued login and password to file documents electronically is responsible for all documents filed using that login and password.*

(b) Signature and Certification. *The transmission of a petition, pleading, motion or other paper by electronic means shall constitute a signature by both the attorney and other person responsible for transmitting it, as required by Fed. R. Bankr. R. 9011(b). Such transmission shall also constitute a representation by the attorney or other person responsible for an electronic transmission to the court that he or she is in possession of the original petition, pleading, motion or other paper, with all original signatures thereon, other than those papers signed solely by the filing user and co-counsel."*

The 2005 BAPCPA added a concept not previously present in the Bankruptcy Code: the figure of the Debt Relief Agency, which includes attorneys representing consumer debtors. 11 U.S.C. § 101(12A) defines the term "debt relief agency," namely: *The term "debt relief agency" means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110…"*

In Milavetz v US ,559 U.S. 229 (2010), the Supreme Court proclaimed that"[a]ttorneys who provide bankruptcy assistance to assisted persons are debt relief agencies under 11 U.S.C.101 (12A); §526(a)(4) prohibits advising an assisted person to incur more debt only where the impelling reason for such advice is the bankruptcy filing. Milavetz, 559 U.S. at 244, See also,Hersh v U.S.,553 F.3d 743 (5th Cir. 2008)(The disclosure requirements of §528,are

directed at misleading commercial speech, impose only a disclosure requirement, and are valid as applied to attorneys.Attorneys qualify as debt relief agencies under 11 U.S.C 101(12A) and 11U.S.C. 527 (b) does not violate the First Amendment.)

Aside from the aforementioned bankruptcy-specific ethical regulations, the Local Rules of the United States District Court for the District of Puerto Rico integrate theAmerican Bar AssociationModel Rules of Professional Conduct.

RULE 83E - ATTORNEYS: DISCIPLINARY RULES AND ENFORCEMENT

(a) Standards for Professional Conduct - Basis for Disciplinary Action. In order to maintain the effective administration of justice and the integrity of the Court, each attorney admitted or permitted to practice before this Court shall comply with the standards of professional conduct required by the Model Rules of Professional Conduct (the "Model Rules"), adopted by the American Bar Association, as amended. Attorneys who are admitted or permitted to practice before this Court are expected to be thoroughly familiar with the Model Rules' standards. Any attorney admitted or permitted to practice before this Court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant for misconduct and Acts or for good cause shown, and after notice and an opportunity to be heard. Omissions by an attorney admitted or permitted to practice before this Court, individually or in concert with any other person or persons, which violate the Model Rules, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship or in the course of judicial proceeding.

The American Bar Association Model Rules of Professional Conduct set forth various standards to regulate attorney conduct and the attorney-client relationship:

Client-Lawyer Relationship
Rule 1.1 Competence

"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." **Model Rules of Professional Conduct**

Client-Lawyer Relationship
Rule 1.2 Scope of Representation And Allocation Of Authority Between Client And Lawyer

Client-Lawyer Relationship
Rule 1.3 Diligence

"A lawyer shall act with reasonable diligence and promptness in representing a client."

In our jurisdiction, the Puerto Rico Judicial Branch Canons of Professional Responsibility and Supreme Court oversight also regulate the attorney duties toward a client, and the practitioners' standards of capacity and diligence in legal representation.

Canon 18. Competence of the lawyer and advice to the client

It would be improper for a lawyer to assume professional representation when he is conscious that he cannot render suitable, competent service and that he cannot prepare himself properly without it entailing unreasonable expenses or delay to his client, or to the administration of justice.

It is the duty of the lawyer to defend the interests of the client diligently, exerting in each case his utmost learning and ability, and acting in the manner which the judicial profession in general deems adequate and responsible.

This duty to [perform professional] services in a capable and diligent manner does not mean that the lawyer may carry out any act which may enable him to succeed in winning his client's causes. The office of attorney does not permit him to violate the laws of the country or to commit any fraud in the defense of his client. Therefore, in supporting the client's cause, he should act within the bounds of the law, taking into account not only the language of the law, but its underlying spirit and purposes. Neither should he yield in the full discharge of his duty for fear of judicial disfavor or public unpopularity. However, a lawyer may assume any professional representation if he prepares himself adequately for it and does not impose unreasonable expenses or delays on his client and on the administration of justice.

The Puerto Rico Supreme Court has summarized it by stating that Canon 18 bars an attorney from assuming legal representation of a client when such attorney understands that he does not have the present capacity to perform the ideal and competent work deserved by the task at hand.[4]Under such standard, every attorney whose professional execution is not adequate, responsible, capable and effective will incur in a violation of Canon 18.[5]

Considering that such legal standards also impact the ethical duties of bankruptcy attorneys, bankruptcy practitioners must conduct acomprehensive investigation of the debtor's economic problem and consider every viable alternative available to the potential client to ease such financial woes and relieve economic pressures before recommending the filing of a bankruptcy petition. In order to properly make such analysis, we must obtain from the debtor such documents and information necessary to properly profile the debtor's complete economic situation, determine how the insolvency came about, and which is the best solution based on a future income and expenses projection. During this initial process, the practitioner must bear in mind the duties and responsibilities of a "Debt Relief Agency."

After identifying the client as a potential bankruptcy debtor and bearing in mind the duties of the bankruptcy practitioner, we should continue by delineating for the benefit of the client the advantages and limitations of filing for bankruptcy protection in order to deal with financial problems.

[4]SeeIn re Francis Pérez Riveiro, 180 D.P.R. 193, 202 (2010).

[5]SeeIn re Collazo I, 159 D.P.R. 141, 146 (2003); In re Roman-Rodriguez, 152 D.P.R. 520, 526 (2000).

The main purpose of filing for bankruptcy relief is to obtain a discharge of debts. However, even before such final goal is reached, with much more immediacy, the Bankruptcy Code presents the swiftest, most straightforward way to stop creditor harassment, wage and personal property garnishments, mortgage foreclosure and motor vehicle confiscation.

The principal advantage of the bankruptcy option *vis a vis* other debt solutions is the implicit power to immediately stop judicial and extrajudicial collection actions with the mere filing of the case. This protection is provided and regulated by Section 362 of the Bankruptcy Code. This is the spearhead power with which a debtor is endowed by filing for bankruptcy relief: the automatic stay of collection actions, 11 U.S.C. § 362.

With the sole act of filing a bankruptcy petition, in most circumstancesa debtor mayprotect virtually all of her personal and real property from foreclosure or garnishment by her creditors. By excluding from the bankruptcy estate different kinds of property under the federal or Puerto Rico exemptions, pursuant to 11 U.S.C. § 522, that is, personal property, salaries, home and other real properties, among many others. The practitioner should be wary of debtors with previous bankruptcy cases, since the automatic stay suffers limitations in consumer cases where the debtor has filed one or more bankruptcy cases during the previous year.[6] A clear timeline of previous case filings is required, in order to either extend the automatic stay after the 30-day limitation when a second case is filed within a year, or to have the bankruptcy court impose the automatic stay when the filing is the third within the year.

With some exceptions, Bankruptcy Code § 506 allows bifurcation of secured debts onto partially secured/partially unsecured portions, pursuant to the collateral's value. Among those possibly modified are second mortgages, short-term mortgage loans and other consensual liens over personal and real property. A much used maneuver in Chapter 13 cases is to "cram down" the total owed on car purchase loans and outstanding interests to the almost always lower value of the collateral vehicle. § 506 also allow the complete "stripping off" from real and personal propertyof those junior liens which amounts are not protected by the collateral's value. Thus, if a debtor's residence's current market value is $120,000, and a first mortgage lien has a balance of $140,000, any junior mortgage lien can be declared wholly unsecured and "stripped off" from the residence.[7] This can also be accomplished with junior tax liens wholly devoid of equity supporting their secured status *vis a vis* the property's value. A major advantage to Puerto Rico local court litigation is that litigation in bankruptcy court is usually much faster and efficient, with streamlined terms and procedural provisions assuring a swifter resolution.

Not all is"peaches and cream." A bankruptcy proceeding presents many disadvantages and challenges to a debtor. The often most cited one is the fact that those higher-tiered credit score holders will probably see their credit history blemished. When any bankruptcy case is filed, creditors may report such filing and it may appear in the debtor's credit report for up to 10

[6]11 U.S.C. § 362(c)(3).

[7]But see, Bank of America, NA v. Caulkett, 192 L.Ed.2d 52, 59 (June 1, 2015)("…a debtor in a Chapter 7 bankruptcy proceeding may not void a junior mortgage lien under §506(d) when the debt owed on a senior mortgage lien exceeds the current value of the collateral.")

years.[8]Thus, when a case is filed, Experian, TransUnion and Equifax usually will be reporting a Chapter 7, 12 or 11 for 10 years, and as a business standard, will usually cease reporting a Chapter 13 case within 7 years.[9] Notwithstanding such blemish, the majority of clients who are ripe for bankruptcy relief arrive at our offices with economic troubles which have already demolished their credit history. Obtaining the bankruptcy discharge of debts will allow debtor a new beginning, a "fresh start," without the undertow caused by unsurmountable debts. For many clients, their credit rating is a sacred matter, and so they usually have to be explained the manner of gradually, but surely, repairing their credit. Mortgage bankers and financial institutions' guidelines for extending mortgage loans allow for a bankruptcy debtor to obtain new credit for such purpose when two years have passed from the discharge date, although many impose various restrictions.[10]

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[8]Pursuant to 15 U.S.C. § 1681c(a)(1), which is part of the Fair Credit Reporting Act, bankruptcy filings can be reported for no more than 10 years on an individual's credit file.SeeIn re Joyce, 399 B.R. 382, 385 (Bankr. D. Del. 2009). The applicable Fair Credit Reporting Act provision makes no distinction between filings under different chapters.

[9]For Experian's explanation of this credit reporting policy, seehttp://www.experian.com/blogs/ask-experian/2015/01/04/when-bankruptcy-public-records-are-removed-from-your-credit-report/

[10] The United States Housing and Urban Development ("HUD") *Guidelines for AnalyzingBorrower Credit, 4155.1 4.C.2.h Chapter 13 Bankruptcy* dictates:

> AChapter13bankruptcydoesnotdisqualifyaborrowerfromobtaininganFHA-insuredmortgage,providedthatthelenderdocumentsthat
>
> - oneyearofthepay-outperiodunderthebankruptcyhaselapsed
> - theborrower'spaymentperformancehasbeensatisfactoryandallrequiredpaymentshavebeenmadeontime,and
> - theborrowerhasreceivedwrittenpermissionfrombankruptcycourttoenterintothemortgagetransaction.
>
> *TOTALScorecardAccept/ApproveRecommendation*
> Lenderdocumentationmustshowtwoyearsfromthedischargedateofa Chapter 13bankruptcy.IftheChapter13bankruptcyhasnotbeendischargedforaminimumperiodoftwoyears,theloanmustbedowngradedtoaReferandevaluatedbyaDirectEndorsement(DE)underwriter.

Section 4155.14.C.2.gChapter7Bankruptcy states:

> AChapter7bankruptcy(liquidation)doesnotdisqualifyaborrowerfrom obtaining anFHA-insuredmortgageifatleasttwoyearshaveelapsedsincethedateofthedischargeofthebankruptcy.Duringthistime,theborrowermusthave
>
> - re-establishedgoodcredit,or
> - chosennottoincurnewcreditobligations.
>
> Anelapsedperiodoflessthantwoyears,butnotlessthan12months,maybeacceptableforanFHA-insuredmortgage,iftheborrower
>
> - canshowthatthebankruptcywascausedbyextenuatingcircumstancesbeyondhis/hercontrol,and
> - hassinceexhibitedadocumentedabilitytomanagehis/herfinancialaffairsinaresponsiblemanner.
>
> *Note*:Thelendermustdocumentthattheborrower'scurrentsituation theeventswhichledtothebankruptcyarenotlikely torecur.

Another disadvantage arising with a bankruptcy filing is the stigma often suffered by the individual concerning his social reputation, with the possibility of discrimination for future economic endeavors, obtaining certain licenses requiring economic solvency, and even when seeking employment. Although Bankruptcy Code Section 525 prohibits bankruptcy related discrimination, the reality is that many societal institutions still see bankruptcy debtors as a "dead beat," often without considering the motives and circumstances which led to the insolvency and need for bankruptcy filing.The debtor should be amply explained of the financial disadvantages of being in a bankruptcy proceeding and the reality that, except for some minor exceptions in reorganization proceedings, the debtor will not be able to incur in credit transactions.

Particularly in a Chapter 7 proceeding, the most significant detriment that we should explain to bankruptcy debtors is the possibility of losing some of their properties, including their home; or, as it often occurs, the ability to maintain the principal residence and lose other properties, such as investment real estate or second homes. Thus, the importance for the practitioner to be fully knowledgeable of the Bankruptcy Code and the local bankruptcy proceedings "culture," since the less than sound Chapter selection, or lack of compliance with the legally-required procedures can cause a debtor to lose one or more assets. Filing for bankruptcy relief creates a new property concept, i.e., ***"property of the estate,"***[11]which includes ***"all legal or equitable interest of the debtor in property as of the commencement of the case,"***that is, a body of property composed of all interests, tangible and intangible, that a debtor may possess in connection with any asset, property or good of any kind as of the petition's filing date. We should grasp this concept clearly, since it is the starting point to determine whether the debtor will have or lose his property.

There are circumstances in which bankruptcy is not a viable alternative for the client. As an example, consider clients with only secured debts not subject to modification. A client needing a Chapter 13 reorganization plan, whose bankruptcy estate has a substantial hypothetical Chapter 7 liquidation value, but who is without income or other liquid assets to satisfy such value during the life of the Chapter 13 plan, will simply will not be able to confirm a plan.

A bankruptcy filing's timing is often a crucial decision. One example is how the 6-month lookback period for the means test, determinant of disposable income, will sometimes require a debtor to delay the filing, in order to allow the exclusion of high income months from the lookback period. Other times, transfers, even non-fraudulent ones, to "insiders" such as family members or other persons with affinity with the debtor will require the debtor to let certain periods to pass, or risk a trustee's action to recover such payment with preference in order for the funds to be redistributed among creditors.

Cases of income tax debts sometimes require the practitioner to allow the passing of the yearly deadline for the filing of the income tax return (the dreaded April 15), in order to make a particular tax debt dischargeable, which would not be if the case was filed the day before the tax filing deadline.

[11]11 U.S.C. § 541.

There are clients who will not receive a discharge in a new case because they have filed earlier cases within specified time periods and already received a discharge.[12] If the practitioner files a new Chapter 7 case to discharge any particular debts, without checking whether such statutory period has been cleared, he could essentially be filing a case without any real usefulness to the debtor.

Another important discussion to have with married debtors is the determination whether to file a joint case or not. This decision must be made with both clients present, since the non-filing spouse should understand that the debtor who did not file for bankruptcy protection does not necessarily become protected under the Bankruptcy Code. In our community property jurisdiction, such protection of the non-filing spouse largely turns upon whether the debt benefitted the conjugal partnership (if married without a prenuptial agreement separating property) and whether there are private properties of the non-filing spouse that may satisfy a debt personally subscribed by the non-filing spouse.

Particular Disclosure Requirements to the Debtor

The 2005 BAPCPA Amendments to the Bankruptcy Code established the legal figure of the "Debt Relief Agency;" as previously mentioned, attorneys representing debtors are squared with such concept. Thus, Section 527 of the Code imposes on the debtor's attorney the obligation of delivering certain generalnotices to the debtor concerning bankruptcy proceedings. We are therefore, before a fourth element: the requirement to deliver disclosures to the client pertaining to bankruptcy general concepts.

The Code requires the Clerk of the Court to issue a Notice to the debtor, briefly describing the different bankruptcy relief chapters, the potential consequences of filing with false or fraudulent information or omissions, of the services available to brief the debtors concerning credit management. 11 U.S.C. § 342 provides:

> *(a) There shall be given such notice as is appropriate, including notice to any holder of a community claim, of an order for relief in a case under this title.*
>
> *(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing--*
>
> *(1) a brief description of--*
>
> *(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and*
>
> *(B) the types of services available from credit counseling agencies; and*
>
> *(2) statements specifying that--*

[12] See 11 U.S.C. §§ 727, 1328; see also,In re Sanders, 551 F.3d 397, 401 (6th Cir. 2008). The purpose of § 727 is to prevent the creation of serial bankruptcy filers who would invoke bankruptcy relief any time they had difficulty with any particular debt. SeeTidewater Fin. Co. V. Williams, 498 F.3d 249, 258 (4th Cir. 2007).

(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both; and

(B) all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.

As Debt Relief Agencies, the Code requires the debtors' attorneys to deliver to their clients a copy of the aforementioned notice required under Section 342, even though the language of the statute first imposes such duty upon the Clerk of the Court.

On its part, Section 527 establishes which disclosures are necessary to comply with § 342, namely:

Disclosures: a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide--

(1) the written notice required under section 342(b)(1) of this title; (…),

b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

"IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.

"If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

"The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

"Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting

of creditors where you may be questioned by a court official called a 'trustee' and by creditors.

"If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.

"If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

"If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

"Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.".[13]

Althoughhighly recommended under general Puerto Rico Supreme Court attorney ethicscase law, in the context of bankruptcy, a debtor's attorney is *absolutely* required to prepare a written professional services contract with the debtor client which contract must comply with the notice/disclosures requirements of Sections 342 and 527. This contract is regulated by Section 528 of the Code, which dictates:

Requirements for debt relief agencies:

(a) A debt relief agency shall--

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

(A) the services such agency will provide to such assisted person; and

(B) the fees or charges for such services, and the terms of payment;

(2) provide the assisted person with a copy of the fully executed and completed contract;

(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general

[13] See 11 U.S.C. § 527.

public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

(4) clearly and conspicuously use the following statement in such advertisement: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." or a substantially similar statement.[14]

It is of utmost importance for the debtor's attorney, as a "debt relief agency," to seek faithful compliance of all these notice-disclosures requirements. The debtor must be well informed about his responsibilities and obligations when submitting to a judicial proceeding under the bankruptcy code, and of all the consequences if such a proceeding were used to defraud his creditors. A final heed to debtors' attorneys enacted by the BAPCPA Amendments, 11 U.S.C. § 526 forbids an attorney to recommend to a debtor to incur new debt when contemplating filing for bankruptcy relief.

The Debtor's Interview

Arguably, the most important event of a bankruptcy proceeding is the initial client interview with the prospective debtor. After having analyzed who can be a debtor, the responsibility imposed on a bankruptcy debtor's attorney, the advantages and disadvantages of filing for bankruptcy relief, the Code's disclosure and notice requirements and a conscious decision of the practitioner to incursion onto debtor representation, we have arrived to the most crucial moment: *the interview with the debtor.*

Every attorney who decides to work debtor bankruptcy cases must have some basic legal and human resources, namely: current versions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules. The practitioner who relies on a version even one year old runs the risks of giving inaccurate advice, since they are constantly being amended, not only through legislative action, but through abundant case law. The practitioner must also have personnel dedicated exclusively to bankruptcy proceedings: a secretary and paralegal. He must have a decent computer, reasonably updated bankruptcy filing software and internet service. Virtually, all bankruptcy filings are done electronically through the internet. The attorney may (and should) obtain information from the Bankruptcy Clerk's Office concerning the minimum hardware and software necessary to undertake filing of bankruptcy cases in any given district. He must possess an official email address, in order to receive actual notices of filings from the Bankruptcy Court, creditors, trustees and litigating attorneys.

In order to obtain all required information, it is highly recommended to prepare an adequate information intake form for the initial potential client interview. This form should contain all basic information, such as: complete name; maiden, surnames and other versions of names by which the debtor has been known; social security number; residential and mailing

[14] See 11 U.S.C. 528.

addresses; occupation and place of work; mobile, residential and work phone numbers; historical and current income; family composition;; if married, very that indeed they are legally married, spouse's full name real property owned; personal property, including motor vehicles and bank accounts; a detail of monthly expenses; list of creditors with their mailing addresses; debt account numbers, balances and debt description (a credit report is most efficient for such task); a detailed list of any assets such as inheritance interests, retirement accounts, pending judicial and non-judicial claims; checking, savings and investment accounts; expected tax refunds; insurance policies; lease agreements; shares with credit unions, pending work benefits, such as commissions or vacation pay, sick leave or other wage liquidations; individual retirement accounts (as well as other retirement funds such as 401K , KEOG or 1165(e) accounts), among others. The practitioner should convey to the debtor the idea that anything of any value should and must be declared with the bankruptcy petition, and, when in doubt, *DISCLOSE*! Any filed complaints, or administrative claims which are pending should be described with case number, court where filed and case status. All information concerning child or spousal support, or any other domestic support obligation should be described with the address and telephone number or the person receiving the benefit, payment amount and ordered form and timing of payment, as well as the payment status.

The initial interview form should be filled out by the potential client themselves and then reviewed by the attorney or office personnel, in order to make the necessary corrections, so as to generate an accurate legal opinion.

Finally, we have the potential client in front of us. This potential client comes looking for a solution to financial hardship. It may be the first time the client visits anyattorney's office and he may be rather anxious. It is useful to establish an introductory dialogue in order to gain the client's trust, so that they may openly (and thoroughly) express the woes, especially the precise reason that moved them to consult for bankruptcy relief. We should have some basic questions ready in order to conduct this interview. The questions should be directed at answering the question: what happened in the client's economic condition which made the client seek bankruptcy advice? Which event(s) triggered the financial downfall: employment loss, divorce, accident, plain bad administrative decisions, credit abuse, death or disease of a family member, gambling losses, criminal accusations and the corresponding legal expenses, or others? We have to ask about the kind of debts and why they were incurred; what are the real estate and personal assets; what are all of the income sources; what collection actions have been undertaken against them and the statues of such actions. The potential client must provide a list of all personal and family expenses if only an employee consumer, and all of the business expenses, if the client has a business. It is paramount to remember that an employed consumer case will vary drastically from a self-employed or business-owner case, be it a "doing business as" or corporately structured enterprise.

The interview must be conducted taking into consideration all the previously mentioned factors. In this first interview, the practitioner should be able to determine if bankruptcy is the best alternative to the client. The client should be reasonably informed of the nature of a bankruptcy proceeding, the need to provide all required information, without omitting any economic, property or debt information. The client must understand that all debts must be included with the bankruptcy petition, regardless that not all of them receive the same exact

treatment. Theimportance of faithfully disclosing and documenting all required information must be permanently fixed on the client's mind. We must also impress upon the client the potential civil and criminal consequences of providing incorrect or downright false information. The client must understand the attorney-client relationship and privilege and all its implications.

The initial client interview cannot be delegated to non-attorney personnel. The office assistants may compile all information and documents necessary to evaluate the case, but cannot interview the client. The client interview to recommend a potential bankruptcy debtor's course of action is the exclusive responsibility of the attorney and the attorney cannot be substituted. Only an attorney, duly knowledgeable of bankruptcy matters can counsel a client and determine if the client may file a bankruptcy petition and under which chapter to seek relief. We must bear in mind that, pursuant to the Bankruptcy Code and aforementioned ethics sources, our signature and representation in bankruptcy matters entails all of this responsibility, obligations and potential liability. If we delegate this monumental duty, we are risking our professional title and license, and our reputation, so costly obtained and maintained.

Necessary Documents

After discussing the financial woes and economic outlook of the client, and determining that the client may be a bankruptcy debtor, we must proceed to comply with Sections 342 and 527 of the Code. It is for such undertaking that we request the client to provide all the necessary documents to determine the particular bankruptcy chapter under which a case will be filed. The client must be impressed with the importance of obtaining all of the required documents, that is, the client must understand that without complete and accurate documents, a bankruptcy filing with all the schedules and complementary documents would be a reckless endeavor.

As attorneys, we cannot allow a case to be filed without first obtaining all the required documents. Experience will counsel that the debtor who obtains a case number and, thus, in most cases, the bankruptcy stay, will reason that he already solved his problem and will not adequately tend to the responsibility with the attorney and, ultimately, the Court. If all required documentation is not at hand before the case is filed, the complete process runs the risk of derailing, from an actual defective filing, to the creditors' meeting, to the confirmation hearing in the appropriate cases. When that client decides to file for bankruptcy protection, he must be committed to faithfully complying with all requirements, including procurement of all necessary documents and information with each government agency, private party or even other attorneys which may have the same.

In the initial debtor interview, we may preliminarily determine if such client qualifies for bankruptcy relief and may even estimate for which chapters, but we should not assure the client qualification for a particular chapter until we have all necessary documents to support our estimations. Clearly important: without all required documentation at hand, the practitioner should not risk guaranteeing to a client the particular chapters for which he or she qualifies. Otherwise, the practitioner may find some, often shocking, surprises when the documents in support of the Debtor's representations are finally provided. Bear in mind that, under bankruptcy law, a mistake on the attorney's part may represent to a client the loss of his real and personal

property; in this scenario, the problem will not only be the client's, since the malpractice will also bear problems for the attorney.

The following list contains some basic documents which are necessary to evaluate and determine qualification for a particular chapter's relief:

1. Pay stubs or advices for the 6 months prior to the intended filing date, ending on the last day of the month before the filing date (in order to populate the Means Test's "current monthly income");
2. Pay stubs or advices for the 60 days prior to the intended filing date;
3. State and local income tax returns, with evidence of filing, for the 4 tax years prior to the bankruptcy filing year;
4. Internal Revenue Service tax returns, with evidence of filing, for the 4 tax years prior to the bankruptcy filing year (self-employed debtors or business owners);
5. A recent credit report, preferably from all three major credit bureaus;
6. Credit card statements, payment booklets, billing statements, collection letters received during the previous 90 days (these are crucial in order to notify all parties involved with each particular debt, i.e., original creditor, third-party collector, third-party purchaser/assignees and their authorized collection agents);
7. Invoices for electric power, water, telephone, internet, cable or dish TV services;
8. School expenses evidence;
9. Copies of bank statements: checking, savings, deposit and shares accounts, for 6 months prior to the intended filing date;
10. Real property ownership and mortgage deeds;
11. Divorce Agreements, Resolutions and Judgments;
12. Lease agreements;
13. ASUME balance (or negative) certification, either for debtor owed or receivable child support;
14. Shares, deposits and savings certifications from credit unions, AEELA and PR Retirement Systems Administration;
15. Auto Licenses;
16. Mortgage loan payoff statements;
17. Conditional sale agreements of the debtor's autos and other personal property;
18. Complaints and money judgments affecting debtor;
19. Title Search report or Property Registry certification pertaining to debtor real properties;
20. For businesses: municipal license (patent permit); Merchant's Registry certificate; Fire and Health Departments permits; copies of professional licenses or permits; local use permit; PR Treasury Department license for sale of alcoholic beverages and cigarettes, copy of the Corporate Certificate in cases of corporations or limited liability companies; firearm's use permit if applicable; any and all other documents relevant to the particular business.

Attorney's Fees

After determining that our client may very well become a debtor under one of the chapters for bankruptcy relief, we reach the last factor to consider: attorney's fees.

A fairly reasonable question we face when considering representing a bankruptcy client is how is the client going to pay if the "bankrupt" client must also be "broke." We should not confuse the concepts:even the often "bankrupt" client coming to our office has economic trouble, on account of various circumstances: defective income management, faulty credit use judgment, divorce, ailments, disability, among others, but he is hardly ever "broke." Namely, there is hardly ever a client in need of bankruptcy protection that is completely indigent. Let us not forget that the whole point of bankruptcy is to protect a debtor's assets, be it real property, goods, funds or income. The great majority of clients have available money to pay a bankruptcy attorney, and the relief from most debts frees up income to either pay up front for a Chapter 7 case, or fund a Chapter 13 bankruptcy plan in which the debtor's attorney, in addition to other creditors, may obtain remuneration for attorney work. Although the attorney-client relationship of a bankrupt client is the same as in other legal practices, the collection of attorney's fees, amount, fashion and timing of payment are all regulated by the Bankruptcy Code. Although we may establish particular rates for attorney work, these will always be subjected to the oversight and approval of the Bankruptcy Court.

The Bankruptcy Code controls all of a debtor's economic transactions, including payment of attorney's fees. Under regulation are the amounts of fees a trustee may collect;[15] the hiring ofprofessional persons for all kinds of services;[16] the amounts that a particular professional person may charge a bankruptcy debtor;[17] the payment of officers appointed by the court;[18] and finally, of particular importance here, the payment of the debtor's attorney's fees.[19]

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[15]See11 U.S.C. § 326.

[16]See11 U.S.C. § 327.

[17]See11 U.S.C. § 328.

[18]See11 U.S.C. § 330.

[19]See11 U.S.C. § 329, which provides:

> (a) *Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.*
>
> *(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—*
>
> *(1) the estate, if the property transferred—*
>
> *(A) would have been property of the estate; or*
>
> *(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or*
>
> *(2) the entity that made such payment.*

The Federal Rules of Bankruptcy Procedure also regulate attorney compensation.[20]

Attorney's fees collection varies from each particular relief chapter to another. Chapters 11 and 13 provide for a period of fees collection which may continue throughout the bankruptcy plan's lifespan, that is, collection of fees for work done before the case's filing and during the early stages of the reorganization proceeding. All prepetition and early work (up to and including representation at the 341 meeting of creditors) for a Chapter 7 case has to be billed and the fees collected before the case's filing. A post-petition payment plan for attorney's fees incurred prepetition is unenforceable. Both, the bankruptcy stay and discharge provisions apply to attorney work performed to prepare and file a Chapter 7 case.[21]

In contrast, filing fees and other associated expenses cannot be confused with attorney's fees. In order to file a bankruptcy petition, the Clerk of the Court must be paid fees in the following amounts: Chapter 7 - $335.00; Chapter 11 - $1,717.00; Chapter 12 - $275.00; Chapter 13 - $310.00. These are the bare minimum amounts that a client must have in order to file a bankruptcy petition. That's without considering the cost of credit counseling, which is required for any individual debtor and which ranges from $14.95 to $50.00 for the pre-filing certificate,[22]

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[20]**Rule 2016 (b) - Disclosure of compensation paid or promised to attorney for debtor.**

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

[21]SeeRittenhouse v. Eisen, 404 F. 3d 395 (6th Cir. 2005)(holding that fees for filing chapter 7 bankruptcy case were discharged, as they are not among the non-dischargeable debts provided in Section 523)); In re Bethea, 352 F.3d 1125 (7th Cir. 2003)(resolving that post-petition and post-discharge collection of prepetition fees violated automatic stay and discharge order, respectively) ; In re Biggar, 110 F 3d 685(9th Cir 1997); In re Newkirk, 297 B.R. 457 (Bankr.W.D.N.C. 2002)(holding that obtaining postdated checks for prepetition fees, to be cashed post-petition, violated automatic stay and created conflict of interest with client.)

[22]11 U.S.C. § 521(b) provides:

> *In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court--*
>
> *(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and*
>
> *(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph* (1).

Meanwhile, 11 U.S.C. § 109(h) dictates:

> *(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111 (a) an individual or group*

and from $14.95 to $100.00 for the post-filing, pre-discharge financial management course. A bankruptcy debtor who does not take this second, more comprehensive course on financial management simply will not receive a discharge, missing this paramount purpose for the great majority of bankruptcy cases.[23]

Since attorney's fees are so thoroughly regulated by the Bankruptcy Code and the Court, we should be fairly familiar with such applicable provisions before resolving to represent a debtor. Failure to correctly bill, and correctly counsel for the purposes hired in the most adequate manner may cause the bankruptcy court to disgorge attorney's fees, including refunding the debtor, in addition to the imposition of monetary sanctions.

Finally, we may commence preparation of the bankruptcy petition, schedules and required forms pertaining to the particularly chosen relief chapter. The practitioner should take into consideration all of the aforementioned factors and prepare to incursion in the intricate world of Bankruptcy Law.We should not forget that in this practice, the practitioner should remain up to date, not only with all substantive and procedural law, but with the technological advances -both hardware and software- which are constantly changing and which are essential to an appropriate practice. Bankruptcy software actualizations, of substantive and procedural requirements,demand fees which are usually collected by providers on an annual basis. Federal Pacer and CM/ECF document access and filing systems are upgraded periodically. The Pacer system charges $0.10 per page obtained from the bankruptcy court's docket. An appropriate office budget should consider these costs, in addition to appropriate computer hardware replacements.

In order to file a bankruptcy petition, documents and associated motions, the practitioner must first obtain login authorization from the Bankruptcy Court, through the Clerk of Court Office. A strong password must be established, lest the attorney easily hand over his viewing and filing authorization.Furthermore, most bankruptcy trustees use document filing systems which are operationally similar to the Court's filing system.Such login and password information must be obtained with each panel or standing trustee.

Before ending this essay, let us emphasize the heightened legal responsibility which representing a bankruptcy debtor entails, both prior to, and after the filing of a bankruptcy petition. Beforemaking such determination, it is crucial to read the Bankruptcy Code, peruse through bankruptcy reference secondary sources, take various courses and seminars on bankruptcy subjects, and adequately prepare first. The bankruptcy practitioner in Puerto Rico is

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briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

[23]See11 U.S.C. § 727 (a) (11), which provides that the debtor who, after filing the petition, fails to complete an instructional course concerning personal financial management described in section 111, will be denied the discharge of debts; see also, 11 U.S.C. § 1328 (g)(1): "The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111."

not only ruled by the Canons of Ethics of the Supreme Court of Puerto Rico, but by the ABA Model Rules of Professional Conduct, Local Bankruptcy Court and District Court of Puerto Rico Rules, Federal Rules of Bankruptcy Procedure, the Bankruptcy Code itself, andt by the United States Department of Justice, through the Office of United States Trustee. We should not forget, and the following must be internalized and observed: bankruptcy practice is not simply about filling out forms; it is about protecting the debtor's property and rights, and at the same time, the rights and property of the creditors.We wishto close this sharing of ideas with the same quote which started it:

*"**A lawyer shall act with reasonable diligence and promptness in representing a client.**"*
Rule 1.3 Model Rules of Professional Conduct, A.B.A.

General Reference Materials

Bankruptcy Basics – John Rao & Tara Twoney, National Consumer Law Center, 2007

Consumer Bankruptcy Law and Practice (2 vols.) – Henry J. Sommer, National Consumer Law Center, 2009

Bankruptcy – William D. Warren, Foundation Press, 2007

SAMPLE INITIAL LETTER TO HOLDER OF CLAIM FOR A DOMESTIC SUPPORT OBLIGATION

Chapter 7

[Name and Address of Holder of Claim for a Domestic Support Obligation]

In re: [Name of Debtor]
Bankruptcy Case Number: [xx-xxxxx]

Dear [Name of Holder of Claim]:

I am the chapter 7 trustee in the case of [Name of Debtor] filed on [Date of Filing] in the United States Bankruptcy Court for the _____ District of _____. Information provided to me indicates you may be owed money by the debtor for a domestic support obligation. If this domestic support obligation includes child support, you have the right to ask your State child support enforcement agency to assist you in collecting this child support during and after the bankruptcy case. The name, address, and telephone number of the agency in your State are listed below:

[Name, Address and Telephone Number of Child Support Enforcement Agency]

If this letter has reached you, but you have moved to another State, you may wish to visit the Internet web site of the United States Trustee Program at http://www.usdoj.gov/ust/eo/bapcpa/ds/index.htm for a complete listing of State child support enforcement agencies. Please also notify my office of your new address.

If funds are available for distribution in this bankruptcy case, you may file a proof of claim for all domestic support obligation amounts (child support, spousal support, alimony, maintenance, etc.) you were owed by [Name of Debtor] when this case was filed on [Date of Filing]. By law, all such domestic support claims will be given first priority and will be paid ahead of all other creditors, except for certain administrative expenses. If you receive a notice from the court that this case will have money to be distributed, you should file a proof of claim before the deadline stated in the notice. This will maximize your chances of being paid at least a portion of your domestic support obligation claim.

[Name of Debtor] may receive a discharge from other debts and may not owe other creditors any more money at the end of this case. Domestic support obligations are not subject to discharge, and [Name of Debtor] will still owe you any domestic support obligation that remains unpaid at the end of this case.

If [Name of Debtor] successfully completes this bankruptcy case and receives a discharge from other debts, I will send you another letter with additional information that may assist you in collecting on any domestic support obligation you are still owed.

Sincerely yours,

Chapter 7 Trustee

SAMPLE INITIAL LETTER TO HOLDER OF CLAIM FOR A DOMESTIC SUPPORT OBLIGATION

Chapter 12 or 13

[Name and Address of Holder of Claim for a Domestic Support Obligation]

In re: [Name of Debtor]
Bankruptcy Case Number: [xx-xxxxx]

Dear [Name of Holder of Claim]:

I am the chapter [12 or 13] trustee in the case of [Name of Debtor] filed on [Date of Filing] in the United States Bankruptcy Court for the_____District of_____. Information provided to me indicates you may be owed money by the debtor for a domestic support obligation. If this domestic support obligation includes child support, you have the right to ask your State child support enforcement agency to assist you in collecting this child support during and after the bankruptcy case. The name, address, and telephone number of the agency in your State are listed below:

[Name, Address, and Telephone Number of State Child Support Enforcement Agency]

If this letter has reached you, but you have moved to another State, you may wish to visit the Internet web site of the United States Trustee Program at http://www.usdoj.gov/ust/eo/bapcpa/ds/index.htm for a complete listing of State child support enforcement agencies. Please also notify my office of your new address.

If [Name of Debtor] successfully completes this bankruptcy case and receives a discharge from other debts, I will send you another letter with additional information that may assist you in collecting on any domestic support obligation you are still owed.

Sincerely yours,

Chapter 12 or 13 Trustee

SAMPLE INITIAL LETTER TO
STATE CHILD SUPPORT ENFORCEMENT AGENCY REGARDING
A CLAIM FOR A DOMESTIC SUPPORT OBLIGATION

Chapter 7, 12, or 13

[Name and Address of State Agency]

Attention: Bankruptcy Reporting Contact

Re: Domestic Support Obligation Owed to [Name of Person Owed Support]
By [Name of Debtor, Bankruptcy Case No. xx-xxxxx,
Social Security Number xxx-xx-xxxx]

Dear Bankruptcy Reporting Contact:

I am the chapter [7, 12, or 13] trustee in the case of [Name of Debtor] filed on [Date of Filing] in the United States Bankruptcy Court for the_____ District of _____. Please be advised that information provided to me in this case lists the following person as having a claim for a domestic support obligation against [Name of Debtor]:

[Name, Address, and Telephone Number of Holder of Claim)

In addition to contacting you, I have sent [Holder of Claim] a letter which explains that your agency may assist in collecting any child support claim due from [Name of Debtor].

If [Name of Debtor] successfully completes this bankruptcy case and receives a discharge from other debts, I will send you another letter providing additional information that may help your agency provide assistance to [Name of Holder of Claim] to collect on any domestic support obligation still owed.

Sincerely,

Chapter 7, 12, or 13 Trustee

SAMPLE DISCHARGE NOTIFICATION TO
HOLDER OF CLAIM FOR A DOMESTIC SUPPORT OBLIGATION

Chapter 7, 12, or 13

[Name and Address of Holder of Claim for a Domestic Support Obligation]

Re: [Name of Debtor]
Bankruptcy Case Number: [xx-xxxxx]

Dear [Name of Holder of Claim]:

Please be advised that [Name of Debtor] was granted a discharge in bankruptcy on [Date of Discharge]. The following information is being provided to assist in your efforts to collect any domestic support obligation which [Name of Debtor] may still owe you:

Last known address of the debtor:

Name of debtor's last known employer:

Address of debtor's last known employer:

I am also obligated to provide you the names of certain creditors whose debts were not discharged or reaffirmed. These creditors are as follows:

[Listing of Creditors]

These creditors may be a source of information regarding any future address for [Name of Debtor]. If you request information from these creditors, they are allowed by law to disclose to you the last known address for [Name of Debtor].

Sincerely,

Chapter 7, 12, or 13 Trustee

**SAMPLE DISCHARGE NOTIFICATION TO
STATE CHILD SUPPORT ENFORCEMENT AGENCY REGARDING
A CLAIM FOR A DOMESTIC SUPPORT OBLIGATION**

Chapter 7, 12, or 13

[Name and Address of State Agency]

Attention: Bankruptcy Reporting Contact

Re: Domestic Support Obligation Owed to [Name of Person Owed Support]
By [Name of Debtor, Bankruptcy Case No. xx-xxxxx,
Social Security Number xxx-xx-xxxx]

Dear Bankruptcy Reporting Contact:

Please be advised that [Name of Debtor] was granted a discharge in bankruptcy on [Date of Discharge]. The following information is being provided to assist in your efforts to collect any domestic support obligation which [Name of Debtor] may still owe to [Name of Person Owed Support]:

Last known address of the debtor:

Name of debtor's last known employer:

Address of debtor's last known employer:

I am also obligated to provide you the names of certain creditors whose debts were not discharged or reaffirmed. These creditors are as follows:

[Listing of Creditors]

These creditors may be a source of information regarding any future address for [Name of Debtor]. If you request information from these creditors, they are allowed by law to disclose to you the last known address for [Name of the Debtor].

Sincerely,

Chapter 7, 12, or 13 Trustee

SECTION 341(a) MEETING OF CREDITORS

REQUIRED STATEMENTS/QUESTIONS[1]

1. State your name for the record. Is the address on the petition your current address?

2. Please provide your picture ID and social security number card for review.

   a. If the documents are in agreement with the § 341(a) meeting notice, a suggested statement for the record is:

      "I have viewed the original state of _____ drivers license (or other type of original photo ID) and original social security card (or other original document used for proof) and they match the name and social security number on the § 341 (a) meeting notice."

   b. If the documents are not in agreement with the 341(a) meeting notice, a suggested statement for the record is:

      "I have viewed the original social security card (or other original document used for proof) and the number does not match the number on the § 341(a) meeting notice. I have instructed the debtor (or debtor's counsel) to submit to the court an amended verified statement by [date], with notice of the correct number to all creditors, the United States Trustee, and the trustee, and to file with the court a redacted copy of the notice, showing only the last four digits of the social security number, and a certificate of service."

   c. When the documents do not match the petition, the trustee shall attempt to ascertain why, and shall report the matter to the United States Trustee.

   d. If the debtor did not bring proof of identity and social security number, the trustee shall determine why.

3. Did you sign the petition, schedules, statements, and related documents and is the signature your own? Did you read the petition, schedules, statements, and related documents before you signed them?

[1]These statements/questions are required. The trustee shall ensure the debtor answers the substance of each of the questions on the record. The trustee may exercise discretion and judgment in varying the wording of the statements/questions, if the substance of the questions is covered.

4. Are you personally familiar with the information contained in the petition, schedules, statements and related documents? To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct? Are there any errors or omissions to bring to my attention at this time?

5. Are all of your assets identified on the schedules? Have you listed all of your creditors on the schedules?

6. Have you previously filed bankruptcy? (If so, the trustee must obtain the case number and the discharge information to determine the debtor(s) discharge eligibility.)

7. What is the address of your current employer?

8. Is the copy of the tax return you provided a true copy of the most recent tax return you filed?

9. Do you have a domestic support obligation? To whom? Please provide to me the claimant's address and telephone number, but do not state it on the record.

10. Have you read the Bankruptcy Information Sheet provided by the United States Trustee?

SAMPLE GENERAL QUESTIONS
(To be asked when deemed appropriate.)

1. Do you own or have any interest whatsoever in any real estate?

   If owned: When did you purchase the property? How much did the property cost? What are the mortgages encumbering it? What do you estimate the present value of the property to be? Is that the whole value or your share? How did you arrive at that value?
   If renting: Have you ever owned the property in which you live and/or is its owner in any way related to you?

2. Have you made any transfers of any property or given any property away within the last one year period (or such longer period as applicable under state law)?
   If yes: What did you transfer? To whom was it transferred? What did you receive in exchange? What did you do with the funds?

3. Does anyone hold property belonging to you?
   If yes: Who holds the property and what is it? What is its value?

4. Do you have a claim against anyone or any business?
   If there are large medical debts, are the medical bills from injury?
   Are you the plaintiff in any lawsuit?
   What is the status of each case and who is representing you?

5. Are you entitled to life insurance proceeds or an inheritance as a result of someone's death?
If yes: Please explain the details.

If you become a beneficiary of anyone's estate within six months of the date your bankruptcy petition was filed, the trustee must be advised within ten days through your counsel of the nature and extent of the property you will receive. FRBP 1007(h)

6. Does anyone owe you money?
If yes: Is the money collectible? Why haven't you collected it? Who owes the money and where are they?

7. Have you made any large payments, over $600, to anyone in the past year?

8. Were federal income tax returns filed on a timely basis? When was the last return filed? Do you have copies of the federal income tax returns? At the time of the filing of your petition, were you entitled to a tax refund from the federal or state government ?
If yes: Inquire as to amounts.

9. Do you have a bank account, either checking or savings?
If yes: In what banks and what were the balances as of the date you filed your petition?

10. When you filed your petition, did you have:

    a. any cash on hand?
    b. any U.S. Savings Bonds?
    c. any other stocks or bonds?
    d. any Certificates of Deposit?
    e. a safe deposit box in your name or in anyone else's name?

11. Do you own an automobile?
If yes: What is the year, make, and value? Do you owe any money on it? Is it insured?

12. Are you the owner of any cash value life insurance policies?
If yes: State the name of the company, face amount of the policy, cash surrender value, if any, and the beneficiaries.

13. Do you have any winning lottery tickets?

14. Do you anticipate that you might realize any property, cash or otherwise, as a result of a divorce or separation proceeding?

15. Regarding any consumer debts secured by your property, have you filed the required Statement of Intention with respect to the exemption, retention, or surrender of that secured property? Please provide a copy of the statement to the trustee. Have you performed that intention?

16. Have you been engaged in any business during the last six years?
If yes: Where and when? What happened to the assets of the business?

In cases where debtors are engaged in business, the following questions should be considered:

1. Who was responsible for maintaining financial records?

2. Which of the following records were maintained?

   a. Cash receipts journal
   b. Cash disbursements journal
   c. General journal
   d. Accounts receivable ledger
   e. Accounts payable ledger
   f. Payroll ledger
   g. Fixed asset ledger
   h. Inventory ledger
   i. General ledger
   j. Balance sheet, income statement, and cash flow statements

3. Where are each of the foregoing records now located?

4. Who was responsible for preparing financial statements?

5. How often were financial statements prepared?

6. For what periods are financial statements available?

7. Where are such financial statements now located?

8. Was the business on a calendar year or a fiscal year?

9. Were federal income tax returns filed on a timely basis? When was the last return filed?

10. Do you have copies of the federal income tax returns? Who does have the copies?

11. What outside accountants were employed within the last three years?

12. Do you have copies of the reports of such accountants? Who does have copies?

13. What bank accounts were maintained within the last three years?

14. Where are the bank statements and canceled checks now located?

15. What insurance policies were in effect within the last year? What kind, and why?

16. From whom can copies of such insurance policies be obtained?

17. If the business is incorporated, where are the corporate minutes?

18. Is the debtor owed any outstanding accounts receivable? From whom? Are they collectible?

19. Is there any inventory, property, or equipment remaining?