



AMERICAN
BANKRUPTCY
INSTITUTE

2022 Consumer Practice Extravaganza

Contingency Planning, Risk-Reduction and Other Security Considerations

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Today's Discussion

Managing Risks Inherent in Bankruptcy Practice

- ❖ Types of Risks to Mitigate
 - ❖ Physical Security
 - ❖ Data Security
 - ❖ Business Continuity



Security Overview: Protecting Your People and Data



Consumer Bankruptcy is a Risky Business

- ❖ Physical Harm to Employees
- ❖ Physical Harm to Property
 - ❖ Loss of Data
- ❖ Loss of Access to Data or Function
 - ❖ Reputational Risk



Security: Back to Basics

Ethical Rules:

ABA 1.1 Competence

ABA 1.6 Confidentiality

ABA 1.15 Safeguarding Property

ABA 5.1 & 5.3 Supervision

Lawyers are under numerous ethical obligations to competently represent their clients while protecting their client's confidentiality, safeguarding their property.



ABA 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.

Comment [8] to Rule 1.1 advises lawyers that to maintain the requisite knowledge and skill for competent representation, a lawyer should keep abreast of the benefits and risks associated with relevant technology. Rule 1.6(c) requires a lawyer to make "reasonable efforts" to prevent the inadvertent or unauthorized disclosure of or access to information relating to the representation.



ABA 1.6 Confidentiality

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

...

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.



ABA 1.15 Safeguarding Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.



Physical Security 101

Basics Protections

- ❖ Locked doors and security systems.
- ❖ Locked file storage.
- ❖ Fire suppression/alarms.



Physical Security 201



- ❖ Employee Vetting and Training (see ABA 5.1 & 5.3)
 - ❖ Roles Based Access
 - ❖ Visitor Policies
 - ❖ Shared Spaces
 - ❖ Third Party Vetting



Data Security

The State of US Privacy Law



Data Security

Privacy & Security



Data Security

Remote User Policies



Data Security

Security Training & Social Engineering



Business Continuity / Disaster Recovery

Creating a Business Continuity Plan

Implementing the Plan/Recovery

Professional Responsibility



Business Continuity

What is a Business Continuity Plan
and Why have one?



Business Continuity

Prepare- Create a written plan-general provisions and ideas:

- Assess what could happen
- Identify essential/critical business functions
- Prepare for multiple disasters;
- How to implement;
- Create levels of severity and develop emergency procedures accordingly ;
- Alternate business location;
- Determine critical business functions;
- Access to vital records;



Business Continuity

Prepare- Create a written plan-general provisions and ideas:

- Develop a hierarchy of key people/points of contact and define their roles;
- Assess damage and report accordingly
- Plan for the expedient recovery;
- Assess the risks and analyze the possible consequences (costs; business impact; supply interruption).
- Insurance- coverage deductibles; exclusions- additional riders? Loss of revenue- LOC;
- Inventory lists;
- Communication is critical. Staff; clients; vendors- must be honest and swift; Employees and staff must be aware that the plan exists and have access to the plan;
- Update regularly.



Business Continuity

Implementation

- **Safety (determine if disaster is over or if more planning is required);**
- **Respond (lines of communication- who to communicate with inside the organization- point of contact)**
- **Stay informed (television; radio; internet; multiple social media platforms)**



Disaster Recovery

Post- disaster planning- Recovery

- **Assess damage and safety**
- **Assess Health and well being of people**
- **Report accordingly to the local authorities; insurance company; landlord;**
- **Look for any available resources that may be able to assist**
- **Re-evaluate your plan**



Disasters

Disasters

- Power Loss/Utility Outage
- Pandemic
- Earthquake
- Hurricane
- Tornadoes
- Flood



Ethical Obligations When Disaster Strikes

**Ethical opinion ABA Formal
Opinion- 482 Ethical
Obligations Related to
Disasters (September 19,
2018)**



Ethical Obligations

- Communication
- Continued Representation in the Affected Area
- Withdrawal from Representation After a Disaster
- Withdrawal from Representation After a Disaster
- Representation of Clients by Displaced Lawyers in Another Jurisdiction
- Loss of Files and Other Client Property
- Solicitation and Advertising



Final Thoughts

When disaster strikes:

Keep calm

Be optimistic

Be civil to your opponent



Resources

- Ready Campaign is a National public service campaign designed to educate and empower the American people to prepare for, respond to and mitigate emergencies, including natural and man-made disasters. <https://www.ready.gov/about-us>
- ABA- Disaster Response and Preparedness is a standing committee that is committed to educating lawyers bar associations and the justice system to prepare. <https://www.americanbar.org/groups/committees/disaster/>
- FEMA <https://www.fema.gov/disaster/declarations>
- U.S. SBA <https://www.sba.gov/>

Faculty

John R. Bollinger is a shareholder with the Boleman Law Firm, P.C. and the partner in charge of the firm's Newport News, Va., office. The firm focuses exclusively in the area of consumer bankruptcy law and is the largest consumer bankruptcy practice in Virginia. Mr. Bollinger is a frequent speaker at local, regional and national organizations and is past president of the board of the Tidewater Bankruptcy Bar Association. He has spoken before ABI, J. Sargeant Reynolds Community College, T. C. Williams School of Law at the University of Richmond, Virginia Bar Association (VBA), Tidewater Bankruptcy Bar Association (TBBA), Virginia Governors Conference on Housing, the National Association of Chapter Thirteen Trustees and the Virginia Trial Lawyer's Association, as well as a number of civic and business organizations. Additionally, he has served as the past president of the board for the Tidewater Bankruptcy Bar Association. Mr. Bollinger most recently served on the 2019 ABI Strategic Planning Committee and the 2019 and 2020 ABI "40 Under 40" Steering Committees. He currently serves as the Education Director of ABI's Consumer Bankruptcy Committee and is an editor for ABI's VOLO project. Mr. Bollinger has been recognized by *Super Lawyers* as a "Virginia Rising Star" in the area of Consumer Bankruptcy Law. He received his J.D. from the University of Richmond T.C. Williams School of Law.

Hon. Rebecca B. Connelly is a U.S. Bankruptcy Judge for the Western District of Virginia in Harrisonburg, appointed in July 2012. She is a former standing chapter 13 trustee and chapter 12 trustee for the Western District of Virginia. Judge Connelly has been a member of ABI since 1994 and has served as a contributing editor and a features author for the *ABI Journal*, a member of the Consumer Bankruptcy Committee, and a speaker at ABI's Annual Spring Meeting and Winter Leadership Conference, "Eye on Bankruptcy" program and Views from the Bench. She also serves on the board of CARE and was an adjunct professor of law at Washington and Lee University School of Law. Judge Connelly was appointed to the Judicial Conference Advisory Committee on Bankruptcy Rules, for which she chairs its Consumer Subcommittee, is a member of its Cross-Border Insolvency Subcommittee and acts as its Bankruptcy Committee liaison. She received her B.A. in 1985 from the University of Maryland and her J.D. in 1988 from Washington & Lee University School of Law.

Berton J. "B.J." Maley is a vice president of Codilis & Associates, P.C. in Burr Ridge, Ill., and serves as both compliance officer and diversity officer for the Codilis Family of Firms. He oversees audit and compliance functions, as well as the firm's expanding Diversity, Equity, and Inclusion Program. Mr. Maley formerly served for nearly 30 years in Codilis's bankruptcy department. He is active in several bar and industry related trade associations, and served as co-chair of ABI's Seventh Circuit Consumer Bankruptcy Conference Advisory Board and as a member of ABI's Commission on Consumer Bankruptcy, for which he served on its Chapter 7 Committee. In addition, he is a past chair of the Bankruptcy Law and Practice Committee of the DuPage County Bar Association and of the Bankruptcy and Reorganization Committee of the Chicago Bar Association. Mr. Maley is a member of the Bankruptcy Association of Southern Illinois, the Illinois State Bar Association, ABI, the National Association of Chapter 13 Trustees (associate member) and Phi Alpha Delta Law Fraternity, International (International board member - marshal). He has previously served as a member of the Bench Bar Liaison Committee for the U.S. Bankruptcy Court for the Northern District of Illinois and of the Model Plan Committees for the U.S. Bankruptcy Court for the Southern District

of Illinois and the Springfield Division of the U.S. Bankruptcy Court for the Central District of Illinois. Mr. Maley is an author and regular lecturer on bankruptcy, mortgage foreclosure and related topics and has spoken for such groups as ABI, the Bankruptcy Association of Southern Illinois, the Illinois Institute of Continuing Education, the DuPage County Bar Association, the Chicago Bar Association, Phi Alpha Delta Law Fraternity, REOMAC (mortgage industry trade association) and the Illinois Housing Development Authority. He is admitted to practice in Illinois, the U.S. Supreme Court, the U.S. Court of Appeals for the Seventh Circuit, and the U.S. District Courts for the Northern, Central and Southern Districts of Illinois, the Northern and Southern Districts of Indiana, and the Eastern District of Wisconsin. Mr. Maley received his B.A. in 1990 from Loyola University of Chicago College of Arts and Sciences and his J.D. from Loyola University School of Law in 1992.

Thomas P. O'Hern is program manager for Enterprise Cybersecurity & Resilience at ICF International, Inc. in Fairfax, Va. For the last 25 years, he has been a cybersecurity consultant, supporting defense, federal and commercial clients for Jacob & Sundstrom, now part of ICF. Mr. O'Hern was a founding member, program manager and technical lead for the Army Research Laboratory Center for Intrusion Monitoring and Protection. He staffed and managed this national 24x7 computer emergency response capability, where he performed intrusion-detection systems research and development, computer incident response, enterprise information assurance and compliance management. Previously, Mr. O'Hern was with the Howard Hughes Medical Institute (HHMI) at the University of Maryland Baltimore County, where he coordinated a multimillion-dollar research wing renovation integrating supercomputing capabilities and produced graphical renderings of the AIDS virus selected for covers of international biochemistry research publications. Over the last 17 years, he has been the program manager of the Standing Trustee Alliance for Computer Security (STACS) on behalf of the National Association of Chapter 13 Trustees (NACTT), for which he and his team provide cybersecurity consulting services and on-site security assessments to 150 chapter 13 trustees across the U.S. He also provides custom cybersecurity programs to medium-sized and small business. Mr. O'Hern received his degrees in engineering technology and computer science graduate from the University of Maryland Baltimore County, where he also provided Unix computer expertise for more than 600 systems in the academic departments.

Natalie Friend Wilson is a shareholder with Langley & Banack, Inc. in San Antonio and has more than a decade of experience representing debtors, trustees and creditors in commercial bankruptcy cases filed under chapters 7 and 11 of the Bankruptcy Code, including related litigation and appeals. She also consults with other members of the firm about bankruptcy-related issues or questions that may arise in litigation or transactional matters. Ms. Wilson has expanded her practice to include cybersecurity, data protection and privacy, and she assists businesses in developing and implementing policies, terms of use, response plans, and in responding to adverse incidents. Prior to joining Langley & Banack, she clerked for Associate Justice Simeon R. Acoba, Jr. (Ret.) at the Hawaii Supreme Court, then entered private practice in Honolulu, practicing before the bankruptcy, federal and state courts in Hawaii. In addition to her legal practice and her membership in various bar associations, Ms. Wilson is active in the Military Spouse JD Network, a bar association for lawyers married to members of the armed forces. She previously served as Key Spouse Mentor for the 836th Cyberspace Operations Squadron and as the Key Spouse for the 92nd Cyber Operations Squadron (2016-17) and the 624th Operations Center (2011-12). Ms. Wilson has been honored as a Professional "On the Rise" by *Texas Lawyer Magazine* (2018), as one of the *San Antonio Business Journal's* 40 Under 40 (2016), and the Belva Lockwood Outstanding Young Lawyer by the Bexar County Women's Bar

Foundation (2014). In 2020, upon her spouse's retirement from active duty service, she received the "Yellow Rose of Texas" Commission from Texas Governor Abbott. Ms. Wilson received her B.A. *summa cum laude* in 2004 from St. Mary's College of Maryland and her J.D. *cum laude* in 2007 from the University of Hawai'i William S. Richardson School of Law, where she served as articles editor of its law review and received the CALI Certificate of Excellence for Federal Courts.