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Straight & Narrow

By James B. Kobak, Jr. and Ignatius A. Grande[1]

Social Media Ethics: Keeping Up with Changing Obligations

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Social media continues to impact the legal world in ways that could not have been foreseen only 10 years ago. Bankruptcy attorneys in particular are finding themselves using social media more often and are utilizing it for a variety of purposes, with the rise of bankruptcy blogs and the active use of applications such as LinkedIn. Many active users undoubtedly have a mix of motives: staying in touch with colleagues; commenting about and keeping up-to-date with legal developments; letting people know of important events in their personal or professional lives; and, in the back of some minds but undoubtedly in the forefront of others, using it as a tool to cultivate name recognition and develop business.

Social media and the ease with which one can store and post information and communicate with large groups of people continue to create challenges for all attorneys, including bankruptcy attorneys. An attorney must think before he/she tweets, posts on Facebook, Snapchats[2] — or puts anything on the Internet, for that matter.[3] An attorney also has an obligation — or at least a professional interest — to advise clients on how to manage their social media accounts consistently with legal positions, but an attorney must abide by professional responsibility rules and obligations when doing so.

Over the past year, ethics committees and bar associations have continued to issue opinions and guidance on how attorneys can use social media, and attorneys and their clients have demonstrated how these platforms can be misused in ways that create ethical issues. It is more important than ever before for attorneys to be aware of the pitfalls, as well as the opportunities, that have been created by changing technology.

A bankruptcy attorney who uses any form of social media — or has clients who do — needs to understand how different social media platforms work and needs to be aware of the existence of any ethics rules or opinions that may affect the attorney's use or their client's use of social media. In other words, developments in this area affect virtually every bankruptcy professional, both technophobe and technophile alike.

This article alerts insolvency practitioners to recent developments in three areas: the duty to advise clients on social media use without running afoul of spoliation rules; the possible need to conform online communication to a number of disparate state advertising and solicitation rules; and the duty to protect confidential information in electronic, as well as physical, form. The case law, professional responsibility rules, and ethics opinions and comments are rapidly evolving and can vary by state.

Social Media Use and Privacy Settings

Clients may post information or remarks on social media that might be inconsistent with later legal positions that they may wish to adopt in insolvency proceedings or other contexts. Such postings may inadvertently divulge information that they would have preferred that creditors or a trustee not know. Social media postings may also serve as fodder for endless and embarrassing discovery or cross-examination, as well as unwittingly violate the rights of third parties. An attorney may consider it good practice, and even part of diligent representation, to advise about what should or should not appear on a client's website, social media feeds and even blogs.

Although content on a social media platform may seem to be different from emails or electronic files, the information stored on social media plat-

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1 Mr. Kobak is a member of the New York County Lawyers Association Ethics Committee, whose opinions are referenced in this article, and the Committee on Standards for Attorney Conduct, which recommended the changes to the comments to the New York Rules of Professional Conduct. Mr. Grande teaches a course on e-discovery at St. John's University School of Law and co-chairs the Social Media Committee of the New York State Bar Association's Commercial and Federal Litigation Section, whose guidelines are referenced in this article.

2 Although he is not an attorney, Royal Bank of Scotland Chairman Rory Cullinan recently resigned after his daughter took screenshots of Snapchat posts of Cullinan being bored at work and posted them online, where they were found by reporters. Snapchat puts a time limit on how long recipients can view and download photos, videos or messages, but Cullinan's daughter took screenshots on her phone and proceeded to upload them to the photo-sharing social media platform Instagram. While it is not clear whether Cullinan resigned due to the Snapchat issue, the media has alleged that it was the reason for his departure. *See* Lianna Brinded, "RBS Boss Leaves Weeks After These Snapchat Pictures Were Put on Instagram by His Daughter," *Business Insider*, March 31, 2015, *available at* uk.businessinsider.com/rbs-boss-rory-cullinan-leaves-just-weeks-after-snapchat-pictures-were-unveiled-on-instagram-2015-3#ixzz3i6BkhiYT (unless otherwise indicated, all links in this article were last visited on Aug. 18, 2015).

3 In recent years, attorneys have posted inappropriate information about their clients on social media, have tweeted profane comments to large audiences when childishly debating Supreme Court holdings on social media, and have misrepresented their attorney admission status and work experience on social media. *See* Erin Fuchs,"A Facebook Photo of Leopard-Print Underwear Caused a Murder Mistrial in Miami," *Business Insider*, Sept. 13, 2012, *available at* www.businessinsider.com/facebook-photo-and-murder-mistrial-2012-9; Debra Cassens Weiss, "BigLaw Partner's Twitter F-Bomb Is Aimed at SCOTUSblog Snark," *ABA Journal*, Oct. 21, 2013, *available at* www.abajournal.com/news/article/biglaw_partners_twitter_f-bomb_is_aimed_at_scotusblog_snark/; Eric Turkewitz, "NJ Files Ethics Complaint Against Rakofsky (And Why It's Important to You)," *New York Personal Injury Law Blog*, March 26, 2014, *available at* www.newyorkpersonalinjuryattorneyblog.com/2014/03/nj-files-ethics-complaint-against-rakofsky-and-why-its-important-to-you.html.

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forms is subject to the same preservation requirements as other forms of data. (Since social media can provide a treasure trove of information in many cases, it is becoming more and more important for attorneys to advise clients on the proper use of social media as it relates to their cases.) It has been clear for several years that an attorney cannot advise a client to delete a social media account or delete content when the information found on the social media account is subject to a litigation hold.[4] More recently, ethics opinions have focused on the related issue of how a lawyer can — and may have a duty to — advise a client regarding changing social media privacy settings.

The Philadelphia Bar Association recently issued an ethics opinion that stated that a lawyer may advise a client to change the privacy settings on his/her social media page, as long as the lawyer does not instruct or permit a client to delete or destroy any "relevant" content "so that it no longer exists."[5] The committee found that changing the privacy settings was acceptable; even though a change would restrict immediate access to the content of the site, a change in privacy settings does not prevent the opposing party from being able to obtain such information through discovery or by a subpoena.

Florida also has issued guidance on this point. In January 2015, the Florida State Bar Association's Ethics Advisory Committee issued a proposed advisory opinion, noting that "a lawyer may advise a client to use the highest level of privacy setting[s] on the client's social media [accounts]."[6] The committee also concluded that, "[p]rovided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, a lawyer also may advise that a client remove information relevant to the foreseeable proceeding from social media pages as long as an appropriate record of the social media information or data is preserved."[7]

What Makes Social Media Communications Advertising?

For several years, bar associations and ethics opinions have found that attorneys who advertise on social media should be subject to the same requirements that are otherwise in place. In 2012, a California Ethics Opinion held that "[t]he restrictions imposed by the professional responsibility rules and standards governing attorney advertising are not relaxed merely because such compliance might be more difficult or awkward in a social media setting."[8] New York attorneys were also recently provided with specific guidance on what usage may constitute advertising.

On March 10, 2015, the New York County Lawyers Association (NYCLA) Professional Ethics Committee weighed in on the ethical implications for lawyers who use social media websites to promote their services when it issued Formal Opinion 748. The opinion focused solely on the use of LinkedIn by attorneys. The committee determined that attorneys may maintain profiles on LinkedIn "containing information such as education, work history, areas of practice, skills and recommendations written by other users."[9] However, if a lawyer wants to include information other than education and employment history, such as a detailed description of practice areas and work done in previous employment positions, that attorney may need to use the words "attorney advertising" if the purpose of the profile could reasonably be deemed to be seeking to be retained by clients and the audience included was not limited to lawyers and present or former clients. A LinkedIn profile in New York should also have the disclaimer, "[p]rior results do not guarantee a similar outcome" if it includes "(1) statements that are reasonably likely to create an expectation about results the lawyer can achieve, (2) statements that compare the lawyer's services with the services of other lawyers, (3) testimonials and endorsements of clients, or (4) statements describing or characterizing the quality of the lawyer's or law firm's services."[10]

This opinion is the first to provide such detailed information on attorney advertising. The New York State Bar Association (NYSBA) Social Media Guidelines had previously stated that social media posts used "primarily" for business purposes are subject to the attorney advertising and solicitation rules. The NYCLA opinion and others have not addressed how to deal with other forms of social media, such as Twitter and Facebook. Attorneys, especially those in New York, must now be cognizant that advertising activity on social media will likely be treated similarly to advertising activity that is in print or on the Internet. In some states, this treatment could entail storing copies of social media profiles or even filing with disciplinary authorities.

Another notable requirement of Formal Opinion 748 is the requirement that attorneys should "periodically" check their LinkedIn profiles in order to monitor what is posted on their profiles by others, by way of endorsements or recommendations that originate from other users. The NYCLA opinion states that "[w]hile we do not believe that attorneys are ethically obligated to review, monitor and revise their LinkedIn sites on a daily or even weekly basis, there is a duty to review social networking sites and confirm their accuracy periodically, at reasonable intervals."[11] This requirement is another example that attorneys can no longer glide by with an ignorance of what social media is; once they set up profiles, they may need to actually monitor them in some way

4 *Lester v. Allied Concrete Co.*, Nos. CL.08-150, CL.09-223 (Va. Cir. Ct. Sept. 1, 2011); *Painter v. Atwood*, 2014 WL 1089694 (D. Nev. March 18, 2014); *Gatto v. United Air Lines Inc.*, 2013 WL 1285285 (D.N.J. March 25, 2013).

5 The Philadelphia Bar Association Professional Guidance Committee, Opinion 2014-5 (July 2014).

6 Professional Ethics Committee of the Florida Bar, Proposed Advisory Opinion 14-1 (Jan. 23, 2015). The Professional Ethics Committee has since affirmed Proposed Advisory Opinion 14-1, with slight modifications after receiving comments. The Florida Bar Board of Governors will review the proposed advisory opinion in October 2015.

7 Other states have echoed this finding, including New York. The updated Social Media Guidelines issued by the New York State Bar Association's Commercial and Federal Litigation Section conclude that "[a] lawyer may advise a client as to what content may be maintained or made private on her social media account, including advising on changing her privacy and/or security settings." NYSBA Social Media Ethics Guideline 5.A (June 2015), *available at* www.nysba.org/socialmediaguidelines/.

8 The State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2012-186 (Dec. 21, 2012).

9 New York County Lawyers Association, Professional Ethics Committee, Formal Opinion 748 (March 10, 2015).

10 *Id.*

11 *Id.*

and keep track of what people might be posting on their sites. Some may well evaluate whether participation in too many forms of social media is worth the effort.

Duty of Competence in Technological Matters

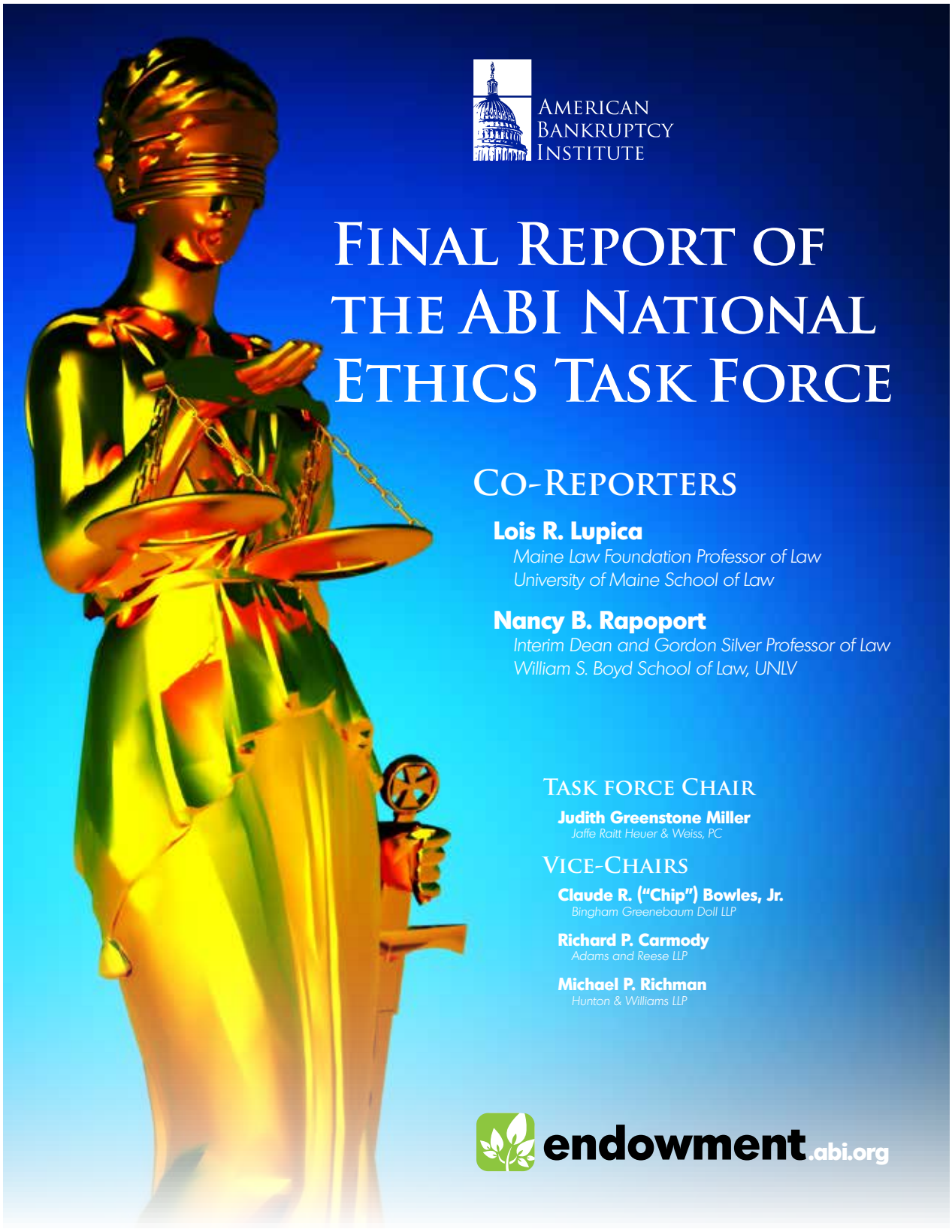
Times have changed in the practice of law, and many governing bodies are now indicating that attorneys should have some expectation or duty of competence as it relates to technology. In 2012, the American Bar Association's (ABA) House of Delegates voted to amend Comment 8 to Model Rule 1.1, which pertains to competence, to revise the section that requires lawyers to "keep abreast of changes in the law and its practice" to include keeping up with "the benefits and risks associated with relevant technology." In January 2015, New York State adopted a version of the ABA Comment that similarly imposes a duty to keep abreast "of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information."[12]

In addition, some ethics committees have directly tied this duty of competence to the social media world. In September 2014, the Pennsylvania Bar Association interpreted Rule 1.1 of the Model Rules of Professional Conduct to require that lawyers have "a basic knowledge of how social media websites work," as well as the ability to advise clients about the legal ramifications of using these sites.[13] In June 2015, the updated Social Media Ethics Guidelines from the Commercial and Federal Litigation Section of the New York State Bar Association suggest that an attorney possess an understanding, at a minimum, of the most basic functions of how each system works, what information (particularly client confidences) might be exposed, to whom and how, and the ethical impact of the usage.[14]

The practice of law and the manner in which professionals and nonprofessionals alike function and communicate have changed dramatically in recent years. Understanding how social media and technology works and will impact one's practice is becoming more of a necessity, both practically and as a matter of professional responsibility. Some large companies are now insisting on strict guidelines for communication protocols and protection of sensitive data, and a market for cyber insurance has even developed. Ethics rules and opinions have not yet opted to require specific measures such as encryption, but some ethics committees and bar associations are beginning to consider such measures. Good bankruptcy lawyers devote time to staying up to date with developments relevant to their chosen field, which now includes developments in the new and changing technologies that they use to interact with colleagues, adversaries and clients. abi

Editor's Note: *Stay connected with ABI on Facebook (facebook.abi.org), Twitter (twitter.abi.org) and LinkedIn (linkedin.abi.org).*

12 New York Rules of Professional Conduct, Rule 1.1, Comment 8.
13 Pennsylvania Bar Association, Formal Opinion 2014-300 (September 2014).
14 Social Media Ethics Guidelines, New York State Bar Association, Commercial and Federal Litigation Section (May 2015).


American Bankruptcy Institute
Final Report of the ABI National Ethics Task Force
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April 21, 2013

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Introduction

In 2011, then-American Bankruptcy Institute President Geoffrey L. Berman established the ABI's National Ethics Task Force[1] to address a problem familiar to all bankruptcy professionals and judges: state ethics rules do not always "fit" with the realities of bankruptcy practice. State ethics rules may also not be a perfect fit in the context of other types of practice, either—for example, states may not yet know how best to handle the increasingly interconnected digital and virtual world—but it is clear that the Model Rules do not fit neatly with the realities of a bankruptcy practice that involves numerous parties with changing allegiances, often departing from the classic two-party adversarial proceeding.[2]

Shortly after President Berman appointed the Task Force's members, the Task Force met to discuss the best way to approach its assignment. At its first meeting, the Task Force promulgated its mission statement:

> *The ABI National Ethics Task Force will consider ethics issues in bankruptcy practice and will make recommendations for uniform standards, where appropriate.*

In essence, the Task Force was charged with answering the question of whether there is a need for national ethics rules, standards, and general practice guidance in the bankruptcy context.[3]

As the Task Force considered the various topics and issues that could potentially be addressed, a few "jumped out."[4] These included the conflicts-related issues that result from the shifting allegiances that can arise during the life of a bankruptcy case, the complexity of disclosure of "connections" when seeking approval of employment, the fleshing out of the duties of counsel for a debtor in possession, and the role of conflicts counsel in business reorganization cases. Other issues implicated in the context of bankruptcy practice, while not specifically at odds with state ethics rules—for example, the concept of attorney competency and the pressing question of how to balance the need for a capable and skilled bar with the need to provide consumers in financial distress access to the bankruptcy system—were addressed in order to provide needed guidance to bankruptcy attorneys.

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[1] Past-President Berman and current President James Markus—with the help of the ABI's Anthony H. N. Schnelling Endowment Fund—have provided significant support for the Task Force's work.

[2] *Cf. In re* Nguyen, 447 B.R. 268, 277 (9th Cir. Bankr. 2011) ("[T]he ABA Standards, which were developed primarily for nonfederal, nonbankruptcy courts by unelected and nonjudicial parties, are ill-adapted to federal bankruptcy proceedings. The ABA Standards were not drafted to address the distinctive context of bankruptcy where, as here, administrative matters rather than litigation may be the focus of an attorney's work.") (referring to the American Bar Association Standards for Imposing Lawyer Sanctions and citing *In re* Brooks-Hamilton, 400 B.R. 238 (9th Cir. Bankr. 2009) (citation omitted)).

[3] The ABI has established a separate Civility Task Force, chaired by James Patrick Shea of Shea & Carlyon.

[4] The Task Force also adopted a set of bylaws.

The Task Force began its work by forming several committees, each focused by topic. Each committee developed initial memoranda on issues that fell within the purview of its subject area. The committees' topics included (1) conflicts of interest, (2) disclosure, retention, and fee issues, (3) consumer issues, (4) committee solicitation issues, and (5) discipline, sanctions, competence, and multi-jurisdictional practice issues. Each committee member attended regular committee meetings, in addition to teleconferences and quarterly meetings of the entire Task Force. The Reporters also held quarterly retreats at which the Reports were researched and drafted.[5] Each Task Force member had the opportunity to comment on the Reporters' draft Reports, and each draft Report was ultimately voted on and approved by the entire Task Force. Although, in its work, the Task Force reviewed several 50-state surveys of particular state ethics rules,[6] it used the American Bar Association's MODEL RULES OF PROFESSIONAL CONDUCT in addressing the issues discussed in this Final Report.[7]

The Task Force also found several worthy topics—including the issue of retainers and employment, standards for practice competency for creditors' counsel, and the issue of ghostwriting a debtor's petition and schedules as a way of addressing bankruptcy access—that the constraints of this Task Force prevented it from fully developing. It is our expectation that these important issues will be taken up in the near future by another ABI working group or committee.

All of the Reporters' White Papers and Proposals are compiled within this Final Report. They are as follows:

1. Proposed Amendments to Rule 2014.[8]
2. Duties of Counsel for a DIP as Fiduciary and Responsibilities to the Estate.
3. A Framework for Pre-Approval of Terms for Retention and Compensation Under 11 U.S.C. § 328.
4. The Use of Conflicts Counsel in Business Reorganization Cases.
5. Best Practices for Limited Services Representation in Consumer Bankruptcy Cases.
6. Competency for Debtors' Counsel in Business and Consumer Cases.
7. Report on Best Practices on Creditors' Committee Solicitation.

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[5] The Reporters were ably assisted by Research Assistants Bridget McMahon, University of Maine School of Law, Class of 2014, and by David Rothenberg and Nicole Scott, William S. Boyd School of Law, UNLV, Class of 2014. The Reporters would also like to thank Heidi Gage for her excellent research and administrative assistance.

[6] The Task Force gratefully acknowledges the research support provided by the reference librarians of the Wiener-Rogers Law Library at the William S. Boyd School of Law.

[7] The Task Force recognizes that the Model Rules do not have the force of law; however, so many states have adopted the Model Rules in part or in whole that the Task Force determined that the discussion of the Model Rules, rather than state ethics rules, would be more useful to most ABI members.

[8] One of the Task Force's Reports—the Report on Proposed Amendments to Rule 2014—has been transmitted to the Advisory Committee on Bankruptcy Rules, which will be reviewing the Report before its Fall meeting.

The Task Force recognizes that much more needs to be done in terms of ethics issues facing the bankruptcy bar and bankruptcy bench—and discussions have already begun with ABI's leadership as to how best to proceed with further review and discussion of ethics issues—but it is pleased to present to you this Final Report and it looks forward to the discussion that will follow.

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April 21, 2013

Best Practices for Limited Services Representation in Consumer Bankruptcy Cases[1]

Introduction[2]

The ABI Bankruptcy Ethics Task Force has considered the issue of Limited Scope Representation ("LSR"), also known as "unbundling legal services" and "discrete task representation." We have also briefly examined the issue of "ghostwriting," a form of LSR.[3] These practices have developed as a means to serve the ever-increasing number of self-represented debtors (also known as *pro se* debtors).

LSR on behalf of a consumer debtor typically consists of the provision by an attorney of a subset of legal services in connection with the filing of a consumer bankruptcy case. LSR is in contrast to the plenary representation of a debtor, where the lawyer is paid a full fee to represent a debtor with respect to all aspects of his bankruptcy case—from pre-filing counseling to post-discharge proceedings. LSR is undertaken to achieve a lower overall cost, and typically in lieu of filing *pro* se or filing with the assistance of a petition preparer. This arrangement allows for legal representation by an attorney for cost containment purposes.[4]

The problem of the high cost of consumer bankruptcy representation is well documented.[5] The recent Consumer Bankruptcy Fee Study revealed a 24% increase in attorney fees post-BAPCPA for Chapter 13 cases, with mean fees in some jurisdictions approaching $5,000.[6] For no-asset cases filed under Chapter 7, mean attorney fees have increased 48%—as high as $1,500 at the mean in some jurisdictions.[7]

Although in most jurisdictions there is a mechanism for attorney fees in Chapter 13 cases to be paid through the plan (thus limiting the amount of cash a financially distressed debtor must have

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[1] This proposed rule is restricted to consumer practice. LSR in the business context has a very different justification and implicates very different issues.

[2] The Reporters' Notes liberally draw on the excellent WHITE PAPER ON LIMITED SCOPE REPRESENTATION IN BANKRUPTCY, prepared by LSR Subcommittee member Theresa V. Brown-Edwards (ABI Ethics Task Force Multijurisdictional Practice/Limited Service Representation Subcommittee) 2012.

[3] Due to the time and resource constraints, the Task Force decided to defer a thorough discussion ghostwriting. It is expected that a future ABI working group will address this important issue.

[4] The Task Force discussed at length the issue of consumers' access to the bankruptcy system, and the tension between the time and skill it takes to responsibly and ethically represent a consumer debtor, and the legal fee the consumer can afford and the market will support. Ultimately the Task Force decided to limit the scope of its report addressing access to the consumer bankruptcy system to a discussion of the issue of Limited Services Representation.

[5] Lois R. Lupica, *The Consumer Bankruptcy Fee Study: Final Report*, 20 AM. BANKR. INST. L. REV. 17 (2012) [hereinafter Lupica].

[6] *Id.* at 30.

[7] *Id.*

in hand to pay an attorney prior to filing),[8] high attorney fees remain a concern. In many instances, at least a portion of the fee must be paid to the attorney up front, and providing for the fee balance to be paid through the plan may adversely affect the plan's feasibility. Thus, high fees in Chapter 13 cases *may* be pricing some debtors out of filing for bankruptcy under Chapter 13.[9] Although it is difficult to measure how many consumers in financial distress do *not* file for bankruptcy protection, the Consumer Bankruptcy Fee Study did reveal that zero cases filed *pro se* under Chapter 13 ended with the debtor receiving a discharge.[10] This is a result of the myriad new obligations imposed on debtors by BAPCPA, and the difficulty many debtors have had (and continue to have) in meeting these obligations.[11]

The problem of *pro se* representation is even more compelling in Chapter 7, where it is far more common. The Consumer Bankruptcy Fee Study found that 5.8% of all Chapter 7 cases are filed *pro se*.[12] This descriptive statistic is reflective of a national random sample of cases filed post-BAPCPA. We recognize, however, that the incidence of *pro se* filings is considerably higher in many jurisdictions. In the ten courts with the greatest number of *pro se* cases, 9.5% to 27.1% of all cases are filed without attorney representation.[13]

The burden that *pro se* debtors place on the court system has been widely recognized.[14] Judges, trustees, and court staff have detailed the extra time and system resources eaten up by aiding

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[8] *Id.* at 116.

[9] *Id.* at 104.

[10] *Id.* at 33-34.

[11] As observed:

> BAPCPA's enactment changed the consumer bankruptcy system in a myriad of small and not-so-small ways. For example, there is now an income and expense standard consumer debtors must meet in order to qualify for Chapter 7. The most critiqued of all new requirements, the means test, mandates that all debtors calculate their income and expenses using a system of complex calculations. It requires the application of various local and IRS expense standards to the debtor's financial information, adjusted by geographic location and household size.
>
> The list of necessary documents and records required by a consumer debtor filing under Chapter 7 or Chapter 13 has also notably increased. In addition to a schedule of assets and liabilities, a schedule of current income and expenditures, and a statement of financial affairs, a debtor must now produce: (i) evidence of payment from employers, if any, received within 60 days of filing; (ii) a statement of monthly net income and any anticipated increase in income or expenses after filing; (iii) a record of any interest the debtor has in a federal or state qualified education or tuition account; and (iv) a copy of his or her tax return for the most recent tax year.
>
> Two educational courses are now also required of debtors—a debtor must complete a credit counseling course prior to filing, and a debtor education course must be completed prior to discharge.

Id. at 33-34 (footnotes omitted).

[12] *Id.* at 31.

[13] *See* Administrative Office of the United States Courts, By the Numbers—Pro Se Filers in the Bankruptcy Courts (2011) (*available at* http://www.uscourts.gov/News/TheThirdBranch/11-10-01/By_the_Numbers--Pro_Se_Filers_in_the_Bankruptcy_Courts.aspx).

[14] Lupica, *supra* note 5, at 102.

pro se debtors who are attempting to navigate the complexities of the bankruptcy process.[15] Moreover, these efforts and resource expenditures are often for naught. The chance a *pro se* debtor's case will be dismissed because of a failure to comply with the dictates of the Bankruptcy Code and Rules is considerably higher than if the debtor were represented.[16]

In considering the issue of Limited Services Representation, the Task Force recognizes the necessity of reconciling the need to protect debtors from receiving inadequate and ineffective representation, even for a limited fee, and the interest of providing debtors with the option of limited legal representation in lieu of self-help resources or non-legal assistance. With the goal of addressing each of these concerns, the Task Force has examined the elements of debtor representation in consumer bankruptcy cases and has developed a framework for engagement of counsel for limited services. After due discussion and consideration, the Task Force is recommending a framework for LSR representation in Chapter 7 consumer cases *only* because of Chapter 13's complexity and the difficulty of distinguishing between the "basic" and the "full service" elements of representation of a Chapter 13 debtor.[17] In addition, the ability to pay legal fees paid through a plan and the historically low incidence of *pro se* Chapter 13 cases has led the Task Force to conclude that the concerns motivating the LSR Proposal are best met by the development of a proposal for best practices for limited services representation only in Chapter 7 consumer cases.

LSR and Model Rules, Local Rules, Bar Association Opinions and Judicial Pronouncements

Limited Scope Representation has been gaining attention among the federal and state judiciary. Typically, states and bar associations have been more receptive to "unbundled" legal services than federal courts. The Model Rules of Professional Conduct, largely adopted in some form in most states, permit Limited Scope Representation under certain, defined circumstances. Rule 1.2(c) reads, "[a] lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent."[18] The Official Comments to Rule 1.2(c) provide:

> The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client . . . . A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.[19]

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[15] *Id.*

[16] *Id.* at 103.

[17] Note, however, that nothing in this Best Practices Statement obviates the need for attorneys for consumer debtors to comply with, *e.g.,* the Bankruptcy Code provisions involving debt relief agencies. *See* 11 U.S.C. §§ 101(8), 101(12A), 526-258.

[18] MODEL RULES OF PROF'L CONDUCT R. 1.2(c) (2011).

[19] *Id.* at R. 1.2 cmt. 5.

The comments to Rule 1.2 further state that lawyers and clients may enjoy "substantial latitude to limit the representation," so long as the proposed limitations are "reasonable under the circumstances." The Official Comment [7] offers the following illustration.

> If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely.[20]

Model Rule 1.0(h) defines "reasonable" as being consistent with the "conduct of a reasonably prudent and competent lawyer.[21] In determining the reasonableness of a proposed representation, the legal knowledge, skill, thoroughness and preparation required is informed by the nature of the unbundled representation.[22]

Currently, dozens of federal judicial districts have adopted a local rule of bankruptcy procedure or written an opinion addressing LSR. The degree of enthusiasm for LSR by courts, who have examined this issue, ranges from high to very low. Some courts have embraced LSR as a tool to address the growing problem of *pro se* debtors.[23] As reported above, legal fees have increased in almost every jurisdiction, pricing some debtors out of legal representation. Moreover, diminished funding for legal services organizations has decreased the availability of low- or no-cost legal representation for low-income debtors. Although the incidence of *pro se* debtors varies from jurisdiction to jurisdiction, at all levels *pro se* cases are reported to add to the already considerably administrative burdens on the courts and the trustees.[24]

Other courts, however, have viewed the practice of unbundling more skeptically.[25] Those

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[20] *Id.* at R. 1.2 cmt. 7; *see also In re* Minardi, 399 B.R. 841, 851-52 (Bankr. N.D. Okla. 2009) (examining the reasonableness requirement based on the nature of the case and the financial circumstances facing a chapter 7 debtor).

[21] MODEL RULES OF PROF'L CONDUCT R. 1.0(h) (2011).

[22] *Id.* at R. 1.2 cmt. 7.

[23] *See* Hale v. United States Trustee, 509 F.3d 1139, 1148 (9th Cir. 2007) (agreeing with the bankruptcy court's determination that bankruptcy counsel may not exclude from representation of the debtor "critical and necessary services"); *In re* Johnson, 291 B.R. 462, 469 (Bankr. D. Minn. 2003) (attorneys representing individual debtors in chapter 7 cases may not "unbundle the core package of ordinary legal representation reasonably anticipated in every case"); *In re* DeSantis, 395 B.R. 162, 169 (Bankr. M.D. Fla. 2008) (counsel for an individual chapter 7 debtor in a consumer case may not exclude from the scope of representation certain essential services; debtor's counsel "must advise and assist their client in complying with their responsibilities assigned by Section 520 of the Bankruptcy Code, including helping their clients decide whether to surrender collateral or instead reaffirm or to redeem secured debts."); *In re* Burton, 442 B.R. 421, 452-53 (Bankr. W.D. N.C. 2009) (disapproving of an attempt to limit representation to file lien avoidances or defend against stay relief motions on the basis that these constitute "key services" to the bankruptcy case).

[24] Lupica, *supra* note 5, at 102.

[25] *See In re* Egwim, 291 B.R. 559, 578 (Bankr. N.D. Ga. 2003); *In re* Carvajal, 365 B.R. 631, 631 (Bankr. E.D. Va. 2007); *In re* Hodges, 342 B.R. 616, 61920 (Bankr. E.D. Wa. 2006). Despite differing views as to the

courts that have viewed limited scope representation less favorably have expressed concern that LSR leaves debtors without guidance in the thick of the bankruptcy case, when they are most vulnerable.[26] Moreover, some judges see full service representation as necessary to meet the minimum standards of a lawyer's professional responsibility. Yet others have noted that what falls under the umbrella of "basic services" is fact-intensive and varies from case to case.

Although both sides of the argument have merit, the Task Force is viewing the LSR Proposal as a needed alternative to a debtor's *pro se* representation. The Proposed Rule should be used as a guide for measuring the reasonableness of a particular Chapter 7 bankruptcy representation arrangement.

In recognizing that the concept of reasonableness is both fact-intensive and situation-specific, the Restatement (Third) of Law Governing Lawyers offers the following guidelines: (i) a client must be informed of and consent to any "problems that might arise related to the limitation," (ii) a contract limiting the representation is construed "from the standpoint of a reasonable client," (iii) if any fee is charged, it must be reasonable in light of the scope of the representation, (iv) changes to representation made after an unreasonably long time after beginning representation must "meet the more stringent tests…for post inception contracts or modifications," and (v) the limitation's terms must be reasonable in light of the client's sophistication level and circumstances.[27]

Informed Client Consent

The reasonableness of a representation cannot be evaluated without the client's informed consent. Informed consent requires that the client knows of and understands the risks and benefits of the limited representation. The Model Rules define informed consent as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks and reasonably available alternatives to the proposed course of conduct."[28]

In the context of consumer bankruptcy, any attempt to limit the scope of representation

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degree to which unbundling is permissible, no court appears to have allowed the exclusion of all post-petition services altogether. *See In re* Wagers, 340 B.R. 391, 398 (Bankr. D. Kan. 2006).

[26] *In re* Bulen, 375 B.R. 858, 866 (Bankr. D. Minn. 2007) (observing that unbundled legal representation is akin to putting a "Band-aid on a gun shot" and leads to an "unraveled legal process, no increased access to justice."); *see also In re* Cuddy, 322 B.R. 12, 17 018 (Bankr. D. Mass. 2005).

[27] Restatement (Third) of Law Governing Lawyers § 19 cmt. c. (2000).

[28] MODEL RULES OF PROF'L CONDUCT R. 1.0(e) (2011). The Official Comments to Rule 1.0(e) further explain: "The communication necessary to obtain such consent will vary according to the Rule involved and circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives." *Id.* at cmt. 6.

must be fully disclosed and clearly understood by the debtor before proceeding with the engagement.[29] This means that for a debtor to provide valid, fully informed consent to limited services representation, the lawyer must fully explain the services that are omitted from the representation, including the materiality of these services and the potential ramifications of their omission. As a matter of "best practices," the Task Force recommends that any informed consent be in writing. A "Model Agreement and Consent to Limited Representation in Consumer Bankruptcy" is found below.

In addition to executing the "Agreement and Consent to Limited Representation in Consumer Bankruptcy," the Task Force further recommends that an affidavit be signed by the attorney and filed with the Bankruptcy Court attesting that the "Agreement and Consent to Limited Representation in Consumer Bankruptcy" was signed by the debtor and the attorney and that the debtor understood its substance.

Despite well-founded concerns for protecting the interests of consumer debtors, the trend in bankruptcy cases (and non-bankruptcy cases) generally favors allowing limited representation in some form. The target of this proposed rule is the debtor who falls in the liminal space between not qualifying for legal aid but with limited funds to pay for full-service representation.

Best Practices for Limited Scope Representation

Given the fact-specific nature of limited scope representation in the context of consumer bankruptcy, it is difficult to design the contours of a limited scope representation that fully addresses the client's needs for affordable counsel and that also meets the standard of competent representation.[30] Best practices, at a minimum, require the following:

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[29] *See* Hale v. U.S. Trustee, 509 F.3d 1139, 1147 (9th Cir. 2007); *In re* Castorena, 270 B.R. 504, 529 (Bankr. D. Idaho 2001) ("Unless debtors truly understand what they are bargaining away, the bargain is a sham."(citing *In re* Basham, 208 B.R. 926, 932-33 (B.A.P. 9th Cir. 1997), *aff'd*, 152 F.3d 924 (1998)).

[30] *In re* Castorena, 270 B.R. at 530 (noting the difficulty of predicting which services would be deemed to "part and parcel" of any debtor-engagement, but that "the closer to heart of the matter—the debtors' desire to obtain bankruptcy relief and the process necessary to do so—the less likely exclusion is appropriate." The court identified the following services as core: (i) proper filing of required schedules, statements, and disclosures, including any required amendments thereto; (ii) attendance at the section 341 meeting; (iii) turnover of assets and cooperation with the trustee; (iv) compliance with tax turnover and other orders of the bankruptcy court; (v) performance of the duties imposed by section 521(1), (3) and (4); (v) counseling in regard to and the reaffirmation, redemption, surrender or retention of consumer goods securing obligations to creditors, and assisting the debtor in accomplishing these aims; (vi) responding to issues that arise in the basic milieu of the bankruptcy case, such as violations of stay and stay relief requests, objections to exemptions and avoidance of liens impairing exemptions.). *See also In re* Kieffer, 306 B.R. 197, 207 (Bankr. N.D. Ohio 2004) (characterizing the following matters as "routine": (i) motion for turnover of tax refund, (ii) Rule 2004 examination, (iii) objection to exemption, (iv) objection to motion for relief from stay, and (v) simple notice of sale); *In re* Wagers, 340 B.R. at 398–99 (observing that objections to exemptions, objections to discharge based on the schedules and statements and motion to dismiss for substantial abuse under section 707(b) likely "are so closely related to the advice the attorney gave the pre-petition preparation for filing that the attorney would at least be morally bound, and might be legally bound, to defend the debtor's position against such attacks.").

1. The initial client interview and counseling should make clear the expected scope of representation and the expected limited fee.
2. Attorneys counseling unsophisticated consumer debtors must be mindful, when gathering initial information to assess a case, to avoid the formation of the debtor's perception that a full-scale attorney-client relationship is being formed.
3. An engagement letter and informed consent should be prepared in plain language and carefully reviewed with the debtor. This letter must clearly and conspicuously set forth the services being provided, the services *not* being provided, and the potential consequences of the limited services arrangement.
4. The engagement letter must also clearly describe the fee arrangement, including a statement of how fees for additional services will be charged.[31]
5. All documents and disclosures filed with the bankruptcy court should be done with full candor consistent with the attorney's duty of confidentiality, disclosing the exact nature of the representation and the calculation of fees for services being provided.
6. In the event that withdrawal from the unbundled representation becomes warranted, attorneys must be mindful of protecting their client's interests to the fullest extent practical when exiting the case.
7. As is the case with all legal representation, if the attorney becomes aware of a legal remedy, problem, or alternative outside of the scope of his or her representation, the client must be promptly informed. The attorney has the further obligation to provide his or her client with a thorough explanation of the potential benefits and harms implicated, in order for the client to make an informed decision as to how to proceed.

In considering the range of tasks and services an attorney typically provides to consumer debtors, the Task Force recognized a distinction between the representation of Chapter 7 individual debtors with secured consumer debts, and those Chapter 7 debtors with only unsecured consumer debt.

[31] There are always risks with asking the client to pay, post-petition, for fees incurred pre-petition as part of the engagement. If the Proposed Rule suggested in this Best Practices Statement is not enacted, then perhaps a better approach would be that taken by a case in the Middle District of Florida. In that case, the court approved a payment system in which "the client execute[d] separate fee agreements for prepetition and postpetition services." *See* Walton v. Clark & Washington, 469 B.R. 383, 384 (Bankr. M.D. Fla. 2012).

Even in the context of providing limited services representation, a lawyer representing a Chapter 7 debtor must comply with all of the relevant governing Rules of Professional Conduct. These rules include the requirements of (i) competency (Rule 1.1.),[32] (ii) diligence (Rule 1.3),[33] (iii) communication (Rule 1.4),[34] (iv) confidentiality (Rule 1.6)[35] , and (v) conflicts of interest (Rules 1.7,[36] 1.8,[37] 1.9,[38] 1.10,[39] and 1.11[40]).[41]

[32] "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 Prof'l Conduct R. 1.1 (2011). The issue of attorney competency in the bankruptcy context will be further addressed elsewhere in the Task Force's Reports.

[33] "A lawyer shall act with reasonable diligence and promptness in representing a client." *Id.* at R. 1.3.

[34] (a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Id. at R. 1.4.

[35] "(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)." *Id.* at R. 1.6.

[36] *Id.* at 1.7 (prohibiting representation of current clients whose interests conflict with other current clients).

[37] *Id.* at 1.8 (prohibiting the representation of clients whose interests conflict with the lawyer's personal or business interests).

[38] *Id.* at 1.9 (prohibiting the representation of current clients' whose interests conflict with former clients).

[39] *Id.* at 1.10 (imputing certain conflicts of interest to other members of a lawyer's law firm).

[40] *Id.* at 1.11 (addressing conflicts of interest when an attorney leaves government service and enters private sector practice).

[41] For example, it is a breach of the obligations of competence and diligence to have non-lawyer staff to counsel a debtor. *See generally In re* Sledge, 353 B.R. 742, 749 (Bankr. E.D.N.C. 2006); *In re* Pinkins, 213 B.R. 818, 820-21 (Bankr. E.D. Mich. 1997).

Proposed Rule Providing for Limited Scope Representation in Consumer Bankruptcy Cases

(1) If permitted by the governing Rules of Professional Conduct, a lawyer may limit the scope of the representation of an individual debtor (or debtors in a joint case),[42] whose debts are primarily consumer debts, if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(2) Limited Services Representation for Individual Chapter 7 Debtors with No Secured Debts.

A. With respect to a Chapter 7 case filed by an individual debtor, whose debts are primarily consumer debts, where such debtor has no secured debt listed on the bankruptcy schedules or statements, reasonable limited representation includes *all of the following*:

1. An initial meeting with the debtor to explain the bankruptcy process and discuss pre-bankruptcy planning (including exemptions) as well as non-bankruptcy alternatives.
2. Advice to the debtor concerning the debtor's obligations and duties under the Bankruptcy Code and Rules and applicable court orders.
3. Preparation and filing of the documents and disclosures required by the Bankruptcy Code, including performance of the duties imposed by Section 521 of the Code.
4. Provision of assistance with the debtor's compliance with Section 707(b)(4) of the Bankruptcy Code.
5. Preparation and filing of the petition, the Statement of Financial Affairs, and the necessary schedules.
6. Attendance at the Section 341(a) meeting.
7. Communication with the debtor after the Section 341(a) meeting.
8. Monitoring the docket for issues related to discharge.

B. In addition to the limited service representation in a Chapter 7 case, as it is defined above, the representation may also include the following services, to be indicated with a check on the Model Agreement:

- Representation of the debtor in connection with a motion by the Chapter 7 Trustee to reopen the case for the inclusion of newly discovered assets.
- Representation of the debtor in connection with a challenge to the debtor's discharge and/or the dischargeability of certain debts.

[42] As used herein, the term "debtor" shall include an individual debtor, as well as debtors in a joint case. Counsel should be particularly careful in joint debtor cases to ensure that both debtors are fully cognizant of the limitations of LSR. Counsel should also be mindful of the danger of joint debtors implicating conflict of interest concerns.

- Preparation and filing of all motions required to protect the debtor's interests.
- Representation of the debtor with respect to defending objections to exemptions.
- Preparation and filing of responses to all motions filed against the debtor.
- Representation of the debtor in connection with a motion for relief from stay.
- Representation of the debtor in connection with a motion for relief from stay that is resolved by agreement.
- Representation of the debtor in connection with a motion seeking dismissal of the case.
- Other _____

(3) Limited Services Representation for Chapter 7 Debtors with Listed Secured Debts.

A. With respect to a Chapter 7 case filed by an individual debtor, whose debts are primarily consumer debts, where such debtor has listed secured debt on the bankruptcy schedules or statements, reasonable limited representation includes *all of the following*:

1. An initial meeting with the debtor to explain the bankruptcy process and discuss pre-bankruptcy planning (including exemptions) as well as non-bankruptcy alternatives.
2. Advice to the debtor concerning debtor's obligations and duties under the Bankruptcy Code and Rules and applicable court orders.
3. Preparation and filing of the documents and disclosures required by and performance of the duties imposed by Section 521 of the Bankruptcy Code.
4. Provision of assistance with the debtor's compliance with Section 707(b)(4) of the Bankruptcy Code.
5. Preparation and filing of the petition, the Statement of Financial Affairs, and the necessary schedules.
6. Representation of the debtor (including counseling) with respect to the reaffirmation, redemption, surrender, or retention of consumer goods securing obligations to creditors.
7. Attendance at the Section 341(a) meeting.
8. Communication with the debtor after the Section 341(a) meeting.
9. Monitoring the docket for issues related to discharge.

B. In addition to the limited service representation in a Chapter 7 case, as it is defined above, the representation may also include the following services, to be indicated with a check on the Model Agreement:

- Representation of the debtor in connection with a motion by the Chapter 7 Trustee to reopen the case for the inclusion of newly discovered assets.
- Representation of the debtor in connection with a challenge to debtor's discharge and/or the dischargeability of certain debts.

- Preparation and filing of all motions required to protect the debtor's interests.
- Representation of the debtor with respect to defending objections to exemptions.
- Preparation and filing of responses to all motions filed against the debtor.
- Representation of the debtor in connection with a motion for relief from stay.
- Representation of the debtor in connection with a motion for relief from stay that is resolved by agreement.
- Representation of the debtor in connection with a motion seeking dismissal of the case.
- Other _____

Model Agreement and Consent to Limited Representation in Consumer Bankruptcy Cases

In order to provide you with reasonable and affordable representation in connection with your consumer bankruptcy case, I, _____, attorney-at-law, licensed in the State of _____, Bar No. _____, agree to provide you, for a limited fee (as described in **Section III** below, hereinafter referred to as the "Fee"), with some, *but not all*, of the services and advice you may need in connection with your bankruptcy case.

You agree that I am being hired to provide you limited bankruptcy-related representation and recognize that at any time between now and when your case is concluded (either because you receive a discharge, your case is converted to a case under another chapter, or because your case is dismissed), circumstances may arise that require additional legal advice and/or legal services. In such event, you have the option of engaging my services for an additional fee, hiring another attorney, or representing yourself.

You understand that you are seeking legal representation under Section ___ (I OR II) below.

Within the scope of my representation, I agree to act in your best interest at all times, and agree to provide you with competent legal services.

I. For Chapter 7 Debtors Who Have No Secured Debts.

If you have *no secured debts* and are filing for bankruptcy under Chapter 7, the Fee includes *all of the following services*:

1. An initial meeting with you to explain the bankruptcy process and discuss pre-bankruptcy planning (including exemptions) as well as non-bankruptcy alternatives.
2. Advice to you concerning your obligations and duties under the Bankruptcy Code and Rules and applicable court orders.
3. Preparation and filing of the documents and disclosures required by and performance of the duties imposed by Section 521 of the Bankruptcy Code.
4. Provision of assistance with respect to your compliance with Section 707(b)(4) of the Bankruptcy Code.
5. Preparation and filing of the petition, Statement of Financial Affairs, and the necessary schedules.
6. Attendance at the Section 341(a) meeting.
7. Communication with you after the Section 341(a) meeting.
8. Monitoring the docket for issues related to discharge.

If you have no secured debts and are filing for bankruptcy under Chapter 7, the Fee *does not* include any of the following services *unless the box next to the service is checked*. If a box next to a service is checked, that service will be included in the Fee.

- ❑ Representation of your interests in connection with a motion by the Chapter 7 Trustee to reopen the case for the inclusion of newly discovered assets.
- ❑ Representation of your interests in connection with a challenge to your discharge and/or the dischargeability of certain debts.
- ❑ Preparation and filing of all motions required to protect your interests.
- ❑ Representation of your interests with respect to defending objections to exemptions.
- ❑ Preparation and filing of responses to all motions filed against you.
- ❑ Representation of your interests in connection with a motion for relief from stay.
- ❑ Representation of your interests in connection with a motion for relief from stay that is resolved by agreement.
- ❑ Representation of you in connection with a motion seeking dismissal of the case.
- ❑ Other _____

II. For Chapter 7 Debtors Who Have Secured Debts.

If you have secured debts and are filing for bankruptcy under Chapter 7, the Fee includes *all of the following services*:

1. An initial meeting with you to explain the bankruptcy process and discuss pre-bankruptcy planning (including exemptions) as well as non-bankruptcy alternatives.
2. Advice to you concerning your obligations and duties under the Bankruptcy Code and Rules and applicable court orders.
3. Preparation and filing of the documents and disclosures required by and performance of the duties imposed by Section 521 of the Bankruptcy Code.
4. Provision of assistance with respect to your compliance with Section 707(b)(4) of the Bankruptcy Code.
5. Preparation and filing of the petition, Statement of Financial Affairs, and the necessary schedules.
6. Representation of your interests (including counseling) with respect to the reaffirmation, redemption, surrender or retention of consumer goods securing obligations to creditors.
7. Attendance at the Section 341(a) meeting.
8. Communication with you after the Section 341(a) meeting.
9. Monitoring the docket for issues related to discharge.

If you have secured debts and are filing for bankruptcy under Chapter 7, the Fee *does not* include any of the following services *unless the box next to the service is checked*. If a box next to a service is checked, that service will be included in the Fee.

- ❑ Representation of your interests in connection with a motion by the Chapter 7 Trustee to reopen the case for the inclusion of newly discovered assets.
- ❑ Representation of your interests in connection with a challenge to your discharge and/or the dischargeability of certain debts.
- ❑ Preparation and filing of all motions required to protect your interests.
- ❑ Representation of your interests with respect to defending objections to exemptions.
- ❑ Preparation and filing of responses to all motions filed against you.
- ❑ Representation of your interests in connection with a motion for relief from stay.
- ❑ Representation of your interests in connection with a motion for relief from stay that is resolved by agreement.
- ❑ Representation of your interests in connection with a motion seeking dismissal of the case.
- ❑ Other_____

III. The Fee

Because you have agreed to a limited services representation arrangement, I have agreed to a limited fee (the "Fee"). You shall pay for the services described and indicated in **Section ___** (**I or II**) above as follows:

❑ **A flat fee of $ _____,** plus $___ for out of pocket expenses,[43] **OR**

❑ **An hourly fee.** The current hourly fee that I charge is $_____. The current hourly fee that my legal assistant charges is $_____. I expect your case will take about ____ hours. The total Fee you will be charged will be capped at $ ____, plus $____ for expenses.

In the event that you ask me to provide additional services (in addition to those services set forth in Section ____ (I or II) above) after I have begun representing you, there shall be an additional fee paid to me to be calculated as follows: _____

You acknowledge that the fee for additional services (on top of those services set forth in

[43] These expenses may include long-distance telephone and fax costs, photocopy expenses, and postage. Costs such as filing fees, if any, and debtor counseling and debtor education fees shall be paid directly by you.

Section ____ (I or II) above) requested after your bankruptcy petition is filed must be paid from funds that are not part of your bankruptcy estate (such as your post-petition earnings).

You understand that I will exercise my best judgment while performing the limited legal services described in **Section _____** (**I or II**) above, and you also understand:

a. that I am not promising any particular outcome;

b. that you entered into this agreement for limited services because I am charging you a Fee that is less than a fee would be for full-service legal representation in connection with your bankruptcy case;

c. that issues may arise in your case that are not covered by the list of core tasks. If that happens, you have the option of (i) representing yourself with respect to the new issues, (ii) entering into another agreement with me, whereby I will continue to represent you for an additional fee, or (iii) hiring another lawyer to represent you; and

d. that I have no further obligation to you after completing the above-described limited legal services unless and until we enter into another written representation agreement.

Except as required by law, I have not made any independent investigation of the facts and I am relying entirely on your limited disclosure of the facts necessary to provide you with the services described in **Section ___** (**I or II**) above. .

If any dispute arises under this agreement concerning the payment of the Fee, we shall submit the dispute for fee arbitration in accordance with [_____]. This arbitration shall be binding upon both parties to this agreement.

YOU ACKNOWLEDGE THAT YOU HAVE READ THE ABOVE AGREEMENT BEFORE SIGNING IT. YOU FURTHER ACKNOWLEDGE THAT I HAVE ANSWERED ANY QUESTIONS YOU HAVE ABOUT THE LIMITED SERVICE REPRESENTATION ARRANGEMENT INTO WHICH WE ARE ABOUT TO ENTER.

Signature of client/s 1._____

2._____

Signature of attorney _____

Date: _____