Very Good Debates

John W. Lucas, Moderator
Pachulski Stang Ziehl & Jones LLP; San Francisco

Judicial Debate

Resolved: The "disinterestedness" requirement should be strictly enforced under § 327 (no waivers or ethical walls).

Pro: Hon. Randall L. Dunn
U.S. Bankruptcy Court (D. Or.); Portland
Con: Hon. Madeleine C. Wanslee
U.S. Bankruptcy Court (D. Ariz.); Phoenix

Business Debate

Resolved: Acceleration of a debt obligation under a credit agreement should act to prevent the lender from enforcing a prepayment premium.

Pro: Lori Sinanyan
Jones Day; Los Angeles
Con: Michael H. Strub, Jr.
Irell & Manella LLP; Newport Beach, Calif.

Consumer Debate

Resolved: Attorneys should be permitted to unbundle services under an engagement agreement with a consumer debtor.

Pro: Samuel A. Schwartz
Schwartz Flansburg PLLC; Las Vegas
Con: John R. Bollinger
Boleman Law Firm, P.C.; Hampton, Va.

On the Edge

By Jerald I. Ancel and Jeffrey J. Graham

Renewed Interest in Disinterestedness under §§ 101(14) and 327(a)

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The changing landscape of the legal market has increased law firm mergers, and acquisitions this year are on a pace to surpass the previous high experienced in 2008.[1] In addition to the market consolidation, commercial chapter 11 filings have continued to decline.[2] As the insolvency bar and financial advisory firms consolidate and reshuffle rosters, some known and long-forgotten ethical and statutory disinterestedness issues have begun to surface.

Ethical and Statutory Framework for Employment by the Estate

Generally, a lawyer or firm may not represent a new client in a matter (1) that is materially adverse to a former client; (2) that is substantially related to the matter for which the lawyer or firm was engaged by the former client; or (3) where confidential information learned in the previous engagement may be used against a former client.[3] Similarly, a lawyer may not represent a new client in a matter that is directly adverse to another client.[4] However, those general rules can be overcome by an informed waiver by both the new client on the one hand and the former or current client on the other, coupled with a screening procedure to wall off the conflicted lawyer.[5] These rules of professional conduct apply to all insolvency lawyers.[6]

Insolvency professionals seeking compensation from the estate must go above and beyond mere conflict checks. Many courts hold that a professional is disqualified under § 327(a) of the Bankruptcy Code in the event of a direct conflict regardless of a waiver.[7]

In addition, § 327(a) requires that a professional seeking compensation from the estate have no interest adverse to the estate and be disinterested.[8] Courts define an adverse interest as an economic interest that would (1) lessen the value of the bankruptcy estate, or (2) create an actual or potential dispute against the estate or a predisposition for bias against the estate.[9] An economic interest usually arises as a claim against the debtor. Should the professional firm have a claim and want to continue working with the client as a debtor professional, waiving the claim may remedy this potentially adverse interest.[10]

Section § 101(14) of the Bankruptcy Code defines a disinterested person as a person who (1) is not a creditor, equity securityholder or insider of the debtor; (2) is not and was not, within two years of the petition date, a director, officer or employee of the debtor; and (3) does not have any interest materially adverse to the estate, any class of creditors, or equity interests by reason of any direct or indirect relationship to, connection with, or interest in the debtor or for any other reason.[11] Federal Rule of Bankruptcy Procedure 2014 facilitates a review of disinterestedness by requiring the applicant to submit a verified statement that fully and broadly discloses any connection with the debtor, creditor, and any party-in-interest.[12] Even with the requirements of § 327(a), courts rarely interfere with a debtor's choice of professional, and then will do so only if (1) the professional has a conflict of interest or (2) it is clear that the professional's employment would not be in the best interests of the estate.[13] This framework has been in place for many years. However, three recent cases show that the disinterested requirement may be undergoing a more searching review and how the changing marketplace may be making compliance with these requirements more difficult.

Member's Employment Terms and Status Cause Concern

The debtor, New England Compounding Pharmacy Inc., sought to employ Verdolino & Lowey PC as its accountant and financial adviser.[14] The application and Verdolino's declaration disclosed that (1) the debtor was the subject of hundreds of lawsuits stemming from an outbreak of fungal meningitis linked to contaminated pharmaceuticals distributed by the debtor; (2) the goal of the chapter 11 filing was to channel these claims into a single

1 *See* Press Release, Altman Weil Inc., "U.S. Law Firms on Pace for Record Year," www.altmanweil.com/MLPR70813/ (last visited July 16, 2013).
2 Press Release, ABI, "Bankruptcy Filings Fall 14 Percent for the First Half of 2013, Commercial Filings Drop 25 Percent," July 3, 2013, http://news.abi.org/press-releases/bankruptcy-filings-fall-14-percent-for-the-first-half-of-2013-commercial-filings-drop.
3 *See* Model Rules of Prof'l Conduct R. 1.9 (2013).
4 *See* Model Rules of Prof'l Conduct R. 1.7 (2013).
5 *See* Model Rules of Prof'l Conduct R. 1.10 (2013).
6 *See In re City of San Bernardino, Calif.*, Case No. 6:12-bk-28006-MJ, *slip op.* (Bankr. C.D. Cal. June 25, 2013) (firm disqualified from representing creditor in chapter 9 proceeding due to conflict of interest).
7 *See In re Jade Mgmt. Servs.*, 386 F. App'x 145, 148 (3d Cir. 2010). Courts have broad discretion in approving employment in instances of a potential conflict. *Id.*
8 *See In re Knight-Celotex LLC*, 695 F.3d 714, 722 (7th Cir. 2012).
9 *See In re AFI Holdings Inc.*, 530 F.3d 832, 845 (9th Cir. 2008), and *In re Persaud*, 467 B.R. 26, 36 (Bankr. E.D.N.Y. 2012).
10 *See, e.g., In re Dearborn Construction Inc.*, No. 02-00508, 2002 WL 31941458 at *8, fn. 23 (Bankr. D. Idaho Dec. 20, 2002).
11 11 U.S.C. §§ 101(14)(A)-(C).
12 Fed. R. Bankr. P. 2014(a); *see also In re Knight-Celotex LLC*, 695 F.3d at 722.
13 *In re Smith*, 507 F.3d 64, 71 (2d Cir. 2007).
14 *In re New England Compounding Pharmacy Inc.*, No. 12-19982-HJB, Docket No. 3 (Bankr. D. Mass. Dec. 21, 2012).

forum and to distribute the assets of the estate to these claimants; (3) Verdolino's shareholder had been named the chief restructuring officer (CRO) and an independent director of the debtor and was charged with running the chapter 11 case and distributing assets to claimants; (4) the CRO was removable without cause by the debtor's board of directors; and (5) Verdolino sought to be indemnified by the debtor.[15]

The application drew an objection by the U.S. Trustee,[16] who first argued that Verdolino was not disinterested because its shareholder served as both an officer and director of the debtor.[17] Although it was the shareholder who served as an officer and director, the U.S. Trustee argued that violation of § 101(14) was imputed to the entire firm, citing *In re Essential Therapeutics Inc*.[18] The U.S. Trustee also argued that Verdolino was not disinterested because the debtor's board, which faced allegations of misconduct, was still in power and had the ability to remove the CRO at the board's sole discretion.[19] The U.S. Trustee reasoned that this retention arrangement constituted an adverse interest to the estate, which may look to the board under one or more theories of liability.[20] The court never ruled on the debtor's application to employ Verdolino and the U.S. Trustee's objection as the court appointed a chapter 11 trustee to oversee the liquidation of the debtor's assets and the trustee hired a separate set of professionals.[21]

Attorney's Lack of Disinterestedness Imputed to the Firm

In *In re Coda Holdings Inc.*, the debtor sought to employ White & Case LLP as its counsel.[22] The application to employ White & Case disclosed that (1) the firm had hired Christopher Rose, a former senior vice president and general counsel of the debtor whose responsibilities while with the debtor included financing and acquisitions; (2) White & Case had established screening procedures with respect to Rose and his assistant; (3) Rose would have no involvement in the debtor's chapter 11 case; (4) Rose would waive any claim or equity interest in the debtor; (5) White & Case had arranged for conflicts counsel in the event that the debtor had any claims against Rose; and (6) the debtor consented to White & Case's engagement based on these procedures.[23] The debtor also argued that although Rose might not be disinterested under § 101(14), his status was not imputed to White & Case, which itself was a person under § 101(41)[24] and satisfied, as a firm, the statutory requirements for disinterestedness.[25]

The U.S. Trustee objected to the application to employ White & Case, arguing that Rose's lack of disinterestedness was imputed to the entire firm.[26] This argument was based on *In re Essential Therapeutics Inc.*, a decision issued by Hon. **Mary F. Walrath** (and cited by the U.S. Trustee in *In re New England Compounding Pharmacy Inc.*), which imputed the disinterestedness of one member of a firm to the entire firm. It also distinguished the cases cited by the debtor on the grounds that Rose was the person hired to make deals, and the U.S. Trustee believed that the instant case was about a deal.[27]

The application and objection thereto were extensively briefed; however, the court issued a one-page order denying the application without prejudice.[28] The debtor subsequently sought and received authority to engage White & Case as special counsel pursuant to § 327(e) of the Bankruptcy Code, which requires that special counsel have no material interest adverse to the estate but does not contain any disinterestedness requirement.[29]

Independent Contractor with Fee Agreement Affects Counsel and Adviser

Long after GSC Group Inc. had engaged Kaye Scholer LLP as debtors' counsel and Capstone Advisory Group LLC as financial adviser and had conducted a successful § 363 sale of its assets, the U.S. Trustee sought disgorgement of all compensation earned by Kaye Scholer and Capstone and a *vacatur* of the orders approving their employment.[30] The crux of the U.S. Trustee's motion centered on Robert Manzo, his relationship with Capstone, his compensation and how the relationship was disclosed by Kaye Scholer.[31] Kaye Scholer's application and affidavit did not disclose any relationships with Manzo or any entities controlled by Manzo.[32] Capstone's application and declarations listed Manzo as an executive director, and stated that he was an employee of Capstone and that Capstone had no fee-sharing agreements.[33] However, the U.S. Trustee learned through subsequent discovery that (1) Manzo was not an employee of Capstone, but rather was an independent contractor; (2) Manzo's agreement with Capstone was actually through a limited liability company (LLC); (3) Capstone had a compensation agreement with Manzo whereby he received a hybrid of an hourly rate plus a portion of the fees generated for Capstone; (4) Kaye Scholer had done work with Manzo and his LLC; (5) members of Kaye Scholer knew that Manzo was an independent contractor and not an employee of Capstone; and (6) Manzo, for at least part of the debtors' chapter 11 cases, did not work exclusively for Capstone.[34] The U.S. Trustee argued that in light of these revelations, neither Kaye Scholer nor Capstone were disinterested, that both failed to adequately disclose their relationships with parties-in-interest, and that Capstone had a fee-sharing arrangement with someone other than a regular member, associate or employee of the firm in violation of § 504 of the Bankruptcy Code.[35]

Both Kaye Scholer and Capstone contested the allegations made and the relief sought by the U.S. Trustee.[36] Kaye Scholer and Capstone argued that any disclosure

15 *Id.*
16 *Id.*, Docket No. 40 (Bankr. D. Mass. Jan. 8, 2013).
17 *Id.*
18 *Id. In re Essential Therapeutics Inc.*, 295 B.R. 203, 208-11 (Bankr. D. Del. 2003). *But see* fn. 25 for cases holding the contrary.
19 *Id.*
20 *Id.* The U.S. Trustee also objected to proposed indemnification provisions.
21 *Id.*, 03-11317 MFW, Docket No. 92 (Bankr. D. Mass. Jan. 24, 2013).
22 *In re Coda Holdings Inc., et al.*, Case No. 13-11153 (CSS), Docket No. 61 (Bankr. D. Del. May 7, 2013).
23 *Id.*
24 The Bankruptcy Code defines a "person" as including an "individual, partnership and corporation." 11 U.S.C. § 101(41).
25 *Coda*, No. 13-11153 (CSS)., Docket No. 61 (Bankr. D. Del. May 7, 2013) (citing *In re Cygnus Oil and Gas Corp.*, No. 07-32417, 2007 WL 158011, at *2 (Bankr. S.D. Tex. May 29, 2007), and *In re Sea Island Co.*, No. 10-21034, 2010 WL 4386855, at *2 (Bankr. S.D. Ga. Oct. 20, 2010)).
26 *Coda*, No. 13-11153 (CSS), Docket No. 140 (Bankr. D. Del. May 24, 2013).
27 *Id.*
28 *Id., slip op.* (Bankr. D. Del. May 29, 2013).
29 *Id., slip op.* (Bankr. D. Del. June 17, 2013).
30 *In re GSC Grp. Inc., et al.*, No. 10-14653 (SCC), Docket No. 1597 (Bankr. S.D.N.Y. Jan. 4, 2013).
31 *Id.*
32 *Id.*
33 *Id.*
34 *Id.*
35 *Id.*
36 *Id.*, Docket No. 1623 (Bankr. S.D.N.Y. Jan. 28, 2013), and Docket No. 1631 (Bankr. S.D.N.Y. Jan. 28, 2013).

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errors were inadvertent; the debtors were not harmed by these errors; the fee arrangement with Manzo did not violate § 504 because the association was not hidden, did not include a markup and Manzo did work only for Capstone; and that the professionals provided significant value to the estates, obtaining a sale price of $235 million after rejecting a stalking-horse bid of $5 million.[37]

After numerous conferences, a mediation and voluminous briefing, the parties reached a settlement wherein Kaye Scholer would either disgorge or waive approximately $1.5 million in fees, Capstone would either disgorge or waive approximately $1 million in fees and abandon a $2.75 million success fee, and both Kaye Scholer and Capstone would submit to an independent third party overseeing conflicts for a period of two years.[38] The settlement is currently awaiting court approval after the matters were argued in the context of Kaye Scholer's final fee application.

Conclusion

In view of this renewed interest in disinterestedness, what can professionals seeking compensation from the estate do to avoid disqualification or disgorgement? Lawyers must distinguish between conflicts arising under their ethical rules and being disinterested under §§ 101(14) and 327(a) of the Bankruptcy Code. Informed waivers and screening procedures might be sufficient under ethical rules but may not be enough to be deemed disinterested under the Bankruptcy Code.

Disclosure is paramount. However, proper disclosure requires good data. Not only must a professional have a robust conflicts database, but that database should include members' present and prior board memberships and prior positions held within the last two years. It is also important to understand the relationship that any member of the firm has with a party-in-interest in a chapter 11 case, something that becomes exponentially harder with larger firms. The professional should also understand any new member's prior employment, involvement with matters that could be deemed a conflict, and the new member's relationship with the debtor, creditor or party-in-interest. Attention should also be given to any member still holding an economic interest in the firm but not currently employed (*i.e.*, an equity payout).

Finally, care should be given to a professional's use of independent contractors, and such relationships must be disclosed. In addition, the professional should avoid any markup of the contractor's rates or a bonus structure based on fees generated that might be deemed to incentivize the contractor to act in its self-interest. The professional should also disclose what, if any, other engagements the contractor may have during the bankruptcy case. The contractor must also overcome the fee-sharing restrictions of § 504. abi

37 *Id.*
38 *Id.*, Docket No. 1743 (Bankr. S.D.N.Y. May 10, 2013).

Advantages of Unbundling Legal Services

I. Growth of Self Representation Warrants Unbundling and Bridges the Justice Gap
   a. Research shows is an increase in pro-se representation in civil matters
      i. Unbundling Provides Public Access to Affordable and Competent Legal Representation
         1. Attorneys can expand their client base and keep cost down per client versus traditional hourly billing
         2. Facilitates greater access to competent legal services to those who traditionally could not afford an attorney
         3. ABA's 1994 legal needs study revealed 40% of low-income, and 46% of moderate-income households had at least one new legal problem in the prior year; however, less than 10% of moderate-income households sought legal representation
            a. Alternatively, the majority of low/moderate-income households handled the problem on their own, did nothing, or consulted a third party – not a lawyer
         4. Access Across America's October 7, 2011 Report, cited a 2010 survey of Americans, commissioned by the ABA, which found while most people were unfamiliar with limited-scope representation, many found the idea attractive once it was explained to them.
            a. Households with annual incomes less than $100,000 believed it was important for lawyers to offer unbundled legal services.
            b. The percentage regarding this as important increased as household income declines, with almost 4/5 of people in households with incomes less than $15,000 regarding the availability of unbundles services as somewhat or very important in their choice of a lawyer.
         5. ABA Resolution 108, Adopted February 11, 2013, revealed more judges reported an increase in self-representation, resulting in undesirable outcomes
            a. Pro-se parties were unprepared
            b. Pro-se parties failed to include important evidence
            c. Pro-se parties committed procedural errors
            d. Pro-se parties were ineffective in raising objections, examining witnesses, and crafting arguments
            e. 2/3 of judges reported the results were worse than they would have been had the parties been represented by an attorney

f. Pro-se parties need more than procedural assistance, and an attorney can provide options and advice on how to proceed

6. ABA Resolution 108, Adopted February 11, 2013, indicated state task forces and commissions from Massachusetts, Iowa, Ohio, and New York Times Op-Ed, all reported positive results from unbundling by providing affordable and competent legal representation

II. Helps Define and Clarify the Scope of Representation
   a. Written Engagement Agreement
   b. Communicate to Client the Services to be Provided
      i. Communication (email, phone)
      ii. Services to be Provided
         1. Motions, pleadings to be drafted, etc.
         2. Appearances

III. Positive Impact on the Profession
   a. Attorneys can charge their full rate for the services provided (flat fee or hourly)
   b. Attorneys can expand their client base because the cost per case is more affordable
   c. Attorneys can effectively compete with legal document preparation services
      i. ABA's 1994 legal needs study reports Legal Zoom served approximately 2 million people in 10 years, and generated $156 million in 2011
   d. Attorneys have greater control over their practice, and are satisfied with representing clients on a limited basis
   e. Relieves judges and court staff from the pressure of giving advice or advocacy

IV. Already Exists in Pro Bono and Legal Aid Settings

V. Already Exists in Bankruptcy
   a. Chapter 13
      i. Most districts allow for a "Basic No-Look" fee that covers certain services the attorney will provide.
      ii. U.S. Trustee Guidelines dictate the services and time attorneys must include to earn the "Basic No-Look" fees
   b. Chapter 7
      i. Most attorneys charge a flat fee that includes preparation and filing of the schedules and statements, completing credit counseling services, and representation at the Meeting of Creditors
      ii. Adversary Proceedings are generally not included in the basic flat fee, however, not every debtor will end up defending an adversary complaint, so charging a lower flat fee makes the bankruptcy process more accessible and affordable to the public

VI. Oversight

a. ABA Model Rules of Professional Conduct, Rule 1.2(c) provides, "A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent."
    i. 41 states adopted Rule 1.2(c), in some form
    ii. Some states require a checklist of services to be provided (Much like SF's chapter 13 memo)
    iii. Some states require the agreement to be in writing
b. Other Rules of Professional Responsibility are not Excused
        1. Attorney must still be competent in the area of law in which services are requested
        2. Attorney must still communicate with the client (form of communication may be limited/defined in the agreement)
        3. Attorney must still diligently perform the retained services, etc.

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: _____