

The Role of the County Attorney in Bankruptcy Cases

WHY SHOULD YOU CARE ABOUT BANKRUPTCY?

OVERVIEW

Areas of Practice

- Child Support
- Property Tax
- Benefit Overpayments
- Restitution
- Claims and Fines

Nuts and Bots of Standard Filings

Child Support

11 U.S.C §101(14A) defines "Domestic Support Obligation":

1. Owed to a spouse, former spouse, child of the debtor, or such child's parent, legal guardian or responsible relative or governmental unit.
2. In the nature of alimony, maintenance or support.
3. Established or subject to establishment before, on or after the date of the order for relief.
4. Not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily.
5. Includes interest charges.

Child Support

Also includes "in the nature of child support"

- Guardian ad Litem fees
- Awards of attorney's fees in family court orders
- Child custody attorney's fee awards
- Medical expenses paid by MA for child's birth
- MA parental fee for child in out-of-home placement
- PA provided to a child
- Child's costs of care while in court-ordered treatment

Child Support

11 U.S. Code §507(a)(1)

Domestic Support Obligations are an unsecured claim of **first priority**.

11 U.S. Code §1322(a)

They must be paid in full unless the creditor agrees to different treatment of the claim or the debtor contributes all disposable income to a 5-year plan.

Child Support

- NOTICE:
- 11 U.S. Code §1302(d)
- Trustee must provide notice to the “holder of the claim” (custodial parent/obligee) and the state child support enforcement agency.
- Usually a delay in DHS sending the notices to the maintaining county.

Child Support

- Actions of County Attorney:
 1. Instruct IV-D client to record bankruptcy on PRISM, modify income withholding, if necessary, contact Obligee and file a Proof of Claim.
 2. Review Ch. 13 Plan.
 3. Object to Plan, if necessary.

Child Support

- 11 U.S. Code §362(b)(2) Exceptions to Automatic Stay allow:
 1. Establishment of paternity, establishment or modification of support orders.
 2. Income withholding for current support
 3. License suspension (DL, OL and RL)
 4. Credit bureau reporting
 5. Interception of federal and state tax refunds.
 6. Enforcement of medical obligations.

Child Support

- Judicial Enforcement Remedies NOT allowed:
 - Contempt
 - FIDM

Child Support

- 11 U.S. Code §1325(a) Confirmation of Plan
 - Debtor must have paid all support that came due after filing of the bankruptcy petition before Plan will be confirmed.
- Other common objections to Plan include: Not proposed in good faith or not feasible.

Child Support

- Discharge:**
- 11 U.S. Code §523(a)(5) – DSO are not subject to discharge.
- 11 U.S. Code §1328(a) – After completing all payments required by Plan, debtor must certify that all current support due during bankruptcy has been paid in full.

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Child Support

Other Resources:

- 2016 MFSRC Annual Conference CLE "Bankruptcy and Child Support Collection"
- 2018 MFSRC Annual Conference CLE "Bankruptcy Essentials"

BENEFIT OVERPAYMENTS

- Overpayment of:
 - Medical Assistance
 - Supplemental Nutritional Assistance Program (SNAP) (Food Stamps)
 - General Assistance Medical Care (GMAC)
 - Minnesota Family Investment Program
 - Unemployment Compensation Benefits

11 U.S.C §523 Exceptions to Discharge

- USC 523 covers Chapter 7 discharge (Liquidation) under 727
- USC 523 also covers Chapter 13 discharge (Adjustment of Debts) under 1328(b)

11 U.S.C §523
Exceptions to Discharge

- Initiate by Complaint filed in Bankruptcy Court
 - Filed within 60 days of creditors meeting
 - Establishing exceptions to discharge
 - False Pretenses
 - False Representation
 - Actual Fraud
- Debtor has 30 days to file an Answer

Exceptions to Discharge
11 USC 523 (a)(2)(A)&(B)

- Money (and other benefits) obtained by-
 - (A) False pretenses, a false representation or actual fraud
 - (B) Use of a statement in writing that is
 - Materially false
 - Respecting the debtor's or an insider's financial condition
 - On which the creditor to whom the debtor is liable for such money (or other benefits) reasonably relied; and
 - That the debtor caused to be made or published with intent to deceive

Exceptions to Discharge
11 USC 523 (a)(2)(A)&(B)

- *In re Overall*, 248 B.R. 146 (Bkcty. W.D. Mo. 2000)
 silence or concealment as to a material fact can constitute false pretenses under Section 523(a)(2)(A)
- *In re Hampton*, 396 B.R. 28 (Bkcty. N.D. Iowa 2008), citing *Overall*
- *In re Treadwell*, 411 B.R. 636 (Bkcty. W.D. Mo 2009), citing *Overall*

Exceptions to Discharge 11 USC 523 (a)(3)(B)

- A debt is not dischargeable if it is...
- (3) Neither listed nor scheduled ...with the name... of the creditor ... in time to permit –
- (B) if such debt is [false pretense, false representation or actual fraud] timely filing of a proof of claim and timely request for a determination of dischargeable ... unless such creditor had notice or actual knowledge.

Fines

Under section 523(a)(7) of the Code, a discharge in bankruptcy does not affect any debt for fine, penalty, or forfeiture payable to and for the benefit of a government unit, and is not compensation for actual pecuniary loss.

Fines

Section 523(a)(7) preserves from discharge any condition a state criminal court imposes as a part of a criminal sentence.

Nuts and Bolts of Filings

Practice Tip:

NOTICE OF CLAIM (in Minnesota)

Court Facility: indicated within the court case number (20-30094).

- 3 - Third Division - St. Paul
- 4 - Fourth Division - Minneapolis
- 5 - Fifth Division - Duluth
- 6 - Sixth Division - Fergus Falls

Nuts and Bolts of Filings

Look up case number in United States Bankruptcy Court records - www.mnb.uscourts.gov. Choose "Case Locator (PACER*)" link. Enter "Bankruptcy" as Client Code.

*PACER stands for Public Access to Court Electronic Records.

- Case Summary link - provides information needed on bankruptcy information sheet
- Docket Report link - where filed documents are located - Download Bankruptcy Petition

Nuts and Bolts of Filings

- Review Petition to determine what debts to county are claimed. Note the amount of each debt and the type of debt (if indicated).
 - Types of debt are secured, priority, and non-priority.
- Notify all county departments of the bankruptcy filing and automatic stay.
- If County Attorney's Office (CAO) will be filing a Proof of Claim (POC): Request departments provide all current claim information for the debtor(s).

Nuts and Bolts of Filings

- A county attorney that will appear or participate in the hearing of any motion or trial must be admitted to practice in the Federal US District Court of Minnesota. Minnesota Local Bankruptcy Code Rule 9010-3
- They should also be registered on PACER.
- If a county attorney is not admitted to the US District Court they may still file a POC; but may only appear or file other documents after being admitted *pro hac vice*. *Check out-of-state districts for their appearance/filing rules.
- A county attorney can also assist department personnel in filing POC themselves as the creditor.


Nuts and Bolts of Filings

- NOTICE OF APPEARANCE AND REQUEST FOR NOTICE
 - Not required to file proof of claim (POC), but if you want to appear or receive electronic notices this must be filed.
 - Save document to .PDF format (flattened if ever using a fillable form provided by the court).
 - File .PDF document into case
 - Navigate to www.mnb.uscourts.gov and click "E-Filing (CMECF)" link
 - Use eFile login information (Post Petition Events, Notices, Notice of Appearance ..., Follow prompts

Nuts and Bolts of Filings

- PROOF OF CLAIM (POC)
 - In Chapter 7 bankruptcy cases, POC are not filed unless Trustee issues notice there are assets available and allows filing of POC.
 - Obtain Proof of Claim (Form 410) from the U.S. Bankruptcy Court website: <http://www.mnb.uscourts.gov/national-forms>. Complete as much information as known.
 - Hover cursor over "Bankruptcy" at the top, Choose "Claim Events", Choose "Claims"-Follow prompts to file
 - Obtain copy of filed Proof of Claim using the "Claims Register" link in PACER.

Nuts and Bolts of Filings
Proof of Claim
https://www.uscourts.gov/sites/default/files/form_b_410_0.pdf



Nuts and Bolts of Filings

- **OBJECTION TO CHAPTER 13 PLAN**
 - The Objection to Plan document must be filed (7 days) prior to the date of the hearing on confirmation. Bankruptcy Rule 3015
 - To file Objection to Chapter 13 Plan - "Response/Objection" link, "Other Answers" link, "MNB Obj to Confirm of Ch 13 Plan" link
 - Note: Memo and affidavit not always required despite message received when filing
 - To file Withdrawal of Objection "Other Case Events" link, "Withdrawal" link
 - **IMPORTANT:** Select all categories so that your objection shows up

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