

Professionalism & Technology & 21st Century Consumer Bankruptcy Practice

January 31, 2017

Issues

1. Inadequate technology and office support:

Attorney decides to broadly advertise on the internet offering reasonable legal services to file quickly file individual bankruptcies, guaranteeing few complications and good results. Consumers are told they will save their houses, cars, and retain most of their assets while shedding debt. Within a few weeks the attorney is inundated with phone calls, emails, and walk in clients.

- a. Attorney lacks up to date computer equipment and software to manage a large case load as well as accomplish e-filing with the Bankruptcy Court.
- b. Legal assistants are not trained to correctly e-file documents with the Court
- c. Delegation of duties to non-lawyers: May a lawyer not meet personally and simply rely on the debtor/client to prepare the Schedules and Statement of Financial Affairs on a fill-in pdf and send as an attachment to the attorney's legal assistant email for the assistant to finalize and e-file?

2. Website Use: Attracting new clients with inquiry links: When does attorney client relationship begin?

Potential client sends an inquiry through attorney's website the night before a sheriff's sale asking the attorney if a bankruptcy would help stay the sale and possibility of a workout to retain the house. The individual requests immediate assistance to prevent the sale from moving forward.

3. Attorney client communication: email; cell phone; security; confidentiality; encryption; the cloud: Safe guarding the attorney-client-privilege

Debtor forwards to her attorney through her office email copies of tax returns, documents setting forth pre-petition transfers of cash to children, and an explanation of intent to orchestrate hiding the transfers. The debtor's employer has a program that surveils all incoming and outgoing emails that is regularly read by supervisors.

4. Attorney reasonable inquiry and the internet: Does a consumer bankruptcy lawyer have an ethical duty to investigate a potential client on the internet: Google, ZabaSearch, Spokeo? How about duty to look at real estate values on the internet to back up debtor/client's assertion of value of home in a chapter7/13 case? Zillow; Trulia?

5. Does attorney representing a bank have a duty to independently review for accuracy information provided by her client from an automated system and determine if the facts support a court filing?
6. Potential debtor clients inform attorney they are unemployed and have little or no income. Is it permissible for attorney to perform an independent internet search? LinkedIn; Face Book; or Credit Report or other internet service such as provide by Lexis Nexis and see if any red-flags appear?
7. Attorney does an independent internet search and finds debtor/client on Face Book and Snap Chat with photos of the husband wearing a Rolex watch in front of a 1969 Red Corvette. Attorney tells debtor/client to remove the photo and come up with an explanation for the transfer of the items. Is that Okay?
8. Would removal of the photo cause other issues for the debtor/client? Good faith? Discharge issues? Criminal issues for attorney?
9. What if photo removed and the items are sold. Attorney instructs debtor/client to deposit the proceeds into the joint account held with his wife. Any issues? Exempt?
10. Attorney meets with husband and wife as potential clients contemplating a consumer bankruptcy filing. It appears that Chapter 13 would be appropriate for the couple. While doing an internet search and ordering an electronic credit report attorney discovers husband has large credit balances in Las Vegas that includes the name of a woman (not his wife). Attorney privately speaks about this with the husband and finds out a divorce is imminent. Does the attorney have to speak with the wife about his discovery? May attorney continue to represent both?
11. Elderly woman and daughter consult with attorney about defense of a foreclosure action and possible bankruptcy. They meet and discuss matters over several weeks and exchange numerous emails. The emails contain information about the woman's daughter who has power of attorney for her mother, and has been assisting with the financial affairs. Elderly mother believes the daughter may have transferred funds for her own use and benefit. Elderly mother decides to file Chapter 13 bankruptcy to save her home. Who does the attorney represent? Is there an attorney/client privilege with the daughter? Can a trustee view the emails?
12. Objection to discharge trial is proceeding. Things are not going well. Attorney is not happy with the manner in which the court is proceeding and admitting evidence. Attorney tweets: "the Judge is a biased lame brain, big corporation Ok, little person NOT" Any problem with this?

13. The Judge's law clerk is bored with the trial and while playing with her iPhone discovers the tweet and sends it to the Judge. Is this Okay?
14. Does the Judge have a duty to recuse in this situation? What if the debtor is pro se and continually disparages the Judge and the Court on the internet?
15. In another trial and another case a different attorney is worried about his pre-planned vacation. During the trial he emails the Judge directly-"Will we be done tomorrow? I have flight at 6 PM." Is this Okay?
16. Judge replies-"Yes, we'll be done tomorrow." Is this permissible?
17. Trial in the discharge case concludes, and after consideration the Court issues a ruling dismissing all of the counts in the complaint and rules in favor of the debtor. That night the debtor's attorney adds to the firm's website: DISCHARGE HERO CONSUMER BANKRUPTCY LAWYER-successfully defends discharge complaint. Is this permissible?
18. Attorney contacts the Court and requests a continuance of a hearing due to a "family emergency." Court grants the request and reschedules the matter. Later the Judge's Law Clerk who is the friend of a friend of the attorney sees the attorney "tagged" in a group photo on Face Book where everyone is raising a can of beer on a golf course the same day of the continued hearing. Issue for the attorney? How about for the Court or Law Clerk?