



AMERICAN  
BANKRUPTCY  
INSTITUTE

# 2021 Consumer Practice Extravaganza

## Fees & Profitability

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## Fees & Profitability

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## Fees & Profitability

The business of running a law practice:  
Work Smarter not Harder!

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What do you want out of your bankruptcy career?

- |   |   |
|---|---|
| a. Enjoy my work, accept cases that challenge me, and make enough money to take yearly vacations, fund my retirement, and live comfortably. | b. Aspirations to seek a judge appointment? |
|   | c. Is this really the AOP for you?          |
-



## Budgeting

- a. What is your budget?
  - b. Do you set an annual/monthly budget?
  - c. Do you know what how much you have to gross every day, week, month, and year to meet your budget needs?
- 



## Budgeting

- d. Do you know your historically slow times?
  - e. Do you know your historically high times?
  - f. How do you adjust your finances and marketing to address the highs and lows?
-



## Budgeting

- a. Evaluate Expenses
  - b. Evaluate Gross Receipts
  - c. Adjust
- 



## Budgeting - Expenses

- a. Planned Expenses
  - b. Actual Expenses
  - c. Variable Expenses
  - d. Expense Analysis
-



## Expansion

- a. Why do you want to expand?
  - b. Do you need to expand?
  - c. What are your expansion options?
  - d. Can you fund an associate?
- 



## Tips for Efficiency/Effectiveness

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## Issues Getting Paid in Chapter 7



“If I had that much money, I wouldn’t need to file bankruptcy”

Post-BAPCPA attorneys fees for representing consumer debtors have been on the rise.

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

“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.”



- *Bethea v. Robert J. Adams & Associates*, 352 F.3d 1125 (7th Cir. 2003): obligations owing under a prepetition fee agreement are subject to automatic stay and bankruptcy discharge.
- Traditional solution: Plenary representation, paid in full pre-petition.
- Problems?
- Alternatives? Unbundling! Limited Service Agreements! Bifurcation!



## Limited Service Agreements, A/K/A A “PERILOUS PATH”

- Rule 1.1: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
- Rule 1.2(c): “A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.”





## Limited Service Agreements, A/K/A A "PERILOUS PATH"

As always, examples of what not to do abound:

- Tedocco v. DeLuca (In re Seare), 515 B.R. 599 (B.A.P. 9th Cir. 2014)
  - In re Collmar, 417 B.R. 920 (Bankr. N.D. Ind. 2009)
  - In re Johnson, 291 B.R. 462 (Bankr. D. Minn. 2003)
  - In re Egwim, 291 B.R. 559 (Bankr. N.D. Ga. 2003)
- 



## Bifurcation

- In re Slabbinck, 482 B.R. 576 (Bankr. E.D. Mich. 2012)
  - In re Grimmett, No. 16-01094-JDP, 2017 Bankr. LEXIS 1492, 2017 WL 2437231 (Bankr. D. Idaho June 5, 2017)
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Any other ideas?

- So...have your client file Chapter 13 instead???



Issues Getting Paid in Chapter 13



## Potential Solutions?

Can a debtor's attorney propose unequal payments to secured creditors in a Chapter 13 plan for the purpose of getting attorneys fees paid sooner?



## Potential Solutions?

Can a debtor's attorney propose unequal payments to secured creditors in a Chapter 13 plan?





## Potential Solutions?

Does the failure of a secured creditor to object to confirmation render 1325(a)(5)(A) satisfied thereby not allowing a Chapter 13 Trustee to object?

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## Potential Solutions?

Can a debtor's counsel obtain additional attorney fees for representation in an adversary?

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## **Fees & Profitability**

### **Panelists:**

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**The Business of Running a Law Practice – Work Smarter Not Harder!**

We all got into the area of bankruptcy for different reasons, some planned and others not. Whether you are wealthy and doing debtors' work to make a difference or you are working to make a profit, there are ways to run your practice to ensure it remains a healthy and vibrant practice that makes you want to be there every day!

**1. What do you want out of your bankruptcy career?**

This answer is a fluid answer that evolves over time, but ask yourself what is your end-game?

- a. Enjoy my work, accept cases that challenge me, and make enough money to take yearly vacations, fund my retirement, and live comfortably.
- b. Aspirations to seek a judge appointment.
- c. Is this really the AOP for you?

**Discussion:** We all know the stats! They're thrown at us at most bar events... Lawyers have extremely stressful jobs, high rates of alcoholism, depression, and suicide. We are not making light of any of those stats, but just knowing those stats exist doesn't help us to minimize our risks of becoming a statistic. What does help? An honest evaluation of our goals, what truly makes us happy, and eliminating stress factors.

- i. If you don't like the bankruptcy AOP, get out! We are only trapped by the constraints of our own fears and the walls and excuses we build around ourselves.
- ii. Do you want to add a complimentary AOP? Establish a plan to do so. Get educated in that AOP.

**2. Budgeting**

- a. What is your budget?
- b. Do you set an annual/monthly budget?
- c. Do you know what how much you have to gross every day, week, month, and year to meet your budget needs?
- d. Do you know your historically slow times?
- e. Do you know your historically high times?
- f. How do you adjust your finances and marketing to address the highs and lows?



**Discussion:** If you do not know the answers to any of these questions at any given time, then how do you know how much you need to charge hourly or as a flat fee, how many cases you need to take in, and whether or not you're ever going to be profitable in your practice? Not knowing is a recipe for disaster and unnecessary stress. You're winging it! That's not acceptable!

- i. First, examine your real expenses, including your salary, staff salaries, taxes, retirement funding, health/life/disability insurance and your continuing education. Get detailed, down to the penny and then roundup by at least 5% for a cushion/inflation.
  1. How much do you expect to make in profit – where you will write yourself a check at the end of the quarter or year? This is NOT your monthly wage. This is the profit you get from running a business successfully.
- ii. Examine expenses carefully. What can you eliminate, reduce, or negotiate better rates/terms for by paying in full, etc.
- iii. Now, go over it again – did you get every single expense?
- iv. What does this mean?
  1. What is the annual expense of running your practice?
  2. What is the monthly expense?
  3. What is your cheapest flat fee bankruptcy case? How many do you need to PIF each month to meet your expenses?
  4. What is your hourly rate? How many billable hours do you have to work AND GET PAID FOR to meet your monthly expenses?
  5. Evaluate! Do you need to adjust your flat fee rate? Hourly rate?
- v. Now, examine expenses for expansion goals, adding staff/associates, new equipment/software, buying a building, retirement, etc.
  1. How much owner's profit do you want to make each quarter/year?

2. Do you have a vacation goal?
3. Do you have a retirement goal (financial number and date to retire?)
4. Once you know the number to reach your minimum costs of doing business, plus the costs of your goals, what do you need to make to meet that goal each year/month/day?
  - Now, what does that break down to in the number of flat fee bankruptcy cases you need PIF each month?
  - What does that break down to in the number of monthly payments from clients on bankruptcy payment plans with your office?
  - How many billable/collectible hours do you have to bill/collect to meet this each day/month/yearly goal?
  - How much and how do you combine the above to reach your goals?
  - What other income do you bring in on a regular basis to add to the above?

vi. Now, evaluate your gross receipts.

Example: \$600,000 Budget each year  
\$50,000/per month  
\$11,539/week  
\$1,667/day  
\$425/hour – Must bill 4 billable hours a day or  
\$2,000 chapter 7 – 25 PIF Case Per Month or  
\$400/mo x 125 monthly chapter  
7 payments Or  
2 billable hours a day = \$850/day x 20 bus/days  
= \$17,000/mo 2 PIF 7's per week = \$16,000  
43 clients paying \$400/mo = \$17,200

**Discussion:** In the example above you can see how you can move things around, add other AOPS to generate the income you desire. On any given day, you should be able to look at your gross receipts and determine if you are behind in your goal or ahead in your goal and adjust accordingly.

As of today, May 18, 2019 – it's the 18<sup>th</sup> day of the month. I should have deposited \$30,000 by today to meet my \$50,000 goal. If I'm a little behind, I can call/email clients I've seen who have not yet retained and ask them if they have any questions I can assist with, etc. I can reach out to clients who have fallen behind in their payment plans and see what I can do to assist them (sometimes, they just need an adjustment in their payment plan and the personal contact is a huge help to them). If I'm ahead, I don't take it for granted. I look to the days left in the month and see what we have scheduled already, generate a social media post, etc.). We are running a business.

### 3. Expansion:

A. Why do you want to expand?

B. Do you need to expand?

- If you want to work less, but keep your same salary, be sure the new associate knows that you'd like to work less and how that will affect their duties
- If you want to increase your salary, make sure there is a realistic expectation set for the new associate, what you expect them to bring in and how they will be compensated.
- Internally, make sure you have a clear understanding that the associate will not just generate more income, they will also generate more expenses (insurance, dues, staff time, training, etc.). Salary is not the only new expense you will have. Your new associate needs to make a profit for the business, not take profit away from the business or create a break-even situation. Managing staff takes your time, as well. Do NOT underestimate the time you will invest in cultivating a new associate. If done properly, your associate will have loyalty to you and the firm and will generate a profit and in turn will expect to be rewarded for that profit.

- Make sure your new associate understands that the dollars he/she brings in are not dollar for dollar profit for the business. You do not have to share your business plan/expenses with the associate, but if you establish a clear understanding of the percentage of each dollar that goes to support the associate and firm overhead before there's a profit, it can help everyone see the business dynamic at work.

- C. If you're ready, what are your options? Contract services/trial period, full time  
v. part-time, project based?
- D. Before committing, make sure you can fund the associate. Set aside the full salary/benefits/taxes it would take to pay this person each month. Put these funds in a separate/untouchable account for 6 months, as a trial run. If you can do it, then get the help you need and expand that business.

**4. Efficiency/Effectiveness = Profit**

- A. Do not touch that document more than once!
- Copy/scan or upload the client docs – and then use it. There should be no reason to continue to deal with the same documents over and over.
  - You should know every question your trustee will ask your clients and you should have already sent every document your trustee needs to finish that case at the first meeting of creditors! One and done!
  - You lose money every time you have to re-update a client file or go back to court on a flat fee agreement. Establish clear fee terms for your clients and an incentive for them to provide ALL documents at once to complete the file. If you have to redo it because they dribble documents to your office, it will cost them more. They have the power to keep the fees/costs low. Give them the tools to do so – checklists, deadlines, etc.
  - Making your firm profitable does not mean you do it at the expense of client service. The most powerful and least expensive advertisement is the power of referrals. If you did a good job for your client, they will refer you business over and over again.

See Appendix A – Sample Expense List

**APPENDIX A: BANKRUPTCY LAW FIRM EXPENSES**

**A. PLANNED EXPENSES**

**B. ACUTAL EXPENSES**

**C. VARIABLE EXPENSES**

**D. EXPENSE ANALYSIS**

**I. Owner Expenses**

1. Salary
2. Profit
3. Taxes
4. Savings/Emergency Fund

**II. Staff/Owner Expenses**

4. Salary/Wages/Bonuses
5. Taxes
6. Insurance – Check your policy coverages, ask for competitive quotes, especially if you haven't evaluated in a long time. You may be paying more for less coverage.
  - a. Workers' Comp
  - b. Health insurance
  - c. Disability insurance
  - d. Life Insurance
  - e. Malpractice Insurance
  - f. Umbrella Insurance
  - g. Commercial Liability Insurance (slip & fall in your business)
  - h. auto insurance
7. Retirement Benefits – Check [www.irs.gov](http://www.irs.gov) for verification, changes, catch-up amounts, and income/other limitations)
  - a. 401k - \$19,000/yr + matching? (2019)
  - b. SEP IRA – \$56,000 or up to \$25,000 of compensation (2019)
  - c. SIMPLE IRA - \$13,000\
  - d. Traditional IRA - \$6,000

**III. Professional Services – Shop Around**

8. CPA
9. Bookkeeper (they're not the same and it's a waste of your time/money to do the books).
10. Insurance Agent
11. Retirement assistance – ABA offers free 401k services – saves \$1,800/year

**IV. Office Expense**

12. Rent/Building Mortgage/Storage Rent
13. Telephone/Wireless
14. Internet
15. Electric
16. Gas
17. Water
18. Office Supplies – evaluate what you’re paying for. What expenses are necessities?
19. Alarm system monitoring/security

**V. Marketing Costs**

20. Website
21. Website Hosting/Updates
22. Blogs
23. Social Media
24. Click Ads
25. Local Advertising (this could mean anything that works for your specific location – but, evaluate the ROI)<sup>30</sup>
26. Local speaking engagements
27. Marketing events (free seminars)
28. Promotional Materials (cards, Koozies, folders, etc.)
29. Advertising
30. Convention advertising

**VI. Professional Dues & Development**

31. State Bar Dues
32. NACBA dues
33. Local Bar Association dues
34. Chamber events, Real Estate Association events, family law bar events, etc. (You may not be joining for the family law education, but rather to be their go to person for bankruptcy).
34. Write articles for local, state, national journals – get your name out there and take a decent headshot.

**VII. Training and Travel**

35. Auto/Fuel/Public Transportation/Shared Ride Transpo
  - Maintenance
  - Tolls
  - Tickets
36. Air/Hotel Expense for MCLE/Convention Travel (Your flight or hotel should be free if you’re paying filing fees/CR/CC fees on a miles/points card – get creative)
37. Convention/MCLE tuition (Invest in yourself and your employees – it



comes back ten-fold. How many BK cases does it take to go? Budget it!)

**VIII. Operational Expenses**

- 38. Software
  - Bankruptcy Software
  - Practice Management Software
  - QuickBooks Online
  - Dropbox/Shared File/Google Drive
  - MS365
  - NetDocs
  - Free/Low Cost Apps
  - Firewall Protection
  - Spam Software
  - Encryption Software
  - Back-up/Crash Plan
  - RoboForm (password protection/saver – move to phrase passwords!)
  - Adobe Online
- 39. Computers/Monitors/Phone System
- 40. Printers/Copiers (service/toner/etc.)
- 41. Mobile Computing (Laptop/iPad/Remote Access VPN – Go paperless!)
- 42. IT Tech
- 43. Postage & Delivery (PB machine or online postage, etc.)
- 44. Certificate of Service (Service of process services)
- 45. Bank Charges/Merchant CC Fees
- 46. Court Call/Special Appearance Fees
- 47. Pacer Fees
- 48. Transcripts/Transcription Services

**IX. Misc.**

Don't pretend you can ignore the Miscellaneous item or just throw a number in. Take the time to evaluate it, plan for it and/or adjust it accordingly:

- 49. Dining (Krispy Kreme or Pizza for the office meeting)
- 50. Charitable Contributions – set up a recurring \$10-\$50/case or monthly to NCBRC
- 51. Petty Cash
- 52. \$5,000 Savings at all times (adjust to meet your office needs if no one walks in your door for month – Paradise, CA fire, Hurricane Katrina, your own health, or just “piece of mind”, etc.)

## Getting Paid in Chapter 7

### 1. Internet Firms.

As consumer filings slow, seemingly more and more consumer practitioners are being lured into “partnering” as local counsel for internet firms as a way to increase revenue. However, not all that glitters is gold, as these cases illustrate:

- a. *Robbins v. Delafield (In re Williams)*, 2017 Bankr. LEXIS 4183 (Bankr. W.D. Va. Dec. 8, 2017).
- b. *In re Banks*, 2018 Bankr. LEXIS 315 (Bankr. W.D. La. Feb. 2, 2018).
- c. *In re Foster*, 586 B.R. 62 (Bankr. W.D. Wash. 2018).
- d. *In re Banner*, 2016 Bankr. LEXIS 2214, 2016 WL 3261886 (explanation of violation of ethics rules by internet & local counsel).
- e. *In re Futreal*, 2016 Bankr. LEXIS 3974, 2016 WL 2609644 (local lawyer at least tried to do it right, but still ended up in trouble).
- f. *In re Hanawahine*, 577 B.R. 573 (Bankr. D. Haw. 2017).
- g. *In re Elrod*, 2017 Bankr. LEXIS 3911 (Bankr. E.D. Tenn. Nov. 14, 2017).

### 2. Non-Traditional Fee Arrangements.

Traditionally, a consumer debtor’s attorney is engaged via a plenary flat fee agreement, where all fees are paid in full prior to case filing. This is necessitated by the fact that obligations owing under a prepetition fee agreement are subject to the automatic stay and the bankruptcy discharge. *See Bethea v. Robert J. Adams & Associates*, 352 F.3d 1125 (7th Cir. 2003).

However, in light of the increasing costs post-BAPCPA<sup>1</sup> and the fact that pro se filers are burdensome to the whole system and are much less successful<sup>2</sup> has created a pressing need for an alternative to the traditional plenary flat fee agreement (enter Limited Services Agreements and Bifurcation).

#### a. Limited Services Agreements / Bifurcation

In spite of the concerns that unbundling raises, the ABA amended Model Rule 1.2(c) in 2002 to expressly allow limited-scope representation and provide a mechanism to regulate it. The

<sup>1</sup> See Lois R. Lupica, The Consumer Bankruptcy Fee Study: Final Report, 20 AM. BANKR. INST. L. REV. 17 (2012)(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.).

<sup>2</sup> See Lois R. Lupica and Nancy B. Rapoport, Am. Bankr. Inst., Final Report of the ABI National Ethics Task Force (April 21, 2013).

ABA's goal was to “encourage attorneys to provide some assistance to low- and moderate-income litigants who could not otherwise afford full representation.”

Rule 1.2(c) “[a] lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.” Such limitations may be appropriate because the client has limited objectives for the representation, or 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.

The decision to unbundle must be specific to the particular circumstances of the client, the legal problem, and the court. The attorney has a duty to alert the client to legal problems which are reasonably apparent, even though they fall outside the scope of retention, and to inform the client that the limitations on the representation create the possible need to obtain additional advice, including advice on issues collateral to representation, i.e. the attorney still has duty to provide competent representation under Rule 1.1.

Rule 1.1: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” The duty of competence both informs and survives any and all limitations on the scope of services. The baseline obligation to inquire into the facts and circumstances of a case and analyze the possible legal issues is not changed when the scope of services is limited.

What does this all mean? An agreement to unbundle and limit services constitutes a breach of the duty of competence if the agreement excludes the services reasonably necessary to achieve the client's reasonable objectives. Debtors often come in with unreasonable or unachievable goals. The attorney’s job is to determine how bankruptcy may help the debtor and whether some of the debtor’s goals may be left unmet and effectively communicate this to the debtor.

- i. *Tedocco v. DeLuca (In re Seare)*, 515 B.R. 599 (B.A.P. 9th Cir. 2014).
- ii. *In re Johnson*, 291 B.R. 462 (Bankr. D. Minn. 2003)(local rule requires counsel to perform all services except adversary proceedings without added fees; counsel cannot refuse to appear for § 341 meeting – even if debtors agreed to this for lower fee).

- iii. *In re Egwim*, 291 B.R. 559 (Bankr. N.D. Ga. 2003)(counsel not allowed to limit scope of work, even as to adversary proceedings and even with state RCP that allowed such limitations; withdrawal for failure to pay added fees allowed only if representation would be unreasonable burden on counsel).
- iv. *In re Slabbinck*, 482 B.R. 576 (Bankr. E.D. Mich. 2012)
- v. *In re Grimmett*, 2017 Bankr. LEXIS 1492, 2017 WL 2437231 (Bankr. D. Idaho June 5, 2017).

b. Chapter 13 as solution for need for non-traditional fee arrangement?

In Chapter 13 attorney's fees may be paid over time post-petition, which, increasingly, is making Chapter 13 an alternative for debtors who would otherwise qualify, but cannot afford a traditional plenary flat fee Chapter 7.

- i. *Ulrich v. Schian Walker, P.L.C. (In re Boates)*, 551 B.R. 428 (B.A.P. 9th Cir. 2016)(rehearing denied by *Ulrich v. Schian Walker, P.L.C. (In re Boates)*, 554 B.R. 472 (B.A.P. 9th Cir. 2016)).
- ii. SD Ala. Local General Order No. 19.
- iii. *Brown v. Gore (In re Brown)*, 742 F.3d 1309 (11th Cir. 2014)(circuit case on filing 13 when 7 is better for the client but 13 is better for the attorney)
- iv. *In re Pursley*, 2017 WL 4480235 (Bankr. E.D.Tenn. Oct. 6, 2017).
- v. *In re Nielsen*, 2017 WL 57260 (D. Colo. Jan. 4, 2017).
- vi. Which lead to a practice called "Fee Jumping". See *In re Gilliam*, 582 B.R. 459 (Bankr. N.D. Ill. 2018).

- 3. Coverage counsel / appearance counsel are now also used increasingly by debtor's and creditor's attorneys alike.

### Getting Paid in Chapter 13

#### I. Can a debtor's attorney propose unequal payments to secured creditors in a Chapter 13 plan?

*The relevant Bankruptcy Code provision, 11 U.S.C. §§ 1325(a)(5) and 1325(a)(5) (B)(iii)(I) ("the equal payment provision") provides that a court shall confirm a plan that satisfies the criteria of § 1325(a). Under § 1325(a)(5)*

(i) the plan [must] provide [] that--

(I) the holder of such claim retains the lien securing such claim until the earlier of--

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under [section 1328](#); and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if--

**(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and**

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan.

#### *The "no" rationale*

- Monthly payments on secured claims must be equal beginning with the first payment under a confirmed plan until the claim is paid in full
- The term "periodic payments" means payments to secured creditors must occur at regular intervals post-confirmation, and that periodic payments equates to encompass all payments made post-confirmation.
- As a policy stepping up payments causes increases litigation and circumvents the purpose of BAPCPA changes to § 1325(a)(5)(B).

#### *The "yes" rationale*

- Section 1325(a)(5)(B)(iii) is silent on when the equal periodic payments must begin. And there is nothing that says the equal payments must begin at confirmation. And equal payments can begin at anytime if they continue until the secured claims are paid in full. Also § 1325(a)(5)(A)(iii)(II) says adequate protection payments must be made “during the period of the plan”
- The “no” rationale conflicts with § 1326(b) which mandates that § 507(a)(2) administrative fees such as chapter 13 debtor fees be paid before or concurrent with other claims such as secured ones.
- There are not inherent abuses to step up payments since secured creditors are entitled to adequate protection payments pursuant to §§ 1325(a)(5)(A)(iii)(II) and 1326(a)(1)(C).

#### **Cases that allow step up plans**

*Credit Acceptance Corp. v. Thompson*, 610 B.R. 595 (S.D. Ind. 2019)  
*In re Carr*, 583 B.R. 458 (Bankr. N.D. Ill. 2018) (must have separate disclosure agreement explaining step up plan filed with court)  
*In re Amaya*, 585 B.R. 403 (Bankr. S.D. Tex. 2018)  
*In re White*, [564 B.R. 883 \(Bankr. W.D. La. 2017\)](#)  
*In re Brennan*, [455 B.R. 237, 240 \(Bankr. M.D. Fla. 2009\)](#)  
*In re Butler*, [403 B.R. 5 \(Bankr. W.D. Ark. 2009\)](#)  
*In re Hernandez*, No. 08 B 72148, 2009 Bankr. LEXIS 982 (Bankr. N.D. Ill. Apr. 14, 2009)  
*In re Chavez*, No. 07-36007-H3-13, 2008 Bankr. LEXIS 592 (Bankr. S.D. Tex. Mar. 5, 2008)  
*In re Marks*, [394 B.R. 198, 204 \(Bankr. N.D. Ill. 2008\)](#)  
*In re Erwin*, [376 B.R. 897, 901 \(Bankr. C.D. Ill. 2007\)](#)  
*In re Hill*, 397 B.R. 259 (Bankr. M.D.N.C. 2007)  
*In re DeSardi*, [340 B.R. 790, 809 \(Bankr. S.D. Tex. 2006\)](#)  
*In re Blevins*, [2006 Bankr. LEXIS 2422, 2006 WL 2724153, at \\*2 \(Bankr. E.D. Cal. 2006\)](#)  
*In re Muhammad*, Case No. 05-33234-FJO-13, doc. 55 (Bankr. S.D. Ind. July 25, 2006) (unpublished)

#### **Cases that prohibit step up plans**

*In re Miceli*, 587 B.R. 492 (Bankr. N.D. Ill. 2018)  
*In re Williams*, 583 B.R. 453 (Bankr. N.D. Ill. 2018)  
*In re Shelton*, 592 B.R. 193 (Bankr. N.D. Ill. 2018)  
*In re Cochran*, 555 B.R. 892 (Bankr. M.D. GA. 2016)  
*In re Romero*, 539 B.R. 557 (Bankr. E.D. Wis. 2015)  
*In re Enders*, No. 15-21737-GMH, 2015 Bankr. LEXIS 3415 (Bankr. E.D. Wis. Sep. 30, 2015)  
*In re Kirk*, 465 B.R. 300 (Bankr. N.D. Ala. 2012)  
[In re Bollinger, 2011 Bankr. LEXIS 3339, 2011 WL 388275 \(Bankr. D. Ore. Sept. 2, 2011\)](#)  
[In re Willis, 460 B.R. 784 \(Bankr. D. Kan. 2011\)](#)  
*Hamilton v. Wells Fargo Bank, N.A. (In re Hamilton)*, 401 B.R. 539 (B.A.P. 1st Cir. 2009)  
*In re Williams*, [385 B.R. 468 \(Bankr. S.D. Ga. 2008\)](#)  
*In re Sanchez*, [384 B.R. 574 \(Bankr. D. Or. 2008\)](#)  
*In re Espinoza*, [2008 Bankr. LEXIS 2121, 2008 WL 2954282 \(Bankr. D. Utah 2008\)](#)



*In re Denton*, [370 B.R. 441 \(Bankr. S.D.G.A. 2007\)](#)

**II. Does the failure of a secured creditor to object to confirmation render 1325(a)(5)(A) satisfied thereby not allowing a Chapter 13 Trustee to object?**

***The “yes” rationale***

- Silence constitutes acceptance because Section 1325(a)(5)(A) is fulfilled because subsection (A) was satisfied when a properly noticed secured creditor fails to object. Moreover, an objection by the Chapter 13 Trustee should be disregarded under Section 1325(a)(5) as treatment is personal to the affected secured creditors and not an issue the trustee should be heard on.

*In re Carr*, 583 B.R. 458 (Bankr. N.D. Ill. 2018)

*In re Olszewski*, [580 B.R. 189 \(Bankr. D.S.C. 2017\)](#)

*In re Schultz*, 363 B.R. 902 (Bankr. E.D. Wis. 2007)

*Scotiabank de Puerto Rico v. Lorenzo (In re Lorenzo)*, [Case No. 15-011, 2015 Bankr. LEXIS 2464, 2015 WL 4537792 \(B.A.P. 1st Cir. July 24, 2015\)](#)

*Bronitsky v. Bea (In re Bea)*, [533 B.R. 283 \(B.A.P. 9th Cir. 2015\)](#)

*Austin v. Bankowski*, [519 B.R. 559 \(D. Mass. 2014\)](#)

*Flynn v. Bankowski (In re Flynn)*, 402 B.R. 437 (B.A.P. 1st Cir. 2009)

*Wachovia Dealer Servs. v. Jones (In re Jones)*, 530 F.3d 1284 (10th Cir. 2008)

*In re Andrews*, 49 F.3d 1404 (9th Cir. 1995)

***The “no” rationale***

- There is no voting process like in a Chapter 11, but even in chapter 11 creditor silence is not deemed acceptance for all purposes.
- Acceptance must be done by an affirmative act
- The Debtor has the burden of showing acceptance under Section 1325.

*In re Shelton*, 592 B.R. 193 (Bankr. N.D. Ill. 2018)

*In re Madera*, [445 B.R. 509 \(Bankr. D.S.C. 2011\)](#)

*In re Montoya*, [341 B.R. 41 \(Bankr. D. Utah 2006\)](#)

*In re Ferguson*, [27 B.R. 672 \(Bankr. S.D. Ohio 1982\)](#)

*In re Bethoney*, [384 B.R. 24 \(Bankr. D. Mass. 2008\)](#)

*In re Montgomery*, [341 B.R. 843 \(Bankr. E.D. Ky. 2006\)](#)

*In re Northrup*, [141 B.R. 171 \(N.D. Iowa 1991\)](#)

**III. Can a debtor’s counsel obtain additional attorney fees for representation in an adversary?**

*In re Steen*, No. 20-50042-rlj13, 2021 Bankr. LEXIS 1818 (Bankr. N.D. Tex. July 7, 2021)

- Debtor’s counsel applied for additional chapter 13 attorney fees above the no look flat fee received, for defense of an adversary for non-dischargeability of a debt. The Chapter 13 trustee objected on the basis that counsel should go after the creditor for the fees directly

and that the fees were not necessary and beneficial to the estate. The court overruled the Chapter 13 Trustee and allowed the additional fees because they were a benefit and necessary to the debtor pursuant to Section 330(a)(4)(B) so thus they benefited the chapter 13 estate. The court also stated the services were necessary for completion of the case since defense provided more debts being discharged.

# Faculty

**Jenny L. Doling** is the founding member of J. Doling Law, PC in Palm Desert, Calif., which serves Reno, Nev., Las Vegas and Southern California. She represents creditors, trustees, and consumer and business debtors in chapter 7, 11, 12 and 13 bankruptcy and insolvency matters. She is a California State Bar Certified Bankruptcy Specialist. Ms. Doling has been accepting cases subchapter V cases and handles mortgage loan litigation, TILA, FCRA, FDCPA, RESPA, and other loan-related review and litigation. She is an active member of the bankruptcy bar and a member of the board of directors for the National Association of Consumer Bankruptcy Attorneys (NACBA), and she is the past-president of the Inland Empire Bankruptcy Forum. Ms. Doling is a frequent speaker on bankruptcy, insolvency, loan default litigation and law practice management topics for the National Conference of Bankruptcy Judges (NCBJ), National Association of Chapter Thirteen Trustees (NACTT), National Association of Consumer Bankruptcy Attorneys (NACBA), ABI and the California Bankruptcy Forum (CBF). In addition, she is a professor of bankruptcy law at the California Desert Trial Academy (CDTA) and she serves on the Central District of California Bar Advisory Committee, where she meets quarterly with the Central District of California bankruptcy judges. Ms. Doling is admitted to practice in all state and federal courts in California and Nevada, and before the Ninth and Tenth Circuit Courts of Appeals. In addition, she served as an Advisory Subcommittee member on ABI's Commission on Consumer Bankruptcy. Ms. Doling was a member of the Desert Defenders Conflict Panel for Riverside County, representing indigent clients in misdemeanor cases under its Conflict Panel for nearly 10 years. She received her B.A. in criminal justice and her J.D. from California Western School of Law in San Diego in 1999, where she received an Academic Achievement Award in Bankruptcy and was also honored with an Award for Excellence from the *American Bankruptcy Law Journal*.

**Ariane R. Holtschlag** is an attorney with FactorLaw in Chicago, where her practice is focused primarily in the field of consumer bankruptcy and is equally divided among representing trustees, debtors and creditors in chapters 7 and 13. She also represents individuals and small businesses in chapter 11. Ms. Holtschlag has spoken at several bankruptcy education programs and also volunteered for CARE, speaking to high school students about credit and bankruptcy. In 2017, she was chosen as one of ABI's inaugural "40 Under 40" award recipients in recognition of her achievements. Ms. Holtschlag was a commissioner on ABI's Commission on Consumer Bankruptcy and in 2018 testified before congress on chapter 7 trustee fees. She received her undergraduate degree in 2004 from Illinois Wesleyan University and her J.D. from the University of Iowa in 2007.

**Hon. Christopher M. López** is a U.S. Bankruptcy Judge for the Southern District of Texas in Houston, sworn in on Aug. 14, 2019. He was previously counsel in the Business, Finance and Restructuring Department of Weil, Gotshal & Manges and had been involved in a number of significant chapter 11 cases in Houston and across the country. Judge López is a member of the State Bar of Texas and the Houston Bar Association. He is also a member of the Honorable Arthur L. Moller/David B. Foltz, Jr. American Inn of Court and has studied cross-border and banking issues in Mexico. Judge López is a member of the board of directors of the Hispanic Bar Association of Houston. He received his B.A. in psychology in 1996 from the University of Houston, his M.A. in theology in 1999 from Yale

University and his J.D. in 2003 from the University of Texas School of Law, where he was a member of the *Texas International Law Journal* and elected permanent class president for the class of 2003.

**Michael A. Miller** is a supervising attorney at the Semrad Law Firm, LLC in Chicago, where he focuses on consumer bankruptcy. He also founded and runs the firm's *pro bono* appellate practice, and has argued three times in front of the Seventh Circuit. Mr. Miller is currently an adjunct professor at The University of Illinois Chicago Law School. He is a former co-chair of the Bankruptcy Court Liaison Committee for the Northern District of Illinois, and he is currently the Seventh Circuit Leader for the National Association of Consumer Bankruptcy Attorneys. Mr. Miller received his undergraduate degree with honors from Roosevelt University and his J.D. from The John Marshall Law School, during which time he was an extern for the U.S. Trustee's Office.