2005 Bankruptcy Reform Amendments and Family Law Litigation

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I. SUMMARY AND INTRODUCTION

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, all previous non support defenses are removed from 11 U.S.C. § 523(a)(15)[2]. This results in all divorce related debt, either as support or property settlements being non dischargeable in Chapter 7 liquidations. However, the identity of the divorce debt as support or property disposition is still important in reorganization cases under Chapters 11, 12 and 13. In bankruptcy, support debts are now known as a Domestic Support Obligation ("DSO") . DSO debt includes not just pre bankruptcy arrearages, but also unpaid amounts arising after the bankruptcy filing, as well as support debts assigned to a governmental unit.

The automatic stay arising upon bankruptcy filing is now less disruptive to domestic support collection and enforcement. DSO creditors enjoy a higher priority in bankruptcy for payment. Time limitations within which to file a complaint to establish that a debt is non dischargeable under § 523(a)(15)are eliminated. Trustees must now provide basic information to DSO creditors to assist in collection. Debtors' ability to avoid a DSO lien as a judicial lien is restricted and such liens cannot be avoided by trustees, as well. The DSO creditor can now play a more powerful role in reorganization bankruptcy cases.

II. DOMESTIC SUPPORT OBLIGATIONS

A support debt under § 523(a)(5) is now a DSO and defined as a debt for alimony, maintenance or support, accruing before, on or after the bankruptcy filing, including interest as provided by non bankruptcy law, owed to or recoverable by a spouse, former spouse or child of the debtor (or such child's parent, guardian or

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[1]The views expressed are solely those of this writer and are not necessarily those of the writer's colleagues or the federal judiciary.

[2]All further section references are to the Bankruptcy Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 11 U.S.C. § 101-1532.

responsible relative) or a government unit[3]. § 101(14A). This means the DSO can be a support debt established before bankruptcy, in the process of being established as bankruptcy is filed or established after the bankruptcy. Any potential support claim can ultimately become a DSO, *e.g.,* a "hold harmless" provision in a decree making one spouse responsible for a community debt can constitute a non dischargeable DSO if intended as a form of support for the other spouse. However, if the DSO is a community debt, it remains one outside of bankruptcy. The community creditor can pursue the non debtor spouse for payment.

The DSO need not be directly owed to the spouse, former spouse or child. It is sufficient if recoverable or enforceable by the spouse or child, even if owed to a third party creditor. This validates prior case law that debts owed to others but required to be paid by the debtor as a form of support for the spouse or child are non dischargable. The debt must be in the nature of alimony, maintenance or support, established or subject to being established before or after bankruptcy by a separation agreement, property settlement agreement, court order or by a government unit under non bankruptcy law. The debt cannot be assigned to a non governmental entity, unless done so voluntarily for collection purposes. Under this new definition, a support debt created entirely post bankruptcy is included in the definition. The same result occurs for a DSO that from its inception is held by a governmental unit. Bankruptcy courts will continue their traditional practice of analyzing the actual nature of the debt as support and not simply rely on labels in pleadings. The determination whether the claim is dischargable, whether it is a DSO or a marital debt at all is a matter of federal bankruptcy law, rather than state law. The determination is governed by the nature of the debt at the time it was created, not by subsequent events. The court looks to the intent of the parties at the time of debt creation and the function of the debt in an agreed divorce. The family court's clear intent in entering a decree in a contested divorce is dispositive in determining whether a marital debt constitutes support. While mere labels are not dispositive, the clearer the intent is expressed in the family court record, order and decree, the fewer surprises will occur in bankruptcy court rulings.

A significant effect of the new DSO definition is to make debts owed to a governmental entity for meeting the needs of a

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[3]It might be possible to make a family court ordered attorneys fee award a non dischargable DSO by awarding the fees jointly to both counsel and the support client or specifically make the award recoverable or enforceable by the support client.

debtor's family for support or maintenance non dischargeable in bankruptcy. § 101(14A)(ii). Presumably this will be held to include keeping children in a juvenile detention facility, support for children made wards of the state and government costs for placement of children in shelter care facilities.

A DSO may be enforced against property of the debtor, both during the Chapter 7 case, without violating the automatic stay, and after entry of a discharge, without violating the discharge injunction. §§ 362(b)(2)(B), 523 (a) (5). Since the non dischargable DSO debt includes interest, a Chapter 13 plan must include payment for interest accruing after the bankruptcy filing, *i.e.,* post petition interest--however, only to the extent debtor has sufficient disposable income to pay interest, after providing for full payment of all other allowed claims. § 1322(b)(10).

III. NON SUPPORT MARITAL DEBTS

Non support marital debts are incurred in the course of a divorce, separation or in a separation agreement, divorce decree, court order or determination of a governmental unit, but must be owed to debtor's spouse, former spouse or child. § 523(a)(15). The significant change is that previous statutory defenses to non dischargability of non support divorce debt are eliminated. While the 2005 amendments now treat DSO and non support marital debts in a similar fashion, there are differences. Essentially there is no longer a distinction between alimony and support and a property settlement debt in Chapter 7. Although both are non dischargable in Chapter 7 liquidations, different treatments are afforded in Chapter 11 and 13 reorganizations.[4] In general, greater protection is afforded to the DSO creditor than to the non support marital debt claimant in reorganizations.

An important distinction between DSO debt and non support marital claims is that support debts not owed to a spouse, former spouse or child but "recoverable by" them still constitutes a non dischargable DSO claim. *See* § 523(a)(5). Non support divorce debt must be directly owed to the spouse, former spouse or child. § 523(a)(15). This clear difference in definitions, included in the 2005 amendments, arguably means Congress specified a broader definition of creditors within the DSO designation. Non support marital debts that are not owed to a spouse, former spouse or child

[4]There are differences in treatment in Chapter 12 agricultural cases as well. Chapter 12 cases are rare in Arizona and will not be treated in this outline.

of the debtor are dischargable.[5] Such a result comports with the goals of protecting support creditors while granting debtors a fresh start.

It is common for a family court to order one spouse to pay community marital debts, on which both spouses are liable. Such an order does not bind community creditors, who may participate fully in the bankruptcy case, even if just one spouse files. Neither § 523(a)(5) nor § 523(a)(15) impact the debts the spouses owe such community creditors or the debt's dischargeability. The creditor spouse that was to be held harmless from the community debt holds an enforcement right, which qualifies as a bankruptcy claim, in the event the responsible spouse fails to pay and instead files bankruptcy. If this enforcement right meets the criteria to be a DSO under § 523(a)(5), *i.e.,* it was intended to be a form of alimony or support, it is non dischargeable in any bankruptcy. If the claim does not meet the criteria to be a DSO, but is nevertheless a marital debt under § 523(a)(15), it would be non dischargeable in Chapter 7 and potentially dischargeable in Chapters 11 and 13.

PRACTICE POINTER: BECAUSE OF THE POSSIBILITY THAT A PROPERTY SETTLEMENT DEBT CAN BE DISCHARGED IN A REORGANIZATION CASE, ALIMONY, MAINTENANCE AND SUPPORT PROVISIONS SHOULD NOT BE "BURIED" IN A PROPERTY SETTLEMENT AGREEMENT, BUT INSTEAD SHOULD APPEAR IN AN INDEPENDENT "SUPPORT" DOCUMENT OR SECTION OF THE DECREE.

IV. CONCURRENT JURISDICTION

The dischargeability determination, to be made using §§ 523(a)(5) and (15), can be made by either federal or state courts. Jurisdiction is concurrent. While the state court dischargability determination can be made after the bankruptcy case is filed, an argument can be made that the state court determination could occur even before a bankruptcy filing! This result could be supported by noting that the DSO definition includes support debts created before bankruptcy and arguing that nothing in § 523 or in Rule 4007, *F.R.B.P.* alters this result. Since the state court's prebankruptcy jurisdiction to enter a binding dischargeability ruling is currently not clearly established, a litigant requesting such a ruling is inviting subsequent litigation in bankruptcy court regarding its preclusive effect.

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[5]No significant legislative history was included in the 2005 act.

PRACTICE POINTER: A BETTER STRATEGY WOULD BE TO SIMPLY ENSURE THAT THE STATE COURT'S INTENT TO AWARD SUPPORT TO THE SPOUSE OR DEPENDENT IS CLEARLY EXPRESSED IN BOTH THE RECORD AND THE FINAL DECREE.

This concurrent jurisdiction relates only to dischargeability determinations. Bankruptcy courts retain exclusive jurisdiction to grant creditors relief from the automatic stay, dismiss or convert the bankruptcy or resolve objections to claims or exemptions.

The bankruptcy filing will not normally impact most family court proceedings, except when the state court is asked to divide property that is estate property of a pending bankruptcy case. The state court cannot do this. As long as the state court order dividing property has not been finalized prior to the bankruptcy, there will be bankruptcy estate property created when bankruptcy is filed, regardless of whether one or both spouses file. State court jurisdiction to divide property ends at that point.

V. CLAIM PRIORITY

DSO claims enjoy first priority in dividend payments by the trustee. § 507(a)(1). Within this first priority, claims owed directly to the spouse, former spouse or child will enjoy a higher priority than DSO claims assigned to or owned by the government. § 507(a)(1)(A), (B). This prevents competition between the family and government entities in the event that not all priority claims can be paid. Such first position priority can be illusory. First, the trustee's allowed expenses in liquidating property that will be used to pay DSO claims will be given priority over the DSO itself. § 507(a)(1)(C). Second, most Chapter 7 cases have little or no assets left to pay priority creditors, after secured creditors are paid through liquidation of their collateral. Accordingly, a secured creditor holding a security interest in identified collateral has an advantage over an unsecured DSO creditor. Making a debt a priority does not ensure it will be paid. However, if funds are available that are not the cash collateral of a secured creditor, the priority creditors are paid first.

This priority is not as important in Chapter 13, as the plan is required to pay in full DSO debts owed to spouses, former spouses and children. It is probably sufficient for the Chapter 13 plan to pay the DSO debt concurrently with other priority or secured debt, rather than sequentially. § 1322(a)(2). Since such support debts are non dischargable, the DSO creditor does not have to depend on a bankruptcy case in order to be paid. Timing of payments under the plan is largely left to the reorganizing

debtor's drafting discretion. Since debtors will want to ensure such non dischargeable debts are actually paid, there is incentive to pay the DSO creditors off early under the plan. However, the need to pay other important debts, such as home and car loans, could cause DSO pre petition arrearage payments to stretch over the entire five-year plan length. Receiving dependable payments from a confirmed Chapter 13 plan through the trustee may be more advantageous that attempting involuntary collection of a non dischargeable debt from an uncooperative debtor outside of bankruptcy.

PRACTICE POINTER: THE DSO CREDITOR MAY ELECT TO COOPERATE WITH THE DEBTOR AND NEGOTIATE ACCEPTABLE PLAN PROVISIONS, EVEN IF THE PLAN DOES NOT PAY THE DSO IN FULL.

Non support marital debts are not granted priority. Again however, such debts directly owed to a spouse, former spouse or child of the debtor are non dischargable. Collection rights survive the bankruptcy. Given the more narrow definition provided by § 523(a)(15), non support marital debts owed to a third party and not to debtor's family are dischargeable in a reorganization case.

Bankruptcy courts and bankruptcy practitioners are used to having the priority of a bankruptcy claim established in bankruptcy, following notice to all creditors and an opportunity for a hearing. Under the recent amendments, a state court could create a new DSO or modify an existing DSO while the bankruptcy is underway, without the knowledge of the trustee or other creditors, thus creating a new priority debt in the bankruptcy. All parties in the bankruptcy would apparently be bound by the priority created in state court in their absence.

VI. AVOIDANCE POWERS

A debtor's power to void certain judicial liens is not applicable to DSO liens. § 522(f)(1)(A). Accordingly, any judicial lien placed on debtor's property to secure a support obligation, assigned or unassigned, cannot be avoided, even if it impairs an exemption available to a debtor. A trustee's power to avoid transfers that prefer certain creditors does not apply to a "bona fide payment of a debt for a domestic support obligation." § 547(c)(7). This also protects a DSO assigned to a government unit. Bankruptcy cannot be used by debtor to undo a successful support collection effort by the government.

VII. PLAN CONFIRMATION, CASE DISMISSAL AND DISCHARGE

A chapter 11 or 13-plan can only be confirmed if the debtor is current on all DSO debt that first became payable post petition. §§ 1129(a)(14), 1325(a)(8). The case can be dismissed or converted to chapter 7 if debtor is delinquent on a post petition DSO. § 1112(b)(4)(P),[6] 1307(c)(11). A discharge of even non-DSO debt cannot be granted in Chapter 13 if debtor has not certified that all DSO obligations due on or before the date of certification that were to have been paid through the plan have been paid. § 1328.

PRACTICE POINTER: BEFORE THE DISMISSAL MOTION IS FILED, THE DSO CREDITOR SHOULD CONSIDER WHETHER WORKING WITH A STRUGGLING DEBTOR RATHER THAN CHASING DEBTOR FOLLOWING DISMISSAL IS MORE ADVANTAGEOUS.

A Chapter 13 plan that fails to pay in full, a DSO assigned to a non family creditor cannot be confirmed, unless the plan utilizes all debtor's projected disposable income to plan payments for five years. § 1322(a)(4). A Chapter 13 discharge cannot be granted, even of non DSO debt after a plan is successfully completed, unless debtor has certified that all DSOs that became due on or after the certification date are current. § 1328(a). However, the plan is not required to pay prepetition DSO claims. This certification requirement is a powerful advantage for the DSO creditor. Even if all payments proposed by the confirmed Chapter 13 plan have been paid, no discharge can be granted if subsequently accruing DSO debt is unpaid.

Check points are established to ensure there is compliance with support debt priority.

(1) Any reorganization case can be dismissed or converted to Chapter 7 at any time if debtor is not current with an ongoing DSO obligation.

(2) A reorganization plan cannot be confirmed unless it pays all past due DSO–with two exceptions: A DSO creditor can agree to accept less than full payment and a Chapter 13 plan can pay less than all support debts held by a governmental agency PROVIDED the plan pays all debtor's projected disposable income into the plan for five years. § 1322(a)(4). Priority claims, such as DSOs can be paid over the life of the plan in deferred cash payments. §

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[6]It will be converted or dismissed absent unusual circumstances specifically identified by the court that establish conversion or dismissal is not in the best interests of creditors and the estate. § 1112(b)(1).

1322(a)(2).

(3) A Chapter 11 or 13-plan cannot be confirmed and a Chapter 13 debtor cannot be discharged, unless all support first becoming due post petition has been paid. §§ 1129(a)(14), 1325(a)(8), 1328(a). Pre petition support arrears need only be paid in the reorganization plan to the extent the plan includes full or partial payment of such debt. The DSO creditor can agree to accept less than full payment of such debt. The Chapter 11 or 13-plan could still be confirmed, but after all plan payments are made, unpaid pre petition support arrears are not discharged. Nonetheless, a reorganization that leaves part of a debtor's non dischargeable support debt unpaid may still be attempted by debtors, to obtain the discharge of non support debt. Elimination of this non DSO debt assists the DSO creditor as well.

(4) After completion of five years of payments under such a plan, the government's unpaid DSO claim is not discharged. The apparent thought was to encourage Chapter 13 debtors to propose at least a plan that pays the spouse, even if lacking sufficient income to pay the government in full.

While DSO creditors enjoy increased protection in Chapter 13, the same is not true for non support marital debts. These § 523(a)(15) debts are not excepted from a Chapter 13 discharge, provided debtor successfully completes payment under the plan. Accordingly, there may be incentive to litigate dischargeability and priority issues by challenging whether the claim actually is a § 523(a)(15) marital debt. However, non support marital debts cannot be discharged in Chapter 13 if debtor seeks a "hardship" discharge prior to completing all plan payments. § 1328(b). Thus a Chapter 13 "hardship" discharge is similar to a Chapter 7 discharge in that no marital debts are discharged and the creditor is free to collect on them. A DSO may be collected from debtor's exempt property–even if the DSO creditor could not collect from the exempt property outside of bankruptcy. § 522(c)(1). Artful debtors who skillfully, painstakingly and lawfully convert non exempt property into exempt property could well undo themselves by subsequently filing bankruptcy while owing a significant DSO, as the filing exposes their exempt property to DSO creditors.

While there are many protections for the DSO creditor applicable to Chapter 11 and 13 plans, this is not a warrant for the creditor to slumber. Ninth Circuit case law is very supportive of the *res judicata* binding effect of a confirmed plan. In Chapter 13, confirmation of a plan can occur early in the case. Chapter 11 plans can be exceedingly complex. It is possible the creditor could lose its favorable position by failing to timely object

before confirmation to improper DSO claim provisions in the plan.

PRACTICE POINTER: ALL DSO CREDITORS MUST CAREFULLY REVIEW THE TREATMENT OF THEIR CLAIM IN THE PLAN, INCLUDING PROVISIONS RELATING TO DISCHARGEABILITY AND PRIORITY, PRIOR TO CONFIRMATION.

VIII. AUTOMATIC STAY

A bankruptcy case does not automatically stay the commencement or continuation of a civil proceeding to establish or modify an order for domestic support, for child custody, to determine paternity, regarding domestic violence or to dissolve a marriage, except where the proceeding seeks to divide bankruptcy estate property. § 362(b)(2)(A). In general, the bankruptcy court continues to have exclusive jurisdiction over bankruptcy estate property. A new exception to this general rule is that the automatic stay no longer bars withholding of income that is estate property or debtor's property for payment of a DSO, provided the withholding is authorized by a judicial or administrative order or a statute. § 362(b)(2)(C). This means that the usual court-ordered payment of ongoing support or arrearage collection through wage withholding could proceed during the bankruptcy under Chapters 7, 11 or 13 by either judicial or administrative process. As always, other state or federal limitations on garnishment would still be in effect. *See, e.g.,* Federal Consumer Credit Protection Act, 15 U.S.C. § 1673. This withholding exception to the automatic stay is limited to income and would not generally include collection of non wage bankruptcy estate property. *But see* § 362(b)(2)(F) (allowing the interception of a state or federal tax refund if authorized by federal or state support law– this presumably obtains even if debtor argues the refund is estate property or that debtor intends to use the refund to pay creditors in a Chapter 13 plan).

Other support enforcement tools are freed from the automatic stay of bankruptcy. Withholding, suspension or restriction of a driver's license, as well as professional, occupational or recreational licenses under state support law as provided in the Social Security Act is not stayed. § 362(b)(2)(D). Reporting delinquent support to a consumer credit reporting agency is not stayed. § 362(b)(2)(E).

IX. EXEMPT PROPERTY

The bankruptcy filing does not stay collection of a DSO from property that is not property of the estate. § 362(b)(2)(B).

Property of the debtor that is exempted from the bankruptcy estate may be collected by the DSO creditor while the bankruptcy case is pending. §§ 362(b)(2)(B), 522(c)(1). It does not matter that the property would be exempt from DSO creditor collection under state law.

While property exempted under either state or federal law is now liable to the DSO creditor, § 522(c)(1), no enforcement provision is provided. Although the trustee can be compensated for liquidating non exempt property used to pay the DSO creditor, § 507(a)(1)(C), there is no express indication the trustee has direct authority to liquidate debtor's exempt property for a single creditor. Accordingly, it ordinarily will be the DSO creditor's responsibility to pursue collection, utilizing state creditor remedies. *See* Rule 7069(a), *F.R.Br.P.*

If the DSO creditor has made the decision to begin a collection effort against exempt property, rather than negotiate with the debtor and the estate, the bankruptcy schedules and docket will identify property declared as exempt to which no objection has been sustained. Because DSO creditors are better off in a bankruptcy case with a large amount of exempt property, then they would be outside of bankruptcy, there could be a temptation to file an involuntary bankruptcy case against a debtor. Practitioners inexperienced in bankruptcy should resist this tactic.

PRACTICE POINTER: INVOLUNTARY BANKRUPTCY CASES HAVE STRINGENT TECHNICAL REQUIREMENTS. AN UNSUCCESSFUL INVOLUNTARY PETITION CAN EXPOSE THE PETITIONER TO AN AWARD OF COSTS, ATTORNEY FEES AND ACTUAL OR PUNITIVE DAMAGES. § 303(i).

X. NOTICE TO DSO CREDITORS

The trustee must advise the DSO creditor in writing of the existence and right to use a state child support enforcement agency, including its address and phone number and provide notice to the agency of the DSO claim and the creditor's name, address and phone number. The trustee must also give notice to this creditor and the agency of the entry of a bankruptcy discharge, of any reaffirmation agreement, any debts that are excepted from discharge, debtor's last known address and last known employer. § 704(C)(1). These notices appear designed to inform DSO claimants about assistance available from state child-support enforcement units and alert the units to the existence of the DSO claim for possible post bankruptcy collection action.

XI. ATTORNEYS AS "DEBT RELIEF AGENCIES"

The amendments remarkably prohibit a "debt relief agency" from advising a client to incur additional debt in contemplation of filing a bankruptcy case. § 526(a)(4). Case law almost universally concludes that attorneys meet the definition of a debt relief agency, defined as " . . . any person who provides any bankruptcy assistance to an assisted person in return for payment . . . " § 101(12A). An assisted person is anyone " . . . whose debts consist primarily of consumer debts the value of whose nonexempt property is less than $150,000." § 101(3).

While clearly intended to ensnare bankruptcy attorneys, is the definition sufficiently broad to apply to a family law attorney, who is counseling on a pending divorce, but also advising the client regarding the possibility of a future bankruptcy filing? Unfortunately, the definition appears to include non bankruptcy counsel providing information and advice regarding the possibility of a future bankruptcy.

The problem with prohibiting an attorney from advising a client regarding the desirability of taking on additional debt, when bankruptcy is possible is clear. It is common for one or both spouses to be stressed financially when divorce occurs. It might be sensible to advise a client, soon to become solely responsible for high interest community credit card debt, to consider a post divorce home equity loan at a lower interest rate to pay off the cards. If the divorce will deprive the client of a vehicle, it might be wise to advise acquiring a vehicle, before a contemplated bankruptcy damages the client's credit rating and makes a post bankruptcy purchase more expensive. Counsel might recommend the financially stressed client sell an expensive vehicle in favor of a credit purchase of a less expensive one or refinance an existing mortgage to obtain a lower interest rate. In a domestic abuse situation, the family law attorney may wish to counsel a victim to finance payoff of a joint debt to eliminate contact with the abusing co-debtor. Yet, valuable relevant legal advice to the client about what might happen in a bankruptcy could result in family law counsel being classed as a debt relief agency.

There is some good news. The prohibition of engaging in what has traditionally been recognized as part of the attorney's counseling responsibilities is uniformly held violative of free speech rights by trial level courts. *Hersh v. United States,* 347 B.R. 19 (N.D. Tex. 2006), *Olson v. Gonzales,* 350 B.R. 906 (D. Ore. 2006), *Zelotes v. Martini,* 352 B.R. 17 (D. Conn. 2006), *Zelotes v. Adams,* 363 B.R. 660 (D. Conn. 2007)(adhering to its prior decision), *Milavetz v. United States,* 355 B.R. 758 (D. Minn. 2006),

In re Reyes, 361 B.R. 276 (Bankr. S.D. Fla. 2007). *Olson* has now been appealed to the Ninth Circuit and briefing is ongoing. *See* Ninth Circuit dockets 07-35762, 07-35616. However, vindication of counsel's free speech rights regarding § 526(a)(4), assuming it is maintained at the Circuit level, does not eliminate other obligations imposed by the 2005 amendments, which could be held binding on family law attorneys.

These obligations prohibit counsel as a debt relief agency from failing to perform any service the agency promised would be performed, making untrue or misleading statements or misrepresenting the services that will be rendered to the assisted person or the benefits and risks that may result if the assisted person becomes a bankruptcy debtor. A waiver of these rights by the assisted person is not enforceable. § 526(b). Intentional violations expose the debt relief agency to injunctive relief and civil penalties. § 526(c)(5).

A copy of the notices required to be given under § 527(a)[7] must be kept by the debt relief agency for two years. § 527(d). Not later than five business days after providing bankruptcy assistance services, but prior to filing of a bankruptcy, the debt relief agency must sign a written contract with the assisted person and provide a copy that clearly and conspicuously specifies the services the agency will provide and the fees or charges and terms of payment. § 528(a)(1). "Bankruptcy assistance" includes any supplied good or service that provides information, advice, counsel, document preparation or legal representation regarding a bankruptcy case. § 101(4A). Given a close nexus between divorce and bankruptcy concerns in many consumer client representations, familiarity with these requirements by family attorneys is important.

Any advertisement of bankruptcy assistance services made to the general public must clearly and conspicuously disclose that the services relate to bankruptcy relief under the bankruptcy code and substantially state: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." §§ 528(a)(3)-(4), (b)(2). Contracts for bankruptcy assistance that fail to comply with §§ 526, 527 or 528 are void, unless enforced by

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[7]The required notice instructs assisted persons that all information the assisted person is to provide with a bankruptcy petition must be complete, accurate and truthful, all assets and liabilities are to be completely and accurately disclosed after reasonable inquiry and failure to comply can lead to civil and criminal sanctions. *Id.*

the assisted person. § 526(c)(1).

The prudent course would be for the family practitioner to attempt as much as possible to be in compliance with these requirements. This writer is not currently aware of a circumstance where liability under these provisions has been sought against family law practitioners. But, you never know.

XII. CONCLUSION

The clear intent of the 2005 bankruptcy amendments was to assist in the collection of a DSO when bankruptcy intervenes. However, besides collection, DSO creditor counsel should monitor developments in pending bankruptcies of DSO debtors, especially reorganization cases.