

KING BANKRUPTCY ACADEMY

TELECONFERENCE

Oct. 25 2013

SELECTED ETHICS ISSUES IN CONSUMER BANKRUPTCY CASES

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1. The 5th Amendment

Is valid and may be invoked in a bankruptcy case, including the meeting of creditors, deposition, hearings etc.

[In re Abbas B.R. \(Bankr. E.D. Va., 2007\)](#)

[In re Yates, B.R. \(Bankr.S.D.Cal., 2008\)](#)

[In re Gi Yeong Nam, 245 B.R. 216 \(Bankr. E.D. Pa. 2000\)](#)

CAVEAT: There some refinements of the rule in connection with waiver

Should be raised individually per question – avoid “blanket” assertion of privilege
May have to justify reasons for refusing to testify:

See *In re Carmen v. Ciotti*, 442 B.R. 412 (Bankr. W.D. Pa., 2011)

2. Attorney-Client Privilege

Weight of authority: Does not exist for most purposes

Debtor’s disclosure of personal and financial information in the petition – schedules – statement of financial affairs effectively waives the privilege as to that information

[In re Myers 382 B.R. 304 \(Bankr.S.D.Miss. 2008\)](#)

[In re Pearlman 381 B.R. 903 \(Bankr.M.D.Fla. 2007\)](#)

But held: court should do a balancing test of harm to debtor versus value to the estate.

Foster v. Hill 188 F.3d 1259 (10th Cir 1999)

3. Filing unsigned documents with the court

A big no-no

Local Rules

Rule 9011 & 1008

28 U.S.C. § 1746

[In re Wenk 296 B.R. 719 \(Bankr.E.D.Va. 2002\)](#)

“Federal Rule of Bankruptcy Procedure 5005(a)(2) provides that ‘ . . . document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.” “A case filed electronically is no different from a paper case filed in person at the counter.”

CAVEAT: I’ve got to file this today!

Typical crisis: Foreclosure

My last Chapter 11 disaster case

- **Accused of forging signature on Statement of Financial Affairs**
- **The accused of filing it without her signature**
- **Then accused of having only the signature page faxed**

4. Conflict of interest

Conundrum: Atty with two truck cases

Two clients involving same stolen assets

More common situations:

Source of compensation

- i. Creditor
- ii. Loan from a relative or employer
- iii. Client owes fees for prior work

[In re Liou _B.R._ \(Bankr. N.D. Ill., 2013\)](#)

Example: Client owed attorney fees for prior representation in bankruptcy and 1) failed to disclose and 2) failed to obtain a waiver.

Attorney permanently barred from appearing in bankruptcy court!

A 38 page opinion!

CAVEAT:

Held, attorney violated rules against conflict of interest by taking a lien against the debtor's house to secure payment of his fees.

In re Cohagan-Deubel (Bankr.Colo. 2002)