

## HYPOTHETICALS

1. The law firm of Marshall and Associates is a small and very busy firm that handles general litigation, real estate and insurance defense matters. Long-time client (LTC) calls Mr. Marshall to represent a friend who has fallen on hard times arising out of the current real estate crisis. Citing little or no money, LTC persuades lawyer Marshall to dust off the bankruptcy books and help him out as a favor. Lawyer Marshall handled several no asset bankruptcy cases before BAPCPA but none since. Lawyer Marshall knows that electronic filing is now available, but does not subscribe.

In your opinion:

- a. Is it wise for lawyer Marshall to consider doing this favor for a good client who has undoubtedly paid him a lot of money through the years?
  - b. Can the lawyer competently handle a bankruptcy case if he does not understand the legal and factual elements of this specialized area of the law?
  - c. Can the lawyer competently handle the case if he is unfamiliar with the methods and procedures used by bankruptcy practitioners?
  - d. How can the attorney discuss the degree of thoroughness, the level of preparation required and the estimated costs with the client?
  - e. Can the attorney keep the client informed as to current developments in the case if he is not familiar with the Court's noticing procedures?
2. You represent the holder of a secured claim in a Chapter 7 proceeding filed by a pro se debtor.

Based upon your examination at the 341(a) meeting, you conclude that the debtor lacks a significant understanding of the proceedings. Further, you believe there may be equity in the property securing your client's claim and so advise the trustee, who, notwithstanding your advice, summarily abandons the estate's interest.

At the conclusion of the meeting, the debtor approaches and asks you what "abandonment" means. You provide what you consider an appropriate

explanation whereupon the debtor proceeds to ask several additional questions, such that it appears he/she may be looking to you for advice.

You feel empathy for the debtor and do not want to appear rude.

In your opinion:

- a. Should you offer the debtor advice?
  - b. If so, what advice should you give?
  - c. Is it permissible to state or imply that you are disinterested in the matter?
  - d. Are you under any obligation to clarify any misunderstanding the debtor may have regarding your role in the case?
  - e. Assuming your client would consent, should you offer to prepare a reaffirmation agreement, even though having examined the debtor's budget, you doubt his/her ability to make the required payments to your client?
3. You are representing a client who is trying to stop a foreclosure on their house and you are assisting them in a loan modification. You are fairly sure the loan modification will go through, but you cannot get the creditor to agree to stop the crying out of the foreclosure. The person you are speaking to says the creditor will work this out even though there is a foreclosure and they will not file the deed of foreclosure. You do not trust them, so you tell your client if they file a pro se petition under Chapter 13, it will stop the foreclosure and buy them more time, and they do so. You tell the debtor you cannot represent them in the Chapter 13.
4. You are working for a large collection firm and are asked to prepare proofs of claims to be filed in court by one of the partners. You have never done this before, so you have to do a lot of research and talk to a lot of people before doing your first one. Each successive proof takes you less time and

you find that once you learned how to do it you can do one in two hours. Your senior partner says that the federal regulations allow you to charge \$1150 per case, and tells you to charge that in every case since it took you so long to learn it.

5. A debtor comes to you because of financial problems. They are loaded up with debt. They can file a Chapter 7 bankruptcy and wipe those debts out; however, they will still struggle with their car payment on their \$60,000 fully loaded Ford F150 and you really think they should give that car up and get something more reasonable. They insist they can do it and you file a Chapter 7 for them and prepare the reaffirmation agreement. Should you have refused to take the case?
  
6. A debtor comes to see you for an initial consult filing a Chapter 7 case. He does not sign anything hiring you as a lawyer and you do not agree to take the case. The debtor tells you that he is the beneficiary of a family trust and that it is worth several hundred thousand dollars. You tell him that you doubt he can keep that trust out of the hands of the Chapter 7 trustee. He thanks you and says he changed his mind and leaves. Several months later you are attending a Chapter 7 341(a) mass meeting of creditors and this man comes in represented by another lawyer. It is obvious from the trustee's questioning that he has not disclosed the trust. What should you do?
  
7. Debtors file a plan seeking to classify a student loan and retain an expensive motorcycle while paying nothing to the unsecured creditors. The trustee files a motion to dismiss. Debtors' response, filed by their retained counsel, contains only one sentence: "COME NOW debtors and object to the motion to dismiss and show that the Trustee is dead wrong in the position he has taken and debtors will soon show same." Is this an appropriate pleading?

8. Debtor comes to you wanting to keep five vehicles he has just recently purchased. He gained possession of the vehicles by representing to the car dealership that he was about to come into some serious money from an insurance settlement. When he did not get the money he goes to an attorney who files a Chapter 13 plan. The debtor has little income, but the schedules list monthly expenses so low that it appears he can make the payments. All of the expenses are unrealistically low. When chastised by the court for filing this budget, the attorney argues it is not his fault, he just took down the information his client had given him and he had no other responsibility than to present what the client had told him. Is he correct?