

## **CASE MANAGEMENT ISSUES FROM BEGINNING TO DISCHARGE**

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When Congress passed and the President signed BAPCPA into law, the world turned upside down, inside out, and backwards for anyone practicing consumer bankruptcy law. Fortunately the world is beginning to turn itself “right side out” again. The key to being “right side out” is proper case management from beginning to end. The text and cases presented in these materials are but a minor look at what needs to be done when practicing in the consumer arena and are not meant to be a dispositive thesis on how to avoid committing malpractice, these materials are meant to only be a starting point.

Case Management starts from the very minute you meet with a client and continues until the case is concluded. Case Management involves managing the client, your staff, the bankruptcy documents, and all other aspects of “administering” the case on behalf of the client.

These materials begin with determining how to put the Chapter 7 or Chapter 13 case together for filing. The starting point is with the basics. The first question that you must ask is “is the person/are the people sitting in front of me candidates for any type of bankruptcy?” This question must be asked and answered every time someone steps into your office. In order to make a determination that someone can be helped by a bankruptcy, you must first begin case management by complying with the requirements of BAPCPA.

### **PRACTICE REQUIREMENT NO. 1:**

- **Disclosures.** Pursuant to the requirements of the Code that make an attorney a “debt relief agency”, you must provide the potential “assisted person” a copy of the notices mandated by 11 U.S.C. §527(a)(2), 11 U.S.C. §527(b) and 11 U.S.C. §527(a)(1), which mandates that a debt relief agency shall provide the written notice required under §342(b)(1). Copies of the disclosures are attached. (See Exhibit 1)

Further, be aware that there are inaccurate statements in the disclosures of 11 U.S.C. §527, including the statement that if a debtor chooses to file a bankruptcy, they will have to pay a filing fee. This is obviously not always a true statement.

### **PRACTICE REQUIREMENT NO. 2:**

- **Initial Consultation Agreement.** Upon providing the disclosures to a potential client, 11 U.S.C. §528 requires the “debt relief agency” to have the assisted person execute a written contract that explains clearly and conspicuously (a) the services such agency will provide to such assisted person, (b) the fees or charges for such services and the terms of payment, and (c) to provide the assisted person with a copy of the fully executed and completed contract.
  - **Practice Tip:** Have your client/potential client sign a Consultation Agreement spelling out what will be done and the cost. (See Exhibit 2). Even if you are not retaining the potential client, if you meet with the potential client, have the client sign a Consultation Agreement.

### **PRACTICE REQUIREMENT NO. 3:**

- **11 U.S.C. §521.** The entire Code section is a prerequisite, but the most significant sections are 11 U.S.C. §521(a)(1)(B)(ii)(iv), which require the Debtor to, unless the Court orders otherwise, file copies with the Court of all payment advices or other evidence of payment received within sixty (60) days before the date of the filing of the Petition by the Debtor from any employer of the Debtor. In the Eastern District of Michigan, Southern Division, we are not required to file the pay stubs with the Court. Instead, we are required to provide them to the applicable Chapter 7 or Chapter 13 Trustee.
  - **Practice Tip:** Failure to provide the required information is not an option. Specifically, 11 U.S.C §521(i)(1) states “the punishment for failing to provide the required documents is automatic dismissal of the case on the 46<sup>th</sup> day after the date of filing of the petition”. Most employers have the ability to provide the required information through their Payroll or Human Resource Department, in the form of a “payroll” or similar report; providing a breakdown on the weekly, bi-weekly, or semi-monthly payments that the Debtor receives, including the taxes withheld, etc. Otherwise, many employers now provide online access to their employees regarding payroll information, payroll summaries, etc. Most Social Security payments are in the form of direct deposits and a Social Security benefit statement can be obtained from the Social Security Administration at [www.ssa.gov](http://www.ssa.gov)

### **PRACTICE REQUIREMENT NO. 4:**

- **Tax Returns.** In order for a Chapter 13 Trustee to allow a case to be confirmed and in order for the Court to confirm a case, pursuant to 11 U.S.C. §1308, if the Debtor was required to file a Tax Return under applicable non-bankruptcy law, a Debtor must have filed with the appropriate taxing authorities, all Tax Returns for all taxable periods ending during the four (4) year period ending on the date of the filing of the Petition. In order to verify that the Debtor has filed all Tax Returns, counsel for the Debtor should complete the IRS Form, 2848 (See, Exhibit 3), and the equivalent Power of Attorney for the state in which the Debtor resides/resided for the previous four (4) years. In order to contact the Internal Revenue Service, you may reach them at 1-866-860-4259. Once you are on the telephone with them, you can fax the Internal Revenue Service the completed Form 2848 and then order, by telephone or by mail, copies of the Tax Returns. When you order them by telephone, they can be received as fast as twenty-four (24) to forty-eight (48) hours.

In order to file a Chapter 7 bankruptcy, you must be able to provide the Chapter 7 Trustee, pursuant to 11 U.S.C. §521(e)(2)(A), with a copy of the Federal Income Tax Return required under applicable law, or at the election of the Debtor, a transcript of such Tax Return, for the most recent tax year ending immediately before the commencement of the case and for which a Federal Income Tax Return was filed. Should you fail to provide this information as required by 11 U.S.C. §521, the Trustee may move to dismiss the case for failure to comply with the Code.

### **PRACTICE REQUIREMENT NO. 5:**

- **Due Diligence Requirement.** Pursuant to 11 U.S.C. §707, you, as counsel for the Debtor, have a duty to investigate the assets of the Debtor. Specifically, you must (1) perform a reasonable investigation into the circumstances giving rise to the Petition, pleading, or other motion, (2) determine that it is well-grounded in fact, and (3) determine that it is warranted by existing law or a good faith argument for extension, modification, or reversal of existing law and does not

constitute a “abuse” under 11 U.S.C. §707(b)(1).

Failure to comply with the above requirements subjects the attorney for the Debtor to sanctions pursuant to Rule 9011. Notably, the same provision does not apply in Chapter 13.

- **Practice Tip:** With regard to a due diligence review, it is advisable to review, at minimum, the following, in every case:
  1. Obtain recorded Deeds and Mortgages for all real property owned/ previously owned for the last six (6) years by the Debtor.
  2. Obtain a copy of the title to all vehicles.
  3. Obtain three (3) to six (6) months bank statements for all bank accounts.
  4. Perform a Westlaw/Lexis asset search.
  5. Obtain tax transcripts for the prior four (4) years.
  6. Obtain an Appraisal of the real property owned by the Debtor.
  7. Obtain the state equalized value and taxable value for all real property owned by the Debtor.
  8. In homes where the Debtor(s) have high income/above medium income, it may be wise to obtain an Appraisal of all household assets.
  9. If the Debtor pays child support, contact the applicable Friend of the Court and determine if any arrearage in child support exists.
  10. Obtain Proof of Insurance for automobiles and for the home.
  11. Obtain purchase dates of the vehicles/PMSI’s to determine if the obligation can be crammed down in a Chapter 13.
  12. Obtain statements for credit cards to determine if non-dischargeability issues exist.
  13. Obtain a Credit Report, a Tri-Merge Report, if possible. This is a blended credit report from all three major credit reporting agencies. Otherwise, each individual can obtain their Credit Report at [www.annualcreditreport.com](http://www.annualcreditreport.com). This Credit Report is available for free, annually.
  14. Obtain proof of income for the six (6) months ending the last day of the month before the month that the case will be filed in.
  15. Obtain a copy of all payment advices received by the Debtor within the last sixty (60) days and of the Debtor’s spouse.
  16. Do a U.S. National PACER search for any prior cases.
  17. Obtain a copy of a Judgment of Divorce, if applicable.

While this is the minimum documentation necessary, each individual case may prompt the requirement to obtain additional documentation. As such, be aware that the more you do the better off you will be. I also suggest using a checklist system (See Exhibit 4) to aid in making sure all prerequisites are met and none have been accidentally omitted.

#### **PRACTICE REQUIRMENT NO. 6:**

- **The Code and Local Practice:** The Chapter 13 practice in the Detroit area is sophisticated and evolved and requires practitioners to handle Chapter 13 cases in light of the Code as well as local practices, customs, and expectations.
  - Be prepared. Failure of a practitioner to review and know his or her case prior to the 341 hearing and the Confirmation hearing results in time wasted for the attorney, other attorneys,

the Trustee, and the Court, and obtaining a reputation of the same. This serves neither you nor your current or future clients.

- Local Rules and Administrative Orders. Practitioners should read and know the local rules and administrative orders as they are numerous and quite prominent in the daily practice of bankruptcy in this District. A copy of the Local Rules can be found at: <http://www.mieb.U.S.C.courts.gov/rulesAndForms/LBR.pdf>
- Familiarity with the preferences of each Judge and each Trustee's office will serve the practitioner well. Information on each of the Judges may be accessed through the Court's website. Information on each of the Chapter 13 Standing Trustees may be accessed through each Trustee's website.

Websites for the Court and the Trustees are found at:

The Court: [www.mieb.U.S.C.courts.gov](http://www.mieb.U.S.C.courts.gov)

Trustee David Ruskin: [www.det13.com](http://www.det13.com)

Trustee Krispen Carroll: [www.det13ksc.com](http://www.det13ksc.com)

Trustee Tammy Terry: [www.det13.net](http://www.det13.net)

### **PRACTICE REQUIREMENT NO. 7:**

- **Writing Chapter 13 Plans: From Drafting to Calculating**
  - **Drafting:** The contents of the Chapter 13 Plan are governed by §1322, which provides that:
    1. The plan must contain the following provisions:
      - a. Submission of all future income necessary to fund the plan,
      - b. Full payment of all claims entitled to priority under §507 unless the Creditor agrees to less favorable treatment (§1322(a)(2)) or the plan provides for all of the debtor's disposable income to be paid to the plan for a period of five (5) years (§1322(a)(4)), and
      - c. Treatment in kind of all claims of the same class.
    2. The plan may:
      - a. Designate a class of unsecured claims, providing for treatment in kind of all such claims. Unsecured claims, for which a non-filing co-debtor is liable, may be treated differently.
      - b. Modify certain secured or unsecured claims.
      - c. Cure or waive a default.
      - d. Provide for payments to unsecured creditors to be made concurrently with secured creditors.
      - e. Provide for ongoing payments and/or for curing any default on any continuous claim.
      - f. Provide for payment of post-petition claims.
      - g. Assume, reject, or assign an executory contract or unexpired lease.
      - h. Provide for payments from property of the estate or of the debtor.
      - i. Vest the property of the estate in the debtor or another entity.
      - j. Allow interest to accrue on any non-dischargeable unsecured claim.
    3. The plan may be 36 to 60 months long. In no event shall the plan propose a term of more than 60 months.
  - **Practice Tip:** Local Practice; Eastern District of Michigan, Southern Division at Detroit.
    1. The Judges, Trustees, and attorneys of this district have worked together to establish a "Model Plan", which contains standardized classes, language, and terms acceptable in

this District. These classes, language, and terms have evolved through the decisions and practices within the District and comply with the Local Rules.

2. Newer bankruptcy attorneys should use the Model Plan in all cases until the practitioner is familiar enough with drafting, calculating, and local practice to allow for intelligent deviation from the model.
  3. A copy of the current Model Plan (in Word format) can be found on any of the Detroit Chapter 13 Standing Trustees' websites.
  4. A new Model Plan is currently being drafted to comply with BAPCPA.
- **Calculating:** Understanding the Math of the Plan (See Appendix A)  
While many attorneys decide to purchase case management software, it is imperative that each attorney practicing in the area of bankruptcy know how to calculate a plan by hand ("hand calc") and not simply by plugging numbers into a computer program. Once a practitioner is comfortable with the steps involved and how the computer calculates sums, the practitioner will be better equipped to fully represent clients both pre- and post-confirmation.

### **Hypothetical**

Client comes into the office on the 2<sup>nd</sup> of the month. He has a foreclosure sale pending and wants to keep the house. The attorney sat down with him, provided him with the disclosure statements, and determined that the client is a candidate for a Chapter 13 bankruptcy. The next step is to figure out how much money the client is going to have to pay to the Trustee each month. This is the calculation of the Chapter 13 Plan.

The client has provided a mortgage bill showing a payment of \$1,623.00 per month. He has advised that he hasn't made his mortgage payments for the last five months and he hasn't paid his property taxes for summer or winter. He and his wife (who is not filing) have two cars, both of which are in his name. They financed one car through Drive Financial in 2002 and one through DCFS in 2005. He owes the IRS taxes from the last two years and has an outstanding balance due on his student loans. He has about \$22,000 in credit cards and unpaid medical expenses.

In a more organized fashion, here is a quick list of what the client owes:

- Mortgage, \$1623/mo
- Arrearage of 5 months plus about \$1420 in foreclosure related fees, \$9535
- Property taxes for both seasons, \$7500
- Drive Financial, \$7000
- DCFS, \$21000
- IRS, \$3300
- Student Loan, \$18000
- Other General Unsecured, \$22000

- **Steps to "hand calc" a plan.**
  1. Make an initial list of claim (i.e. debt) information and idiosyncrasies of each type of debt. i.e. how to treat the vehicle debt based on when the Debtor financed the vehicle, etc.
  2. Begin the calculation by classifying each claim appropriately (§507, §1322, §365, §1325), identifying missing information (interest rates, FMV, amount to be repaid on unsecured debt, etc.), and determining which debts can be calculated on a straight division basis (claim amount to be paid, divided by number of months of the plan).

3. Complete the calculation by using an amortization calculator<sup>1</sup> to complete the computation of debts paid interest through the life of the plan (i.e. IRS, vehicles, etc.).  
**Practice point:** Both the straight division and the amortization calculations should be completed for a 36, 48, and 60 month plan.  
Practice point: While mortgage arrearages will typically be paid within the first 36 months after confirmation, practitioners should still calculate this debt over a 48 and 60 month repayment period as well.
4. Add up the total payments for a 36, 48, and 60 month plan. Add in the Trustee fee.  
**Practice point:** Assume 5% in order to account for increases in the Trustee fee during the life of the plan.  
The Trustee Fees for the Eastern District of Michigan are currently:  
4% for cases administered by David Ruskin (10/2007),  
3.5% for cases administered by Krispen Carroll (10/2007), and  
4.3% for cases administered by Tammy Terry.
5. Determine the hard permo payment required to fund the plan.  
The results are the details necessary to complete the writing of the Plan; the length, the treatment, the funding.

### **PRACTICE REQUIREMENT NO 8:**

#### o **Getting The Plan Confirmed**

- **Confirmation** is governed by 11 U.S.C. §1325, which provides that:
  1. The court shall confirm a plan if it fulfills all the requirements set forth in §1325(a).  
These requirements include the debtors ability to make the payments set forth in the plan, the appropriate treatment of all claims, the value of the property to be distributed is at least equal to the amount a creditor would receive in a Chapter 7 proceeding, and that the plan is proposed in good faith. These requirements are not all inclusive and practitioners should review §1325 in its entirety.
  2. The Trustee or a creditor objects to confirmation of the plan, the court may confirm the plan “over the” Trustee or creditor’s objections upon certain findings. §1325(b).
- **Local Practice**; Eastern District of Michigan, Southern Division at Detroit.
  1. Confirmation hearings are held Monday through Thursday, depending on the assigned Judge. Currently, Confirmation hearings are held as follows:

Judge Shapero	Monday
Judge Shefferly	Tuesday
Judge Rhodes	Wednesday
Judge McIvor	Thursday
Judge Tucker	Thursday
  2. Judges Rhodes, McIvor, Shefferly, and Tucker’s courtrooms are located at 211 W. Fort on the 18<sup>th</sup> and 19<sup>th</sup> floors. Judge Shapero’s courtroom is located on the 10<sup>th</sup> floor of the federal courthouse.
  3. Chapter 13 Status Conferences and Contested Docket.
    - a. Judges Shapero, McIvor, Shefferly, and Tucker allow the Trustee to hold status conferences prior to the confirmation hearings to allow debtor’s counsel the last opportunity to resolve outstanding objections. Any cases that can’t be resolved at the status conference will be heard by the Judge beginning after lunch.
    - b. Status conferences are not held on Judge Rhodes’ cases. Judge Rhodes takes the bench at 9:00 am and begins hearing arguments on any case in which there are

outstanding objections to confirmation. Practitioners are cautioned against confusing the Chapter 13 status conference practice of Judge Rhodes with the Adversary Proceeding status conference practice of Judge Rhodes.

Practice Point: Be prepared to proceed before the Judge.

- c. Truly effective practitioners will prepare cases in advance of 341 and Confirmation hearings and will proactively address outstanding issues and objections.
4. Additional rules, practices, and procedures of each Judge can be found on the Court's website. Practitioners are responsible for familiarizing themselves with these details.
5. If a plan is well drafted, provides appropriately for all creditors, and complies with the Code and local rules; no objections are filed; and the Trustee approves the Order Confirming Plan (OCP), the case can be confirmed without hearing pursuant to LBR 3015-3(b).

### **PRACTICE REQUIREMENT NO. 9:**

- o **Post-Confirmation Review: A Brief Note:** Monitoring and reviewing your cases post-confirmation will raise the potential for your clients to obtain a discharge. By conducting case reviews on an, ideally, semi-annual basis, you are able to alert your clients to deficiencies well before a discharge audit begins. This permits your client the opportunity, based on your *written* notification, to cure a multitude of issues that will ultimately result in the client being denied a discharge. These deficiencies may include a shortage in plan payments, failure to remit tax refunds, and/or an increase in the mortgage payments.

### **PRACTICE REQUIRMENT NO. 10:**

- o **Is 180 Days Really 180 Days?** 11 U.S.C. §109(h) requires credit counseling before anyone is eligible to be a Debtor in a bankruptcy. The following review of the Prerequisites of Credit Counseling is set forth in a format which presents different hypothetical situations and in turn discusses the related case law.

### **HYPOTHETICAL**

#### **VERSION 1:**

Darryl Debtor ("D.D.") filed a voluntary petition for Chapter 13 pro per on November 1, 2005. The Debtor's case was dismissed on December 1, 2005 for failure to obtain credit counseling and failure to obtain waiver of same. D.D., facing a foreclosure sale on his home, contacts Arnold Attorney ("A.A.") to file a second Chapter 13 case on January 2, 2007, two hours before his foreclosure sale set for January 2, 2007 at 1:00 p.m. A.A. files his Chapter 13 case at 11:59 a.m. D.D. completes his credit counseling at 4:00 pm the same day and is issued the required certificate.

#### **VERSION 2:**

The Debtor's case was dismissed on December 1, 2006 for failure to obtain credit counseling and failure to obtain waiver of same. D.D., facing a foreclosure sale on his home, contacts Arnold Attorney ("A.A.") to file a second Chapter 13 case on January 1, 2006 on the eve of his foreclosure sale set for January 2, 2007 at 1:00 p.m. D.D. completes his credit counseling and is issued the required certificate on January 1, 2006, and A.A. files his Chapter 13 case that same evening at 5:00 pm and submits to the court with the filing the credit counseling certificate.

### **TOPICS FOR DISCUSSION**

**A. EXIGENT CIRCUMSTANCES: DO THE FACTS IN VERSION 1 RISE TO THE LEVEL OF EXIGENT CIRCUMSTANCES WHICH MERIT THE STATUTORY WAIVER OF THE BRIEFING REQUIREMENTS?**

In the present Chapter 13 case, is D.D. excused from the requirement of obtaining credit counseling prior to filing if D.D. provided the court with proper certification that describes his mortgage foreclosure as an exigent circumstance as set forth by 11 U.S.C. 109(h)(3)? How would mortgage foreclosure merit statutory waiver of the credit counseling requirement?

**1. APPLICABLE CODE PROVISION:**

11 U.S.C. §109(h)(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that--

- (i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);
- (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and
- (iii) is satisfactory to the court.

**2. APPLICABLE CASE LAW: NOT EXIGENT**

**In re Hedquist, 450 F.3d 801, 46 (Bankr.Ct.Dec. 181, C.A.8 (Minn.), June 16, 2006)**

The court held that debtors' delay in waiting to file their bankruptcy petition until eve of mortgage foreclosure sale did not constitute "exigent circumstance," such as might permit temporary waiver of prepetition credit counseling requirement.

**In re Dixon, 338 B.R. 383, 8th Cir. BAP (Mo.)**

In this Chapter 13 case, the court held, "bankruptcy court's decision that threatened loss of Chapter 13 debtor's home at foreclosure sale scheduled to occur one day after bankruptcy petition was filed did not rise to level of exigent circumstances which merited waiver of prepetition credit counseling requirement was not abuse of discretion."

**In re DiPinto, 336 B.R. 693, (Bankr.E.D.Pa.2006)**

In this case, the court ruled that imminent loss of debtor's home at foreclosure sale scheduled to occur that same day did not rise to level of "exigent circumstances."

**In re Postlethwait, 2006 Bankr. LEXIS 2098 (Bankr. W.D. Pa. September 12, 2006)**

Te bankruptcy court held that the debtor failed to show that she was "unable" to receive the required briefing. The debtor's efforts directed to obtaining her credit briefing were deficient and inadequate, where two unsuccessful attempts were made in the span of a mere 15 minutes, and within an hour thereafter the petition was filed more than five days before the triggering, exigent event. The debtor thus failed to comply with the third prong of the 11 U.S.C. 109(h)(3)(A) Waiver requirement.

**3. APPLICABLE CASE LAW: EXIGENCY ESTABLISHED**

**In re Cleaver, 333 B.R. 430, 435, (Bankr.S.D.Ohio.2005)**

"[T]he common reality is that many debtors file at the last minute just before a foreclosure sale or the loss of their money or possessions to creditors... it is difficult to conceive of any exigent circumstances related to bankruptcy that would not involve impending creditor action. Absent some sort of immediate

collection activity, there is no urgency affecting the timing of a bankruptcy filing. Consequently, the immediacy of the foreclosure sale in this case appears to be exactly the sort of exigent circumstance contemplated by the statute.”

**In re Burrell, 339 B.R. 664, (Bankr.W.D.Mich.2006)**

The court ruled an impending foreclosure sale of Chapter 13 debtor's home was kind of “exigent circumstance” that might entitle her to temporary waiver of the credit counseling requirement required by BAPCPA; but debtor’s failed to provide certification necessary to waive the requirement.

**In re Westenberger, 2006 WL 1105008, (Bankr. S.D.Fla.2006)**

Court found that Debtor’s sole source of funds being frozen satisfied both the exigency and waiver requirements. The Court found that the Debtor was unable to obtain the counseling because the credit counseling agency was not willing to provide counseling until the out of state check cleared its bank account, which would have taken more than five days.

**In re Hubbard, 333 B.R. 377, 384, (Bankr.S.D.Tex.2005)**

Loss of family home unless immediate relief granted is exigent circumstances.

**In re Valdez, 335 B.R. 801, (Bankr.S.D.Fla.2005)**

The court stated, “Clearly, exigent circumstances existed in regard to [Debtor’s] concern to save her homestead” but dismissed the case in failure to obtain credit counseling within 5 days of the attempt.

**In re Davenport, 335 B.R. 218, (M.D.Fla.)**

Repossession of family's only method of transportation constituted exigent circumstances.

**In re Hawkins, --- B.R. ----, 2006 WL 1071682, (Bankr.D.Dist.Col.2006)**

“The court's conclusion is that a debtor need only make a colorable claim that she has received such counseling for the court to assert jurisdiction.”

**In re Petit-Louis, 338 B.R. 132, (Bankr.S.D.Fla.2006)**

The Debtor was fluent in Creole and had limited English capability. The court waived the pre-bankruptcy budget and credit counseling since none of the approved counseling agencies had Creole speaking counselors.

**CONGRESS AT ITS BEST**

**In re Raymond, 2006 WL 1047033, (Bankr.D.N.H.2006)**

“It is a mystery to the Court why Congress granted the Court the authority to waive all filing fees for persons such as the Filer, but not waive the credit counseling requirement. The Filer qualified for a waiver of fees which means the Court and the chapter 7 trustee would have received no payment for the processing of the Filer's bankruptcy case. However, the credit counseling agency would still receive payment for a counseling session. Exactly what form of credit counseling could be useful, or necessary, to a person who qualifies for a waiver of fees under 28 U.S.C. § 1930(f) is even more of a mystery. The rationale for many of the provisions in BAPCPA, the language used in those provisions, and the coordination among them are likely to remain an enigma for a long time. In this case, there is no mystery regarding the action this Court is compelled to take with respect to the Certification.”

**B. DID THE AUTOMATIC STAY REALLY NEED TO BE EXTENDED IN THE DEBTOR’S SECOND CASE OR WAS THE FIRST CASE A NULLITY BECAUSE HE DID NOT OBTAIN CREDIT COUNSELING IN THE PRIOR CASE AND DID NOT SEEK WAIVER?**

A.A. moves to strike D.D.'s first Chapter 13 case as void ab initio because D.D. was ineligible to be a Debtor reasoning that a petition filed by a person ineligible to be a debtor does not commence a case for purposes of 11 U.S.C. § 301(a).

What result as to the first case? How does this impact the present case or future cases under BAPCPA? What are the automatic stay implications? How would the Trustee administer a stricken case? How is this different from a debtor's dismissal for failure to be eligible pre-BAPCPA?

### **1. Applicable Code Provisions:**

11 U.S.C. § 109(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

### **2. Applicable Case Law: Case Has Commenced**

#### **In re Bell, 2006 WL 1132907, (Bankr.D.Colo.2006)**

The Debtors previously filed a Chapter 13 case on which was dismissed due to the Debtors' failure to obtain, or attempt to obtain, credit counseling prior to filing bankruptcy, as required by 11 U.S.C. § 109(h). The Court held a case had commenced adopting the reasoning in *In re Seaman*.

#### **In re Mills, 341 B.R. 106, 2006 WL 1071679, (Bankr.D.Dist.Col.2006)**

"The debtor opposes the trustee's motion [for failure to obtain credit counseling] and suggests in the alternative that the court strike the debtor's petition without dismissing his case if the court concludes that the debtor is ineligible for title 11 relief under § 109." The court dismissed the case pursuant to § 109(h).

#### **In re Seaman, 340 B.R. 698, 2006 WL 988271, (Bankr.E.D.N.Y.2006)**

The court held after lengthy discussion the case would be dismissed, rather than stricken as a nullity. The court gave the following reasons for its decision:

"Until the court determines that a petitioner is ineligible, a case is commenced by the filing of a petition and cannot be a nullity.... Second, the dismissal of a case filed by a petitioner who is ineligible to be a debtor comports with other sections of the Bankruptcy Code and with BAPCPA as a whole. Dismissal is the result in nearly all of the cases filed by petitioners who are ineligible under other subsections of Section 109. See *In re Ross*, 339 B.R. at 136-37. See also n. 3, supra. And while dismissal of a case because of the ineligibility of the petitioner does not conflict with the applicability of other sections of the Bankruptcy Code, striking a petition would make at least one other section superfluous. See 11 U.S.C. § 362(b)(21)(A). See also *In re Ross*, 339 B.R. at 138-39.... Third, the legislative history of the credit counseling requirement established by BAPCPA suggests that Congress sought to discourage abuse of the bankruptcy system, and in particular, to address the situation of serial filings made to invoke the protections of the automatic stay in the face of collection actions by creditors with a security interest in real property.... Fourth, striking rather than dismissing

a bankruptcy case filed by an ineligible petitioner may well not provide the petitioner with the opportunity to realize all of the benefits of a bankruptcy case provided by Congress in a second filing if the protections of the automatic stay are not triggered by the first case.... Finally, the Court takes note that this district provides notice to petitioners that failure to file certain documents, including those required by Section 109(h), may be grounds for dismissal, as well as notice that if the case is dismissed, a future filing may result in limited application of the automatic stay.”

**In re Tomco, 339 B.R. 145, (Bankr.W.D.Pa.2006)**

The court concluded that dismissal, not striking the petition, was the appropriate outcome.

**In re Ross, 338 B.R. 134, 135-36, (Bankr.N.D.Ga.2006)**

The court found dismissal was the appropriate remedy because there is no indication in the Bankruptcy Code that “Congress intended that ineligibility under § 109(h) be treated any differently than ineligibility under § 109(g).”

**In re Warren, 339 B.R. 475, (Bankr.E.D.Ark.2006)**

The court held that credit counseling received on the same day that the debtor filed his petition satisfied the timing requirement of § 109(h) by “interpret[ing] the words ‘date of filing’ as used in § 109(h) (1) to mean the specific day, month, year, and time of day the petition was filed.”

The court concluded that given the given individual's ineligibility to be a debtor, the proper remedy is for the court to dismiss the case, as opposed to striking the petition as void ab initio.

**3. Applicable Case Law: Case Is a Nullity:**

**In re Salazar, 339 B.R. 622, 2006 WL 827842, (Bankr.S.D.Tex.2006)**

In *In re Salazar* the court concluded that the filing of a petition by an ineligible debtor did not commence a case and, therefore, did not trigger the provisions of Section 362. The Court ruled that; “There is a difference between a bankruptcy case and a bankruptcy petition. Certain language in the Code does suggest that “dismissal” is the proper word or action, but for the petition, not the case.”

**In re Valdez, 335 B.R. 801, 803-04, (Bankr.S.D.Fla.2005)**

“Because the petition failed to provide [the petitioner] status as a debtor, the Court will not consider this a dismissed case in which the individual was the debtor, for purposes of denying the imposition of the automatic stay in a subsequently filed case pursuant to 11 U.S.C. § 362.”

**In re Rios, 336 B.R. 177, 179-80, (Bankr.S.D.N.Y.2005)**

The court held that striking the debtor's petition was the appropriate result: “Congress did not intend the credit-counseling requirement to limit the availability or extent of bankruptcy relief for debtors, which dismissal would accomplish, and thus, dismissal is inappropriate.”

**In re Hubbard, 333 B.R. 377, 388, (Bankr.S.D.Tex.2005)**

“This Court and others have generally ‘dismissed’ cases that were filed by ineligible debtors. Under the prior statute, “dismissal” had the same effect as ‘striking’ a petition. Because ‘dismissal’ of a case under [BAPCPA] may have substantially different implications than the ‘striking’ of a petition, the Court must consider the appropriate remedy.” The court held that no ‘case’ was commenced by the filing of these five petitions.

**Adams v. Finlay, Slip Copy, 2006 WL 3240522, S.D.N.Y., November 03, 2006, 2006 U.S. Dist. LEXIS 81591 (S.D.N.Y. November 3, 2006)**

The bankruptcy court did not err in striking petitions, the court properly concluded that no automatic stay could exist under 11 U.S.C. 362(a) for the debtors because the debtors' cases were not commenced by an eligible debtor filing a petition under 11 U.S.C. 301, since under 11 U.S.C. 109(h) an individual could not be a debtor unless pre-petition counseling was obtained.

**C. 180 DAY RULE: DID THE DEBTOR IN VERSION 2 OBTAIN CREDIT COUNSELING AS REQUIRED PURSUANT TO 11 U.S.C. § 109(h)(1)?**

The Trustee files a motion to dismiss for D.D.'s failure to obtain credit counseling within the 180 days prior to filing bankruptcy, stating the Debtor violated 109(h) in obtaining credit counseling on the same day as filing the petition. What result?

**1. Applicable Code Provisions:**

11 U.S.C. § 109(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

11 U.S.C. § 109(h)(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that--

- (i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);
- (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and
- (iii) is satisfactory to the court.

**2. Applicable Legislative History: (as cited in In re Warren)**

“The House Report discussing this section of the Act summarizes this section to mean that an individual debtor must “receive credit counseling within the 180-day period preceding the filing of the bankruptcy case.” H.R.Rep. No. 109-31, at 54 (2005), U.S.Code Cong. & Admin.News 2005, pp. 88, 124-25. Nothing in the legislative history suggests that Congress contemplated at least a one-day waiting period after completion of credit counseling, and no case law exists to support the Trustee's interpretation of the statute.”

**3. Applicable Case Law:**

**In re Warren, 339 B.R. 475, (Bankr. E.D.Ark.2006)**

“In bankruptcy, the exact time of filing is a critical bright line in determining property rights of debtors and creditors. At the moment a petition for relief is filed, the automatic stay goes into effect, affording the debtor an extra measure of protection from the legal maneuvers of his creditors. On October 27, 2005, at 3:03 p.m., the debtor was subject to impairment of his property interests; at 3:04 p.m., the moment of filing, he received the relief from his creditors afforded him by the automatic stay and other provisions of the Bankruptcy Code. The evidence is that the Debtor's credit counseling occurred at 11:16 a.m. on October 27, 2005, approximately four hours proceeding the time of filing at 3:04 p.m. Thus, the Debtor has complied with the requirement in section 109(h)(1) that he must receive credit counseling during the 180-day period preceding the date of the filing of the petition.” The Warren court interprets, “the words ‘date of filing’ as used in § 109(h)(1) to mean the specific day, month, year, and time of day the petition

was filed.” The Warren court relied on *Anderson v. State Personnel Bd.* 103 Cal.App.3d 242 (1980) and the legislative history of § 109(h) in support of its position.

**In re Dixon, 338 B.R. 383 (8th Cir. BAP 2006)**

“It is the clear expectation of [§ 109(h)(1)] that all individual debtors receive such a briefing prior to filing.”

**In re Mills, 341 B.R. 106, 2006 WL 1071679, (Bankr.D.Dist.Col.2006)**

“A person must obtain credit counseling of the kind described in § 109(h) on a date prior to the petition date to be eligible for relief under title 11. As the debtor in this case obtained credit counseling on the same date that she filed her petition, she is ineligible for such relief.”

**In re Cole, 2006 Bankr. Lexis 1765 (Bankr. E.D. Tenn. July 31, 2006)**

Debtor file a voluntary chapter 13 petition the same day as obtaining credit counseling briefing. The court held that the “180-day period preceding the date of filing of the petition” requirement in the section did not include the date upon which a debtor’s bankruptcy petition was filed.

**In re Murphy, 342 B.R. 671, 2006 WL 1071153, (Bankr.D.Dist.Col.2006)**

Debtor's counsel electronically opened a docket reflecting this case as commenced on the same day credit counseling took place. Debtor’s counsel did not file the debtor's petition until the following day. The Judge ruled the case had effectively commenced upon the filing of the petition, not relating back to the opening of the docket on the previous day. Debtor, having concluded credit counseling the day prior to filing the petition was eligible to be a debtor; however, the foreclosure sale took place prior to the official filing of the petition thus lifting the automatic stay as to the house.

**ADDITIONAL CASELAW**

**A. EXIGENT CIRCUMSTANCES**

**In re Afolabi, 342 B.R. 195, 2006 WL 1524628, (Bankr.S.D.Ind.2006)**

**In re Burrell, 339 B.R. 664, (Bankr.W.D.Mich.2006)**

**In re Tulper, 345 B.R. 322, 2006 WL 1651710, (Bankr.D.Colo.2006)**

**In re Westenberger, 2006 WL 1105008, (Bankr. S.D.Fla.2006)**

**In re Carey, 341 B.R. 798, (Bankr.M.D.Fla.2006)**

**In re Talib, 335 B.R. 417 (Bankr.W.D.Mo.2005)**

**In re Star, 341 B.R. 830, (Bankr.E.D.Va.2006)**

**In re LePorta, 332 B.R. 879 (Bankr.D. Minn.2005)**

**In re Hedquist, 342 B.R. 295, 2006 WL 1042429, 8th Cir.BAP (Minn.)**

**In re Hubbard, 333 B.R. 373, (Bankr.S.D.Tex.2005)**

**In re Dixon, 338 B.R. 383, 8th Cir. BAP (Mo.)**

**In re Gee, 332 B.R. 602 (Bankr.W.D.Mo.2005)**

**In re DiPinto, 336 B.R. 693, (Bankr.E.D.Pa.2006)**

**In re Valdez, 335 B.R. 801, (Bankr.S.D.Fla.2005)**

**In re Cleaver, 333 B.R. 430, (Bankr.S.D.Ohio.2005)**

In re Davenport, 335 B.R. 218,  
(Bankr.M.D.Fla.2005)

In re Watson, 332 B.R. 740  
(Bankr.E.D.Va.2005)

In re Hawkins, 340 B.R. 642, 2006 WL  
1071682, (Bankr.D.Dist.Col.2006)

In re Petit-Louis, 338 B.R. 132,  
(Bankr.S.D.Fla.2006)

In re Raymond, 2006 WL 1047033,  
(Bankr.D.N.H.2006)

## B. NULLITY?

### Case Is Not a Nullity/Dismiss Case

In re Racette, 343 B.R. 200, Bkrcty.E.D.Wis.,  
May 17, 2006

In re Brown, 342 B.R. 248,  
(Bankr.D.Md.2006)

In re Bell, 2006 WL 1132907,  
(Bankr.D.Colo.2006)

In re Mills, 341 B.R. 106, 2006 WL 1071679,  
(Bankr.D.Dist.Col.2006)

### Case Is a Nullity/Strike Case

In re Salazar, 339 B.R. 622, 2006 WL 827842,  
(Bankr.S.D.Tex.2006)

In re Valdez, 335 B.R. 801, 803-04,  
(Bankr.S.D.Fla.2005)

In re Rios, 336 B.R. 177, 179-80,  
(Bankr.S.D.N.Y.2005)

## C. 180 DAY RULE

In re Warren, 339 B.R. 475, (Bankr.  
E.D.Ark.2006)

In re Dixon, 338 B.R. 383 (8thCir. BAP 2006)

In re Cobb, 2006 Bankr. Lexis 884 (Bankr.  
E.D.Ark May 22, 2006)

In re Toccaline, 2006 WL 2081517, 56 Collier  
Bankr.Cas.2d 708, Bkrcty.D.Conn., July 17,  
2006

(inability to pay \$50 fee for credit counseling  
within 5 day period – Not Exigent)

In re Berman, Slip Copy, 2006 WL 3431828,  
Bkrcty.D.Ariz., November 28, 2006 (No. 2:06-  
BK-03730-JMM.) 2006 Bankr, Lexis 3334  
(Bankr. D. Ariz November 28, 2006)  
(Waiver of credit counseling requirement  
denied, absent exigent circumstances)

In re Seaman, 340 B.R. 698, (Bkrcty.E.D.N.Y.  
2006)

In re Tomco, 339 B.R. 145,  
(Bankr.W.D.Pa.2006)

In re Ross, 338 B.R. 134, 135-36,  
(Bankr.N.D.Ga.2006)

In re Warren, 339 B.R. 475,  
(Bankr.E.D.Ark.2006)

In re Hubbard, 333 B.R. 377,  
(Bankr.S.D.Tex.2005)

In re Calderon, 2006 WL 871477,  
(Bankr.S.D.Fla.2006)

In re Thompson 2006 Bankr. Lexis 1202  
(Bankr. S.D. Ind. June 5, 2006)

In re Mills, 341 B.R. 106, 2006 WL 1071679,  
(Bankr.D.Dist.Col.2006)

**In re Murphy, 342 B.R. 671,  
Bkrty.D.Dist.Col., February 22, 2006, 2006  
WL 1071153, (Bankr.D.Dist.Col.2006)**

**In re Jones 2006 WL 3020477**

**In re Cole 347 B.R. 70, 2006**

**In Re Sosa 336 B.R. 113, 115 Bankr. W.D.  
Tex 2005**

### **CONCLUSION**

BAPCPA is filled with prerequisites to filing a consumer bankruptcy case. This analysis is really just a drop in the bucket. The issues addressed above do not even begin to address the Means test, how to fill it out and what various pitfalls one must go through in that analysis before filing a case. It is possible to just address Line 30 of the Form 22C for over ten written pages alone.

The entire new law is time consuming and cumbersome; however, organization and preparation are the keys to success under BAPCPA. Specifically, today, more than ever, it is important to become a great case administrator and facilitator. Unfortunately, it seems that BAPCPA also requires you to become an accountant, an investigator, an auditor, and a magician along with being a lawyer. Remember, you cannot abdicate your responsibility to continue to identify and incorporate new, better, and more efficient ways to effectuate proper case management.

Fortunately, now that we have some significant experience under the law and a foundation has been laid to spring forward into the future, it appears that many of the concerns that we thought would make it impossible to file a successful consumer case are no longer an issue. Now we just have to wait for the technical amendments... (to be continued)

**IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE  
SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION  
PREPARER.**

If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. **THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST.** Ask to see the contract before you hire anyone.

The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of the creditors where you may be questioned by a court official called a 'trustee' and by creditors.

If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.

If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.

**Disclosure Pursuant to 11 U.S.C. §527(a)(2)**

**You are notified:**

- 1. All information that you are required to provide with a petition and thereafter during a case under the Bankruptcy Code is required to be complete, accurate, and truthful.**
- 2. All assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case. Some places in the Bankruptcy Code require that you list the replacement value of each asset. This must be the replacement value of the property at the date of filing the petition, without deducting for costs of sale or marketing, established after a reasonable inquiry. For property acquired for personal, family, or household use, replacement value means the price a retail merchant would charge for property of that kind, considering the age and condition of the property.**
- 3. The following information, which appears on Official Form 22, Statement of Current Monthly Income, is required to be stated after reasonable inquiry: current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of the Bankruptcy Code, disposable income (determined in accordance with section 707(b)(2)).**
- 4. Information that you provide during your case may be audited pursuant to provisions of the Bankruptcy Code. Failure to provide such information may result in dismissal of the case under this title or other sanction, including criminal sanctions.**

**EXHIBIT 1**

**Thav  
Gross  
Steinway  
& Bennett**

30150 Telegraph Road  
Suite 444  
Bingham Farms, Michigan  
48025-4549

Tel: 248/645-1700  
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Jenny Stiles

Of Counsel:

Michael Freeman  
Jack M. Schultz  
Franklin D. Gettleston

A PROFESSIONAL CORPORATION

Attorneys & Counselors at Law

\* Certified Public Accountant  
† Also licensed in Florida  
‡ Also licensed in California

**INITIAL CONSULTATION AGREEMENT**

Thank you for coming to the law firm of Thav, Gross, Steinway & Bennett, P.C. This letter is our initial consultation agreement.

I understand that I have come to Thav, Gross, Steinway & Bennett, P.C. to discuss a legal situation.

I understand that by signing this initial consultation agreement, I am not retaining any of the attorneys at this office, nor am I entitled to have any work done by the law firm until a retainer agreement is executed by all necessary parties.

I understand that there will be no charge for this initial consultation which shall be a maximum of \_\_\_ hrs. After \_\_\_ hrs, the attorney that I am meeting with, may, at his or her discretion, extend the length of the free consultation or may advise me that any further discussions will be billed at his / her then applicable hourly rate after I sign a separate written engagement/retainer agreement.

For an initial free bankruptcy consultation, the attorney you meet with shall provide the following services:

- A. To the extent possible, based on the information provided by you, advise you of the available options as to bankruptcy.
- B. If you have not provided the attorney with sufficient information which is needed to advise you as to your options, then the attorney shall inform you what information you need to provide to enable the attorney to provide such advice and information.
- C. Advise you of the requirements placed upon the Client to file a Chapter 7 or 13 Bankruptcy.
- D. To the extent possible, quote you an estimated fee for the Attorney's services to provide bankruptcy assistance or other legal services (if applicable) to you.

I further acknowledge that the first date upon which Thav, Gross, Steinway & Bennett, P.C. has first offered to provide me with bankruptcy assistance is this date and that the attorney has provided me with the following:

- 1) Notice Mandated By Section 527(a)(2) Of The Bankruptcy Code
- 2) Notice Mandated By Section 527(b) Of The Bankruptcy Code

**THAV, GROSS, STEINWAY, & BENNETT, P.C.,**

By: \_\_\_\_\_

Acknowledged:

X \_\_\_\_\_ Date

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

X \_\_\_\_\_ Date

Spouse's Name: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Work Phone: \_\_\_\_\_

EXHIBIT 2

Form **2848**

(Rev. March 2004)  
Department of the Treasury  
Internal Revenue Service

### Power of Attorney and Declaration of Representative

► Type or print. ► See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name \_\_\_\_\_

Telephone \_\_\_\_\_

Function \_\_\_\_\_

Date / /

**Part I** Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

**1 Taxpayer information.** Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address	Social security number(s)	Employer identification number
	Daytime telephone number ( )	Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

**2 Representative(s)** must sign and date this form on page 2, Part II.

Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

**3 Tax matters**

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific uses not recorded on CAF.**

**5 Acts authorized.** The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

**Exceptions.** An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6 Receipt of refund checks.** If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here \_\_\_\_\_ and list the name of that representative below.

Name of representative to receive refund check(s) ►

Exhibit 3

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a** If you also want the second representative listed to receive a copy of notices and communications, check this box
  - b** If you do not want any notices or communications sent to your representative(s), check this box

**8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here.

**YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

**9 Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

**▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

Signature  Print Name	Date  PIN Number	Title (if applicable)  Print name of taxpayer from line 1 if other than individual
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Signature  Print Name	Date  PIN Number	Title (if applicable)
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		

**Part II Declaration of Representative**

**Caution:** Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
  - a** Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - b** Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
  - c** Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
  - d** Officer—a bona fide officer of the taxpayer's organization.
  - e** Full-Time Employee—a full-time employee of the taxpayer.
  - f** Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
  - g** Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
  - h** Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See **Unenrolled Return Preparer** on page 2 of the instructions.

**▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.** See the Part II instructions.

Designation—Insert above letter (a–h)	Jurisdiction (state) or identification	Signature	Date

## New Client Checklist

**Name:** \_\_\_\_\_ **Spouse:** \_\_\_\_\_

Done?	Required Documents	Link
<input type="checkbox"/>	Pre-Filing Briefing Certificate Received	
<input type="checkbox"/>	Debtor Education Certificate Received / Filed	
<input type="checkbox"/>	All Payment advices received within sixty days prior to filing. Pay Stubs Missing:	
<input type="checkbox"/>	Tax Transcripts Received: All	
<input type="checkbox"/>	Statement of No Interest in Educational IRA or Tuition Program	<a href="#">Statement</a>
<input type="checkbox"/>	Signed Initial Consultation Agreement	<a href="#">agreement</a>

	Requested Documents	Link
<input type="checkbox"/>	Credit Report	<a href="#">Report</a>
<input type="checkbox"/>	All Creditor Statements received by debtor in last 90 days	
<input type="checkbox"/>	Proof of Income for Six (6) months prior to filing Petition	
<input type="checkbox"/>	Affidavit of No Section 521 Income	<a href="#">affidavit</a>
<input type="checkbox"/>	signed Form 2848 IRS POWER OF ATTORNEY	<a href="#">f2848.pdf</a>
<input type="checkbox"/>	WEST LAW ASSET SEARCH	<a href="#">Cover Lt</a>
<input type="checkbox"/>	No Tax Return Filed Letter	<a href="#">8821</a>
<input type="checkbox"/>	Signed Pre-Filing Briefing Letter	<a href="#">Tax Letter</a>
<input type="checkbox"/>	Pre-Filing Briefing Certificate Fee Paid	<a href="#">Pre-Letter</a>
<input type="checkbox"/>	Pre-Filing Briefing Performed GP: (866) 332-8435	<a href="#">IFL</a>
<input type="checkbox"/>	Signed Debtor Education Letter	<a href="#">InCharge</a>
<input type="checkbox"/>	Signed Chapter 13 Appointment Letter	<a href="#">Ed-Letter</a>
<input type="checkbox"/>	Signed Chapter 7 Appointment Letter	<a href="#">13 Letter</a>
<input type="checkbox"/>	PACER Summary of Prior Bankruptcy Case Filings	<a href="#">7 letter</a>
<input type="checkbox"/>	Notice of Foreclosure	<a href="#">pacer</a>
<input type="checkbox"/>	All Recorded Deeds	<a href="#">oakland co.</a> <a href="#">wayne co.</a>
<input type="checkbox"/>	All Recorded Mortgages	<a href="#">oakland co.</a> <a href="#">wayne co.</a>
<input type="checkbox"/>	Recent Appraisal for all Real Estate	<a href="#">Contact</a>
<input type="checkbox"/>	Property Tax Statement showing State Equalized Value (SEV)	
<input type="checkbox"/>	Divorce Judgment	
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		

Notes

Exhibit 4

### Initial List of Claim Information

Type of Debt	Debt Specifics & Considerations	Class/ Treatment	Total Claim*	Arrear Amt	Interest Rate	Est Mo Pmnt	Mos to Cure
House Payment	Continuing claim. <i>*This claim reflects only the mo pmnt.</i>	Determined later in the process; ignore for now.	\$ 1,623.00	n/a	n/a	\$ 1,623.00	Determined later in the process; ignore for now.
Arrearage	5 mos pre-petition.		\$ 9,535.00	\$ 9,535.00	0%		
Property Taxes	Summer & winter.		\$ 7,500.00	n/a	12%		
IRS	Must pay in full.		\$ 3,300.00	n/a	0%		
Car - Drive Financial	2002/current/retail.		\$ 7,000.00	\$ 5,000.00	10%^	\$ 245.00	
Car - DCFS	2005/current/retail.		\$ 21,000.00	\$ 17,000.00	10%	\$ 610.00	
Unsecured Debt	Assume 10% plan.		\$ 22,000.00	n/a	0%		
Student Loans	Assume 10% plan. Continues to accrue interest & survives discharge.		\$ 18,000.00	n/a	0%		

^ Assume 10% unless contract rate is lower.

Appendix A

**Begin Plan Calculation**

Type of Plan Payment (i.e. Debt) Trustee Fee	Debt Specifics & Considerations	Class/ Treatment	Total Claim*	Arrear Amt	Interest Rate	Mos to Cure	Est Mo Pmnt
Attorney Fees	Assume \$3600.	Administrative	\$ 3,600.00	n/a	0%	36	=3600/36 =3600/48 =3600/60
House Payment	Continuing claim. *This claim reflects only the mo pmnt.	Continuing	\$ 1,623.00	n/a	n/a	n/a	\$ 1,623.00
Arrearage	5 mos pre-petition.	Pre-petition arrearage	\$ 9,535.00	\$ 9,535.00	0%	36	=9535/36 n/a n/a
Property Taxes	Summer & winter.	Secured, not PMSI	\$ 7,500.00	n/a	12%	36	=7500(PV)12/(I)36(N)CPT PMT
IRS	Must pay in full.	Priority	\$ 3,300.00	n/a	0%	36	=3300/36 /48 /60
				<b>FMV</b>			
Car - Drive Financial	2002/current/retail. Ad pro requirement.	Secured, PMSI personally	\$ 7,000.00	\$ 5,000.00	10%	36	=5000(PV)10/(I)36(N)CPT PMT
						48	N=48
						60	N=60
Car - DCFS*	2005/current/retail. Ad pro requirement.	Secured, PMSI personally	\$ 21,000.00	\$ 17,000.00	10%	36	=21000(PV)10/(I)36(N)CPT PMT
						48	N=48
						60	N=60
Unsecured Debt	Assume 10% plan.	General unsecured	\$ 22,000.00	n/a	0%	36	=(22000*10%)/36
						48	/48
						60	/60
Student Loans	Assume 10% plan. Continues to accrue interest & survives discharge.	General unsecured	\$ 18,000.00	n/a	0%	36	=(18000*10%)/36
						48	/48
						60	/60

To calculate the estimated monthly payment (and using an amortization calculator):  
\$ = PV % = I/Y  
#mos = N CPT  
PMT=payment amount

\*Must pay the total debt (not the FMV) because car was financed within 910 days of filing (11 USC 1325); may modify the interest rate.

Plan Calculation

Type of Plan Payment (i.e. Debt) Trustee Fee	Debt Specifics & Considerations	Class/ Treatment	Total Claim*	Arrear Amt	Interest Rate	Mos to Cure	Est Mo Pmnt
To be calculated after calculating other payments.							
Attorney Fees	Assume \$3600.	Administrative	\$ 3,600.00	n/a	0%	36 48 60	\$ 100.00 \$ 75.00 \$ 80.00
House Payment	Continuing claim. *This claim reflects only the mo pmt	Continuing	\$ 1,623.00	n/a	n/a	n/a	\$ 1,623.00
Arrearage	5 mos pre-petition.	Pre-petition	\$ 9,535.00	\$ 9,535.00	0%	36 48 60	\$ 264.86 n/a n/a
Property Taxes	Summer & winter.	Secured, not	\$ 7,500.00	n/a	12%	36 48 60	\$ 249.11 \$ 197.50 \$ 168.83
IRS	Must pay in full.	Priority	\$ 3,300.00	n/a	0%	36 48 60	\$ 91.67 \$ 68.75 \$ 55.00
Car - Drive Financial	2002/current/retail. Ad pro requirement.	Secured, PMSI personally	\$ 7,000.00	<b>FMV</b> \$ 5,000.00	10%	36 48 60	\$ 161.34 \$ 126.81 \$ 108.24
Car - DCFS	2005/current/retail. Ad pro requirement.	Secured, PMSI personally	\$ 21,000.00	\$ 17,000.00	10%	36 48 60	\$ 677.61 \$ 532.61 \$ 446.19
Unsecured Debt	Assume 10% plan.	General unsecured	\$ 22,000.00	n/a	0%	36 48 60	\$ 61.11 \$ 45.83 \$ 36.67
Student Loans	Assume 10% plan. Continues to accrue interest & survives discharge.	General unsecured	\$ 18,000.00	n/a	0%	36 48 60	\$ 50.00 \$ 37.50 \$ 30.00

**Plan Funding**

Type of Plan Payment (i.e. Debt)	Class/ Treatment	Length of Plan		
		36	48	60
Attorney Fees	Administrative	\$ 100.00	\$ 75.00	\$ 60.00
House Payment	Continuing	\$ 1,623.00	\$ 1,623.00	\$ 1,623.00
Arrearage	Pre-petition	\$ 264.86	\$ 198.65	\$ 158.92
Property Taxes	Secured, not PMSI	\$ 249.11	\$ 197.50	\$ 166.83
IRS	Priority	\$ 91.67	\$ 68.75	\$ 55.00
Car - Drive Financial	Secured, PMSI	\$ 161.34	\$ 126.81	\$ 106.24
Car - DCFS	Secured, PMSI	\$ 677.61	\$ 532.61	\$ 446.19
Unsecured Debt	General Unsecured	\$ 61.11	\$ 45.83	\$ 36.67
Student Loans	General Unsecured	\$ 50.00	\$ 37.50	\$ 30.00
<b>Sub-Total</b>		\$ 3,278.70	\$ 2,905.65	\$ 2,682.84
Trustee Fee*	Administrative	\$ 163.93	\$ 145.28	\$ 134.14
<b>Final Total (Monthly Plan Payment)</b>		<b>\$ 3,442.63</b>	<b>\$ 3,050.93</b>	<b>\$ 2,816.99</b>
Weekly		\$ 795.07	\$ 704.60	\$ 650.57

\*Estimate Trustee Fee at 5%.

## Calculating Permo Payments

Type of Plan Payment	Type of Permo	Length of Plan		
		36	48	60
<i>Attorney Fees</i>	None	\$ -	\$ -	\$ -
<b>House Payment</b>	Hard	\$ 1,623.00	\$ 1,623.00	\$ 1,623.00
<b>Arrearage</b>	Hard	\$ 264.86	\$ 264.86	\$ 264.86
<i>Property Taxes</i>	Soft	\$ -	\$ -	\$ -
<i>IRS</i>	None	\$ -	\$ -	\$ -
<b>Car - Drive Financial</b>	Hard	\$ 161.34	\$ 126.81	\$ 106.24
<b>Car - DCFS</b>	Hard	\$ 677.61	\$ 532.61	\$ 446.19
<i>Unsecured Debt</i>	None	\$ -	\$ -	\$ -
<i>Student Loans</i>	None	\$ -	\$ -	\$ -
<b>Sub-Total Arrearage Deduction</b> (assume 36 month cure)	-	\$ 2,726.81	\$ 2,547.28	\$ 2,440.29
<b>Sub-Total (to calc ttee fee)</b>		\$ 2,726.81	\$ 2,481.07	\$ 2,334.35
<b>Trustee Fee*</b>	+	\$ 136.34	\$ 124.05	\$ 116.72
<b>Total of Monthly Hard Permos</b>		\$ 2,863.15	\$ 2,671.33	\$ 2,557.01
<b>Weekly</b>		\$ 661.24	\$ 616.94	\$ 590.53

To calculate "Arrearage Deduction", multiply monthly arrearage payment by 12 and divide by months in excess of 36 (i.e. 12 or 24)

\* Estimate Trustee Fee at 5%.