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Rustling Up Bankruptcy Unbundling

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Rustling Up Bankruptcy Unbundling
(a/k/a What the Sheriffs Are Saying About Unbundling Down at the Not-So-OK Corral)

An attorney’s quest to be paid a reasonable fee for services rendered is not a new one. Chapter 7 attorneys have been using their legal imagination for decades to create a way, within the law, to ensure payment, or at least create an avenue to collect otherwise dischargeable fees. Although there is never a guarantee of payment in any business venture, it seems Chapter 7 lawyers have an uphill battle to recover for their valuable services. Not only do they have to seek payment from a client who may be unwilling or unable to pay, attorneys must carefully navigate legal parameters such as various Bankruptcy Code sections, state rules of professional conduct, and ethical considerations.

The simplest way of allowing Chapter 7 attorneys to be fairly compensated is for Congress to amend the Bankruptcy Code to add attorney’s fees as an exception to discharge. Until that happens, attorneys will continue to explore and test the boundaries of professional representation and seeking payment.

At least one court noted:

Chapter 7 attorney fees are not obligations that are compensable from the bankruptcy estate, thus a Chapter 7 lawyer must, in a perfect world, collect his fee in full from the debtor prepetition. Because Chapter 7 debtors often do not have sufficient funds to pay attorney fees up front, lawyers often enter into pre-petition agreements allowing debtors to pay part of the fees pre-petition and the balance of the fees post-petition. This arrangement, however, runs afoul of the general rule that pre-petition debts are dischargeable. In re Abdel-Hak, 2012 Bankr. LEXIS 5393 (Bankr. E.D. Mich. 2012)

To address the possible dischargeability of pre-petition fees, some attorneys attempt to divide their services into pre-petition services and post-petition services and enter into separate contracts for each; or use one contract but limit services to be performed in the case.

1. What is “unbundling”?

Unbundling is the practice of limiting the scope of services that an attorney will provide—“dividing comprehensive legal representation into a series of discrete tasks, only some of which the client contracts with the lawyer to perform.” In re Seare, 493 B.R. 158 (Bankr. D. Nev. 2013)
Instead of traditional representation, where a lawyer handles a case from start to finish, limited scope representation, also known as “unbundling” or “discrete task representation,” involves representation in which a lawyer performs some, but not all, of the work. *In re Ruiz*, 515 B.R. 362 (Bankr. M.D. Fla. 2014)

In a Chapter 13 case, attorney fees are paid with assets of the estate through confirmed plans. Chapter 13 lawyers are paid for both pre- and post-petition services. Chapter 7 attorneys are not so fortunate. *In re Abdel-Hak*, 2012 Bankr. LEXIS 5393 (E.D. Mich.)

2. What are the different versions of unbundling?
   - No money down vs. partial money down cases
   - One contract vs. two contract models

3. What is the purpose of unbundling?
   - Is there any benefit to debtors?
   - Simply to collect fees?
   - Ethical and professional considerations

4. One-contract vs. two contracts for services

5. One flat or fixed fee contract will likely not work:

   The Court finds the division of a flat fee arrangement into prepetition and postpetition parts to be conceptually inconsistent and therefore untenable. The Court therefore joins those other courts which hold that when a flat or fixed fee prepetition agreement is at issue, the fee must be paid in full prior to the commencement of the debtor's case or the fee is discharged under § 727(b). *In re Michel*, 509 B.R. 99 (E.D. Mich. 2014)

6. Most, if not all, state bar rules allow limiting scope of representation
   - Limit on scope of representation must be with client’s informed consent and must be reasonable
   - Example: Criminal defense attorneys may limit representation to preliminary hearing only
   - Example: Personal injury attorneys may limit representation to settlement negotiations only and no trial representation, or no representation on appeal
   - See *In re Jackson*, 2014 Bankr. LEXIS 3160 (W.D. La 2014) (discussing scope of representation)
7. Where does unbundling Chapter 7 services get off track?

- No clearly defined “end segment” as in above examples
- Not able to clearly limit services without jeopardizing the discharge
- Chapter 7 is one process—in the Code, in the local rules, in the ECF system.
- If debtor’s intent in filing Chapter 7 is to discharge debt, how does unbundling services help the client?
- Factoring attorney fee contract creates additional conflicts of interest
- Attorney’s desires to enter into post-petition non-dischargeable fee agreement conflicts with code.
- Any fees received must be applied first to outstanding filing fees. Cannot hold filing fee hostage for attorney fees. Rule 1006(a). Nor can attorney fee be received before filing fee is paid, if order to pay fee in installments is paid.

8. Case law review

- How are courts handling unbundled Chapter 7 representation model?
- Is unbundling allowed even with full disclosure?
- What is “full disclosure”? See In re Jackson

9. Local Practice Review

- Do your local rules suggest scope of representation in Chapter 7?
- Do your state’s rules of professional conduct offer guidance?

10. Are other options available for getting paid post-filing or post-discharge?

- Is any attempt to collect fees post-filing allowed?
- Are any jurisdictions allowing post-filing/discharge fee collections?
- Nothing prevents a debtor from voluntarily repaying any debt, including attorney’s fee
- Where/when is the line crossed?
- Can a debtor sign, post-filing, a reaffirmation agreement for attorney’s fees? See In re Frazier, 231 B.R. 454 (Bankr. D.Conn 1999) (inherent conflict) (also sets out factors for reasonableness of fees).
- Can an attorney seek payment based on quantum meruit?
  - Is this an action in state court or bankruptcy court?
    1. In re Abdel-Hak, 2012 Bankr. LEXIS 5393 (Bankr. E.D. Mi. 2012) (no quantum meruit recovery for services rendered post-petition because the code does not specifically except fees from discharge)
    2. In re Hines, 147 F.3d. 1185 (9th Cir. 1998) (fees are incurred when rendered and an action for quantum meruit may be justified for post-petition services)
3. However, note pending California case In re Gilmore, Bk. No. 17-13682, AP No. 01271 (C.D. Calif.); In re Neufville, Bk. No. 17-24812 (Bankr. Md.) UST motion to examine fees, sanctions, BK Billing bifurcation model, same issues as in Gilmore

- Would a judge consider a fee application in a Chapter 7 case seeking to determine that amount of fees earned post-filing?
- Does Fed.R.Bankr.P. 2017(b) offer a basis to seek a determination of fees?

- What should your 2016(b) disclose for fees? Should it include an hourly rate for post-petition services? Should it identify pre- and post-petition services and fees for each?

Cases:

A. In re Hines, 147 F.3d. 1185 (9th Cir. 1998)

**FACTS:** Debtor signed one fee contract for Chapter 7 services that covered both pre- and post-petition services for a total fee of $875. $375 was paid pre-petition and the $500 balance was to be paid in tendered post-dated checks.

**HELD:** Attorney could not collect the $500 fee balance because any unpaid balance was dischargeable based on the pre-petition contract. However, the court found that the attorney can look to reasonable compensation under a quantum meruit theory of recovery. An attorney has a “claim” for compensation when those services are rendered. Since the services in question were rendered post-petition, § 362 is not implicated and the attorney may recover for services actually rendered. Here, since the debtor terminated the attorney’s services post-filing the case was remanded to the bankruptcy court to determine what amount of the $500 was earned after filing but before services were terminated.

B. In re Michel, 506 B.R. 99 (E.D. Mi. 2014)

**FACTS:** Debtor and attorney signed a pre-petition “flat fee” agreement and debtor paid $450 of the $900 fee. The balance was to be paid after the case was filed. After the § 341 meeting was concluded debtors paid the $450 balance. Attorney amended the 2016(b) statement to reflect that the entire flat fee was paid prior to the filing of the amended 2016(b). The UST didn’t like that and asked the court to order fees returned to debtor.

**HELD:** The $450 received post-petition ordered to be returned to debtor. Debtor’s single pre-petition contract “draws no distinction between pre-petition services and post-petition services to be rendered, and does not in any way apportion the $900.00 flat fee… into a fee amount for pre-petition services and a fee amount for post-petition services. The Court agrees with those cases holding that this kind of pre-petition flat fee agreement in a Chapter 7 case creates a debt that is entirely a pre-petition debt, which therefore is subject to the automatic stay and is dischargeable in the Chapter 7 case.” Quantum meruit theory of compensation denied under these facts.
C.  *Abdel-Hak* 2012 Bankr. LEXIS 5393 (Bankr. E.D. Mi. 2012)

**FACTS:** Attorney used a single, pre-petition contract and received $2,000 pre-filing. Attorney setting out an hourly rate, kept records of time spent post-filing, and sought recovery under quantum meruit after he successfully withdrew from case.

**HELD:** The court denied the request stating: Because the Code specifically identifies the types of pre-petition debts that survive discharge, and the unpaid portion of pre-petition fee agreements are not specified as debts which survive discharge, the Court cannot, under the guise of equity, find that the fees sought in the present case survive discharge.

D.  *In re Grimmett*, 2017 Bankr. LEXIS 1492 (D. Idaho 2017) (affm’d on appeal)

**FACTS:**

1. Debtor signed a pre-petition fee agreement:
   - $2,000 flat fee
   - Agreement divides legal services into pre- and post-petition services
   - $500 for certain pre-petition services; $1,500 for certain post-petition services
   - $500 paid prior to filing
   - $250 to be paid monthly after filing

2. If any fee payment was missed, debtor agreed to certain consequences: late fee of $100, entire balance due, 36% interest on unpaid balance, the filing fee might not be paid to the court, case could be dismissed without a discharge, counsel would seek to withdraw, collection action would be started, counsel could recover attorney fees, costs, and expenses

3. A skeletal petition was filed (no schedules)

4. Debtor filed an application to pay filing fee in installments (granted)

5. After the initial $500 payment debtor stopped making payments

6. While case still pending, attorney started collection activity, including numerous emails demanding payment. The court pointed out some attorney emails that contained:
   - Threats to withdraw from the case
   - Statements that the case may be dismissed/debtor would have to start all over
   - Assertions of serious consequences such as collections and default interest

7. Debtor wrote letter to judge (never good):
   - “Bankruptcy is stressful enough and humiliating, then on top I have my lawyer threatening me with having my case dismissed and having to start all
over with another attorney. My hair is falling out; I am a nervous wreck all the time and I don’t know what to believe.”

8. UST filed motion seeking cancellation of fee agreement and disgorgement of fees

9. In allowing disgorgement of all fees, the District Court upheld the Bankruptcy Court findings:

♦ The fee agreement could not attempt to **unbundle services**
♦ Over counsel’s argument, no recovery based on quantum meruit; counsel offered insufficient evidence to establish value of services actually provided
♦ The fee agreement created a conflict of interest between the attorney and debtor
♦ Rule 2016(b) disclosures were inaccurate
♦ Counsel tried to collect fees in violation of the court’s installment fee order

Where it Went Wrong:

♦ Multiple, inaccurate disclosure statements; court could not determine how the initial $500 was applied (to filing fee or attorney fee?); no receipts or accounting records on how funds applied; Section 329 disclosure requirement are mandatory, not permissive
♦ “Because the Fee Agreement did not specify that the filing fee payment would have to be paid before Counsel could collect compensation, it violated Rule 1006(b)” and the installment payment order
♦ Schedules filed by counsel showed debtor could not afford to pay the $250 monthly fee
♦ Counsel threatened to **unbundle legal services**, which the court construed as attempting to impermissibly withdraw as counsel in violation of local rules.
♦ Counsel cannot withdraw without leave of the court, notice to client, and notice and hearing
♦ “An attorney cannot threaten a client with future conduct that is otherwise prohibited by local rules.”
♦ The court denied any recovery based on value of services rendered because the record was void of any evidence of counsels’ time spent in the case: “Counsel’s right to payment does not arise until the services are actually provided. Accordingly, if Counsel seeks payment for post-petition services based on a contract signed before the bankruptcy petition is filed, it would behoove Counsel to keep contemporaneous time records to reflect when the legal services were provided.”
E.  *In re Walton, 469 B.R. 383 (M.D. Fla. 2012) (Part 2)*

**FACTS:** In *In re Walton, 454 B.R. 537 (M.D. Fla. 2011) (Part 1)* the court ruled that attorney’s use of postdated checks deposited post-petition violated the automatic stay of § 362, the discharge injunction of § 524, and created a conflict of interest. The attorney’s method of doing business required clients to sign a single fee agreement with a flat fee, and payments by postdated checks after the case was filed.

After modifying its business model, the attorney adopted a two-contract procedure and the court reconsidered its position adopted in Part 1.

**Part 2:** The attorney now uses the following model:

- Client executes a pre-petition fee agreement for attorney to file the Chapter 7 petition ($250)
- After the pre-petition retainer is signed, attorney prepares petition and schedules
- Client comes back for second meeting to sign petition and schedules
- Attorney files petition only; then immediately prepares a post-petition retainer agreement
- Client makes arrangement to pay post-petition fees ($1,000)
- Once done, attorney files the rest of the schedules and statements

The UST filed a motion to determine if this method violated the court’s prior ruling. The court allowed this procedure with conditions:

- Debtors must be given disclosures and certain options explained in the pre-petition retainer agreement for post-petition legal services. Client must be given the following options regarding post-petition procedures:
  - Client can proceed pro se;
  - Client can retain same attorney; or
  - Client can retain another attorney
- Client cannot be forced to exercise any option the same day petition is filed; 14 day “cooling off” period
- The 2016(b) stated the pre-petition fee only
- If the attorney is retained post-petition, a new 2016(b) must be filed setting out the post-petition fee
- Attorney must continue to represent debtor during the 14 day cooling off period, and continue representation until allowed to withdraw (this must be stated in the 2016(b), too)
♦ The court also required the attorneys to move the disclosure to a more prominent location in the retainer agreement (from the back to a separate cover sheet)
♦ The UST did not raise local rules or rules of professional conduct issues

Other Cases/Issues:

F. The above Walton model of bifurcating services (with three client options post-filing) is being challenged in California by the UST in In re Gilmore, Bk. Case No. 17-13682, AP No. 17-01271 (C.D. Ca.). In addition to the two-contract bifurcation model as used in Walton, the attorney here used a “zero money down” system and a factoring company, BK Billing, to finance fees. The UST seeks disgorgement of fees, cancellation of the two contracts, and other relief on the following basis:

♦ Material misrepresentations under §§ 526, 527, and 528; attorney did not disclose that pre-petition fees are dischargeable,
♦ Did not disclose to debtor that the fees would be financed with BK Billing or the terms of the financing (40% rate, total interest to be paid, payment terms)
♦ The advance of the filing fee was not disclosed
♦ Did not disclose to debtor that only the petition would be initially filed
♦ Did not explain the “zero money down” business model
♦ Filed post-petition schedules with debtor’s consent

OTHER CASES:

In re Jackson, 2014 Bankr. LEXIS 3160 (W.D. La. 2014): § 528(a)(1) requires a debt relief agency to execute a written contract prior to the filing of the bankruptcy petition. The court found the following to constitute material misrepresentations and ordered disgorgement of all fees:

1. The contract did not explain, clearly and conspicuously: (A) the services such agency will provide to such assisted person; and (B) the fees or charges for such services, and the terms of payment. Here, neither the pre-petition retainer agreement nor the post-petition retainer agreement identified the "terms of payment" within the meaning of § 528(a)(1)(B), including the date when the periodic installment payment was due and the amount of each payment. Instead, each agreement merely stated there would be a “flat fee of $2,400.” This was a material misrepresentation. See §§ 526, 527, 528.

2. Attempting to unbundle services was in violation of local rules and rules of professional conduct that collectively impose certain required duties of the attorney, including those stated in § 521. Since the attorney could not, in fact, unbundle services (terminate services), the court deemed the contract materially misrepresented the attorneys’ duties.
3. The attorney is “required to render (and the Debtor was entitled to receive) all routine post-petition services essential to the case, such as filing documents required by § 521(a)(1)” as well as attendance at the meeting of creditors and assist client in reaffirmation/surrender decisions.

4. Because of the material misrepresentations, the court deemed both the pre- and post-petition contracts void pursuant to § 526(c)(1).

_In re Ruiz_, 515 B.R. 362 (Bankr. M.D. Fla. 2014). Pro se method; attorney prepared Chapter 7 petition, did not put his name on it or sign it, and instructed client to file petition pro se; court held cannot mask representation as an attorney if any legal advice is given to client

_In re Collmar_, 417 B.R. 920 (Bankr. N.D. Ind. 2009). Attorney could not contractually limit scope of representation with debtor to exclude assistance with deciding to reaffirm a debt, a critical part of Chapter 7.

_In re Sandberg_, Bankr. No. 12-78596; AP no. 13-05050 (N.D. Ga. 2013) (unreported case, considered but rejected _Bethea_). Allowed payment of fees by post-dated checks with full disclosure to client that attorney’s fees are a dischargeable debt and there can be only minimal collection. In finding that attorney’s acceptance of post-dated checks was not fraudulent, the court held:

It is true that collecting post-petition on pre-petition debts goes against the very fiber of the bankruptcy code and its undeniably important automatic stay. However, collecting attorneys’ fees that are contracted pre-petition for work performed post-petition, is entirely different from protecting the estates of newly filed debtors from looting creditors. The Seventh Circuit concluded that Congress must have intentionally left attorneys’ fees out when they enumerated the exceptions to discharge in section 523. However, is it logical that Congress did not intend for attorneys representing destitute chapter 7 debtors to be paid? Some attorneys can afford the luxury of turning away clients who cannot pay in full before filing, and some attorneys cannot. The bankruptcy system is a complicated one in which pro se prosecution is extremely difficult. To deprive struggling debtors of willing counsel in such a time of need is markedly opposite of the intentions of the Bankruptcy Code.

_In re Frazier_, 231 B.R. 454 (Bankr. D. Conn. 1999). Noting the inherent conflict in an attorney recommending that debtor reaffirm attorney fees.

_In re Seare_, 493 B.R. 158 (Bankr. D. Nevada 2013). “A limitation on services violates the duty of competence if the unbundled service is reasonably necessary to achieve the client's reasonably anticipated result.” Here, the attorney’s attempt to remove adversary proceeding defense from the scope of representation was improper because the purpose in filing Chapter 7 was to address a debt involving a nondischargeable fraud claim, an expected complaint.
In re Egwim, 291 B.R. 559 (Bankr. N.D. Ga. 2003). A lawyer must represent the debtor in connection with all adversary proceedings and contested matters filed in the case which may affect the debtor's rights and interests unless and until the lawyer withdraws in accordance with local bankruptcy rules.

In re Slabbinck, 482 B.R. 576 (Bankr. E.D. Mi. 2013). No per se prohibition against unbundling “if the attorney's legal services for an individual debtor are unbundled between pre-petition services and post-petition services, in strict conformance with the MRPC . . . such unbundling of legal services does not by itself warrant any relief under § 329 of the Bankruptcy Code”

In re Bethea, 352 F.3d. 1125 (7th Cir. 2003)
Question considered: are installment payments collected by lawyers post-petition on prepetition agreement subject to discharge?
**Rejects In re Hines**, because this places lawyers in a superior position to other creditors re. Prepetition claims; logic in Hines shatters one agreement into multiple agreements in which each piece of work done is a separate claim.
Reasoning: prepetition retainer agreements are subject to discharge; attorneys can split agreements into pre- and post-petition retainer agreements, if client is fully informed.
Holding: Counsel must repay any sums collected after discharge entered; and any sums collected during pendency of action violated the stay

Question: Does B.R. 1006 contemplate that fees can be paid in installments, and that attorneys may attempt to collect unpaid installment fees from discharged clients? In this case, the facts are similar to BK Billing, in that the collection efforts are done by the first attorney who purchased the Accounts Receivable (AR) from a placeholder attorney who filed cases while the first attorney was enjoined from practicing law.
Analysis: Reviews language of §329, §1006 and finds no language that creates an exception to discharge language of §727, if not listed as exception in §523; also rejects the Doctrine of Necessity, in which a trustee is allowed to pay prepetition debts to obtain services that are vital to a debtor’s reorganization, as inapplicable.
**Suggestions for processes that don’t violate the discharge: a) prepay in full in advance; b) break in pre- and post-petition services, and pay pre-petition in full; c) reaffirm the prepetition agreement; seek payment from third party guarantors, not from the debtor.
Holding: Attorney must cease all collection efforts on AR purchases for fees owed under prepetition agreements.

In re Griffin, 313 B.R. 757 (Bankr. N.D. Ill. 2004)
Question: Can post-petition request for fees stemming from prepetition agreement that was funded by AR third party, Redemption Funding, be paid from estate?
Analysis: Rejects In re Hines, which states that post-petition claims for fees are created when work is performed, and reasons that contract-based claims arise at time of signing of contract. All elements necessary to form contract were in play before petition was filed: contract, agreement to pay, billing for services and work under contract. Therefore, claim for fees presented to Court is prepetition claim subject to discharge.
**Reviews disclosure of third-party claim on schedules:**
Attorney has arrangement with lender where lender makes post-petition loan to debtor, and proceeds of that loan are paid a) to counsel for prepetition debt created by retainer agreement, and b) to attorney for post-petition services. Court finds that prepetition contract conveys the right to post-petition services. **Finding:** Attorney cannot enter into retainer contract that leaves a conditional balance for potential post-petition services without disclosing conflict of interest and obtaining consent of client. BUT, even if that happened, Debtor schedules did not disclose in Rule 2014 application that Redemption Funding fronted the money for post-petition legal services. Court finds this a material misstatement and analogizes to Rule 2016: “attorney who fails to comply with 329 forfeits the right to receive compensation for services rendered for debtor.”

**Suggestion:** Split representation into two agreements, pre- and post-petition, which are actually entered into in two separate phases, or reaffirm the agreement, with full disclosure.

**Holding:** Claim cannot be paid by Court. Attorney should have disclosed third-party funding on request for compensation. Denies application for compensation in full.


**Question:** Can a flat fee Chap. 7 retainer collect unpaid attorneys fees post-petition.

**Facts:** Flat Fee, $1,000 upfront, with $250 monthly installments with payments to begin after filing.

**Analysis:** Declines to adopt *In re Hines*, because analysis doesn’t comport with nature of a flat fee; defines a claim as arising when services are performed, and, because the fee agreement didn’t differentiate into pre- and post-petition services, all the services are prepetition obligations.

**Holding:** Collecting monthly installments after petition filed violates the automatic stay.


Legal fees which are segregated from prepetition legal fees and incurred for post-petition legal services constitute a post-petition debt and are, therefore, an obligation of the Chapter 7 debtor (as opposed to the estate) which he or she has an obligation to pay out of his or her post-petition earnings or exempt assets.

*In re Sanchez*, 241 F.3d. 1148 (9th Cir. 2001)

This case has good overview on 9th Cir. law on post-petition collection practices, but note that most circuits have come down against *In re Hines*.

**Facts:** Debtors paid 6 monthly installments after their case was filed. Attorney collected $700 post-petition but provided only $450 worth of post-petition services.

**Question:** Did attorney who collected post-petition fees in an amount greater than the amount that was later determined by the court to be reasonable violate the stay by collecting the additional $250.

**Holding:** While there is a discrepancy in the fee charged and what a reasonable fee is under the circumstances, it is not large enough to warrant disgorgement.
In re Waldo, 417 B.R. 854 (Bankr. E.D. Tenn. 2009)

**Facts:** seven consolidated cases, all with engagement letters that require $1,250 upfront flat fee or no-look fee, non-refundable, and retainer specifically states that the engagement is for pre-petition services and post-petition services, but that agreement creates “... Clients give attorneys post-dated checks to deposit post-petition.

**Question:** Do no-look fee agreements entered into prepetition that divides the services into pre- and post-petition that allow for the post-petition payment of fees in installments survive discharge?

**Analysis:** Court finds that attorney’s fees are fees that arose prepetition, irrespective of when the services were rendered because all elements to form contract were present pre-petition. Upon signing of agreement, attorneys were obligated to represent debtor in Ch. 7 case in exchange for payment. That some services were rendered post-petition does not change nature of obligation nor nature of the fee. All services fall within the scope of “Routine Case” under 11 U.S.C. Chap. 7. And debtor’s obligation to pay the fees arises on the date the agreements are entered into. If agreements were true “saddle-obligations,” the attorneys wouldn’t collect post-dated checks.

**Holding:** unpaid portions of a flat fee contracted for pre-petition constitutes a pre-petition obligation of a debtor which is dischargeable; attorneys cannot collect post-dated checks prepetition. Order attorneys to disgorge all attorney’s fees received in the seven cases, and return to Debtor’s all post-dated checks in their possession.

In re Lawson, 437 B.R. 609 (Bank. E. D. Tenn. 2010)

Follow up from In re Waldo; law firm tries to work around holding of In re Waldo, by taking checks from third parties prepetition.

**Facts:** Law firm retains clients under split retainer agreement, and take checks from third parties to pay the prepetition fees.

**Analysis:** The clients understood that they were signing an agreement that required them to pay the full fee for both pre- and post-petition services. The checks, even if they were from third parties, were post-dated and created the obligation in both parties to pay for and to provide services. The discharge of the obligation created by the prepetition retainer was not fully disclosed to the clients.

**Holding:** disgorgement of all fees obtained through these retainer agreements.

In re Cadwell, 2018 U.S. App. LEXIS 8128 (11th Cir. Fla. 3/30/18)

After considering several interpretations of § 526(a)(4), the court adopted the following:

Reading No. 3: "A debt relief agency shall not ... advise an assisted person or prospective assisted person to incur more debt [1] in contemplation of such person filing a case under this title or [2] to pay an attorney or bankruptcy petition preparer a fee or charge for services performed as part of preparing for or representing a debtor in a case under this title."

Attorney advised debtor to pay legal fees with a credit card and then set up automatic debits for post-filing payments. The court held that lawyer (including a law firm) violates 11 U.S.C. § 526(a)(4) if it advises a client to incur additional debt to pay for bankruptcy-related legal
representation, without respect to whether the advice was given for some independently "invalid purpose".