



ERICSA 2015: Building Sweet Futures for ...



# Basic Bankruptcy: A Primer

Geraldine Redic  
Brent Cullers



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## Basic Bankruptcy: A Primer

- ❖ Objectives of Filing for Bankruptcy Protection
  - “Fresh Start”
  - Orderly Payment of Creditors
  - Reorganization of business/individual

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## Basic Bankruptcy: A Primer

### Types of Bankruptcy

- ❖ Chapter 7 – Liquidation
- ❖ Chapter 11 – Business Reorganization
- ❖ Chapter 12 – Family Farmer
- ❖ Chapter 13 - Individual Reorganization

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## Basic Bankruptcy: A Primer

### The Automatic Stay

- ❖ What is the Automatic Stay
- ❖ When is the Stay effective
- ❖ Who is subject to the Stay
- ❖ What happens when the Stay is violated
- ❖ What is a Relief from Stay

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## Basic Bankruptcy: A Primer

### Overview of the Bankruptcy Process

- Filing the Action
- Participants in the Action
  - Debtor
  - Creditors
  - Trustee
  - Judge
  - Attorneys
- Filing the Proof of Claim

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## Overview of the Bankruptcy Process

### Property of the Estate

- ❖ Property of the Estate
  - Voluntary Petition filed, POE includes:
    - All debtor's assets & debts
    - All potential earnings
    - Lottery proceeds
    - Tax refunds\*
    - All other income sources during bankruptcy
  - Only limited exemptions to POE allowed

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## Overview of the Bankruptcy Process

### ❖ Chapter 13 Plan

- Plan to reorganize debts
- Repayment lasts 3-5 years
- Debtor pays trustee who pays creditors
- Regular wage earners with assets
- Voluntary Petition lists assets & liabilities
- End: most remaining debts discharged

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## Overview of the Bankruptcy Process

### ❖ Plan Confirmation

- Plan must comply with Chapter 13
- All fees must be paid
- Plan must be proposed in good faith
- Distribution paid to each unsecured claimant must equal what it would receive in Chapter 7
- Plan must provide for collateral surrendered or preserve claimant's lien
- Plan must be feasible
- Plan binds all parties— Creditors & Debtor

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## Overview of the Bankruptcy Process

### ❖ Dismissal

- Informally:
  - Contacting Trustee—Advise Trustee NCP not paying current support & pre-petition debt.
- Formally—File a petition with BK court
  - Not making current support payments -- 11 U.S.C. §§1208(c)(10), 1307(c)(11)

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## Overview of the Bankruptcy Process

### ❖ Discharge

- What does it mean to have bankruptcy discharged?
  - Debtor (NCP) is entitled to discharge (release/eliminate) certain kinds of debts
  - Domestic Support Obligations are non-dischargeable. They survive bankruptcy.

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## Bankruptcy & Child Support

### ❖ Domestic Support Obligation

- 11 U.S.C. Section 101 (14A)
- Debt accruing before, on or after bankruptcy filing, including interest that is owed:
  - to a spouse, former spouse, child, or child's parent, legal guardian, responsible relative, or governmental unit
  - in the nature of alimony, maintenance or support including assistance provided by a governmental unit.

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## Bankruptcy & Child Support

### ❖ Actions Not Subject To Automatic Stay

- Establish paternity
- Establish/Modify a child support order
- Establish a medical support order
- Take criminal action against debtor
- Collect support: non- estate property
- Report Balance to Credit Reporting Agency
- Suspend licenses
- Income Withholding
- Intercept tax refunds

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## Bankruptcy & Child Support

### ❖ Working Chapter 7 Cases

#### ❖ Do:

- Continue collecting current & arrears by IWO
- Utilize tax interception, credit bureau reporting, license suspension or administrative remedies

#### ❖ Do Not:

- Release property liens
- Send demand letters
- Release license just because bankruptcy filed
- File a contempt action without relief granted

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## Bankruptcy & Child Support

### ❖ Chapter 13 Cases– Decision Points

#### ❖ IV-D Agency:

- Decides whether to file a Proof of Claim
- Or receive payments outside of Plan
- Decides to object to confirmation of Plan
- Decides to seek relief from stay
- Decides to seek dismissal
- Decides to seek modification

#### ❖ Debtor may:

- Contest claim amounts
- Negotiate treatment of DSO under Plan

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## Bankruptcy & Child Support

### ❖ Working Chapter 13 Cases

#### ❖ Do Not:

- Contact the debtor about next payment
- File a contempt action without relief
- Release property or vehicle liens
- Release license just because bankruptcy filed

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## Bankruptcy & Child Support

### ❖ Basic Objections: Ch. 13 Confirmation

- Debtor proposes less than full payment of assigned DSO
- Debtor proposes plan provisions not authorized by law
- Plan doesn't address treatment of DSO
- Plan is not feasible
- Plan prioritizes debt ahead of DSO
- Current support ordered paid thru Plan

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## Bankruptcy & Child Support

### ❖ Paying Outside Plan: A Win/Win?

- For IV-D Agency--
  - No interruption of IWO
  - May get more toward DSO
  - No delay in receiving payments
- For Debtor/NCP--
  - Plan is more feasible
  - May assist in keeping Ch.13 from dismissal

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## General MCPO Chapter 13 Processing

### ❖ Initial Screening

- Notice received from Indiana CSB
- Calls received from NCP/NCP Attorney
- NCP/NCP Attorney walk-ins
- NCP contacts MCPO work program
  - Bankruptcy document forwarded to assigned Deputy Prosecutor
  - Notes of point of contact put in case notes

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### General MCPO Chapter 13 Processing

#### ❖ Reviewing The Plan

- In Plan treatment- In Plan & IWO working for current support & arrears, then:
  - Contact Debtor Attorney to see if OK to Amend Plan For Payments Outside Plan.
- If Debtor Attorney unwilling to amend Plan for payments outside plan, file POC, Then:
  - Update account & certify calculation as of BK DOF & present day.

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### General MCPO Chapter 13 Processing

#### ❖ Filing A Proof Of Claim & Appearance

- If Debtor Attorney unwilling lift stay & pay outside Plan, then:
  - Once account updated, DPA reviews calculations. When filing POC, also file appearance.
  - Update BK log
  - If NCP has any open warrants, petition court to recall warrant.
  - Place "STOP" codes on electronic administrative enforcement

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### General MCPO Chapter 13 Processing

#### ❖ Pre-Confirmation Actions

- Responding to objection to claim
- Seeking to lift the automatic stay
- Objecting to confirmation of the Plan
  - Plan does not provide treatment for DSO
  - Plan is not feasible
  - Plan does not provide for full payment of DSO
  - Debtor proposes plan provisions unauthorized by law
  - Current support ordered paid through Plan

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### General MCPO Chapter 13 Processing

#### ❖ Post-Confirmation Enforcement

- Seeking to dismiss bankruptcy action
- **Formally**—File a petition with court
  - Possible Grounds:
    - Not Making Current Support Payments -- 11 U.S.C. §§1208(c)(10), 1307(c)(11)
- **Informally:**
  - Contacting Trustee—Advise Trustee NCP not paying current support & pre-petition debt.

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### General MCPO Chapter 13 Processing

#### ❖ Discharge Preparations

- Objection to discharge?
- Properly amend/terminate IWO
- Remove “STOP” codes on enforcement.
- Update bankruptcy log of discharge.
- Update case system notes.

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### What Did We Learn Today?



Purpose of Bankruptcy

Types of Bankruptcy

Bankruptcy Process

Bankruptcy & Child Support

**I LEARNED SOMETHING TODAY.**

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## Basic Bankruptcy: A Primer

### Contact Info:

Brent Cullers

Deputy Prosecuting Attorney

Marion County Prosecutor's Office— Child Support Division

251 East Ohio Street, Suite 700

Indianapolis, IN 46204

317.327.1830

brent.cullers@indy.gov

Geraldine M. Redic

Deputy Administrator, Allegheny County Family Division

440 Ross Street

Pittsburgh, PA 15219

412.350.0369

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