

“MR. REF – I NEED A TIMEOUT”

**NAVIGATING BANKRUPTCY PITFALLS THAT ARISE FOR THE
STATE COURT PRACTITIONER**

I. When Your Plaintiff Client files Bankruptcy

- A. PACER search using name & SS #
- B. GET IN TOUCH WITH BK ATTORNEY ASAP – amend schedule B, schedule C, Statement of Financial Affairs
- C. Application to Employ
- D. Motion to Approve Compromise, Distribution & Approve Attorneys’ Fees

II. When Your Client is a Debt Collection Defendant

- A. File Answer to stall civil process
- B. Call to Answer and Defend debt action by 3rd Party Collector
- C. Suggestion of Bankruptcy in Civil Action
- D. Careful of Fraud Actions – res judicata in BK Court
- E. Just say NO to Debt Consolidation Companies

III. When Your Client is a Debt Collecting Plaintiff

- A. Always record your judgment with Probate ASAP
- B. PACER search
- C. File Proof of Claim
- D. Scheduled Debt vs. Unscheduled Debt; CH 7 vs. CH 13

IV. When Your Divorce Client is involved in Bankruptcy

- A. No Motion for Relief needed for establishment of Paternity, establishment of or modification of Domestic Support, child custody, dissolution of marriage
UNLESS proceeding will divide property of the estate (11 USC S 362(b)(2))
- B. Consent order for Relief to proceed with property division
- C. Drafting the Divorce Agreement – property settlement versus alimony, maintenance and support – Section 523(a)(5) {domestic support} vs. §523(a)(15) { not DSO}; Chapter 13 vs. Chapter 7 implications
- D. Contact Debtors’ Counsel regarding potential Severing Chapter 13 cases

V. When Your Landlord Client has a tenant that files Bankruptcy

- A. Motion for Relief from Stay
- B. Pre-Petition vs. Post-Petition Rent Claims
- C. Assumption vs. Rejection of the Lease and The Chapter 13 Plan; How much of the lease term remains

VI. When your Business Client is a “troubled borrower”

- A. Personal Guarantor
- B. Transferring Assets / Selling Assets
- C. Work-Outs, Short Sales
- D. Tax Debts

VII. When your client has tax problems

- A. Income Tax vs. Withholding vs. Sales
- B. Has the client filed all relevant income tax returns?
- C. 3 year, 2 year, 240 day RULES