Let Counsel Beware: Overzealous Bankruptcy Practice Can Lead To a Prison Cell

Bankruptcy cases and criminal prosecutions are close cousins. Desperation is a hallmark of both. White collar practitioners, in particular, often deal with clients forced into bankruptcy by criminal investigation or prosecution. In fact, dedicated defense counsel may feel a sense of duty to assist the client in filing for bankruptcy. But counsel must be aware that a client's desire to protect dwindling assets, or abuse the bankruptcy system for unlawful gain, can quickly lead to fresh criminal charges. Lawyers who cross into the bankruptcy realm should do so fully cognizant of the criminal landmines.

Attorneys representing debtors, especially in consumer bankruptcy cases, practice under numerous ethical and statutory duties intended to enforce a standard of professionalism on the field. When attorneys fail to live up to their ethical and legal obligations, they prejudice their clients and other parties in interest, and subject themselves to civil and criminal liability for their delinquencies.

In addition to responsibilities under the relevant state law code of professional responsibilities, an attorney's obligations arise from (1) Rule 9011 of the Federal Rules of Bankruptcy Procedure; (2) Title 11 of the U.S. Code (the Bankruptcy Code) Sections 526[1], 527 and 528; and (3) Title 18 of the U.S. Code. While an attorney's violations of Bankruptcy Rule 9011 and sections of the Bankruptcy Code can give rise to civil liability and sanctions, if an attorney's conduct runs afoul of the provisions of Title 18 concerning "Bankruptcy Crimes," the attorney faces criminal fines and/or incarceration.

Attorneys who are unaware of the potential criminal tensions in a bankruptcy case put themselves in a dangerous position. Counsel who are tempted to advise their clients to intentionally undervalue assets, overvalue claims, or otherwise be exceptionally "creative" in an effort to take unfair advantage of the bankruptcy system should keep in mind that it is a federal crime to aid, abet, counsel, command, induce or procure another to commit a federal crime.[2]

The area of bankruptcy law has historically been one that has been fraught with the potential for abuse and criminality perpetrated by attorneys. This issue dates to the infamous "bankruptcy rings" of the 1920s. A bankruptcy ring is cooperation between bankruptcy officials and lawyers with the goal being to extract large amounts of money for themselves without a care about creditors or debtors. In the early 1920s, Congress began to institute legislation that was intended to control the abuse inherent in the bankruptcy rings. In the subsequent decades, several other measures have been added by Congress in an effort to control improper or illegal actions by bankruptcy professionals.

BY JOEL M. SHAFFERMAN

The Bankruptcy Process

Bankruptcy is a longstanding legal right that provides a way for individuals and entitles to obtain debt relief and a fresh financial start. Article I, Section 8, of the U.S. Constitution authorizes Congress to enact "uniform laws on the subject of bankruptcies." Under this grant of authority, Congress enacted the "Bankruptcy Code" in 1978. The Bankruptcy Code, which is codified as Title 11 of the U.S. Code, has been amended several times since its enactment. It is the uniform federal law that governs all bankruptcy cases. The court official with decision-making power over federal bankruptcy cases is the U.S. bankruptcy judge, a judicial officer of the U.S. district court. The bankruptcy judge may decide any matter connected with a bankruptcy case, such as eligibility to file or whether a debtor should receive a discharge of debts. Much of the bankruptcy process is administrative, however, and is conducted away from the bankruptcy court.

Congress enacted the U.S. Bankruptcy Code to help people who can no longer pay their debts get a "fresh start" by either liquidating their assets over a certain value to pay their creditors or by proposing a repayment plan. The Bankruptcy Code also protects distressed businesses by providing for orderly distributions to business creditors either through reorganization or liquidation.[3] Most cases are filed under the three main chapters of the Bankruptcy Code — Chapter 7, Chapter 11, and Chapter 13. Federal courts have exclusive jurisdiction over bankruptcy cases.

A bankruptcy case usually begins by the debtor filing a petition with the bankruptcy court.[4] A bankruptcy petition may be filed by an individual, jointly by a married couple, or by a corporation or other business entity.[5] On or shortly after filing a bankruptcy petition, a debtor is required to file schedules or statements listing assets, income, liabilities, and the names and addresses of all creditors and how much they are owed.[6]

Under Section 362(a) of the Bankruptcy Code, the filing of the bankruptcy petition immediately "stays," by operation of law, debt collection actions against the debtor and the debtor's property. "As long as the stay remains in effect, creditors cannot bring or continue lawsuits, make wage garnishments, or even make telephone calls demanding payment. Creditors receive notice from the clerk of court that the debtor has filed a bankruptcy petition."[7] Chapter 11, 12, or 13 bankruptcy cases are filed to enable a debtor to reorganize and propose a plan to repay creditors, while Chapter 7 cases involve the liquidation of a debtor's assets. In most cases involving the liquidation of the property of individual consumers, there is little or no money available from the debtor's estate to pay creditors. "As a result, in these cases there are few issues or disputes, and the debtor is normally granted a 'discharge' of most debts without objection. This means that the debtor will no longer be personally liable for repaying the debts."[8] In cases under Chapters 7, 12, or 13, and sometimes in Chapter 11 cases, this administrative process is carried out by a trustee who is appointed to oversee the case.[9]

Potential Minefield For Attorneys Representing Debtors

Since the enactment of the Bankruptcy Reform Act of 1978,[10] most large- and medium-sized law firms have departments devoted exclusively to bankruptcy and insolvency practice, thus exalting the reputation and level of the bankruptcy bar. Nonetheless, the bankruptcy field remains one in which the clients and their attorneys face criminal prosecution. In fact, in a report to Congress issued in March 2011, the Office of the U.S. Trustee, which is a component of the Justice Department, announced that it had made 1,721 bankruptcy and bankruptcy-related criminal referrals during fiscal year 2010.[11] This represents a 6.8 percent increase over the 1,611criminal referrals made during fiscal year 2009.[12]

Prosecutions for bankruptcy crimes have increased to the point where bankruptcy is probably the most common area for parallel civil and criminal proceedings.[13] "The delightful quality of bankruptcy crimes lies in their infinite variety."[14] Debtors, creditors, trustees, and attorneys for each of these parties have committed bankruptcy crimes. Debtors file false information with the court, hide their assets, transfer their assets to friends and relatives,[15] and bribe creditors and trustees to refrain from taking certain actions.[16] Creditors help rig bids in bankruptcy,[17] aid in the facilitation of debtor fraud,[18] and threaten certain actions against the debtor unless the debtor "plays along."[19]

Bankruptcy Crime Statutes

The principal criminal statutes regulating attorney behavior are found at 18 U.S.C. §§ 152-157, which are the federal statutes directly relating to bankruptcy crimes. Section 157, relating to "Bankruptcy Fraud," is a fairly recent and very broad addition to the federal criminal statutes, and should be read by any attorney who plans to represent a debtor in a bankruptcy case. Bankruptcy crimes are like all other violations of criminal law except that they are offenses related to a bankruptcy case. A bankruptcy crime can be construed as many different offenses such as concealing property from the bankruptcy court or a bankruptcy trustee; knowingly and fraudulently making a false oath or account; knowingly transferring or concealing property to defraud creditors; concealing, destroying, mutilating or falsifying records or documents; and filing a bankruptcy petition to deceive or defraud creditors. During the course of a bankruptcy case, certain misconduct can constitute a criminal offense. For example, signing a false petition, declaration or proof of claim, as well as hiding assets, can result in federal charges and a prison sentence.

Common case situations that have resulted in prosecutions for committing bankruptcy crimes include concealment of assets (18 U.S.C. § 152(1)); the making of false oaths, accounts, and declarations (18 U.S.C. § 152(5) and (3)); the filing of false claims (18 U.S.C. § 152(5)); receiving property with the intent to defeat the Bankruptcy Code and bribery (18 U.S.C. § 152(5) and (6)); making fraudulent pre-bankruptcy transfers (18 U.S.C. § 152(7)); concealing or destroying records (18 U.S.C. § 152(8) and (9)); embezzlement against estates (18 U.S.C. § 153); representing an adverse interest (18 U.S.C. § 154); entering into illegal fee agreements in bankruptcy and receivership cases (18 U.S.C. § 154); committing general bankruptcy fraud and aiding and abetting bankruptcy fraud (18 U.S.C. §§ 352, 353, 354); being involved in a conspiracy (18 U.S.C. § 371); making false statements (18 U.S.C. §§1001, 1014 & 1032); committing mail, wire and/or bank fraud (18 U.S.C. §§ 1341-1344); engaging in the obstruction of justice (18 U.S.C. § 1503); committing perjury (18 U.S.C. §§ 1621-16230); committing acts in violation of the Racketeer Influenced and Corrupt Organization statutes (18 U.S.C. § 1962); and engaging in money laundering (18 U.S.C. § 1956).[20] It is important to note that unlike ethical violations that might arise from a mistake or neglect, criminal liability will only be imposed if the attorney in question had the requisite criminal intent, which

includes the "knowing" standard of 18 U.S.C. § 155, the "fraudulent" standard of 18 U.S.C. § 157, and the "knowing and fraudulent" standard of other key sections.[21]

As the cases below indicate, the issue of attorneys being charged with bankruptcy crimes under Title 18 is not a new or novel development, or limited to inexperienced or incompetent practitioners.[22] Perhaps the problem arises from attorneys who, if not clearly intending to break the law, get too close to their client's difficult situation and do not understand that they have "crossed the line" and violated Title 18 of the U.S. Code. Attorneys have been charged with committing bankruptcy-related crimes either as part of a contemplated scheme or unwittingly by overly aggressive representation where they have "crossed the line" from providing zealous advocacy to engaging in criminal conduct. While the government has a high burden in proving an attorney guilty of a bankruptcy crime, the Department of Justice is quite cognizant of criminal conduct by attorneys. Indeed, an excellent bargaining chip for clients indicted for committing bankruptcy crimes is to "offer up" an attorney who assisted them in the commission of bankruptcy crimes.[23]

The remainder of this article will put the provisions addressing bankruptcy-related crimes in a practical context by highlighting several recent cases involving attorneys who were charged with violating the bankruptcy crimes statutes of Title 18 of the U.S. Code.

Specific Cases

When in Doubt, Disclose Everything and Anything

The words "full disclosure" should be a mantra for any attorney who practices in the area of bankruptcy law. *United States v. Sullivan*[24] underscores this point. In *Sullivan*, an attorney represented Focus Media Inc. (Focus), an ad placement company that experienced financial difficulties due to loss of clients and the fact that its CEO borrowed (and never repaid) $16 million from Focus between 1996 and 1999.[25] In 2000, Focus was sued and enjoined from spending any funds after May 2000. However, despite the injunction, corporate insiders still took money from Focus and caused it to forgive the $16 million debt.[26]

Creditors thereafter filed an involuntary petition against Focus, and Focus retained attorney Geoffrey Mousseau to represent it in connection with the bankruptcy case.[27] Mousseau clandestinely funneled $500,000 from Focus to fund the retainer for Focus' primary bankruptcy counsel.[28] As a result of this action, the government charged Mousseau with 17 counts of bankruptcy fraud and one count of conspiracy to commit bankruptcy fraud.[29]

Mousseau argued that he disclosed Focus as the source of the funds and that they did not knowingly conceal funds from the interim trustee appointed in the Focus bankruptcy case.[30] The court concluded that a rational juror could have concluded otherwise, and noted that although Mousseau chose to represent Focus in its bankruptcy case despite having no experience in that area of law, "even an inexperienced attorney should have known to report the $500,000 transferred to the interim trustee. … [Mousseau's] lack of experience in bankruptcy law is not a shield from criminal liability."[31]

Attorneys who are representing a debtor in a bankruptcy case must always be vigilant in making sure that every single asset of the debtor is listed in the bankruptcy petition and schedules that are filed with the bankruptcy court. *United States v. Webster*[32] is an example of the consequences that can befall an attorney who does not observe this fundamental rule.

In *Webster,* Steven Deiss (Deiss) purchased an establishment called the Hitching Post Bar from his friend Joseph Schommer after managing it for two years.[33] In January 1991, Deiss retained Leslie J. Webster, a sole practitioner with a general practice, to incorporate the ownership of this business in order to limit his liability.[34] While proceeding with the incorporation, Webster, whose legal practice included approximately 10 to 15 bankruptcies a year, advised Deiss and his wife to review their finances and debts, and to consider filing a bankruptcy petition to obtain a discharge of their debts.[35] On Feb. 1, 1991, Webster completed the incorporation process and arranged for the conveyance of the bar business and its assets to the newly formed corporation for a return of stock.[36] Deiss and his wife were the only directors. Deiss was the registered agent, and Webster notarized the corporation documents.[37]

On March 25, 1991, Deiss and his wife filed a joint voluntary petition under Chapter 7 of the Bankruptcy Code. Webster prepared the Deisses' bankruptcy schedules and the "Statement of Financial Affairs for a Debtor Not Engaged in Business."[38] The financial statement asked whether any of the debtors' property had been returned to, or repossessed by, the seller or a secured party within the past year. Webster, on behalf of the Deisses, answered that Deiss had "voluntarily surrendered the Bar business to Joseph Schommer in January 1991 for release of unpaid balance of Land Contract."[39] The bankruptcy filings were devoid of any mention that, on the eve of filing the bankruptcy petition, the Deisses had incorporated a new corporation, and that Deiss' assets in the bar had been conveyed to that new corporation. Second, on Deiss' list of personal property, which is contained on Schedule B of the petition, Webster failed to report any stock ownership in the new bar business.[40] Instead, he reported "0" stock ownership and no real property.[41] At the meeting of creditors in their joint Chapter 7 case,[42] the Deisses stated, under oath, that the bankruptcy petition and schedules were true and complete, and Webster advised the Chapter 7 trustee Kaiser that theirs was a "no asset case." The bankruptcy court consequently granted the Deisses a discharge on July 16, 1991.[43]

In February 1996, Deiss was charged with bankruptcy fraud, and thereafter plead guilty to making false statements under oath in a bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1) and 2(a). His cooperation with the government led to Webster's indictment in July 1996 on the charge of aiding and abetting the fraudulent concealment of property from a bankruptcy trustee in violation of 18 U.S.C. §§ 152(1) and 2(a).[44] After the two-day trial, the jury returned a guilty verdict against Deiss, and Webster was subsequently convicted and sentenced to 15 months in prison.[45]

On appeal, the Seventh Circuit affirmed Webster's conviction, finding that there was sufficient evidence from which the jury could have convicted Webster of aiding and abetting in the concealment of Deiss' ownership of the bar.[46]

United States v. Dolan[47] involved the services rendered by attorney Gary L. Dolan on behalf of his client, David R. Anderson, in connection with business litigation against several financial institutions in the mid-1980s. On Sept. 16, 1987, at least two of those financial institutions filed an involuntary bankruptcy petition against Anderson.[48] Anderson retained Dolan to represent him in the involuntary bankruptcy case. After the bankruptcy judge denied Anderson's motion to dismiss the involuntary petition, Dolan, on Anderson's behalf, successfully moved to convert the involuntary case to a voluntary case under Chapter 11 of the U.S. Bankruptcy Code.[49]

Dolan had previously never served as a debtor's counsel in a bankruptcy pro-

ceeding.[50] Dolan assisted Anderson in filing his schedules of assets and liabilities and statement of financial affairs.[51]

Thereafter, it was revealed that Anderson concealed from creditors a Ferrari automobile with a value of $85,000 and his interest in litigation that was settled after the commencement of the bankruptcy case for $1.9 million. Dolan was co-counsel in that litigation and received $50,000 from the settlement proceeds as a personal bonus.[52] When Dolan learned of his client's interest in the vehicle after the case was filed, he failed to disclose it to the court or creditors, and failed to have his client disclose the vehicle.[53] Although Dolan was aware of these assets, he continued to tell creditors that Anderson was unable to pay any of his debts.[54]

Dolan was subsequently indicted for conspiring to conceal property of the bankruptcy estate in violation of 18 U.S.C. § 371 and concealing and aiding and abetting in the concealment of property of the bankruptcy estate in violation of 18 U.S.C. § 152.[55] Anderson, Dolan's alleged co-conspirator, pled guilty to fraudulently transferring property of the bankruptcy estate in a separate case.[56] Dolan was convicted in the U.S. District Court for the District of Nebraska of conspiracy to conceal bankruptcy estate property and aiding and abetting in the concealment of estate property. Dolan's conviction was affirmed by the U.S. Court of Appeals for the Eighth Circuit.[57]

Even When Representing a Creditor, Be Mindful of the Bankruptcy Crime Statutes

Attorneys representing creditors in bankruptcy cases have also found themselves facing criminal prosecution for services rendered on behalf of their clients. In *United States v. Connery*,[58] attorney Edmund M. Connery was charged with aiding and abetting Daniel Overmyer (Overmyer) in the filing of a false claim, in the amount of $859,481, on behalf of Hadar Leasing Company, Inc. (Hader). The claim was filed against the bankruptcy estate of D.H. Overmyer Telecasting Company Inc. (OTC) in violation of 18 U.S.C. § 152(4). Section 152(4) provides that "[w]hoever knowingly and fraudulently presents any false claim for proof against the estate of a debtor or uses any such claim in any case under the bankruptcy code personally or by agent, proxy, or attorney or as agent, proxy, or attorney shall be guilty of an offense."[59]

Prior to the filing of the proof of claim,[60] Connery had worked for OTC. After OTC commenced its Chapter 11 case, Connery became general counsel for Hader, which was controlled by Overmyer, the control person of OTC.[61] At trial, the jury found that Connery was intimately familiar with the daily operations of OTC and Hadar, and that Connery directed Hader's accounting department to restate its books to delete the sum of approximately $626,000 owed to OTC by Hader, and to replace it with a claim of approximately $473,000 against OTC.[62] Connery also assisted in changing other corporate records to support this claim.[63] Based upon these facts, a jury found Connery guilty of aiding and abetting the filing of a false claim.

On April 22, 1987, the district court granted a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29(c), despite the jury's verdict. The district court reasoned that although the United States introduced evidence showing that Connery aided in the filing of a proof of claim that he knew was subject to dispute by the debtor and other creditors, there was no evidence introduced from which a reasonable jury could infer that Connery acted with the requisite criminal intent to deceive the bankruptcy court.[64] However, on appeal, the U.S. Court of Appeals for the Sixth Circuit reversed the district court and reinstated the jury's verdict.[65]

Conclusion

As in any area of law, an attorney who decides to practice in the highly technical bankruptcy field must become fully familiar with the substantive law and procedural requirements. However, in addition to these statutes and the traditional ethical obligations inherent in any area of practice, a bankruptcy practitioner must be cognizant of the myriad statutory provisions prohibiting the commission of bankruptcy crimes. Even the most well-intentioned counsel must be mindful that there is a fine line between being an aggressive advocate and stepping into the minefield of bankruptcy crimes. Failure to do so can result in an attorney being forced to trade in a legal pad for a prison jump suit.

Notes

1. An attorney failing to exercise reasonable care in preventing a client from filing statements or schedules containing untrue or misleading statements "shall" be liable to the client in the amount of any fees and charges received by the attorney, for actual damages and for reasonable attorneys' fees and costs, under Section 526(c)(2). The Bankruptcy Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, also imposes new certification standards directed at attorneys who represent consumer debtors in Chapter 7 cases. These new standards, set forth in Section 707(b)(4)(C) and (D) of the Bankruptcy Code, provide that:

> (C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has — (i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and (ii) determined that the petition, pleading, or written motion — (I) is well grounded in fact; and (II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).
>
> (D) The signature of an attorney on the petition shall constitute certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

2. Craig Peyton Gaumer, *Caveat Counsel: Pitfalls That Can Lead to the Prosecution of Attorneys for Bankruptcy Crimes*, 18-6 Am. Bankr. Inst. J. 10 (1999).

3. Official United States court system website (http://www.uscourts.gov/FederalCourts/Bankruptcy.aspx.).

4. Creditors can also file an involuntary petition against a debtor pursuant to Section 303 of the Bankruptcy Code as long as certain conditions contained therein are satisfied.

5. Official United States court system website (http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Process.aspx).

6. Official United States court system website.

7. *Id.*

8. *Id.*

9. *Id.*

10. Pub. L. No. 95-598, 92 Stat. 2549 (1978).

11. U.S. Department of Justice report to Congress.

12. *Id*. Of the 1,721 criminal referrals made during fiscal year 2010, formal charges were filed in 25 matters, as of Dec. 6, 2010, and prosecution was declined in 587 referrals. The balance of referrals was still under review. *Id.*

13. Ogier & Williams, *Bankruptcy Crimes and Bankruptcy Practice*, 6 Am. Bankr. Inst. L. Rev. 317 (1998) (citing William I. Kampf & Jay M. Quam, *The Intersection of Bankruptcy and White Collar Crime*, 97 Com. L.J. 70, 70 (1991) (footnote omitted); *see also* Craig Peyton Gaumer, *Bankruptcy Remedies and Double*

Jeopardy, 17 AM. BANKR. INST. J. 10, 39 (1998) (observing that debtors and creditors engaging in fraud on bankruptcy system face wide array of civil and criminal sanctions).

14. Ogier & Williams, *Bankruptcy Crimes and Bankruptcy Practice*, 6 AM. BANKR. INST. L. REV. 317 (1998).

15. *Id.* (citing *Congress Talcott Corp. v. Sicari (In re Sicari*), 187 B.R. 861, 871 (Bankr. S.D.N.Y. 1994)).

16. Ogier & Williams, *Bankruptcy Crimes and Bankruptcy Practice* (citing 18 U.S.C. § 152 (stating that it is crime to commit bribery within bankruptcy cases); *United States v. Pommering*, 500 F.2d 92, 100 (10th Cir. 1974) (finding that defendant's fake financial statements established motive and necessity for him to bribe government official); *In re Silverman*, 13 B.R. 270, 270 (Bankr. S.D.N.Y. 1981) (asserting that debtor had bribed creditor's employees in exchange for creditor withdrawing its objection to discharge of debtor's bankruptcy case).

17. Ogier & Williams, *Bankruptcy Crimes and Bankruptcy Practice* (citing *Gekas v. Pipin (In re Met-L-Wood Corp.))*, 861 F.2d 1012, 1015-16 (1988); *In re Arochem*, 181 B.R. 693, 702 (Bankr. D. Conn. 1995) (noting situation where bid rigging activity between various parties in trustee's auction of debtor asset allegedly occurred); *Bennett v. Genoa AG Ctr. Inc. (In re Bennett),* 154 B.R. 140, 147 (Bankr. N.D.N.Y. 1993) (providing that collusion in foreclosure sale manifests itself in bid rigging or some sort of price fixing).

18. Ogier & Williams, *Bankruptcy Crimes and Bankruptcy Practice* (citing *In re Kingston Square Assocs*., 214 B.R. 713, 732 (Bankr. S.D.N.Y. 1997) (stating that where opposing creditors prove fraud and collusion between debtor and certain creditors, "an order of adjudication would not be entered. The bankruptcy court has, within its own jurisdiction, full equity powers, and cannot be compelled to, nor will it, exercise its powers in aid of a fraud." *Cornwall Press Inc. v. Ray Long & Richard R. Smith Inc.,* 75 F.2d 276, 276-77 (2d Cir. 1935)).

19. Ogier & Williams, *Bankruptcy Crimes and Bankruptcy Practice* (citations omitted).

20. Chip Bowles, *CSI Bankruptcy: The Hard Road From Dealing With Troubled Clients to Living With Troubled Cellmates, The Sequel: Part I*, 27-8 AM. BANKR. INST. J. 20, 21 (October 2008).

21. Bowles, *supra* note 20. Title 18, Section 3057 requires any judge who has "reasonable grounds for believing that any violation under Chapter 9 of this title [18 U.S.C. §§ 151 *et. seq.*]. . ." to report the details to the appropriate U.S. Attorney.

22. Bowles, *supra* note 20.

23. *United States v. Webster*, 125 F.3d 1024 (7th Cir. 1997) (attorney indicted due to debtor's cooperation with prosecutors after guilty plea to bankruptcy criminal charges); *United States v. Franklin*, 837 F. Supp. 916 (W.D. Ill. 1993) (debtor agreed to cooperate in an investigation of his bankrupt attorney after his arrest for drug trafficking).

24. 522 F.3d 967 (9th Cir. 2008).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. 125 F.3d 1024 (7th Cir. 1997).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. The first meeting of a debtor's creditors is held pursuant to 11 U.S.C. § 341(a) and is usually called a Section 341 meeting. The purpose of a Section 341 meeting is to give creditors and the trustee the opportunity to examine the debtor concerning his acts, conduct, property, or any other matter that may affect the administration of the bankruptcy estate or the debtor's right to a discharge or to the dischargeability of certain debts. B. Weintraub & A. Resnick, BANKRUPTCY LAW MANUAL § 1.11[3] (1980).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* However, the appellate court found that the district court erred when enhancing his sentence because it failed to state with adequate clarity the factual basis for its conclusion that the defendant deserved the enhancement.

47. 120 F.3d 856 (8th Cir. 1997).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. 867 F.2d 929 (6th Cir. 1989).

59. *Id.*

60. A proof of claim is an official form used by creditors to state the amount owed and the basis for the claim. Section 502 of the Bankruptcy Code controls the allowance of a creditor's claim.

61. 867 F.2d 929 (6th Cir. 1989).

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* ■

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