



Garden State CLE
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Video Course Evaluation Form

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Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

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What did you like most about the seminar?

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I Certify that I watched, in its entirety, the above-listed CLE Course

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GARDEN STATE CLE LESSON PLAN

A 1.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUATION

MOTION PRACTICE IN CONSUMER BANKRUPTCY (WITH FORMS)

WITH

DAWN R. SAN FILIPPO, ESQ.

AND FEATURING

ROBERT RAMSEY, SENIOR INSTRUCTOR

Program Description

If you're lucky, a judge signs a routine order to discharge and close your bankruptcy case. Sometimes, the court is barely involved at all. But when a judge's decision is required to resolve an issue in a consumer bankruptcy claim, mastery of motion practice in consumer bankruptcy is invaluable. This 1.0 credit seminar will teach you the 'what', 'when', and 'how' when it comes to filing a motion in a consumer bankruptcy case.

I. INTRODUCTION

- **Garden State CLE**
- **Panelists**
[DAWN R. SAN FILIPPO, ESQ. and
ROBERT RAMSEY]
- **Scope of Topic**
[1:03 duration and
6 pages of Lesson Plan materials]

II. CHAPTER 7 MOTIONS

- **Occasionally secured creditors will file a Motion for Relief from Stay in a Chapter 7 liquidation case**
- **Regarding auto lenders, they want to continue with their lien enforcement procedure**
- **Chapter 7 cases take 4 - 6 weeks to reach meeting of creditors**
- **It is a three month process more or less, depending in part on the number of filings in the quarter**
- **Most creditors in Chapter 7 are unsecured**

- **Secured creditors may include an auto finance company, a mortgage company (first or second)**
- **Petitioners may move for relief from stay for various reasons**
- **Debtor defenses include: adequate protection (enough value in the security)**
- **Car payments have to be makeable (and made) and a reaffirmation agreement needs to be signed by the Debtor**
- **Trustee's can make Motions to Dismiss for failure to pass the means test**
- **Address this issue up front with the means test at the interview and drafting stages**
- **Motions to deny the Debtor their discharge can be made too, sometimes for failure to disclose assets and liabilities (sec 527---non dischargeability claims)**
- **Fraud is one basis for a Motion to Dismiss or for non dischargeability claims**
- **Running up new debts and charges before Bankruptcy filing is a big no-no**

III. Chapter 13 Motions

- **Motions are filed as a part of the initial Plan, they are integrated in the form to a degree**
- **The Plan of Payment and Motions accompany the Petition**
- **Motions may include:**
 - i. Motion to Modify the Plan due to changes in circumstances like job loss, illness, etc.**
 - ii. Motion to Convert a Chapter 13 to Chapter 7 can be filed when the Debtor cannot live up to the obligations required in the Plan**
 - iii. Debtor Motions to Strip off the Second Mortgage when the second is unsecured by the value in the property. Not even a dollar can be secured**

IV. Chapter 13 Discovery

- **2004 examination is a deposition**
- **Bad behavior is punished: hiding assets, not providing information etc. and it can rise to the level of criminal investigation by the US Attorney**
- **Certain claims can be factored and sold off to benefit the Estate but it is rare in BK cases**
- **Other potential assets: Annuities? No. They are exempt under the fresh start approach**
- **Preference actions: 90 day lookback for some creditors, one year for family members**
- **The Debtor's Petition reveals what is available for preference claims**
- **Adversary Proceedings tend to be rare, they often do follow a failed business**
- **Trials are also rare. They try before the Judge and not a Jury in most cases. It is a bench trial with segments that can be chopped up as in Chancery Division. They can take an hour, they can take weeks. Most are a couple of days.**

V. ATTORNEY RESPONSIBILITY

- Liability falls to the Attorney for failure to provide full financial disclosure on all assets AND all debts
- Now attys must have on hand a year's bank statements and so on
- Credit reports are routinely pulled by some attorneys or at least the Debtor pulls the reports and provides them
- Hidden cash? Ethically, the attorney is required to put it down on the Petition
- Overseas cash and other assets
- Family debts need to be discharged too, the client can always gift it back later if they choose. But the debt remains unenforceable