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Bankruptcy Pro Bono Representation of Consumers: The Seven Deadly Sins

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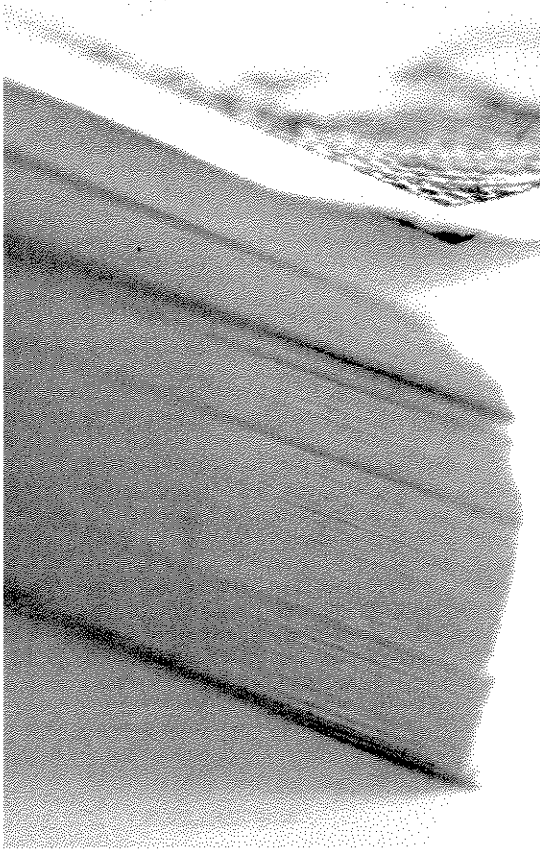

By NANCY B. RAPOPORT
and ROLAND J. BERNIER

Pride, envy, wrath, sloth, avarice, gluttony, and lust. In Christian theology, these seven deadly sins[1] are considered such odious failings that they are fatal to a soul's spiritual progress. Renaissance poet Dante Alighieri built his seven levels of Purgatory around those sins.[2] At the gate of Purgatory, Dante met an angelic gatekeeper, who inscribed the letter "P" on his forehead seven times.[3] Upon progressing through each of Purgatory's levels, one "P" was removed.[4]

The seven deadly sins for pro bono attorneys representing consumer debtors in bankruptcy may not have the same dire eternal consequences as for those misguided enough to veer from the spiritual straight and narrow. But each one of these "sins" has its own negative consequences, some of which may impede or terminate your client's protection, while others might affect a lawyer's practice.

In formulating this lawyerly list of seven deadly sins, the authors looked at the amendments to the Bankruptcy Code (BAPCPA),[5] the revised Bankruptcy Rules,[6] the Texas Disciplinary Rules of Professional Conduct, and associated case law. Although Dante likely had good reason for the order in which he presented the seven deadly sins, the authors have used artistic license to rearrange that order.

ENVY-Eligibility to Practice in the Appropriate Court

"This circuit," said my teacher, "knots the scourge for envy; and the cords are therefore drawn by charity's correcting hand."[7]

Dante described envy as "love of one's own good perverted to a desire to deprive other men of theirs."[8] For attorneys, the deadly sin of envy is associated with an attorney's eligibility to appear before the court, on the theory that only an envious attorney would try to appear in court without going through the appropriate admissions procedure.

An attorney's eligibility to appear before a particular court seems so elementary that it almost does not warrant mentioning. After all, who would imperil his own career so recklessly as to appear before the court without being duly authorized? Unfortunately, though rare, the practice isn't extinct.[9]

A judge confronting a lawyer who is ineligible to practice before the court typically wishes to use charity's correcting hand quite firmly. Bankruptcy attorneys practicing in the Southern District of Texas operate under four main sets of rules: the Bankruptcy Code and Bankruptcy Rules, the local bankruptcy rules, the local rules of the district, and the Texas Disciplinary Rules of Professional Conduct.[10] These rules make it clear that one must be eligible to practice before the court, either through admission to general practice under the appropriate rules or *pro haec vice* admission.[11]

Why would an attorney jeopardize so much by continuing to represent a client after being ordered by a court to find someone else? After all, courts do not always give such warnings, and when they do, it seems prudent to follow their instructions. Then again, it also seems illogical to be envious of others. Dante saw the envious, who dwelled in the second ledge of Purgatory, penalized by having their eyes forced shut to prevent them from receiving pleasure from watching misfortune befall others.[12] Lawyers similarly should approach a court with open eyes.

SLOTH-Lack of Competence in the Relevant Subject Matter

"'Why partest from me, O my strength?' So with myself I communed; for I felt my o'ertoil'd sinews slacken."[13]

Originally described as "sadness or apathy," Dante characterized sloth as a failure to love God with all due zeal,[14] labeling it "gloominess or indifference."[15] An attorney's "sloth" is associated with his or her lack of competence in bankruptcy.

Whether a lawyer engages in sloth because of some overreaching ambition, simple carelessness, or lack of resources, attorneys always should be diligent in weighing their abilities to manage a case—*before* they take on that representation. This principle is especially true in such specialty niches as bankruptcy. Unless there are emergency circumstances, an attorney may not undertake a representation for which he is unqualified, unless he simultaneously associates with a lawyer who is competent in that area of law. Plain and simple, an attorney should not represent a client in matters that are "beyond the lawyer's competence."[16]

In Dante's Purgatory, those who were guilty of sloth were purged of the sin by continually running, demonstrating their zeal for penance.[17] On the other hand, those attorneys who overcome apathy—who dare to respect their role in the legal system by obtaining and maintaining their skills—can avoid this deadly sin.

PRIDE-Are Attorneys "Debt Relief Agencies" under BAPCPA?

"My old blood and forefathers' gallant deeds made me so haughty, that I clean forgot the common mother; and to such excess wax'd in my scorn of all men, that I fell..."[18]

The Divine Comedy placed the deadly sin of pride on the very first level of Purgatory.[19] For the purposes of eternity and a soul's destiny, pride is defined as "the love of self perverted to hatred and contempt to one's neighbors."[20] For attorneys, pride is equated with the statutory linking of attorneys to that of a "debt relief agency" under BAPCPA. (Admittedly, a stretch, but please bear with the authors.) This little piece of Purgatory may seem less dramatic than Dante's, but its importance should not be minimized.

Courts are split on the question of whether attorneys are debt relief agencies under BAPCPA. BAPCPA defines a "debt relief agency" as anyone who provides *any bankruptcy assistance* to an *assisted person* in return for *the payment of money*

or other valuable consideration.[21] Debt relief agencies have been assigned numerous new duties under revised §§ 526-28 of the Code.

The term "bankruptcy assistance" includes any services "sold or otherwise provided" that are expressly or impliedly for the purpose of providing advice or counsel to an assisted person.[22] An "assisted person" is a person whose debts are primarily consumer debts in nature and that do not exceed $150,000.[23] Debts are "consumer in nature" when they are incurred primarily for personal, family, or household purposes.[24]

Explicitly excluded from the definition are: (1) those who act in the capacity of officer, director, employee, or agent of one providing bankruptcy assistance; (2) non-profit organizations exempt from paying taxes under § 501(c)(3) of the Internal Revenue Code; (3) a creditor who is assisting the debtor to restructure his debt with that particular creditor; (4) banks and credit unions; and (5) one who is acting in his capacity as an author, publisher, distributor, or vendor of works subject to copyright protection under Title 17.[25]

Whether an attorney is considered to be a debt relief agency (or not) is important because of the numerous responsibilities the statute assigns to debt relief agencies. Courts concluding that attorneys and/or their firms are debt relief agencies have explained that, because debt relief agencies provide "bankruptcy assistance," which may include legal representation, attorneys offering such legal representation are providing the service ascribed to the debt relief agencies, and thus fall within the definition of debt relief agencies.[26] Those same courts note that although Congress considered excluding attorneys from the definition of debt relief agencies, it did not.[27]

Courts that do exclude attorneys from the definition of debt relief agencies reason that, although the definition of debt relief agency encompasses many tasks typically performed by an attorney, the definition of debt relief agency does not explicitly mention "attorney" or "lawyer."[28] The term "attorney" is, in fact, defined elsewhere.[29] One court has opined that, because the term "attorney" clearly does not mean the same thing as "debt relief agency," the ordinary meaning of those terms should govern their statutory construction, absent special statutory definitions.[30] The same court declared the incorporation of "legal representation" into the services provided under the term "bankruptcy assistance" to be an instance of Congress's intention to protect consumers from the unauthorized practice of law by bankruptcy petition preparers.[31]

Another basis for excluding attorneys from the definition of debt relief agency is the doctrine of constitutional avoidance.[32] Any construction of a statute that creates grave constitutional questions is less desirable than a construction without such questions.[33] Still another argument takes a "split the baby" approach: even if attorneys generally *might* fit within the definition of debt relief agencies, at least one attorney has argued that an attorney working pro bono does not receive valuable consideration for his services, and therefore, the pro bono attorney should be excluded from the definition of debt relief agency, even though an attorney working for money is included in the definition.[34]

Because the statute seeks to govern the behavior of debt relief agencies, the construction that equates attorneys to debt relief agencies would tie those rules to attorneys.[35] The authors believe that such a construction is flat-out wrong, because states, not the federal government, traditionally govern attorney behavior;[36] moreover, even where there might be a need for some federal regulation of attorney behavior,[37] the rules governing certain statements that debt relief agencies may or may not make interfere with an attorney's ability to represent the client competently and zealously.[38]

Attorneys who practice in a jurisdiction that considers them to be debt relief agencies[39] will have to comply with a

multitude of new restrictions. For either a chapter 7 or 13 case, debt relief agencies must provide to the client a brief description of chapters 7, 11, 12, and 13, "and the general purpose, benefits, and costs of proceeding under each of those chapters,"[40] along with a brief description of the types of services available from credit counseling agencies.[41] Within three business days of a debt relief agency's "first offer of assistance," the debt relief agency must provide to the debtor a "clear and conspicuous written notice" that: (1) the debtor must disclose information with respect to his case that is "complete, accurate and truthful;"[42] (2) all assets and liabilities must be completely and accurately disclosed, along with their respective replacement costs stated "where requested after reasonable inquiry [has been undertaken] to establish such value;"[43] (3) information the debtor provides may be audited;[44] and (4) failure to provide information may be penalized by dismissal or other sanction, including criminal penalties. At least one analysis has concluded that an attorney may rely upon his client's representations as his "reasonable inquiry."[45] But beware: don't risk discipline under the assumption that an attorney is *always* safe in accepting her client's representations. If the attorney sees red flags[46] in what a client is saying, the attorney will likely have a duty to investigate those red flags further.[47]

Debt relief agencies must also provide, within those same three days, a notice containing the words, or words substantially similar to, those articulated in § 527(b).[48]

As a debt relief agency, a lawyer also must execute a contract with the debtor that is dated[49] before the date of the bankruptcy petition. The contract should explain the services that the attorney will provide to the debtor, the fees and the terms of payment, and the obligation of all debtors not eligible for exceptions[50] to complete a pre-discharge financial management course.[51]

Because all debtors must file the certificate verifying that the debtor has completed credit counseling, all attorneys practicing bankruptcy must deal with the introduction of the counseling organization into a now already convoluted mix. The presence of another party can have unforeseen consequences.[52]

BAPCPA imposes new, enumerated responsibilities upon attorneys. Those lost souls whom Dante met in Purgatory purged their sins of pride by having to bear the weight of heavy stones on their back, so that they were unable to stand up straight.[53] BAPCPA places similar stones on attorneys' backs, and prudence dictates that lawyers learn the new requirements, at least until and unless Congress or the courts revisit the issue conclusively.

LUST-Disclosures for all Attorneys

"[W]hen thus the instructor warn'd; 'strict rein must in this place direct the eyes. A little swerving and the way is lost.'"[54]

Dante characterized the deadly sin of lust as an excessive love of persons.[55] In the bankruptcy context, BAPCPA's excessive love of enumerating the various obligations that attorneys have always had is one legal analogy for "lust" (which the authors concede falls flat, so feel free to email them[56] with other suggestions).[57] Attorneys have disclosure requirements even beyond those obligations for debt relief agencies. Attorneys must insure that they meet the general notice requirements listed in § 342(c)-(g).[58] An attorney must file a certificate stating that he has performed a reasonable investigation of the circumstances giving rise to the bankruptcy petition, that the petition is well-grounded in fact and warranted in law, and that the attorney has no knowledge of any incorrect information contained within the documents that he has signed and filed with the court.[59] (Actually, attorneys always had these obligations under their state ethics rules; but now the obligations are linked directly to the Bankruptcy Code via BAPCPA).[60]

GLUTTONY-Multiple Filings

"Honey and locusts were the food whereon the Baptist in the wilderness fed..."[61]

Under BAPCPA, the court is prohibited from granting a discharge under chapter 13 if the debtor has received a discharge under chapters 7, 11, or 12 during the previous four years; or under chapter 13 during the two years before the date of the current order.[62] Courts also cannot grant discharges to chapter 7 debtors who have received a discharge "commenced within 8 years before the date of the filing of the [current] petition."[63] The new four-year bar between a chapter 7 discharge and a subsequent chapter 13 discharge curtails the practice of filing a "chapter 20," which consisted of first filing a chapter 7 petition to discharge as much debt as possible, promptly followed by a chapter 13 petition to allow the debtor to pay the remaining debt over time.[64]

Those in Dante's Purgatory who were guilty of gluttony were forced to stay between two fruit-laden trees, unable to partake of either one.[65] Debtors under BAPCPA will not get too many bites of the "discharge" apple, either.

GREED-Overreaching

"As avarice quench'd our love of good..."[66]

Pro bono attorneys are not usually associated with the deadly sin of greed. (As noted earlier, even the pro bono credit given by the state bar was not considered by one court to rise to the level of "valuable consideration").[67] The authors analogize the sin of greed as overreaching under the means-testing process under BAPCPA, and suggest reading some of the many articles written on this topic.[68]

WRATH-Sanctions[69]

"Blessed they, the peace-makers: they know not evil wrath."[70]

Dante described the deadly sin of wrath as the perversion of justice for revenge or

spite.[71] For these purposes, the authors would like to caution practitioners against incurring the wrath of the court, which usually is manifested in the form of sanctions against the offender. For an attorney to protect himself against sanctions, he must avoid making those mistakes outlined above. Above all, an attorney needs to know the Code, rules, procedures, and customs of bankruptcy law.

A court finding that an attorney representing a debtor violated Rule 9011 of the Federal Rules of Bankruptcy Procedure during a chapter 7 case may, *sua sponte* or "on the motion of a party in interest," assess civil penalties against the attorney for the benefit of both the debtor and a trustee.[72] In addition, the court may require the attorney "to reimburse the trustee for all reasonable costs in prosecuting a motion filed under [chapter 7]."[73] Lawyers must be familiar with the means test for debtors (described in § 707(b) of the Bankruptcy Code) to insure that their clients do not trigger the § 707(b) presumption of abuse.[74]

Summary: Dante and BAPCPA

Those violating this article's version of the sin of envy will not, as those in the Purgatory of Dante, have their eyes sewn shut to prevent them from enjoying the misfortune of others,[75] but they risk the suspension of their licenses to practice law, the sullying of their professional reputations, the payment of an uncomfortably large fine, and any further sanction a court may see fit to impose. Those who disregard these warnings of the sin of sloth will not, as Dante observed, be forced to run in perpetuity,[76] but they risk running afoul of the court's displeasure. Those who cannot avoid the deadly sin of pride will not walk around carrying heavy boulders on their backs,[77] but they will feel "bowed under" if they decide on their own (without case law or Congressional support) that they do not have to comply with the rules governing debt relief agencies.

Dante described the penitent in Purgatory purging his lust by walking through fire.[78] No court will ask a lawyer to walk through a single flame or over a single hot coal, but violating the notice requirements discussed above may land a lawyer in hot water with the court. If a lawyer engages in multiple filings contrary to the new rules, he won't suffer the pangs of hunger with food just out of reach,[79] but might notice a bitter taste in his (or the judge's) mouth.[80] Upon failing to measure a client's wealth (or at least his projected disposable income) accurately, a lawyer will not be forced to kneel on hard, uncomfortable ground, reciting examples of greed,[81] but might find himself in front of an angry tribunal, which can be just as uncomfortable.

We end by observing that no court will make a lawyer walk through thick clouds of smoke to force the realization that she has been blind to reason,[82] as those, guilty of the sin of wrath had to do in Dante's Purgatory. We hope that we have been able to clear the air and help lawyers avoid all seven deadly sins.

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Endnotes

1. Encyclopedia Britannica Online, *deadly sin*, at http://www.britannica.com/eb/article-9029629/deadly-sin (last visited on Jan. 21, 2007); *cf.* SE7EN (New Line Home Video 1996); BEDAZZLED (Twentieth Century Fox 1967); BEDAZZLED (Twentieth Century Fox 2000) (remake). **2.** DANTE ALIGHIERI, THE DIVINE COMEDY 149-289 (Henry Francis Cary, trans., Doubleday & Co. 1946) (c. 1310-14) [hereinafter Cary]. **3.** *Id.* at 186. **4.** *Id.* at 199, 210, 219, 227, 238, 250, and 259. **5.** Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). **6.** *See* Fed. R. Bankr. P. 1007 (2005), ("Lists, Schedules and Statements; Time Limits"); Rule 1009 (2006) ("Amendments of Voluntary Petitions, Lists, Schedules and Statements"); Rule 2002 (2005), ("Notices to Creditors, Equity Security Holders, United States, and United States Trustee"); Rule 3004 (2005), ("Filing of Claims by Debtor or Trustee"); Rule 3005 (2005) ("Filing of Claim, Acceptance, or Rejection By Guarantor, Surety, Indorser, or Other Codebtor"); Rule 5005 (2006) ("Filing and Transmittal of Papers"); Rule 7004 (2006) ("Process; Service of Summons, Complaint"); Rule 9001 (2005) ("General Definitions"); Rule 9006 (2005) ("Time"); Rule 9036 (2005) ("Notice by electronic transmission)." **7.** Cary, *supra* note 2, at 201. **8.** DANTE ALIGHIERI, THE DIVINE COMEDY 67 (Dorothy L. Sayers, trans., Penguin Books 1973)(c. 1310-14) [hereinafter Sayers]. **9.** At least one of us believes that any attorney who forgets the "mother, may I?" step of asking permission to appear in court is, in fact, a dodo. **10.** *In re Zuniga*, 332 B.R. 760 (Bankr. S.D. Tex. 2005), provides a perfect example of the fate of attorneys who fail to comply with the rules for admission to practice before a court. In this case, debtor Martha Zuniga contacted Select Financial Services ("Select"), a "credit repair" service based in California, to help alleviate financial pressures. 332 B.R. at 767–68. After determining that Zuniga, a Spanish-speaking janitor whose English was poor, did not qualify for any of its programs, Select persuaded her that filing for bankruptcy was the appropriate course of action. *Id.* at 768. Employees of Select charged Zuniga $1,190 to help her file a bankruptcy petition, and then referred Zuniga to the Bernal Law Group ("BLG"), a California law firm not licensed to practice in state courts in Texas or in the Southern District of Texas. *Id.* at 768-69. BLG hired Dion Craig, a Houston based attorney, to represent the debtor's interest locally. *Id.* at 767. Craig filed Zuniga's chapter 7 petition and associated documents with the Bankruptcy Court in the Southern District of Texas, despite his own ineligibility to practice before that particular court. *Id.* at 767, 770. An attorney for BLG prepared all of the documents filed by Craig, including a document required under rules implemented by the Central District of California, but not under the rules of the Texas court in this matter. *Id.* at 770. The court stated that, to practice before the Bankruptcy Court of the Southern District of Texas, an attorney must have either filed a written application with and received approval by the clerk of court, or have obtained permission from a judge before whom a "case or adversary proceeding is pending." *Id.* at 774. The first type of permission allows the attorney to practice before the court at any time. *Id.* The latter practice, called *pro hac vice*, allows the attorney to appear before the court only for that particular matter. *Id.* Because neither BLG nor Craig had obtained either type of authorization to practice before the court, each was subject to disciplinary action under the District Court's local rules, and each had "actually committed the unauthorized practice of law." *Id.* at 777 (citing TEX. DISCIPLINARY R. PROF'L CONDUCT 5.01, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A, art. 10, § 9 (Vernon 2005). The partner at BLG who directed a junior attorney to prepare the petition and associated documents assumed the responsibilities and of a partner or supervisory attorney as expressed under Rule 5.01. *Id.* Craig, by signing the petition declared himself to be the debtor's attorney, and became the "attorney-in-charge" of the case under the District's Local Rule 11. *Id.* at 791. Both BLG and Craig were sanctioned by the court, for these and other violations. *Id.* Craig, the local attorney, was ordered to disgorge all fees received in the matter and pay a $5,000 fine to the clerk of court. *Id.* at 789. **11.** *See* discussion, *supra* note 10. **12.** Cary, *supra* note 2, at 201. **13.** *Id.* **14.** Sayers, *supra* note 8, at 67. **15.** Cary, *supra* note 2, at 217. **16.** TEX. DISCIPLINARY R. PROF'L CONDUCT 1.01. One of us has referred to people unfamiliar with bankruptcy law as "bankruptcy wanna-bes." *See* C.R. Bowles & Nancy B. Rapoport, *Our House, Our Rules: The Need for a Uniform Code of Bankruptcy Conduct*, 6 AM. BANKR. INST. L. REV. 45, 72 (1998), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936343.

In *McIntyre v. Comm'n for Lawyer Discipline*, 169 S.W. 3d 803 (Tex. App.—Dallas 2005), the debtor's attorney stood accused of practicing bankruptcy law without having the requisite knowledge of the field. The lawyer had been handling a related matter for the debtor when a creditor filed an involuntary petition. *Id.* at 805. The debtor had disappeared before the filing, and the attorney was unable to contact him. *Id.* Among other things, the attorney signed papers in the debtor's name without the debtor's authorization, *id.*, signed amended pleadings attesting to his own competence, *id.* at 808, represented the client despite having no authorization to do so, *id.* at 813, and did so even though he knew that he lacked knowledge of the law and procedures of bankruptcy. *Id.*

The court understood the attorney's belief that exigent circumstances existed in the immediate aftermath of an involuntary filing. Even so, the continuance of legal representation beyond the limited need that the situation required exceeded the attorney's authorization, and the filing of the documents falsely attesting to facts was improper. *Id.* Ultimately, the court decided to suspend the attorney's license for 18 months and prohibit the attorney's future practice in the field of bankruptcy unless he associated himself with a competent bankruptcy attorney for another 18 months. *Id.* at 815. **17.** Cary, *supra* note 2, at 223-24. **18.** *Id.* at 192. **19.** *Id.* **20.** Sayers, *supra* note 8, at 67. **21.** 11 U.S.C. § 101(12A) (emphasis added). **22.** 11 U.S.C. § 101(4A). **23.** 11 U.S.C. § 101(3). **24.** 11 U.S.C. § 101(8). **25.** 11 U.S.C. §§ 101(12A)(A) – (E). **26.** *See Olsen v. Gonzalez*, 350 B.R. 906 (Bankr. D. Ore. 2006); Hersh v. U.S., 347 B.R. 19 (Bankr. N.D. Tex. 2000); In re Gutierrez, ____B.R.____, 2006 WL 3479669 (N.D. Cal. Dec. 1, 2006) (analyzing attorney responsibilities in the role of being debt relief agencies, while not directly confronting the constitutionality of burdening attorneys with those new responsibilities.); *In re Mendez*, 347 B.R. 34 (Bankr. W.D. Tex. 2006) (stating in dicta that attorneys are "in virtually all of these cases...debt relief agenc[ies]"); In re Chapter 13 Applications, 2006 LEXIS 2710 (Bankr. S.D. Tex. 2006) (equating the terms "attorney" to "debt relief agency," despite challenges in doing so). **27.** Olsen, 350 B.R. at 913-14. **28.** Milavetz, 2006 WL 3524399 at *18. **29.** *In re Attorneys at Law and Debt Relief Agencies*, 332 B.R. 66, 69 (Bankr. S.D. Ga. 2005) (pointing out that "attorney" is defined in 11 U.S.C. § 101(4)). **30.** *Id.* **31.** *Id.* **32.** *See, e.g.*, Milavetz, 2006 WL 3524399. **33.** Id. at *7 (*citing* Lies v. Flynt, 439 U.S. 438, 442 (1979) (stating that "[s]ince the founding of the republic, the licensing and regulation of lawyers has been left exclusively to the states."). **34.** *See In re Reyes*, ____B.R.____, 2007 WL 136934 (Bankr. S.D. Fla. Jan. 17, 2007) (holding, *inter alia*, that pro bono credit from the state bar association does not constitute "valuable consideration" by the debtor "in return for services" rendered and therefore determining that provisions on debt relief agencies "do not apply to attorneys providing *pro bono* representation to debtors,...who receive no payment whatsoever...in return for their representation."). **35.** *Id.* **36.** On the other hand, one of us is on record for suggesting that bankruptcy ethics rules should be subject to federal law, at least in chapter 11 cases. *See* Nancy B. Rapoport, *The Intractable Problem of Bankruptcy Ethics: Square Peg, Round Hole*, 30 HOFSTRA L. REV. 977 (2002). **37.** *Id.* **38.** In *Zelotes v. Martini*, 352 B.R. 17 (Bankr. D. Conn. 2006), the court found that § 526(a)(4) of the Bankruptcy Code was unconstitutional. That section prohibits attorneys from advising clients contemplating filing bankruptcy to incur more debt, regardless of whether the advice is prudent. 352 B.R. at 19. *Zelotes* analyzed the provision using two different standards. Under a "strict scrutiny" standard, the government may restrict speech only if: (1) the provision is "narrowly tailored to achieve" a (2) "compelling state interest." *Milavetz*, 2006 WL 3524399, at *3. Using the more lenient standard set out in *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), the court would weigh the rights of the attorneys under the First Amendment's provision guaranteeing the freedom of expression against the government's "legitimate interest in governing the activity in question" to determine whether the law imposed "only narrow and necessary limitations of the lawyers' speech." *Id.* The *Zelotes* court ruled that, under either standard, the provision failed; therefore, the court did not decide the issue of which standard applied. *Zelotes*, 352 B.R. at 22. Some other courts have reached the same conclusion. *See, e.g., Hersh v. United States*, 347 B.R. 19 (Bankr. N.D. Tex. 2006); *Olsen v. Gonzales*, 350 B.R. 906 (Bankr. D. Ore. 2006). **39.** *See supra* nn. 26-27 and accompanying text; *but cf.* nn. 28-34 and accompanying text. **40.** 11 U.S.C. §§ 342(b)(1)(A) & 527(a)(1). **41.** 11 U.S.C. §§ 342(a)(1) & 527(a)(1). **42.** 11 U.S.C. § 527(a)(2)(A). **43.** 11 U.S.C. § 527(a)(2)(B). **44.** 11 U.S.C. § 527(a)(2)(D). **45.** Henry J. Sommer, *Trying to Make Sense Out Of Nonsense: Representing Consumers Under The Bankruptcy Abuse And Prevention Act Of 2005*, 79 AM. BANKR. L.J. 191, 204 (2005) [hereinafter Sommer]. **46.** For example, a client who drives to your office in a "friend's" Corvette and who says he lives in that "friend's" house, rent-free. **47.** *See, e.g.*, In re Oliver, 323 B.R. 769 (Bankr. M.D. Ala. 2005) (imposing sanctions on an attorney for filing debtor's seventh chapter 13 petition in nine years in violation of an injunction despite client's misrepresentations to her because the attorney failed to search the electronic records of previous court filings.). **48.** 11 U.S.C § 527(b), which suggests the following language:

> IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.
>
> If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.
>
> The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.
>
> Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court.
>
> You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a "trustee" and by creditors.
>
> If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.
>
> If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.
>
> If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.
>
> Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.

49. We recommend not just *dating* the contract before filing the bankruptcy petition but *signing* it, too, of course. **50.** See 11 U.S.C. § 109(h)(4) for a list of exceptions. **51.** 11 U.S.C. § 727(a). **52.** For example, Rhode Island attorney Christopher Lefebvre dealt with a counseling agency that initially refused to give his client the necessary certificate upon completion of the course because the debtor did not possess a debit or credit card with which to pay for the course. Leslie E. Linfield, *Lightning Strikes Thrice: Emerging Issues in Bankruptcy Credit Counseling*, AM. BANKR. INST. L.J. (Feb. 1, 2006), *at* http://www.abiworld.org/AM/Template.cfm?section=February10&template=/MembersOnly.cfm&ContentID=42470 (last visited Jan. 21, 2007). The counseling service continued to fail to send the document despite its repeated assurances to Mr. Lefebvre. Because of those assurances, Lefebvre filed the petition, checking the box indicating that his client had completed credit counseling. As days passed without his client receiving the certificate, a frustrated Lefebvre filed a motion several days later stating "for some unknown, bizarre and extremely frustrating reason, the certificate of completion has yet to be forwarded to the undersigned." Ultimately, his client received the certificate,, Lefebvre withdrew the motion, and the court never ruled on the issue. *Id.* Lefebvre's reaction to the events? "I wasted time [and] energy, and the counseling was a colossal waste of time" because the client's financial misfortune was due to illness rather than mismanagement of funds. *Id.* **53.** Carey, supra note 2, at 196–98. **54.** Cary, *supra* note 2, at 254. **55.** Sayers, *supra* note 8, at 67. **56.** Our emails are nrapoport@uh.edu and rjbernie@central.uh.edu. **57.** We'd have analogized "lust" to a bad-faith debtor's tendency to run up credit card debt before filing, but this article is about attorneys, not about debtors. **58.** If notice is required, the text of the notice should contain the name, address and last four digits of the debtor's social security number, or if the notice concerns an amendment adding a creditor to the schedules of assets and liabilities, the text must contain the debtor's entire social security number. 11 U.S.C. § 342(c)(1). If a creditor has properly supplied the debtor with an account number and address to which all correspondence concerning the case should be directed within 90 days of beginning a voluntary case, any notice must be sent to the designated address and contain that account number. 11 U.S.C. § 342(c)(2). A debtor must use the addressed provided to him and the court by the creditor on any notice sent later than five days after the notice was received by the debtor or his representative. 11 U.S.C. § 342(e). A debtor must use the addressed designated by a creditor who has filed notice with any bankruptcy court when sending correspondence at any time later than 30 days from the date the creditor filed the notice with the court. 11 U.S.C. § 342(f). Any notice sent by the debtor not in accord with the above requirements "until notice is brought to the attention of the creditor." This includes notifying any designated person or subdivision that has been validly designated by the creditor. 11 U.S.C. § 342(g). **59.** 11 U.S.C. § 707(b)(4)(C)-(D). We're not sure yet what the requirements of "reasonable investigation" and "no knowledge of any incorrect information" mean, but we can point you to one useful source: the American Bar Association's Task Force on Attorney Discipline has drafted some recommendations to flesh out these concepts. *See* AD HOC COMMITTEE ON BANKR. COURT STRUCTURE AND INSOLVENCY PROCESSES, TASK FORCE ON ATTORNEY DISCIPLINE, ABA SECTION OF BUSINESS LAW, ATTORNEY LIABILITY UNDER SECTION 707(B)(4) OF THE BANKR. ABUSE PREVENTION AND CONSUMER PROT. ACT OF 2005 (2006), *reprinted in* 61 BUS. LAW. 697 (Feb. 2006).

60. The scope of this affirmation is apparently less than Congress may have intended when it passed the law. BAPCPA § 319 expresses Congress's sentiment that BR 9011 should be amended to cover all documents, including schedules, whether signed or unsigned, that the debtor submits to a bankruptcy court or a trustee in bankruptcy; however, the amendment to the statute actually limits the scope of the responsibilities and sanctions to those "petitions, pleadings, and written motions" containing the attorney's signature. Thank goodness. **61.** Cary, *supra* note 2, at 241. **62.** 11 U.S.C. § 1328(f). **63.** William Houston Brown, *Taking Exception To A Debtor's Discharge: The 2005 Bankruptcy Amendments Make It Easier*, 79 AM. BANKR. L.J. 419, 425 (2005) (citing 11 U.S.C. § 727(a)(8)). **64.** In light of the prohibition on the rapid filings of petitions, don't forget to do your own docket searches, rather than relying on the debtor's word. In *In re Oliver*, 323 B.R. 769 (Bankr. M.D. Ala. 2005), the court ruled that an attorney violated Rule 9011 by filing a petition on behalf of a debtor when the court had barred that particular debtor from filing due to previous multiple filings, because the attorney had failed to search the electronic records. **65.** Carey, *supra* note 2, at 241. Wrath has also been described as a denial of truth to others or oneself. *Id.* at 229. **66.** Carey, *supra* note 2, at 229. **67.** *See supra* note 34. **68.** As articulated in 11 U.S.C. § 707(b). **69.** *See, e.g.*, Nancy B. Rapoport, *Avoiding Judicial Wrath: The Ten Commandments for Bankruptcy Practitioners*, 5 J. BANKR. L. & PRAC. 615 (September/October 1996), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=940769. **70.** Carey, *supra* note 2, at 219. **71.** Sayers, *supra* note 8, at 67. **72.** 11 U.S.C. § 707(b)(4)(B). The ability of the court to assess a civil penalty is not new, however "this penalty, unlike those assessed *sua sponte* under Rule 9011, may be payable to a trustee, United States trustee, or bankruptcy administrator." Sommer, *supra* note 45, at 204. **73.** 11 U.S.C. § 707(b)(4)(A). **74.** *See* 11 U.S.C. § 707(b)(2). **75.** *See supra* note 10. **76.** *See supra* note 17. **77.** *See supra* note 53. **78.** *See* Carey, *supra* note 2 at 255. **79.** See *supra* note 65. **80.** Don't get confused and kiss the judge. That's bad, too. **81.** Carey, supra note 2, at 227. **82.** *See* Carey, *supra* note 2, at 215.