

## **LEGAL ADVICE VS. LEGAL INFORMATION TRAINING SCENARIOS**

In a training setting, such as this one, it is often easy to slip into an overly-confident mindset. Listeners may feel that they never cross the legal advice line no matter what the circumstances of an inquiry. But, when confronted with a specific situation where a caller is angry, hateful, cursing, threatening, tearful, desperate, crying, victimized, has experienced illness, disability, death, job loss, divorce, financial ruin, etc., composure may not be easy for a Chapter 13 employee. But, these are the very circumstances where the Chapter 13 employee must remain thoughtful, vigilant, and careful to consistently maintain neutrality and professionalism and comport with the law and with the Trustee's prohibition against legal advice. The person with whom you are talking may be under great personal stress, which can affect his or her ability to understand. Often, people under stress will truly believe that you said something that you never said at all. Do any of these sound familiar?

- 1. A debtor's attorney calls the Chapter 13 office and demands that the Chapter 13 paralegal review his debtor's plan and run a plan calculation because the attorney does not have all the necessary information or software, and to give him a plan payment that will amortize in 60 months by tomorrow's Court docket.**
- 2. A Chapter 13 employee finds a case running in excess of 75 months on a quality control report. The employee calls the debtor's attorney and informs him that it will be necessary to increase the plan payment to bring the case within statutory limits or the Trustee will file a motion with the Court to dismiss the case.**
- 3. A debtor's attorney calls the Chapter 13 office and speaks to a Case Analyst. He asks the Case Analyst how much money the debtor needs to commit to payment of unsecured creditors to get the Trustee off his back. The Chapter 13 employee conducts a liquidation analysis and gives the debtor's attorney a dividend for unsecured creditors.**
- 4. While conducting analysis of a case prior to a 341 Meeting of Creditors, a Chapter 13 employee discovers that the debtor's plan payment amount will not cover payments proposed to creditors, the attorney's fees, and Trustee's fees. The Chapter 13 employee emails the debtor's attorney, provides this information, and in addition suggests a new plan payment amount.**

- 5. A debtor calls a Chapter 13 Receptionist. The debtor is screaming that he is trying to buy a house, but that he has just discovered that the Bankruptcy Court never sent him a Discharge Order for a case that completed over a year ago. The Receptionist tells the debtor that he is out of control, to calm down, or she will end this conversation. The Receptionist then checks the debtor's case notes and tells the debtor that the reason he did not get his discharge is because he never paid his domestic support obligations.**
- 6. A debtor calls the Chapter 13 office. His case has just been dismissed "for no reason other than his dumb attorney didn't show up in Court" and the mortgage creditor has initiated foreclosure proceedings on his house. The debtor has tried and tried to reach his attorney who will not respond. The debtor asks the Chapter 13 employee how he can get his case reinstated before the sheriff arrives and evicts his family. The Chapter 13 employee tells him which motion to file and in what timeframe.**
- 7. A debtor calls the Chapter 13 office requesting a payoff of his case. The debtor shares with the Chapter 13 employee that he filed his case 30 months ago and that he is paying a 46% dividend to unsecured creditors. The Chapter 13 employee tells the debtor that no payoff can be calculated without an order from the Bankruptcy Court and to contact his attorney to file such a motion. The Chapter 13 employee then goes on to tell the debtor that he'd be better off waiting to request a payoff until 36 months from confirmation had elapsed in order to avoid paying a 100% dividend to unsecured creditors.**
- 8. A debtor calls the Chapter 13 office in hysterics. He cannot make his next plan payment because his child is in hospital after being hit by a car. The debtor asks the Chapter 13 employee what he should do. The Chapter 13 employee tells the debtor to contact his attorney. The debtor calls his attorney who in turn calls the Chapter 13 office and inquires of the Chapter 13 employee as to "how this problem can be worked out so that this debtor can focus on his child". The Chapter 13 employee suggests the following remedies: 1) file a motion to suspend payments; 2) file a motion to convert to Chapter 7; or 3) file an amended plan to reduce the plan payment.**
- 9. A creditor calls the Chapter 13 office inquiring as to why he is not being paid by the Trustee/ debtor. The Chapter 13 employee refers the creditor to**

his own attorney. The creditor becomes infuriated because he doesn't want to incur additional attorney fees on a non-paying loan. The Chapter 13 employee, intimidated by the creditor's wrath, then suggests that if the creditor just contacts his own attorney, that attorney can then file a motion to dismiss the case or a motion for relief from stay so that the creditor can go after its collateral.

10. An ex-spouse (she's not a Chapter 13 debtor) calls the Chapter 13 office and shares with the Staff Attorney that she is a DSO that has not been listed in the debtor's schedules. The ex is upset about the lack of payment of her alimony and child support and wants to know how the debtor is getting away with not including her as a creditor in his bankruptcy. She repeatedly asks "isn't it illegal for him to leave me off the schedules?"; "can he do that to me, is it legal?"; "I've got four kids to feed, what can I do?" The Chapter 13 employee tells the ex it is not legal for the debtor to leave her off the schedules and provides the caller with the debtor's attorney's name and telephone number.
11. A debtor's employer calls the Chapter 13 office and asks for information about the "Order To Pay Trustee". The caller states that the employer has received the Order that directs the employer to deduct the debtor's payment from his wages, but that it did not come with the debtor's complete name nor the employer's "exact" business name and address, so the caller states that the employer will not honor the Order. The Chapter 13 employee tells the caller that if the employer does not comply with the Order that the employer will be held in contempt by the Bankruptcy Court.
12. A debtor's employer calls and advises the Chapter 13 employee who fields the call, that the debtor is getting a bonus and wants to know whether or not the employer should deduct a payment from the bonus check. The Chapter 13 employee reads the actual text of the Wage Order to the caller. The caller argues that the employer feels that the Order could BE interpreted in many different ways. The Chapter 13 employee then tells the caller that the correct interpretation is that they 'should' make the deduction out of the debtor's wages for that payment or they will be held in contempt, then go to jail, and the debtor's case will be dismissed.
13. A *pro se* creditor sends a letter and a Proof of Claim to the Court. The letter states that the creditor received no notice of the bankruptcy filing and wants to be allowed to file a late claim. The Court treats the letter as a

**motion to file a late filed claim, but the *pro se* creditor did not receive electronic notice from the Court. In a Court oversight, the creditor letter, i.e. “motion” does not get set for hearing. The *pro se* creditor calls the Trustee’s office and says she’s heard nothing about her claim and wants to know what to do now? The Chapter 13 employee tells the creditor that her claim was filed out of time, the Judge decided not to set it for a hearing, and nothing else could be done.**

**A debtor’s case was dismissed for failure to make plan payments. A *pro se* creditor calls the Trustee’s office and asks what a “dismissal order” means? The creditor then inquires as to what his options are for collection of his debt. The Chapter 13 employee explains that a motion to dismiss is a court order ending the debtor’s case and that the creditor is free to do anything he wants like call the debtor or go pick up the coll**