

The Intersection of Domestic Relations and Bankruptcy Law:

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When is an obligation dischargeable?

I have spoken on this subject previously to separate groups of bankruptcy and domestic specialists. When addressing the topic of a “domestic” case that has become a “bankruptcy case,” I generally observed that neither group was well versed in the perspective or subject matter of the other. It is hoped that the following will provide non-bankruptcy specialists, and perhaps the occasional bankruptcy lawyer, with a suitable guide to issue spotting in the area of dischargeability relative to domestic obligations, as well as a jump start for their further research.

I. Dischargeability Under § 523(a)(5)

A. The basic statute.

Section 523 (a)(5) of the Bankruptcy Code provides, in pertinent part, that:

A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt owed to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or

territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt is assigned to another entity, either voluntarily or by operation of law, or otherwise (Nor does the determination extended to any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State, other than debts assigned pursuant to section 402(a)(26) of the Social Security Act [42 U.S.C. § 602(a)(26)]); or such debt which includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

Section 523(a)(5) is a sad commentary on statutory drafting, but with some work, the text reveals a few of the basics. A requirement exists that the obligation be “in connection with” a separation agreement, divorce decree or other court order. Any obligation arising outside this context may be discharged. A further requirement exists that the obligation be to a spouse, former spouse or child of the debtor. This language has been interpreted by most courts not to require that the payee be a spouse, former spouse or child of the debtor, but rather that the payment be required to fulfill an obligation with respect to such persons. Finally, a requirement exists that the obligation not be assigned, except where the assignment satisfies the requirements of § 523(a)(5)(A). This assignment language, for the curious, coordinates with the state-federal Aid for Dependant Children (AFDC) program, which requires an assignment of child support rights as a condition of AFDC eligibility.¹

B. Certain marital obligations are not dischargeable.

Three categories of financial obligations are addressed by § 523(a)(5): alimony or spousal support; child support; and property settlement obligations. Section 523(a)(5) does not distinguish between types of support. Definitional, spousal and child support, alimony, maintenance and support are all the same under the statute.

The distinction between “support” and “property settlement” is crucial. Alimony and support are prospective in nature, looking to the future financial needs of the spouse, former spouse or children of the debtor, while property settlements are, essentially, retrospective in nature, involving the division of assets and liabilities accrued during marriage. Section 523 (a)(5) allows a

discharge of property settlement obligations except to the extent that those obligations are really in the nature of support.

C. The distinguishing feature between support and property settlement obligations under § 523(a)(5) is intent.

Historically, the Bankruptcy Code provided for non-dischargeability of support only if ordered in a separation agreement, divorce decree or property settlement agreement.² Now, under the present § 523(a)(5), as amended by the Bankruptcy Amendments of 1984, support is not dischargeable if actually provided for in any order or in an agreement between the parties. The question then becomes whether the obligation that the debtor seeks to discharge is in the nature of support or property settlement, irrespective of the labels that the parties (or a state court) put upon the obligation.³ This determination depends upon the nature of the obligation itself, as opposed to the nature of the language used in describing the obligation.

D. Determination of whether an obligation is in the nature of support or property settlement is a bankruptcy issue under § 523(a)(5).

Federal law, not state law, determines whether an obligation is in the nature of support and is hence non-dischargeable.⁴ “This, however, does not mean

that state law is entirely irrelevant, because state law may be helpful in understanding the agreement.”⁵ For example, the definitions contained in the *Code of Virginia* precisely describe marital property which is to be divided in a property settlement.⁶

Do not mistake, however, reference to state law concepts of property law for a state law determination on what constitutes support under the statute. Support for these purposes may be an obligation not recognized under state domestic relations law, but agreed to by the parties and non-dischargeable under bankruptcy law. Consider, for example, a debtor’s promise to pay son’s graduate education⁷, and post-maturity child support and education.⁸ A bankruptcy court may determine that an obligation is in the nature of support regardless of whether state support law would require the creation of that obligation.⁹

E. Whether or not an obligation is in the nature of support or not is a question of intent—but whose intent?

The crucial inquiry where the court is interpreting a state court divorce decree is the intent of the state court judge.¹⁰ Where the final decree follows a commissioner’s report, the report may well be probative of the divorce court’s intent.¹¹ However, the failure of the state court to award monthly support payments is not cause for the bankruptcy court, to find that the oblig-

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ation was ordered by the state was a property settlement and hence dischargeable.¹² The crucial inquiry where the court is interpreting a voluntarily executed marital settlement agreement focuses on whether the parties intended the debtor’s obligation to support the ex spouse and children.¹³ *Tilley v. Jessee* is the leading case in the Fourth Circuit on § 523(a)(5).¹⁴ This case ought to be reviewed because it sets out the basic rules that the mutual intent of the parties must be examined;¹⁵ conduct subsequent to the parties agreement may be relevant in determining their mutual intent.¹⁶ (For example, treatment by the payor of the payments as deductible alimony under I.R.C. § 215 and treatment of the payments by the payee as income under I.R.C. § 71 may create a quasi-estoppel against any other characterization of the payments.¹⁷) “[o]bjective indicia” of the mutual intent may also be found in the agreement or order at issue. (For example, payments argued by the debtor to be child support, and otherwise dischargeable because the child was not a “child of the debtor.” Which were not objectively related to the child’s need and which would continue even after the child’s death, terminating on at the mother’s death, objectively could only be alimony.)¹⁸

The leading (it would appear) test of whether an obligation is “in the nature of” support in the Eastern District of Virginia is set for the in *Kettner v. Kettner*.¹⁹ Therein, Judge Clarke identifies and discusses “four principal indicators” of intent found in most of the case law on § 523(a)(5):

- (a) The “actual substance and language of the agreement.” Where the agreement is “well structured with separate provisions detailing spousal support and property rights,” the party with the burden of proving non-dischargeability will be faced with a “substantial obstacle” with respect to those segments of the agreement that purport to deal with a property settlement;
- (b) The “financial situation of the parties at the time the agreement was entered into.” Factors of this indicator include the respective incomes of the spouses, the stability of such income and the physical custody of the children of the debtor;
- (c) The “function served by the obligation at the time of the agreement.” The court may consider whether the obligation provided daily necessities, such as “food, clothes, shelter and transportation,” the standard of living during the marriage, and the statements of the spouses as to their understanding of the purpose of the payments;
- (d) Evidence of “overbearing at the time of the agreement that would cause the court to question the intent of a spouse.” Factors here include whether the parties were represented by counsel; whether

there was gross inequality of bargaining power; whether misrepresentations were made or whether the creditor spouse had knowledge of the debtor’s weaknesses or inability to fulfill the terms of the agreement.

Despite Judge Clarke’s test, there is no “fixed hierarchy” of factors in the Fourth Circuit that must be considered in determining intent;²⁰ instead, the choice of factors to be considered is “uniquely a function committed to the discretion of the trier of fact.”²¹ One bankruptcy court in the Fourth Circuit has listed 18 such relevant factors.²² Bankruptcy Judge Anderson of the Western District of Virginia has recently utilized an eight-factor test:

- (1) labels used in the separation agreement;
- (2) the income and needs of the parties at the time that the obligation became fixed;
- (3) the amount and outcome of property division;
- (4) whether the obligation terminates on the death or remarriage of the plaintiff;
- (5) the number and frequency of payments;
- (6) whether the plaintiff has waived alimony or support rights in the agreement;
- (7) whether the state court retains the right to modify the obligation or enforce it through contempt remedy; and
- (8) how the obligation is treated for tax purposes.²³

F. Nondischargeability of attorney’s fees: A former spouse or child need not be the payee for an obligation to be “in the nature of” support.

Several courts, most notably the Second and Tenth Circuits, have held

that it is not the identity of the payee that determines dischargeability, but the nature of the debt owed.²⁴ Attorney's fees incurred in divorce and separation situations make up the lion's share of cases in which the issue is discussed. The law is "well settled in the Fourth Circuit and the Eastern District of Virginia that attorney fee awards may be excepted from discharge under § 523(a)(5)."²⁵ However, the court must first determine whether the obligation connected with the fees is itself non-dischargeable.²⁶ The fact that formal payments of support were waived in a divorce decree does not necessarily lead to the conclusion that fees and costs awarded in the decree were not intended by the court as a form of support; the waiver has "no effect" on the bankruptcy court's obligation to decide the nature of the fees awarded.²⁷

The assignment clause of § 523 (a)(5)(A) is discussed in the context of an attorney fee award.²⁸ In *Silansky v. Brodsky, Greenblatt & Reheban*,²⁹ both the former spouses filed Chapter 7 cases after the divorce. However, one of the spouses listed the divorce judgment as property of the estate, leading the other to challenge the attorney fee in his case as being outside §523(a)(5) due to the assignment of the obligation to the bankruptcy trustee. The court rejected the argument stating, without citation, that the benefit received when a divorce decree requires the other spouse to pay attorney fees "is not a property right" and does not come into the estate pursuant to § 541(a)(1). (Query: what is it then?)

Once the notion is established that an obligation "in the nature of" support need not be paid directly to the former spouse or dependent, then other types of expenses related to support-type needs may be allowed by the court. For example, psychological testing and treatment in connection with a child

custody proceeding;³⁰ or the fees of a commissioner in chancery;³¹ or a child's guardian ad litem's fees and expenses.³²

G. Obligations under § 523 (a)(5) are not discharged unless and until some court litigates the issues and decides the case.

The federal and state courts share concurrent jurisdiction with respect to the dischargeability of § 523(a)(5) obligations.³³ Section 523(c) states that bankruptcy courts have **exclusive** jurisdiction to decide issues arising under sections 523(a)(2), (4), (6) and (15). As to all other exceptions to discharge, there is **concurrent** jurisdiction between the state and federal courts. Note carefully that "alimony, maintenance or support" are not standard debtor/creditor situations, but involve important issues of family law. Traditionally, the federal courts have been wary of becoming embroiled in family law matters."³⁴ This consideration of comity, in combination with the concurrent jurisdiction of the state courts over § 523 (a)(5) issues, makes this type of case a hot prospect for permissive abstention by the bankruptcy court pursuant to 28 U.S.C. § 1334 (c)(1). Any § 523(a)(15) issues which might be raised could return to the bankruptcy court at the conclusion of the state court § 523(a)(5) case for decision of the bankruptcy code.

Under Fed. R. Banr. Proc. 4007 (c), there is a 60-day time limit for filing a complaint under sections 523 (a)(2), (4), (6) and (15). There is no time limit under Fed. R. Bankr. Prpc. 4007(b) for filing complaint to determine dischargeability under § 523(a)(5). In fact, Rule 4007(b) states that the bankruptcy case may be reopened without payment of an additional filing fee to file such a complaint.

Section 727(b) of the Bankruptcy Code allows a Chapter 7 debtor a discharge

of all debts "except as provided in section 523" Section 523 excepts certain debts from discharge but then allows, in § 523(c)(1), for certain debts to be discharged unless the creditor files a timely objection to discharge. However, § 523(a)(5) is not excepted under § 523(c)(1).

Section 1328(a)(2) of the Bankruptcy Code specifically excepts § 523(a)(5) obligations from a Chapter 13 discharge, and § 1328(c)(2) specifically excepts § 523(a) obligations from a Chapter 13 "hardship" discharge. Thus, this issue of a discharge of a § 523(a)(5) obligation is never finally decided until actually litigated. Once actually litigated, the doctrine of collateral estoppel bars relitigation of the discharge issue, no matter which court, state or federal, presided over the case.³⁵ Note, however, that federal bankruptcy policies require that discharge issues be resolved only after the "fullest possible inquiry," so that collateral estoppel effect will not be afforded where dischargeability could have been, but was not, actually litigated.³⁶

H. Shifting the burden of proof on dischargeability.

The Black Letter rule is that the burden of proof on non-dischargeability is upon the party challenging the discharge.³⁷ The standard of proof is the preponderance of the evidence.³⁸ The Fourth Circuit has held that once a party objecting to discharge establishes a *prima facie* case, the burden of going forward to rebut the *prima facie* case shifts to the debtor.³⁹ The ultimate burden of persuasion remains upon the party objecting to the discharge. It is therefore possible that the text of a settlement agreement or order may sufficiently establish a *prima facie* case that an obligation is in the nature of support and therefore is non-dischargeable:

If the parties to an agreement are willing to set forth clearly, and willing to acknowledge in writing the mutual intent which they hold in making an agreement, the courts, in interpreting that agreement, must take them at their word unless the remainder of the text of the agreement reveals a reason not to do so. This is particularly true when the parties were presented by competent counsel and incorporated their agreement into a court order.⁴⁰

In such a case, the burden of production will properly be shifted to the debtor.

II. Dischargeability Under § 523(a)(15)

A. The background of § 523(a)(15).

Section § 523(a)(15) of the Bankruptcy Code provides, in pertinent part, that:

A discharge under section 727, 1141, 1228 (a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt— (15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation agreement, divorce decree or other order of a court of record, a determination made in accordance with the state or territorial law by a governmental unit, unless (A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and

operation of such business; or (B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor

The Bankruptcy Reform Act of 1994 added paragraph (15) as an additional exception to the exemptions from discharge created by § 523(a)(5). The legislative history indicates that the provision was added to except from discharge those obligations not excepted under § 523(a)(5) which still outweighed the debtor's need for a fresh start.⁴¹

At the same time Congress added § 523(a)(15) to the Code, Congress amended § 523(c)(1) to add subparagraph (15) to the list of obligations which will be automatically discharged unless the creditor timely files an action to have the debt declared non-dischargeable. This distinction between § 523(a)(5) obligations and § 523(a)(15) is particularly important in Chapter 13 cases, where the former are non-dischargeable priority claims, but the latter will be normally dischargeable.⁴²

The important issue raised by § 523(a)(15) and amended § 523(c)(1) is this: Obligations excepted from discharge under § 523(a)(5) slide through the bankruptcy if the parties do nothing, but obligations potentially excepted from discharge under § 523(a)(15) will be discharged unless a timely dischargeability complaint is filed. So can a non-debtor spouse now ever not file a dischargeability complaint? A failure to do so appears to forfeit the right to raise non-dischargeability issues under § 523(a)(15) in any future action if the obligations turn out not to be “in the nature of” support under § 523(a)(5).

Bankruptcy Judge Pearson so disliked this prospect that he held, in *In re: Minnick*,⁴³ that since Congress could not have intended that the non-debtor spouse and children have the burden of “pleading the debtor's affirmative defenses,” then the debtor has the burden of bringing an adversary proceeding to determine both dischargeability under § 523(a)(5) and also whether § 523(a)(15) is applicable to the case.

B. The scope of § 523(a)(15).

The statute addresses common support arrangements between spouses that defy easy identification, such as where one spouse agrees to smaller alimony based upon a larger (than otherwise entitled to) property settlement, or where one spouse agrees to hold the other harmless from marital debts in exchange for a reduction in support. Under § 523(a)(5), if such property settlement and hold harmless agreements are not found to be “in nature of” support, the obligations will be discharged, thus the need to be careful when negotiating settlements.

Section 523 (a)(15) allows a potential second bite at the apple where such arrangements are not found to be “in the nature of” support. Obligations not in the nature of support are not dischargeable if the debtor has the ability to pay the obligation or the benefit of a discharge to the debtor outweighs the detriment imposed upon the creditor. Note that § 523(a)(15) is framed in the disjunctive: A debtor need prove only one or the other.

C. The burden of proof under § 523(a)(15).

An “overwhelming majority” of courts that have considered this issue have decided that creditors bear the burden of establishing a *prima facie* case that the obligation arose out of a property

settlement agreement to which § 523(a)(15) applies. But the “overwhelming majority” of courts have also decided that thereafter the burden shifts to the debtor to prove an inability to pay, or that the benefit of the discharge outweighs the detriment to the non-debtor spouse.⁴⁴

However, Bankruptcy Judge Mitchell has held that the inability to pay and the balance of harm are affirmative defenses to be plead and proved by the debtor.⁴⁵

D. Tests, anyone?

The “ability to pay” test of § 523(a)(15)(A) seems to have been quickly equated with the “disposable income test” of § 1325(b)(2), which centers on whether the debtor’s expenses are reasonably necessary for the support of the debtor and his or her dependents. Support obligations continue to take precedence over property settlement debts. It is not clear when the debtor’s expenses are to be measured.⁴⁶ Chief Judge Tice of the Eastern District has held that a debtor’s ability to make payments over time controls.⁴⁷

The “balance of harm” test mandated by § 523(a)(15)(B) is essentially wide open, having been described as a “totality of circumstances” test.⁴⁸ The court in *In re: Phillips*⁴⁹ provides that this subsection requires the court to exercise its purely equitable powers to make a value judgment as to which party will suffer the most for the proposed action. Generally, one would expect the usual factors of this “balance of harm” test to include, but not be limited to, the following: the respective incomes and expenses of the parties; whether the non-debtor spouse is jointly liable on the obligation; the number of dependents; the nature of the obligation; the reaffirmation of debts; the ability of the non-debtor

spouse to pay the debt; and whether the debt may be collected from the non-debtor spouse.⁵⁰

E. Non-applicability in Chapter 13.

The § 523(a)(15) exception to discharge does not apply in Chapter 13 cases. With the exception of the hardship discharge of provision § 1328(b), property settlement obligations may therefore be treated within a Chapter 13 plan as general unsecured debt, with any amount not paid through the plan being discharged.

F. Nondischargeability for fraud.

Where bankruptcy follows closely upon execution of a property settlement or entry of a divorce decree, the non-debtor spouse seeking to enforce a property settlement obligation should also consider seeking an exception to discharge pursuant to the fraud provisions of § 523(a)(2)(A):

- (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by
 - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.

III. Dischargeability Under § 523(a)(18)

Section 523 (a) (18) of the Bankruptcy Code provides that an obligation is nondischargeable to the extent that it is:

- (18) owed under state law to a state or municipality that is (A) in the nature of support and

(B) enforceable under part D of the title IV of the Social Security Act (42 U.S.C. 601 et seq.).

Added by the 1994 Reform Act, § 523(a)(18) joins § 523(a)(5)(A) in preserving the nondischargeable nature of support claims which have been assigned under certain circumstances to governmental entities. *Colliers on Bankruptcy*, a well-known bankruptcy treatise, suggests that § 523 (a)(18) is designed to eliminate any question as to the nondischargeability of state and municipal claims against support obligors.⁵¹

IV. Practical Tips

The manner in which a property settlement agreement is drafted may have implications for bankruptcy, as well as for taxation. A potential debtor will wish to characterize an obligation as arising in property settlement, so that it will be dischargeable in Chapter 13 and potentially dischargeable in Chapter 7. A potential non-debtor spouse will wish to characterize an obligation as nondischargeable support. These anticipated positions of the parties related to the dischargeability of marital obligation in bankruptcy might well prove the opposite of those taken by the same parties on issues of taxation. Counsel for each party should attempt to draft with knowledge of the significant factors invoked by the bankruptcy courts in determining support versus property settlement obligations.

When representing the non-debtor spouse in bankruptcy, the first consideration should be whether a proof of claim may properly be filed asserting a priority claim for support. An adversary proceeding may be filed seeking a declaratory judgment as to whether a

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claim constitutes support or property settlement. In Chapter 7, a timely adversary proceeding should be filed seeking to have any property settlement claims found non-dischargeable pursuant to 11 U.S.C. § 523(a)(15).

If representing the debtor spouse, consider filing an objection to a priority claim of the non-debtor spouse on the basis that the obligation constitutes property settlement and not support. Likewise, the debtor may also file an adversary proceeding seeking a determination of whether a claim constitutes support or property settlement. In a Chapter 7 case, the debtor might wish to file such a proceeding after the bar date has passed for filing a dischargeability complaint regarding § 523(a)(15), which is 60 days after the first date set for the § 341 meeting. Should the non-debtor spouse file a § 523(a)(15) dischargeability complaint in a Chapter 7 case, debtor's counsel should consider whether "affirmative defenses" may be asserted pursuant to § 523(1)(15)(A) and (B). If a property settlement obligation is found nondischargeable in Chapter 7, then consider conversion to Chapter 13. ☞

Endnotes:

- 1 See also *McLean v. Virginia Dept. of Social Services*, 59 B.R. 675 (Bankr. E.D. Va. 1986)(B.J. Shelley)(Social Security Act, not Code, controlling provision re: dischargeability of AFDC-related child support obligations).
- 2 See 11 U.S.C. § 523(a)(5)(1979).
- 3 *Long v. West*, 794 F.2d 928, 931 (4th Cir. 1986); *Ferraro v. Ballard (In re Ballard)*, No. 00-71225-

- S, 2001 Bankr. LEXIS 1661 at *27-28 (Bankr. E.D. Va. July 18, 2001).
- 4 *Long*, 794 F.2d at 930; *Ferraro*, 2001 Bankr. LEXIS at *24; *In re Taylor*, 252 B.R. 346, 352 (Bankr. E.D. Va. 1999).
- 5 *In re Catron*, 164 B.R. 912, 916 (E.D. Va. 1994).
- 6 See *In re Robertson*, 187 B.R. 159, 164-65 (Bankr. E.D. Va. 1995)(real property is "marital property as defined in Section 20-107.3 of the *Code of Virginia*").
- 7 *Boyle v. Donovan*, 724 F.2d 681 (8th Cir. 1984).
- 8 *In re Harrell*, 754 F.2d 902 (11th Cir. 1985).
- 9 *Lauson v. Lauson (In re Lauson)*, No. 92-2154, No. 92-2163, 1993 U.S. App. LEXIS 32043 at *31-32 (4th Cir. Dec. 9, 1993)(unpublished opinion)(citing *Boyle*, *supra* n. 24, and *Harrell*, *supra* n. 25).
- 10 *Foiles v. Taylor*, 174 B.R. 692, 694 (E.D. Va. 1994)(citing *Hirschler, Fleischer, Weinberg, Cox & Allen v. El-Amin, (In re El-Amin)*, 145 B.R. 836, 838 (Bankr. E.D. Va. 1991).
- 11 *Id.* (citing *Beaton v. Zerbe (In re Zerbe)*, 161 B.R. 939, 940 (E.D. Va. 1994)).
- 12 *Ewing v. Ewing (In re Ewing)*, 180 B.R. 443, 447 (Bankr. E.D. Va. 1994).
- 13 *Tilley v. Jessee*, 789 F.2d 1074, 1077 (4th Cir. 1986).
- 14 *Id.*
- 15 *Id.* at 1078.
- 16 *Id.*
- 17 See *Robb v. Robb (In re Robb)*, 23 F.3d 895, 898 (4th Cir. 1994)("we find this reasoning persuasive").
- 18 *Id.* at 899.
- 19 *Kettner v. Kettner*, 1991 U.S. Dist. LEXIS 21130 (E.D. Va. Nov. 19, 1991).
- 20 *In re McCauley*, 105 B.R. 315, 318-19 (E.D. Va. 1989)(J. Ellis).
- 21 *Id.* at 319.
- 22 *Coffman v. Coffman*, 52 B.R. 667 (Bankr. D. Md. 1985).
- 23 *Rodriguez v. Williams (In re Williams)*, No. 01-04087-WA4-7, 2003 Bankr. LEXIS 396 at * 7-8 (Bankr. W.D. Va. Mar. 28, 2003)(citing 4 *Collier on Bankruptcy*, "Exceptions to Discharge", ¶ 523.04 at 523-19 (15th ed. rev.)).
- 24 See, e.g., *Miller v. Gentry*, 55 F.3d 1487, 1490 (10th Cir. 1995); *In re Spong*, 661 F.2d 6, 9-10 (2nd Cir. 1981); *Adamas v. Council, Baradel, Kosmerl & Nolan, P.A. (In re Adams)*, 254 B.R. 857, 862 (D. Md. 2000); *In re Laing*, 187 B.R. 531, 533 (Bankr. W.D. Va. 1995)(following the reasoning of *Miller*).
- 25 *Ferraro*, 2001 Bankr. LEXIS at *100 (quoting *Robertson*, 187 B.R. at 163, *supra* n. 23).

- 26 *Taylor*, 252 B.R. at 352, *supra* n. 21; *Bulman v. Bulman (In re Bulman)*, 123 B.R. 24 (Bankr. E.D. Va. 1990)(fee award non-dischargeable where both property division and support at issue).
- 27 *Zerbe*, 161 B.R. at 940, *supra* n. 28.
- 28 *Silansky v. Brodsky, Greenblatt & Rebehan*, 897 F.2d 743 (4th Cir. 1990).
- 29 *Id.*
- 30 *Laing, supra* n. 41.
- 31 *Foiles v. Foiles (In re Foiles)*, 174 B.R. 692 (E.D. Va. 1994).
- 32 *Miller*, 55 F.3d at 1487, *supra* n. 41.
- 33 *In re Crauford*, 183 B.R. 103, 105 (Bankr. W.D. Va. 1995); *Douglas v. Douglas*, 17 Va. App. 380, 437 S.E.2d 244 (Va. App. 1993).
- 34 *Carver v. Carver*, 954 F.2d 1573, 1578 (11th Cir. 1992); *Weller v. Dept. of Soc. Serv.*, 901 F.2d 387, 396 (4th Cir. 1990)("Federal courts have traditionally avoided deciding issues of family law.").
- 35 *Rosenbaum v. Cummings (In re Rosenbaum)*, 150 B.R. 994, 996 (E.D. Tenn. 1993).
- 36 *Combs v. Richardson*, 838 F.2d 112 (4th Cir. 1988); see also *Federal Ins. Co. v. Gilson (In re Gilson)*, 250 B.R. 226 (Bankr. E.D. Va. 2000)(discussing at length the application of the doctrines of collateral estoppel and res judicata in bankruptcy dischargeability cases).
- 37 *Bulman*, 123 B.R. at 26, *supra* n.43; Fed. R. Bankr. Proc. R. 4005.
- 38 *Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991); *Ferraro*, 2001 Bankr. LEXIS at *50 (citing *Grogan*, *supra* n. 20).
- 39 *In re Catron (Catron v. Catron)*, 1994 U.S. App. LEXIS 36061 (4th Cir. Dec. 21, 1994)(unpublished opinion).
- 40 *Catron*, 164 B.R. at 917, *supra* n. 22.
- 41 See 4 *Collier on Bankruptcy*, ¶ 523.21 (15th ed. rev. 1997).
- 42 See 4 *Collier on Bankruptcy*, ¶ 523.21 at 523-106 (15th ed. rev. 1997).
- 43 *In re Minnick*, 198 B.R. 187, 190 (Bankr. W.D. Va. 1996).
- 44 *Rodriguez*, 2003 Bankr. LEXIS at * 13-14, *supra* n. 40; *Craig v. Craig (In re Craig)*, 196 B.R. 305, 308 (Bankr. E.D. Va. 1996).
- 45 *Rodriguez*, 2003 Bankr. LEXIS at 14, *supra* n. 40; *King v. Speaks (In re Speaks)*, 193 B.R. 436 (Bankr. E.D. Va. 1995). Therefore (at least in Judge Mitchell's Court), a § 523(a)(5) dischargeability complaint need not address the elements of § 523(a)(15).
- 46 See, e.g., *Hill v. Hill (In re Hill)*, 184 B.R. 750, 754 (Bankr. N.D. Ill. 1995)(time of complaint); *Collins v. Hesson (In re Hesson)*, 190 B.R. 229, 238 (Bankr. D. Md. 1996)(time of trial); *Taylor v. Taylor (In re Taylor)*, 191 B.R. 760, 767 (Bankr. E.D. Ill. 1996)(no certain time).
- 47 *Craig*, 196 B.R. at 310, *supra* n. 61; see also *Ferraro*, 2001 Bankr. LEXIS at *50, *supra* n. 20 (following *Craig* and citing additional cases in support).
- 48 *Id.* at 309.
- 49 *Phillips v. Phillips (In re Phillips)*, 187 B.R. 363 (Bankr. M.D. Fla. 1995).
- 50 *Craig*, 196 B.R. at 309.
- 51 4 *Colliers on Bankruptcy* ¶ 523.24.



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