

Committee Opinion
February 27, 1990

LEGAL ETHICS OPINION 1327

BANKRUPTCY PRACTICE –
REPRESENTING A CLIENT WITHIN
THE BOUNDS OF THE LAW:
REPRESENTING CREDITOR IN A
DEFAULT JUDGMENT AGAINST CO-
DEBTOR WHEN DEBTS HAVE BEEN
DISCHARGED PURSUANT TO
CHAPTER 7 OF THE BANKRUPTCY
CODE.

You have asked the Committee to consider the propriety of an attorney representing Creditor in seeking a default judgment against Co-Debtor. You have indicated, however, that all of the Co-Debtor's debts were discharged pursuant to Chapter 7 of the Bankruptcy Code. Furthermore, you state that the Co-Debtor was solely or contributorily liable on the Creditor's debt.

The Committee believes that the appropriate and controlling Disciplinary Rules relative to your inquiry are DR:2-107(A)(1) and (2). They provide that a lawyer shall not file a suit or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another, nor shall a lawyer knowingly advance a claim, or defense, that is unwarranted under existing law, unless such claim or defense can be supported by a good faith argument for an extension, modification, or reversal of existing law. (See also DR:7-102(A)(1) and (2))

Thus, the Committee opines that the filing of a civil suit in the hopes of obtaining a default judgment against a debtor on a debt discharged by a prior bankruptcy court order would be violative of the Code of Professional Responsibility when the lawyer knows of the prior discharge. (See DR:7-102(A)(2) and LE Op. 224 and LE Op. 1224) The Committee is of the opinion that LE Op. 491 is inapplicable to the circumstances you have described.

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