BANKRUPTCY!

Now What Do I Do?

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<u>BANKRUPTCY Q&A</u>

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Q1. I just received a notice that one of my Respondents has filed for Bankruptcy. <u>Now what do I do?</u>

A. First determine the amount that is actually owed to your Fund and decide if it is worth fighting for. There is a filing fee (currently $250) to file a Complaint contesting dischargeability, and the time involved may take you away from other pressing matters. If you are paying outside counsel, the costs may make it unattractive to pursue a small debt. If it is a Chapter 7 case, they are trying to completely write off the debt, alleging that they have no, or few, assets with which to pay their debts. If it is Chapter 13 case, they may try to offer a partial payment over a period of time and to write off the balance.

Q2. We did not get a formal notice and have no information about the bankruptcy petition. We just heard a rumor that the respondent is in bankruptcy. How do we find out about the bankruptcy case?

A. The NJ Fund has an account at <u>www.pacer.gov</u> where we can look up public court records. Click on "Court Links" and then click on your state under the column for U.S. Bankruptcy Courts. Click on "document filing system" and then log in to your pacer account. Click on "query" and enter the name of your respondent to find the number of the bankruptcy case. Then click on "reports" and "docket" and enter the case number to get a docket report for the bankruptcy matter. From the docket report, you can determine where the case is currently in the process and you can also print out a copy of the bankruptcy petition. If the Fund is not listed as a creditor, but a claimant you paid was listed in the bankruptcy petition as a creditor to be discharged, you will need to point out to the court that the Fund is the real creditor and that you intend to file a Complaint to determine dischargeability of the debt.

Q3. OK, we did the cost/benefit analysis and we want to pursue the respondent. Now what?

A. First file a Notice of Appearance. (Exhibit A). After filing the Notice of Appearance, you should receive a notification about the date and location of the

meeting of creditors and the deadline to file your Complaint from the court. (Exhibit B). You can also determine that date from the docket report.

Q4. Why would I go to the creditors meeting?

A. This is an opportunity to question the debtor about their assets and to share with the Bankruptcy Trustee your concerns and any information you may have about the respondent that is pertinent to the bankruptcy. You will not be allotted much time to do this, usually just minutes, so be sure to prioritize what questions you want to ask and the information that you want to share. See 11 U.S.C. §341 and §343. If you would like to conduct a more thorough examination at another time, a motion is required under Rule 2004 of the Federal Rules of Bankruptcy Procedure (FRBP). If you have already missed the meeting of creditors, you can still share the information that you have with the bankruptcy trustee in a letter or phone call.

Q5. What if we know about assets that the respondent has and we're afraid that the respondent will deplete those assets?

A. If you are a secured creditor, you can file a motion requesting protection of those assets. See 11 U.S.C. §361, §362(d)(1), §363(e) and §364(d). In addition, 11 U.S.C. §362(f) permits *ex parte* relief from the stay in situations where irreparable harm might occur to the Fund before an opportunity arises for notice and a hearing under the normal procedures. See 11 U.S.C. §507(b) regarding priority, §547 regarding preferences, and §548 and §727(a)(2) regarding fraudulent transfers or concealment of property. Also see 18 U.S.C. §152 which makes it a crime to conceal assets or make false oaths and claims, and §157 dealing with bankruptcy fraud. See FRBP 4001 regarding relief from the automatic stay and 4003 regarding exemptions.

Q6. Speaking of 18 U.S.C., which is the criminal code, there may be a judgment of conviction from criminal proceedings against the respondent requiring the payment of restitution. What impact does that have on the dischargeability of the debt?

A. Under 11 U.S.C. §523(a)(13), a discharge......does not discharge an individual debtor from any debt for any payment of an order of restitution issued under title 18 U.S.C. When you become aware that a respondent is being criminally prosecuted, you should reach out to the prosecutor and request that restitution be required under the criminal judgment of conviction.

Q7. We are ready to prepare the Complaint. What is the basis for the Complaint?

A. Gather the materials about the claims you paid, your judgment if you have one, and the balance due to your Fund, and prepare your Complaint. The basis for the Complaint is that the debt owed to the Fund is not dischargeable in bankruptcy

per 11 U.S.C. §523(a)(2)(A) for money, property, services,......, to the extent obtained by false pretenses, a false representation, or actual fraud.... Or in the alternative, per 11 U.S.C. §523(a)(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny. Your argument will be more effective if you have an underlying judgment against the respondent that you obtained in your state court based on a complaint that included these "magic words". See FRBP 4007 and 7001. (Exhibit C).

Q8. Is there anything special we need to consider?

A. Yes, 11 U.S.C. §523(d) provides for fee shifting in favor of the respondent if your complaint to determine dischargeability under §523(a)(2) was not substantially justified. The Fund must prove that the debt is not dischargeable by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 111 S. Ct. 654, 112 L. Ed. 2d 755, 24 C.B.C.2d 1 (1991). You must state in the Complaint that the matter is a core proceeding under 28 U.S.C. Section 157(b)(2)(I) and that the court has jurisdiction over the adversary proceeding.

Q9. What is the next step?

A. Wait – Yes, wait until a few days before the deadline for filing the Complaint. The filing is fee is $250 and you might save that money if the bankruptcy petition is dismissed for any type of deficiency in the filing. If the debtor does not properly complete and file all of the required schedules, or they don't attend financial counseling, or if the payment plan is unrealistic, then the bankruptcy Trustee may make a motion to dismiss the case. BUT, do not miss the filing deadline as these are strictly enforced.

Q10. When is the deadline for filing a Complaint to determine dischargeability of the debt?

A. The court has thus far advised the NJ Fund of the date of the filing deadline, which is 60 days after the fist scheduled meeting of creditors. These deadlines are strictly enforced.

Q11. So when do I file, & where, & how?

A. File your complaint a few days before the deadline, then you will have the time to correct any errors that the court may discover. Make sure you include the necessary forms, which in NJ include the Adversary Proceeding Cover Sheet and the Summons and Notice of Pretrial Conference. Check your local Rules to see which forms are required in your district, as this varies. The forms are usually available on the website www.uscourts.gov.

In New Jersey there are three bankruptcy courts; in Newark, Trenton & Camden. If a petition is filed in Newark, we can file our response in Trenton where our

offices are. Check with your district to see what their rules are. The courts would prefer that you file electronically and you are limited to the number of "hard copy" or paper documents that you can file. You will have to go to training to learn how to file electronically. The court provided this training for free, allowed me to select an ID for electronic filing, and provided directions for indicating my signature on the documents filed electronically. See FRBP 5005.

Q12. What happens after the Complaint is filed?

A. First you have to pay that filing fee. Many law firms have a credit card number on file with the bankruptcy court to charge the fee against. Since the NJ Fund does not have a credit card, we cut a check and hand deliver it to the bankruptcy court clerk in Trenton, where our offices are located. Until the check is received by them, our filing privileges are suspended.

Q13. OK, so what happens after the Complaint is filed & we paid the fee?

A. In NJ, the court will return a completed Summons and Notice of Pretrial Conference form noting the date, time and location of the Pretrial Conference. (Exhibit D). We must then serve the following on the respondent by first class mail within 14 days after the summons is issued: the Complaint, the Summons and Notice of Pre-Trial Conference, Instructions, and a Joint Order Scheduling Pretrial Proceedings and Trial. (Exhibit E). After you have mailed these documents to the respondent, make sure you file the proper certificate of service with the court. See FRBP 7004 and Rule 4 of the Federal Rules of Civil Procedure (F.R.Civ.P).

Q14. I could only partially complete the Joint Order Scheduling Pretrial Proceedings and Trial form from the information provided by the court in the Summons and Notice of Pretrial Conference form before mailing it to the respondent. When is the completed form due back to the court?

A. You must confer with the respondent and arrive at a mutually agreeable schedule. The Fund is responsible for making sure that this happens on a timely basis. But first review F.R.Civ.P. 26 regarding the general provisions governing discovery, which would apply here. Per F.R.Civ.P. 16, the judge must issue the scheduling order within 120 days after the complaint has been served or 90 days after the defendant appeared. Per F.R.Civ.P. 16(f), failure to participate in framing of a discovery plan or follow the schedule may result in sanctions, which may include the Court granting expenses to the other party. In addition to the federal Rules, you should check the local Rules to determine what your deadline is. Once you have agreed on a schedule, file it with the court and serve a copy on the respondent. The court should then sign the scheduling order.

Q15. What happens if we can't reach an agreement or the respondent does not respond or otherwise does not cooperate?

A. The judge will not be pleased when you appear at the pretrial conference, so it is important that you keep a record of the dates, times, and manner in which you attempted to reach out to the respondent regarding this schedule. Something will be worked out at the pretrial conference if no agreement has been made in advance.

Q16. What happens if the respondent does not reply to the Complaint?

A. If they do not file a responsive pleading within 30 days after being served with the summons and complaint and raise their defenses, then the allegations will be deemed admitted. See FRBP 7012. Per FRBP 7008, the general rules of pleading under F.R.Civ.P. 8 apply to these proceedings.

Q17. Does that mean the respondent's debt to the Fund is automatically declared not dischargeable?

A. No, you must follow F.R.Civ.P. 55 and apply to the court for a default judgment.

Q18. What happens when respondents indicate that they are not going to contest the matter and they agree that this debt is not dischargeable?

A. You could request that they sign a Consent Order to that effect to be approved by the court. (Exhibit F). You may also obtain a reaffirmation agreement, making sure to use the correct forms available on the website www.uscourts.gov. Please Note - The required attorney affidavit should signify that the attorney investigated and explained to the debtor the relevant facts about the reaffirmation. Failure to do so can lead to annulment of the reaffirmation agreement and may be grounds for sanctions under Rule 9011. *In re* Melendez, 235 B.R. 173 (Bankr. D. Mass. 1999). *Accord In re* Vargas, 257 B.R. 157 (Bankr. D.N.J. 2001); *In re* Bruzzese, 214 B.R. 444 (Bankr. E.D.N.Y. 1997). See 11 U.S.C. §524 for disclosure requirements. See FRBP 4008 regarding filing and statement in support of the reaffirmation agreement.

Q19. What happens if the respondent files an answer to the complaint and a counter claim?

A. Per FRBP 7012, the respondent has 30 days after the issuance of the summons to serve an answer. Make sure you respond to the counterclaim within 21 days and raise the defenses you may have or the allegations will be deemed admitted if they are not denied. Per FRBP 7008, the general rules of pleading under F.R.Civ.P. 8 apply to these proceedings. See F.R.Civ.P. 12 and 13.

Q20. The respondent alleged that we violated the "automatic stay". What is that?

A. Once a bankruptcy petition is filed all collection efforts must cease immediately – that is the automatic stay. Alleging a violation of the automatic stay is not enough. The respondent must argue his case with specificity. Although referred to as "the automatic stay", it is not just one "stay" but the collection of eight specific stays enumerated in 11 U.S.C. §362(a). The respondent must state which of the specific enumerated stays in §362(a) were violated, and how. The filing of a Complaint to determine dischargeability is not a violation of the stays. BE WARNED, any violation of the automatic stay may subject your Fund to damages, including punitive damages, under §362(k).

Q21. Is considering a claim and granting an award a violation of 11 U.S.C. §362(a)?

A. It may be a violation of the stay in your jurisdiction if the granting of an award in your state would serve to automatically create a lien against the respondent's property, or perhaps even if it results in a judgment against the respondent. See §362(a)(5). In New Jersey it is not a violation, as it is not a proceeding against the respondent by the Fund to recover from the respondent. However, the NJ Fund would not be allowed to then pursue a civil judgment in a state court action against the respondent while they are in bankruptcy as that would be a violation of the stay, which stops all collection efforts.

Q22. Prior to the filing of the bankruptcy petition we had filed a claim with our state's Department of Taxation to have respondent's state income tax refunds seized and transferred to the Fund in partial payment of respondent's debt. Respondent was notified that those refunds were set aside to be paid over to the Fund and filed for bankruptcy protection before the Department of Taxation actually cut a check to the Fund. Do we have to let the Department of Taxation turn those refunds over to the respondent?

A. No, but you do have to file a Motion with the bankruptcy court to lift the automatic stay under 11 U.S.C. §362(a)(7), which stays the setoffs of mutual debts and credits between the debtor and the creditor. (Exhibit G). The court's determination would hinge on the degree to which the setoff had been completed prior to the bankruptcy filing, and the tax refunds cannot be transferred to the Fund until the bankruptcy court approves the setoff. See §553. A delay in seeking this relief may prejudice your case as the court has held that a "delay of six months before seeking relief from stay was impermissibly long." *In re* Strumpf, 516 U.S. 16, 116 S. Ct. 286, 133 L. Ed. 2d 258, 33 C.B.C.2d 869 (1995). There is a fee to file a Motion to Lift the Automatic Stay – go back to that cost/benefit analysis. Also see FRBP 4001, which governs motions for relief from the automatic stay.

Q23. Prior to the bankruptcy filing we took action against the respondent for contempt for not appearing in response to a summons. The respondent filed a Motion requesting that the court order us to rescind that action. Will the bankruptcy court make us rescind that action? (In NJ we suspended his driving privileges.)

A. Not necessarily. The court may recognize that it does not have to order the Fund to rescind that action. The Court stated that "a bankruptcy court does not have the power to relieve a party of all of the burdens that were created by nonpayment of debt. The filing of bankruptcy does not necessarily cure the collateral consequences that were created by the debt, such as restoration of a license that was validly suspended prior to the filing of bankruptcy due to Debtor's pre-petition conduct." *In re* Raphael, 238 B.R. 69 (D.N.J. 1999). The Bankruptcy Code in §525(a) states in part that "a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit,....or other similar grant to ...., a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act...., solely because such bankrupt or debtor ....has not paid a debt that is <u>dischargeable</u> in the case under this title or that was discharged under the Bankruptcy Act." (emphasis added.) It is the Fund's position that this debt is not dischargeable in bankruptcy because defendant incurred the debt through false pretenses, false representation or actual fraud, 11 U.S.C. §523(a)(2)(A) and/or, in the alternative, through fraud or defalcation while acting in a fiduciary capacity, 11 U.S.C. §523(a)(4). It would be helpful if a review of the Docket Report showed that the defendant has not yet received a discharge in bankruptcy regarding the other creditors. (Exhibit H).

Q24. The Answer to our Complaint does not indicate a genuine issue for trial. Can we file a Motion for Summary Judgment?

A. Yes. First review F.R.Civ.P. 56 and remember that you MUST include an affidavit with your filing or your exhibits will not be admissible. The Fund may move for summary judgment at any time until 30 days after the close of discovery. Collateral estoppel principles apply in dischargeability proceedings. Grogan v. Garner, 498 U.S. 279, 111 S. Ct. 654, 112 L. Ed. 2d 755, 24 C.B.C.2d 1 (1991). This is great if you already have a judgment in fraud against the respondent from your state court. Collateral estoppel applies if (1) the parties are identical; (2) the issues are identical; (3) the matter has been fully litigated to a final decision of a court of competent jurisdiction. *In re* Catt, 368 F. 3d 789 (7th Cir. 2004); *In re* Nourbakhsh, 67 F.3d 798 (9th Cir. 1995). (Exhibit I).

Q25. But that states that the matter has been fully litigated. What if we have a default judgment?

A. It depends on the circumstances. Under the law of some states, the doctrine may apply even if the judgment was rendered by default. *In re* Catt, 368 F. 3d 789 (7th Cir. 2004); *In re* Nourbakhsh, 67 F.3d 798 (9th Cir. 1995). But note: If there is no express finding in the state court judgment as to any fraudulent action, a creditor

fails to show that the issues regarding fraud were actually litigated or that fraud was necessary to the judgment providing for contractual remedies. Thus, collateral estoppel does not apply to prevent discharge of the obligation under §523(a)(2)(A). *In re* Harmon, 250 F.3d 1240 (9th Cir. 2001). Perhaps you can show that the respondent had a full and fair opportunity to litigate the matter in your state court. A federal court must give a state court judgment the same preclusive effect it would have under the law of the state in which judgment was rendered. Migra v. Warren City School District Board of Education, 465 U.S. 75, 81, 104 S. Ct. 892, 896, 79 L. Ed. 2d 56 (1984). An Order suppressing a pleading with prejudice constitutes an adjudication on the merits as fully and completely as if the Order had been entered after a trial. Feinsod v. Noon, 261 N.J. Super. 82, 84 (App. Div. 1992); Albarran v. Lukas, 276 N.J. Super. 91, 95 (App. Div. 1994). Check how your state would handle the situation you are facing.

Q26. Can we allege that this debt is not dischargeable under 11 U.S.C. §523(a)(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny if there was not an express or technical trust?

A. That may depend in large part on where you are located, as opinions differ considerably. Section 523(a)(4) does not except a debt from discharge for defalcation in the absence of an express trust. *In re* Cantrell, 88 F.3d 344, 347 (5th Cir. 1996). *Accord* Quaif v. Johnson, 4 F.3d 950, 953, 29 C.B.C.2d 1481, 1484 (11th Cir. 1993). Cantrell was an accountant and Quaif was an insurance broker. On the other hand: "An attorney acts as a fiduciary within the meaning of section 523(a)(4) despite the absence of an express or technical trust. Moreover, that fiduciary obligation includes matters regarding fee agreements." *In re* Hayes, 183 F.3d 162 (2d Cir. 1999). *Accord In re* Cochrane, 124 F.3d 978 (8th Cir. 1997), *cert. denied*, 522 U.S. 1112, 118 S. Ct. 1044, 140 L. Ed. 109 (1998). *Contra* R.E. America, Inc. v. Garver (*In re* Garver), 116 F.3d 176, 38 C.B.C.2d 249 (6th Cir. 1997): *In re* Gergely, 110 F.3d 1448 (9th Cir. 1997).

Q27. Can we rely on §523(a)(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss to allege that the debt is not dischargeable?

A. Again, that depends on what jurisdiction you are in. This section of the code appears to be more applicable to disciplinary proceedings than to claims paid by Funds. A debtor's debt to the bar for costs in a disciplinary proceeding is not penal in nature and, thus, is dischargeable, because the fees are imposed to reimburse the bar for "actual expenses" and "reasonable costs" associated with the disciplinary hearing. *In re* Taggart, 249 F.3d 987 (9th Cir. 2001). On the other hand: Because cost assessment in attorney disciplinary proceeding was discretionary and penal in nature, the costs assessed were nondischargeable under section 523(a)(7). Richmond v. N.H. Supreme Court Comm. On Prof'l Conduct, 542 F.3d 913 (1st Cir. 2008). Please note that under §724(a), a chapter 7

bankruptcy trustee may avoid a lien that secures a claim for a fine, penalty, forfeiture or punitive damages.

Q28. What if we don't already have a judgment from a state court?

A. You may have to proceed to trial on the matter in the bankruptcy court as collateral estoppel would not apply. Summary judgment may still be available if the uncontroverted facts strongly establish fraud.

Q29. What if it appears that the bankruptcy judge favors the respondent over the fund?

A. It may not be your imagination. The court has stated that "the exceptions to discharge should be strictly construed in favor of dischargeability." *In re* Hudson, 107 F.3d 355, 37 C.B.C.2d 1109 (5th Cir. 1997). *Accord In re* Peters, 133 B.R. 291 (S.D.N.Y. 1991), *aff'd*, 964 F.2d 166 (2d Cir. 1992). Do not lose heart, although you may be fighting an uphill battle to prove your case. Public policy militates against allowing dishonest debtors to profit at the expense of their victims. *In re* Grogan, 498 U.S. 279 at 286-87, 111 S.Ct. 654, 112 L. Ed. 2d 755 (1991). In Grogan, the Supreme Court emphasized that the "fresh start" policy of the bankruptcy code was the "opportunity for a completely unencumbered new beginning to the honest but-unfortunate-debtor. Where a-debtor has committed fraud under the code, he is not entitled to the benefit of a policy of liberal construction against creditors." Id.

Q30. If we don't like the court's decision, can it be appealed and to whom?

A. 28 U.S.C. §158 provides for appellate review of bankruptcy court orders. Orders of the bankruptcy court are appealed to the district court or the bankruptcy appellate panel if one has been established by the circuit. See FRBP 4004 on filing a complaint objecting to discharge, and FRBP 8001 through 8020 on appeals.

Q31. Can we use alternative dispute resolution at some point in this process?

A. Yes, 28 U.S.C. §651 authorizes the use of alternative dispute resolution (arbitration) in all civil actions, including adversary proceedings in bankruptcy.

Q32. How will we know if the respondent has any assets that can be used to pay their creditor's claims?

A. You should receive a Notice of Assets and Deadline to File Proof of Claim. (Exhibit J).

Q33. How and when do I file a claim?

A. The Notice should contain the deadline date and a form for filing a claim should also be enclosed. If no form is enclosed, you can get the form from the website www.uscourts.gov. Be sure to attach your supporting documentation, such as a copy of your judgment. Refer to 11 USC §507 to determine if your claim is entitled to priority. A claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief per 11 USC §502(b)(9). See FRBP 3001 and 3002, and Rule 3007 regarding objections to claims.

Q34. Does filing a claim have any special impact on the Fund? Our Fund is a committee of our state's Supreme Court.

A. A governmental unit that files a proof of claim is deemed to have waived sovereign immunity with respect to a claim against it which is property of the bankruptcy estate and that arose out of the same transaction or occurrence. See 11 USC §106. The filing of a proof of claim by one state agency does not waive the sovereign immunity of another agency if the claims do not arise out of the same transaction or occurrence. *In re* Wilson, 259 B.R. 432 (Bankr. S.D. Ga. 2000). *Accord In re* Havens, 229 B.R. 613 (Bankr. D.N.J. 1998); *In re* Value-Added Comm., Inc., 224 B.R. 354 (N.D. Tex. 1998).

Q35. What if our Fund is part of the State Bar Association, not our state's Supreme Court?

A. "A state bar association is an instrumentality of the state supreme court, engaged in a governmental function, and therefore, is a governmental unit." *In re* Wade, 23 C.B.C.2d 41, 115 B.R. 222 (B.A.P. 9th Cir. 1990), *aff'd*, 948 F.2d 1122, 25 C.B.C.2d 1287 (9th Cir. 1991).

Q36. How will the property of the bankruptcy estate be distributed?

A. First, property is distributed among priority claimants, as determined by 11 U.S.C. §507, and in the order prescribed by §507. Second, distribution is to general unsecured creditors. Third distribution is to general unsecured creditors who tardily filed. Fourth distribution is to holders of fine, penalty, forfeiture, or multiple, punitive, or exemplary damage claims. In addition to the possibility that it may be avoided by the bankruptcy trustee, this very low fourth distribution level is another reason why NJ has not alleged §523(a)(7) in the example Complaint to determine dischargeability, just in case the debt is determined to be dischargeable. Section 523(a)(7) applies to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss.

Q37. We have a lien on the property. What effect does that have?

A. Distribution provisions do not come into play until all valid liens on the property are satisfied. Thus, perfected liens must be satisfied out of the assets they encumber prior to making the assets available to unsecured claimants, even those that have priority. *In re* SPM Mfg., 984 F.2d 1305, 28 C.B.C.2d 451 (1st Cir. 1993). However, the bankruptcy trustee may file a motion requesting an order that would allow the trustee to sell the property free and clear of various liens, claims and encumbrances – including the Fund's lien. See 11 U.S.C. §726. See FRBP 6004 regarding the sale of property free and clear of liens

Q38. This is a Chapter 13 case. What is supposed to be in the proposed payment plan?

A. Per 11 U.S.C. §1322(a)(2), the plan shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under §507, unless the claim holder agrees to a different treatment of the claim. Please see §1322 for further details about the payment plan. You should be notified of the date of the confirmation hearing per §1324, where you should be given an opportunity to object to the payment plan. If an objecting party does not appear at a confirmation hearing to argue its objection, the court may overrule the objection without considering its merits. *In re* Powell, 5 C.B.C.2d 775, 15 B.R. 465 (Bankr. N.D. Ga. 1981). Failure to object to plan confirmation is deemed acceptance of the plan. *In re* Chappell, 984 F.2d 775, 28 C.B.C.2d 431 (7th Cir. 1993). If the standards are met, the plan must be confirmed. See 11 U.S.C. §1325 for more information regarding the plan, §1327 for the effect of confirmation, and §1329 regarding modification of the plan after confirmation. See FRBP 3015 regarding filing, objecting to, and modifying a Chapter 13 plan.

Q39. How will the payments be handled?

A. Per 11 U.S.C. §1326, unless the court orders otherwise, the debtor shall commence making payments (usually to the bankruptcy trustee, but sometimes directly to the creditor) not later than 30 days after the date of filing of the plan or the order for relief, which ever is earlier. The bankruptcy trustee shall distribute the payments in accordance with the plan after the plan is confirmed. Upon completion of the payment plan, the debtor should receive a discharge per §1328. Debtors who fail to make payments according to an approved plan would not be entitled to a discharge and their case could be dismissed.