

AT 2002- 001, APPENDIX 1
BANKRUPTCY AND THE IV-D PROGRAM

PURPOSE: This item is being released to insure that all elements of the Michigan IV-D program react appropriately and in concert to a bankruptcy filing.

Bankruptcy filings can effect establishment, modification, enforcement, receipting and accounting.

Establishment/Prosecuting Attorney

Exceptions to the automatic stay provision of the Bankruptcy Code allow the prosecutors to begin or continue actions to establish paternity and support. (Proposed amendments would add provisions referencing child custody and visitation(parenting time), marriage dissolution and domestic violence. The family court actions would be added to the list of court filings allowed while the automatic stay is in effect.)

Bankruptcy courts have consistently held that the automatic stay provision does not preclude the filing of a divorce against the debtor.(Schock v. Schock 37 B.R. 399). **The Bankruptcy Code protects the property of the bankruptcy estate, not the marital status of the debtor.** A complaint for divorce is not subject to the automatic stay.

A party to a divorce may seek relief from the automatic stay if a portion of the state divorce decree would direct any transfer of property in the bankruptcy estate.

Modifications and Enforcement/Friend of the Court

Exceptions to the automatic stay provisions for a payer filing for bankruptcy protection allow the Friend of the Court to modify an order for support and to collect support from property that is not part of the bankruptcy estate. (Proposed amendments would add clarifying provisions referencing withholding of income, suspension of licenses, reporting to consumer reporting agency, interception of taxes and enforcement of medical obligations. These enforcement remedies would be exempt from the automatic stay provisions.)

Actions to collect the arrearage due at the time of the bankruptcy filing are automatically stayed. They are a judgment against the debtor obtained before the commencement of the bankruptcy because all past due payments are judgments under MCL 552.603(2). Arrearage that arises after the bankruptcy filing can be collected. Bankruptcy Courts refer to those arrearages as "post petition

obligations.” The automatic stay applies to the acts of creditors to obtain property of the bankruptcy estate.

Example: On the date of the bankruptcy filing Mr. Smith has \$500 in child support arrearage. Even though the \$500 arrearage will not be discharged by the bankruptcy the Michigan Circuit Court (Friend of the Court) can not move to collect them at this time. If Mr. Smith misses current support payments after the bankruptcy filing and now owes \$800 (\$500 pre-bankruptcy filing + \$300 post-bankruptcy filing) only \$300 of the arrearage can be enforced without violation of the automatic stay in the Bankruptcy Court.

Liens against the property of the bankruptcy estate are automatically stayed.

Take the following actions for a payer who has filed for bankruptcy:

- Record that a bankruptcy has been filed and the date of the filing. The enforcement actions you are authorized to take depend on whether you are enforcing against arrearage that accrued before or after the bankruptcy filing. Update the system.
- Check the system for any other pending or existing cases. Notify any other Friend of the Court or Prosecutor who may have pending action against the payer. Notify the Financial Institution Data Match (FIDM) unit or private agency you have contracted with of the bankruptcy. Notify the Michigan State Disbursement Unit (MiSDU).
- Notify the payee unless it is a couple’s joint filing and the payee is one of the debtors.
- Suspend enforcement actions on the debt (arrearage) that accrued prior to the bankruptcy filing. This includes such routine activities as sending letters or notices to the more drastic measures such as arrest on a warrant. Reduce income withholding to current support, health care coverage and non-arrears obligations. Chargeable bonuses can be collected but arrearage bonus should be collected only up to the amount of post bankruptcy filing arrearage. Suspend tax-offset actions.
- Respond to the bankruptcy pleading, if necessary, even though support debts are not dischargeable. For example, respond to receipt of a Notice of Meeting of Creditors and indicate the support amounts are not dischargeable.

In completing the bankruptcy process the debtor will complete many forms such as FORM B61. This form requires answers as to employment and earnings.

Other forms require statements as to assets and property exempt from creditors. These forms may become resources and be valuable in securing the information needed to proceed with a traditional or extraordinary enforcement remedy.

(Proposed amendments to the Bankruptcy Code would require the trustee to notify the payee (claimant) of the services of the child support agency where the claimant resides. The trustee would be required to give claimant's name, address and telephone number to the child support agency. The trustee would be required to inform the claimant and the child support agency that the debtor was discharged and supply the debtor's last known address, the name and address of last known employer and the name of each creditor that holds a debt that is not discharged. The child support agency may inquire about the payer's address from the creditors.)

Enforcement against a payer with employer who has filed for bankruptcy

If the employer fails to make payments to the MiSDU, but has made deductions from the employee's wages, the employee has a higher claim against the bankruptcy estate than the child support recipient or agency. The employee has a claim against the bankruptcy estate of the employer that is third in priority (child support is seventh) for wages salaries or commissions. Remedies such as contempt actions against an employer or source of income under MCL 552.613 may first require setting aside the automatic stay.

The payer/employee could not stop the support deduction by the bankruptcy-protected source of income. While the employee may have a claim against the employer, there may be few assets to collect against. It may be necessary to terminate the IWV if the employee is being paid-in-full for the non-IWV share of his wages. The employee/ payer must then pay the support. Automated child support enforcement remedies may have to be overridden to protect "innocent" employees/payers. The employer non-compliance as to either the IWV portion or the balance of the employee's wages (or both) represents a reduction in earnings that the Friend of the Court is aware of and may require action to modify the support pursuant to MCL 552.517 (1)(b).

Receipting and Disbursal

An employer may continue in business under the protection of the Bankruptcy Court with no disruption in processing. Determine under which "chapter" of the Bankruptcy Code the employer or source of income is seeking protection. The MiSDU should be alerted if they have not received prior notice (The MiSDU may be notified as a creditor because checks are sent to them). The MiSDU may require certified payment.

If the bankrupt employer's check is returned due to non-sufficient funds (NSF) the usual protections (vendor responsibility and criminal penalties) are still available. The MiSDU is empowered by MCL 400.236 to pursue collection. Immediate civil action against the employer would require a lifting of the automatic stay.

Take the following actions for an employer or source of income who has filed for bankruptcy:

- Check the system for existing Income Withholding Notices for this employer or source of income and note all cases.
- Contact the MiSDU. If this is an employer the Friend of the Court receipts directly, it may be advantageous to redirect payments to the MiSDU. Coordinate the decision with the MiSDU.
- Update all files for all effected payers and notify other Friend of the Court offices.
- If arrearage patterns indicate the employer may have failed to forward IWN payroll deductions advise payers and payees by mail.

Bankruptcy law provides as an exemption from the bankruptcy estate the debtor's right to receive support and alimony to the extent necessary for the support of the debtor and any dependent of the debtor. (11 USC 522(D)(10)(d))

Accounting

Spousal support and child support that arise from a determination under state or territorial law are not dischargeable (Proposed amendments would create a definition for "domestic support obligation". It would be a debt that accrued before or after the bankruptcy filing, due a person or government agency or assigned to a private entity for collecting of the debt). Bankruptcy Form B18, DISCHARGE OF DEBTOR IN A CHAPTER 7 CASE states in the explanation on the back of the form, "Debts that are Not Discharged... b. Debts that are in the nature of alimony, maintenance, or support."

Debts can be adjudicated in the Family Division of Circuit Court in the property settlement. One or both parties may later seek relief in the Bankruptcy Court from those non-support debts. The Friend of the Court may have to adjust accounts or records if presented with a discharge of debt by a party. The non-filing party may be frustrated by the bankruptcy action; or besieged by creditors who have lost recourse against the other party in bankruptcy. The Friend of the Court must refrain from attempting to advise parties on these matters.

A debtor claiming in Circuit Court Family Division that he has had a debt discharged in bankruptcy has the burden of proving the discharge by offering a certified copy of the order into evidence. (Voss v. Perkins Michigan Court of appeals, No. 222716, unpublished)

Definitions

Automatic stay: A prohibition in the form of an injunction that operates automatically upon a filing of a bankruptcy case prohibiting collection against the debtor or the legal and equitable estate of the debtor at the time of filing for bankruptcy. (11 USC Section 362)

Bankruptcy Code: Title 11 of the United States Code (The Code). This federal law overrides or preempts state law. Note: Exemptions exception.

Bankruptcy Estate: The legal and equitable interests of the debtor at the start of the bankruptcy case. The debtor can claim certain property exempt from the estate, the balance is liquidated (in Chapter 7) to pay claims of creditors and administrative costs.

Chapter 7: This chapter of the Bankruptcy code is available to individuals and married couples (as well as partnerships and corporations) and is a liquidation of the assets proceeding.

Chapter 11: A reorganization proceeding with the debtor remaining in possession of property or may continue in business. The bankruptcy court confirms a plan indicating in what manner and in what order claims of creditors are to be paid.

Chapter 12: A reorganization plan for family farmers.

Chapter 13: A reorganization plan for individuals with debts below a limit set by statute with repayment of debt coming from future earnings over a defined time period.

Dischargeable: A debt that can be legally eliminated through bankruptcy. A discharged debt is no longer enforceable against the debtor.

Exemptions: A list of items and their values determined by state and federal law that are beyond the reach of creditors and the bankruptcy court. The debtor keeps these items to begin anew after bankruptcy.

Non-dischargeable: A debt that cannot be eliminated by bankruptcy court and remains legally enforceable. The Code lists non-dischargeable items.

Priority: The order the Bankruptcy Code establishes for claims to be paid with each highest claim required to be paid in full before moving to a lower claim.

Relief from stay: This is accomplished by filing a motion and asking the court to allow the action to take place. The Bankruptcy Court can permit action against the debtor or his property. The relief from the stay is the permission granted by the Bankruptcy Court following a successful motion to lift the automatic stay.

Unsecured claim: There is no collateral held as security for the debt. Credit card debt would be an unsecured debt.

Legal References

Federal

U.S. Code: Title 11 - Bankruptcy

State

MCL 600.6023 - Property exempt from levy

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WND/WB/ED

