

LOCAL RULES FORM #11

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE

CASE NO.

DEBTOR(S)

ATTORNEY DECLARATION

I, _____ (attorney's name), am an attorney admitted to practice before this Court and have been retained as attorney for the debtor(s) in this bankruptcy case.

I have generally advised the debtor(s) about (i) the scope and effect of the discharge; (ii) the option of reaffirming debts under 11 U.S.C. § 524, and the statutory requirements and consequences of reaffirmation; (iii) the option of redemption of property under 11 U.S.C. § 722; (iv) the possible options to avoid liens under 11 U.S.C. § 522; (v) the definition of "property of the estate," the debtor's obligation to provide full and accurate disclosure of information, and the requirement that the debtor turn over all property of the estate, except that specifically exempted, to the trustee; and (vi) the possible consequences of failure to provide full and accurate disclosure of property and debts, and the failure to turn over to the trustee property which could be property of the estate, such as revocation of discharge, interest and other charges by the trustee, and criminal prosecution. I have specifically reviewed with the debtor(s), by reading to the debtor(s) when it was thought necessary, the content of this declaration.

The discharge in bankruptcy is intended to relieve honest but unfortunate debtors from oppressive debt and to provide them with a financial fresh start. The document which notifies the debtor of the discharge is a court order entitled "Discharge of Debtor." It is mailed to the debtor and creditors by the bankruptcy court.

The discharge in bankruptcy releases a debtor from any further personal liability for any debt owed to a creditor listed in the schedules filed with the court, unless the debt is a nondischargeable debt or is a debt, after timely complaint and upon final judgment, excepted from discharge. I have advised the debtor(s) as to the types of debts which are not discharged by the Order of discharge (such as many tax obligations, debts in the nature of alimony, maintenance and support, government-guaranteed student loans, debts not properly listed or scheduled, etc.) and the types of debts which may be excepted from discharge (fraud, willful and malicious injury, fraud or defalcation while acting in a fiduciary capacity, certain community property obligations, etc.). Though nothing prevents a debtor from voluntarily repaying a discharged debt,

creditors can take no action to encourage or require a debtor to repay a discharged debt. They cannot personally contact a debtor at home or at work; they cannot send demand letters to a debtor; they cannot file suits against a debtor; they cannot obtain judgments against a debtor; they cannot execute on property of a debtor unless the creditor holds a valid security interest in the property and, in conformity with state law and the Bankruptcy Code, is entitled to execute upon **the property**; they cannot garnish a debtor's wages or take any action which harasses a debtor for having filed bankruptcy or which attempts to require repayment of any debt that has been discharged.

If a creditor engages in any conduct aimed at encouraging or forcing repayment of a discharged debt, the debtor should contact his or her attorney immediately so that appropriate legal action can be taken against the creditor. As part of my representation of the debtor in this case, I acknowledge my responsibility to act on behalf of the debtor to protect the debtor's rights under his or her discharge and to bring to the bankruptcy court's attention, if necessary or proper, actions thought by me to be in violation of the Order of Discharge.

There are differences between secured and unsecured debt and in the manner in which a debtor may treat a secured debt in a Chapter 7 bankruptcy case. Some debtors may desire to surrender property which is collateral or security for a secured debt. Upon surrender of the property to the creditor, the debtor has no further liability to the creditor. Some debtors will redeem property pledged as security for a debt by paying the creditor the fair market value of the property. Other debtors may wish to reaffirm the debt secured by the debtor's property.

Debtors should consider reaffirmation of a secured debt only where the value of the property equals or exceeds the debt, and the payments on the debt are reasonable and within the debtor's means. To reaffirm a debt, the debtor must sign a new agreement with the creditor, and that agreement, along with an attorney's affidavit or declaration pursuant to 11 U.S.C. § 524(c), if applicable, must be filed with the court within the time afforded under the Local Rules of the United States Bankruptcy Court for the Middle District of Louisiana. Even after signing a reaffirmation agreement, the debtor still has a right to cancel that reaffirmation at any time prior to the discharge, or within 60 days after filing the Agreement with the Court, whichever is later (30 days for cases filed before October 8, 1984) by taking the proper action to rescind it. A debtor should consider the effect of a catastrophic event, such as medical problems, on the debtor's ability to pay any reaffirmed debts because, once a Chapter 7 discharge is received, a debtor cannot again seek this same benefit for six years. I have reviewed with the debtor(s) the substantive and form requirements of § 524(c) and recognize, as a component of my attorney obligation, my responsibility to advise the debtor(s) as to whether or not the reaffirmation agreement(s) in connection with which I assist the debtor(s) comply with § 524(c).

I have informed the debtor of his or her obligations under this Court's Local Rules (particularly rules 4008-1 and 4008-2) in the event the debtor wishes to reaffirm a debt without my assistance in the course of negotiating the agreement or in the event I, in fulfillment of my ethical duties to my client, cannot assist or provide the debtor with the declaration or affidavit as required by 11 U.S.C. § 524(c)(3). Further, I have advised the debtor of the consequences of

failure to comply with this Court's Local Rules in this event, and of the necessity of court approval of such an agreement.

I have informed the debtor(s) that he (she) has fulfilled the requirements of the Bankruptcy Code and, as of the date of the entry of the Discharge Order, will receive the fresh start envisioned by the Code. I have further urged the debtor(s) that debt should be avoided which would again place the debtor(s) in a position to need protection under the bankruptcy law. I have advised the debtor of my willingness to assist in negotiating reaffirmation agreements that I, in performance of my representation according to ethical standards, can make the subject of a declaration or affidavit conforming to the requirements of 11 U.S.C. § 524(c)(3).

_____, Louisiana, this ____ day of _____, 20__.

(Debtor's attorney)

The undersigned debtor(s) in the captioned bankruptcy case hereby acknowledge(s) that I/we have read the Attorney Declaration and that _____, my/our attorney in this case as advised me/us as is stated in the Declaration.

(Debtor)

(Debtor)