

DISCHARGE AND DISCHARGEABILITY: INACCURACIES
ON SCHEDULES AND STATEMENTS OF FINANCIAL
AFFAIRS AND WAYS TO PREVENT AND DEAL WITH THEM
(SOME TIPS FROM A CREDITOR'S LAWYER)

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1. Introduction

A debtor seeking relief under the Bankruptcy Code must initially submit Schedules and a Statement of Financial Affairs (“SOFA”) reflecting *all* of the debtor’s assets and liabilities, as well as current income and expenditures. FED. R. BANKR. P. 1007(b)(1);¹ *see also* 11 U.S.C. § 521(a)(1)(B).² Bankruptcy Rule 1008 provides that the debtor must verify “[a]ll petitions, lists, schedules, statements and amendments thereto” or sign them under “an unsworn declaration as provided in 28 U.S.C. § 1746.”³ FED. R. BANKR. P. 1008.

¹ Bankruptcy Rule 1007 requires

the debtor . . . [to] file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases and a statement of financial affairs, prepared as prescribed by the appropriate Official Forms.

FED. R. BANKR. P. 1007(b)(1).

² Under Section 521(a), “[t]he debtor shall — (1) file . . . unless the court orders otherwise — (i) a schedule of assets and liabilities; (ii) a schedule of current income and current expenditures; (iii) a statement of financial affairs” 11 U.S.C. § 521(a)(1)(B).

³ 28 U.S.C. § 1746 provides:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury.

28 U.S.C. § 1746 (official form omitted).

2. Section 727(a)(4)

Bankruptcy Code section 727(a)(4)(A) provides that the court shall grant the debtor a discharge, unless the debtor has knowingly and fraudulently, in or in connection with the case, made a false oath or account. 11 U.S.C. § 727(a)(4)(A) (“The debtor knowingly and fraudulently, in or in connection with the case – (A) made a false oath or account”).⁴ See *The Cadle Co. v. Pratt (In re Pratt)*, 411 F.3d 561, 566 (5th Cir. 2005).

The purpose of section 727(a)(4)(A) is “to enforce a debtor’s duty of full disclosure and to ensure that the Debtor provides reliable information to those who have an interest in the administration of the estate.” *Jackson Law Office, P.C. v. Herman (In re Herman)*, No. 07-6003, 2009 WL 483214, at *8 (Bankr. E.D. Tex. Feb. 24, 2009), quoting, *Fiala v. Lindemann (In re Lindemann)*, 375 B.R. 450, 469 (Bankr. N.D. Ill. 2007).

“To establish a false oath under this section, the creditor must show that (1) [the debtor] made a statement under oath; (2) the statement was false; (3) [the debtor] knew the statement was false; (4) [the debtor] made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case.” *Pratt*, 411 F.3d at 566 (alterations in original).

A false oath includes a false statement or omission in the debtor’s schedules or a false statement by the debtor at an examination during the course of the bankruptcy proceedings. See *Beaubouef v. Beaubouef (In re Beaubouef)*, 966 F.2d 174, 178 (5th Cir. 1992). “An omission of an asset can constitute a false oath.” *Pratt*, 411 F.2d at 566.

Fraudulent intent may be proven by circumstantial evidence. *Sholdra v. Chilmark Fin., LLP (In re Sholdra)*, 249 F.3d 380, 382 (5th Cir. 2001). Further, fraudulent intent may be shown where there is an existence of more than one falsehood, together with the failure to take

advantage of the opportunity to clear up all inconsistencies and omissions when the debtor amends his/her schedules. *Id.* It is not enough for the debtor to claim that they were negligent (made mistakes) to avoid a finding that they made the false statements with fraudulent intent. *Mullican v. Moser (In re Mullican)*, No. 4:08-cv-428, 2009 WL 2409026, at * 7 (E.D. Tex. August 4, 2009).

The bankruptcy system relies on a debtor to deal honestly with his creditors by making full, complete and honest disclosures in his statements and schedules. *Morton v. Dreyer (In re Dreyer)*, 127 B.R. 587 (Bankr. N.D. Tex. 1991). Courts should not and cannot tolerate such intentional or reckless misrepresentations or flippant attitude regarding such by any debtor, let alone debtors. *Id.* at 593. However, discharge will not be denied the debtor whose false statement or omission was due to “an honest oversight” or, for example, when they simply were not aware that their statements were false. *See Buckeye Retirement Co., LLC v. Laux (In re Laux)*, 4:07-cv-181, 2008 WL 828060, at *3 (E.D. Tex. March 27, 2008).

“A debtor has a paramount duty to consider all questions posed on a statement or schedule carefully and see that the question is answered completely in all respects.” *Friedman v. Sofro (In re Sofro)*, 110 B.R. 989, 991 (Bankr. S.D. Fla. 1990). *Dreyer*, 127 B.R. at 593-94; *see also Banc One, Texas, N.A. v. Braymer (In re Braymer)*, 126 B.R. 499, 502 (Bankr. N.D. Tex. 1991). “The debtor must be scrupulous in giving notice of all assets to which others may make a legitimate claim, and may not avoid questions by failing to disclose the asset even though he or she may think it may be theirs to keep.” *Braymer*, 126 B.R. at 502 citing *Woodson v. Fireman’s Fund Insurance Co. (In re Woodson)*, 839 F.2d 610, 616 (9th Cir. 1988)). If a debtor is uncertain as to whether certain assets are legally required to be included in his schedules, it is his duty to

⁴ Section 727(a)(4)(A) does not apply in chapter 13 cases.

disclose the assets so that any questions may be resolved. *Id.*; *In re Dreyer*, 127 B.R. at 597, citing *Butler v. Ingle (In re Ingle)*, 70 B.R. 979, 983 (Bankr. E.D. N.C. 1987)). Creditors are entitled to judge for themselves what will benefit and what will prejudice them. *Beaubouef*, 966 F.2d at 178, quoting *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984)). Additionally, a debtor has an ongoing obligation to disclose all transfers, attempted transfers, unlisted assets, and other relevant information. *Braymer*, 126 B.R. at 503.

The question of whether a debtor's omission was made knowingly and fraudulently means that there must have been an intentional, untruthful relationship to the matter material to the bankruptcy. *Humphries v. Schnurr (In re Schnurr)*, 107 B.R. 124, 128 (Bankr. W.D. Tex. 1989); *Federal Land Bank v. Ellingson (In re Ellingson)*, 63 B.R. 271 (Bankr. N.D. Iowa 1986). A debtor's intent can be inferred from the facts and circumstances surrounding the debtor's actions. *Schnurr*, 107 B.R. at 128; *Pigott v. Cline (In re Cline)*, 48 B.R. 41 (Bankr. E.D. Tenn. 1985). The intention of the debtor in these types of cases must generally be determined by an analysis of the facts and circumstances surrounding the transfer, as almost no debtor who has acted with fraudulent intent will admit to it on the witness stand. *In re Schnurr*, 107 B.R. at 130; *J.W. Operating Company v. Roth Rock (In re Roth Rock)*, 96 B.R. 666 (Bankr. N.D. Tex. 1988).

3. **Tips For Avoiding Denial of Discharge Based on False Oath**

Discharge is not denied because of anything a creditor did, does, did not, or does not do. Rather, if discharge is denied it is typically due to some act or omission on the debtor's part. It is black letter law that bankruptcy is a privilege, not a right, available only to the honest debtor. Debtors cannot be content with simply filling out forms, paying a fee, and awaiting the notice of discharge to arrive in the mail. Debtors have a responsibility to assure their discharge

is not denied. This requires debtors, as well as their counsel, to be proactive from the initial client interview through the expiration of the discharge deadline.

TIP #1

Client(s) Should Read (And Understand) Their Schedules/SOFAs Before Signing Them—Contrary to Popular Belief an Oath is Still a Serious Thing (Isn't It?)

When a debtor signs his/her schedules, amended schedules, SOFA, and amended SOFA he/she signs each of them “under penalty of perjury,” adding that the Schedules or SOFAs are “true and correct to the best of [his/her] knowledge, information, and belief.” Fed. Bankr. Form 6. This language is taken from 28 U.S.C. § 1746.⁵

When signing the Schedules and SOFAs, a debtor is testifying that they are (a) true and (b) correct. In other words, that they are true, complete, and accurate as of the date on the signature – this goes for the truth of what is put in the Schedules as well as the truth about something not in the Schedules.⁶ And, while section 727(a)(4)(A) may not technically apply in chapter 13 cases, an oath, is an oath and the criminal penalties will still apply in the event of false statements or omissions.

Omitted items from a debtor’s Schedules and SOFA “render the sworn certification accompanying those documents as a false statement made under oath. *Hermann*, 2009 WL 483214, at *8.

⁵ See *supra* note 3.

⁶ As noted above, “[a] debtor has a paramount duty to carefully consider all questions posed on his schedules and statements of affairs and see that each question is answered completely in all respects.” *Dreyer*, 127 B.R. at 593-94; see also *Braymer*, 126 B.R. at 502.

With this in mind, it is important that your client not only read but understand the Schedules and SOFA if they want to avoid trouble down the road. If nothing else, be sure your client understands that they are under oath when they sign.

TIP #2

Materiality

The accuracy and completeness of Schedules and SOFA – information contained therein – is essential to the successful administration of the bankruptcy case. Deliberate omissions will result in discharge. But what about the deliberate omission that does not really make any difference e.g., the bank account that was omitted from the Schedules that had a \$0 balance on the petition date?

To deny discharge, the omission must have been “material.” In *Beaubouef*, the Fifth Circuit noted: “In determining whether an omission is material, the issue is not merely the value of the omitted assets or whether the omission was detrimental to creditors. The subject matter of a false oath is ‘material,’ and thus sufficient to bar discharge if it bears a relationship to the bankrupt’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property.” *Beaubouef*, 966 F.2d at 177.⁷ Debtors must make full disclosure, even of seemingly worthless assets. *See Burford v. Novak (In re Novak)*,

⁷ Regarding the materiality of bank accounts, the court in *Johnson v. Baldrige (In re Baldrige)*, 256 B.R. 284 (Bankr. E.D. Ark. 2000), notes:

The value of property which is not disclosed on the petition, particularly as it relates to bank accounts, may have little relevance to the concept of materiality. Few, if any, assets are more material to a consumer debtor’s financial affairs than a bank account, for it is from that kind of asset that the creditors can discern not only an overall picture of the debtor’s financial affairs, but also the details of the debtor’s finances. Accordingly, *the omission of any and all bank accounts to which the debtor had access constituted a false statement that related materially to the case.*

Baldrige, 256 B.R. at 290 (emphasis added).

No. 08-4114, 2009 WL 2998328, at * 5 (Bankr. E.D. Tex. Sept. 17, 2009), *citing*, *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984) (Debtor's failure to disclose transfer of real property in Schedules when transfer took place around time judgment was entered against him); *Desai v. Desai (In re Desai)*, 07-04190, 2009 WL 2855735, at *6 (Bankr. E.D. Tex. – Sept. 2, 2009), *citing*, *Sholdra*, 249 F.3d at 382 (“The Defendant, at a minimum, has acted in reckless disregard of his duty of candor to this Court.”)); *Hermann*, 2009 WL 483214, at *8 (debtor's failures to disclose a vehicle purchased with Debtor's funds but titled in her husband's name and diversion of cash into her homestead three weeks prior to filing bankruptcy were material “because they with the existence and/or disposition of the Debtor's property.”).⁸ Also, if the debtor knows or has reason to know the value of assets, it is fraudulent to significantly undervalue the assets or, worse, disclose the value of the asset as \$0. *See, e.g.*, *Master-Halco, Inc. v. Sanchez (In re Sanchez)*, No. 07-3431, 2009 WL 1657991 (Bankr. S.D. Tex. June 12, 2009) (Debtors made a false oath in listing value of company as \$0 when they testified that they knew the company had assets and was probably profitable at the time they signed and filed their Schedules).

⁸ In *Chalik*, the Eleventh Circuit explains materiality this way:

The recalcitrant debtor may not escape a section 727(a)(4)(A) denial of discharge by asserting that the admittedly omitted or falsely stated information concerned a worthless business relationship or holding; such a defense is specious. It makes no difference that he does not intend to injure his creditors when he makes the false statement. Creditors are entitled to judge for themselves what will benefit, and what will prejudice, them. The veracity of the bankrupt's statements is essential to the successful administration of the Bankruptcy Act.”

Chalik, 748 F.2d at 617.

TIP #3

You Cannot Throw Your Lawyer Under the Bus – Can You?

Fraudulent intent may be demonstrated by a reckless disregard for the truth. *Sholdra*, 249 F.3d at 382. A reckless disregard may be shown by the existence of more than one falsehood. *Beaubouef*, 966 F.2d at 178. To what extent may a debtor blame his/her counsel for these errors?

In one case involving multiple omissions and material errors (false statements), the debtor claimed he gave all of the information to his lawyer, his lawyer failed to include the information in the amended schedules (which the debtor admitted he read and signed under oath) and/or he just did not understand what they were asking for in the questions *The Cadle Co. v. Moore (In re Moore)*, No. 06-3451, 2007 WL 1474289 (Bankr. N.D. Tex. May 18, 2007). In *Moore*, “[t]he Debtor...blamed the omissions from his Schedules and SOFAs on his bankruptcy attorney and imprecise instructions or advice given to him by his bankruptcy attorney.” *Id.* at *9.

Regarding this position, Judge Jernigan noted

While it is possible in certain circumstances for a Debtor to have a credible defense that he relied on counsel in making mistakes in the Schedules or SOFAs, the defense has to be reasonable and in good faith. *E.g.*, *Gebhardt v. Gartner (In re Gartner)*, 326 B.R. 357, 374 (Bankr. S.D. Tex. 2005). The reasonableness of the reliance is undermined where the Debtor has admitted under oath having read and signed the Schedules and SOFAs that are challenged. *Id.* Here the Debtor did admit to reading and signing the Schedules and SOFAs. The Debtor is an educated, sophisticated, mature man. He has been a manager of numerous companies and handles complex transactions. The omissions from the original and Amended Schedules and SOFAs were many. This court does not find “blame it on the lawyer” here credible, reasonable, or a good faith defense.”

Id. See also *Laux*, 2008 WL 828060 at *3 (Bankruptcy Court found that the debtors did not know, when they filed their original Schedules, that they had omitted items from the Schedules and found that the error was the result of “an honest oversight based, in part, on the advise of

their former counsel.”); *Stanton v. Temecula Valley Bank (In re Stanton)*, No. H-07-670, 2007 WL 2538431 *5 (S.D. Tex. August 31, 2007) (claims of honest confusion, a lack of understanding, or reliance on poor legal advice may negate fraudulent intent).

TIP #4

Take Your Client to the Woodshed (Please)

I cannot tell you how many times I have benefitted from the ill-prepared client.

Q: Are these your Schedules?

A: I don't know (or, What is this? or, I have never seen this before)

• * * *

•

Q: Did you sign your Schedules?

A: I don't know. I don't recall (or worse, “No”)

* * *

Q: You knew you had that account and still you failed to schedule it?

A: Yes.

Q: Why?

A: I don't know (or, I did not want my creditors to find out because the account had my son's money in it as well as mine; or, worse, my attorney told me I did not have to do so”).

If your client is being up front and honest with you, you will hopefully be aware of problem areas such as these. You will want to go over these with your client prior to a deposition or trial so that their answers will appear sound and honest at trial. Also, at the trial or depositions, it is a good idea to have the original signed Schedules and SOFAs.

Also, since the question of “knowingly and fraudulently” is fact driven and reviewed on appeal for “clear error,” impress upon your client(s) the importance of looking good – continually stressing the importance of credibility to your client(s). Most all judges make prophylactic findings of credibility. FED. R. BANK. P. 8013 (“Findings of fact, whether based on

oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.”). *See also The Cadle Co. v. Orsini*, No. 4:06-cv-203, 2007 WL 1006919, at *11 (E.D. Tex. 2007) (“A bankruptcy court’s determination that a debtor did not act with the intent to deceive is a finding of fact and subject to the clearly erroneous standard of review.”) (citation omitted); *Webb v. Reserve Life Ins. Co. (In re Webb)*, 954 F.2d 1102, 1106 (5th Cir. 1992) (when bankruptcy court’s findings are based on determinations regarding credibility of witnesses, they should be awarded even greater deference); *Tex. Mortgage Servs. Corp. v. Guadalupe Sav. & Loan Ass’n (In re Tex. Mortgage Servs. Corp.)*, 761 F.2d 1068, 1078 (5th Cir. 1985) (“We will not attempt to reassess the credibility of witnesses to whom we have not had the opportunity to see on the stand.”); *Washington Mutual Bank v. Heard (In re Heard)*, No. 07-03444, 2008 WL 5479099, at *2 (Bankr. S.D. Tex. Nov. 25, 2008) (court found debtor lacking credibility when she professed she did not know she transferred her home to a company owned by her attorney and who was a personal friend – “Mrs. Heard’s professed ignorance of the disposition of her own home breaks the last straw of credibility she might have had.”).

When all else fails “fall on the sword” and explain, explain and explain. Some times the best offense is a good defense. Sometimes a good explanation will suffice. Credibility may come with contrition. *See Desai*, 2009 WL 2855735 at *5 (“The Defendant offered no explanation for his failure to list his closed accounts at Texas State Bank Frankston (Texas) or his failure to disclose missing books or records relating to his operation of Ross #2 in his Statement of Financial Affairs.”); *In re Mascolo*, 505 F.2d 274, 276 (1st Cir. 1974) (“knowing

and fraudulent omissions of a bank account, whether or not closed at the time of filing, warrants the denial of discharge”).

TIP #5

Amend Promptly (Preferably Before the BR 2004 Exam)

A sure fire way to show “honest mistake” or “inadvertent non-disclosure” is to amend as soon as the error is brought to the attention of the debtor or his counsel. Creditors often argue that the debtor should not benefit from the creditor having discovered the error and bringing it to the attention of the debtor. Debtors ought to get it right the first time. However, this is where honest and unintentional mistake come into play.

Sometimes it will just come down to the evidence before the court on the issue. In *Laux, supra*, the creditor asserted that the debtor did not amend until the creditor gave notice of its intent to depose the debtor. *Laux*, 2008 WL 828060 *4. However, at trial and on appeal, the creditor failed to present any evidence to this effect. The debtor testified that they amended because they felt apprehension about their original filing. In this regard, debtor’s counsel argued in closing: “Nobody instigated that. The Trustee didn’t instigate. A creditor didn’t instigate it. On their own, they were apprehensive and concerned about meeting their duty under the Bankruptcy Code.” *Id.*

Taking the opportunity to clear up any inconsistencies, particularly before they are called to the debtor’s attention or shortly thereafter, may be considered in determining whether the debtor acted with fraudulent intent. *See Sholdra*, 249 F.3d at 383; *The Cadle Company v. Preston-Guenther (In re Guenther)*, 333 B.R. 759, 768 (Bankr. N.D. Tex. 2005). *See also Comm’n for Lawyer Discipline v. Neely (In re Neely)*, No. 05-3503, 2008 WL 4547521, at *4

(Bankr. S.D. Tex. Oct. 10, 2008) (debtor claimed he had no other bank accounts; however, he clearly signed checks on his wife's account, using it as his own and failed to amend his Schedules after being admonished by the Trustee to do so).

TIP #6

Shakespeare Said: To Thy Own Self Be True (Not a Bad Idea)

Given the risks inherent in the post-BAPCPA world of disclosures on Schedules and SOFAs, it is more and more incumbent on counsel to take steps to protect themselves in the event a client's information does not make it to the Schedules/Statement of SOFA - the information is not complete or accurate. Like it or not, most individual Debtors are not sophisticated. Although the forms are, for the most part, self-explanatory, there are a lot of questions there, and they can be confusing. Clients will certainly ask for explanations and will not remember that you explained it to them in detail when its push-come-to-shove time. Therefore, take steps to protect yourself by creating checklists and having clients sign waivers, hold harmless agreements and the like. Also, it would not hurt to be involved in the process. I have actually used the argument that "the paralegal prepared the forms and the attorney was absent from the process" argument a couple of times.

TIP #7

Don't Forget the Past (or, What Comes Around Goes Around)

If the creditor that filed the discharge proceeding was actively collecting the debt prior to filing of the bankruptcy, keep this in mind and play it up. Section 727 benefits all creditors and a particular creditor's pre-petition discovery and knowledge should have little bearing on whether the omission was material as to all creditors. Nevertheless, some courts have considered it a

factor that the creditor-plaintiff knew or should have known about the omitted matter prior to the filing, and therefore, could not have been surprised by its absence in the Schedules or SOFA.

TIP #8

To Paraphrase Kenny Rogers: “Know When to Fold Them” or Find an Exit Strategy

Sometimes the deck is just stacked against you. Sometimes there is just no way on earth that your client is going to survive an attack on discharge. It is at this point that your client maybe best served by counseling him/her to throw in the towel. Even though discharge may be denied, if the client is effectively judgment proof, denial of discharge may gain the creditor little overall advantage and save the client valuable resources (not to mention paying your fee).

TIP #9

Know Your Judge

It is probably a smart thing to consider whose court the discharge proceeding is pending. I generally will pull all opinions authored by the court to discern a pattern or predilection to rule for or against a Debtor under a given set of facts. If you can align your case with factually similar cases ruled on by the same court, that may be something you can at least allude to in argument.

We know that the determination of fraudulent intent is factual and a court's ruling will be judged under clearly erroneous standard. Therefore, it would be interesting to know whether the particular judge slated to try your client's discharge action has previously held a certain number of omissions to constitute *de facto, prima facie* fraud. Depending on whose court you appear in, whether in our district or other districts, the answer may be important.

I believe Judge Jernigan got it right when she writes in *Moore*, 2007 WL 1474289 at *1, (Bankr. N.D. Tex. May 18, 2007), citing, *U.S. Trustee v. Hughes (In re Hughes)*, 353 B.R. 486, 505 (Bankr. N.D. Tex. 2006):

In other words, this court does not believe it is appropriate to tally up mistakes and omissions in Schedules and SOFAs and, if a debtor has committed some magic number of transgressions, then fraudulent intent to deceive will be inferred and the debtor's discharge will be denied. Instead, this court finds that the approach taken by Judge Hale in *The Cadle Co. v. Guenther (In re Guenther)*, 333 B.R. 759 (Bankr. N.D. Tex. 2005) a little more persuasive. *Id.* at 767-68 (noting that it may be close to impossible to produce Schedules and SOFAs containing no mistakes, but opining that debtors who make more than one falsehood under oath, combined with a pattern of other activity suggesting fraudulent intent, at some point cross a threshold).

*Id.*⁹ Knowing where your judge comes out on the factual issues ahead of time is important to counseling your client as to whether they should worry about the discharge objection.

TIP #10

When Results Matter – Put Pride Aside And Get Some Help

Not everyone is a good trial lawyer. Not everyone understands the nuances of discharge proceedings. When the outcome of the action is pivotal for your client and you do not feel up to the task, consider consulting with and/or having your client retain other counsel to defend the discharge action. However, if you do so, make sure they have actually litigated discharge

⁹ Cf. *Ransom-Jones v. Cordray (In re Cordray)*, 347 B.R. 827, 836 (Bankr. N.D. Tex. 2006) (opinion withdrawn). Judge Lynn, citing the Fifth Circuit's unpublished decision in *The Cadle Co. v. Mitchell (In re Mitchell)*, 102 Fed. App. 860, 862-63, 2004 WL 1448041, at *1 (5th Cir. 2004), held that six or more errors or omissions may amount to reckless disregard for the truth. Judge Lynn, acknowledging the lack of precedential value of *Mitchell*, noted that the district court had "directed [*Mitchell's*] application." *Id.* at 836 n.9, citing *Brown v. Chestnut (In re Chestnut)*, 311 B.R. 446, 450 n.5 (N.D. Tex. 2004) (citing *Mitchell* for the general proposition that filing false schedules may result in the denial of a debtor's discharge), *rev'd on other grounds*, 422 F.3d 298 (5th Cir. 2005). The relative importance of the mistakes, not the number of mistakes, appears to be the determining factor in this district. Less than six errors or omissions may be sufficient. More than six errors or omissions may not make a difference.

adversary proceedings. I have on many occasions taken advantage of counsel who either do not understand discharge proceedings – particularly the case laws in our jurisdiction – or who have never tried an adversary in bankruptcy court. Just because you are a great litigator does not mean you are good on your feet in the bankruptcy arena.

4. Conclusion

Discharge is the holy grail of bankruptcy – from the debtor’s perspective. There are a number of things that can be done to prevent objections to discharge and some practical things to do when confronted with an objection to discharge based on false oath. Following these tips and other experiences that have proven effective, debtor’s counsel can, hopefully, resolve the matter to the satisfaction of the client and his/her practice.

The foregoing is presented for educational purposes only and should not be relied upon as legal advice. Although prepared by professionals, it should not be utilized as a substitute for professional services in specific situations. If legal advice or other expert assistance is required, the services of a professional should be sought.

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