

# KREKELER LAW REPORT



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## 2004 EXAMINATIONS EXPLAINED

Bankruptcy relief is available for the "honest but unfortunate debtor." The benefits of bankruptcy are many, and valuable. To receive that relief and those benefits, a debtor really has to do really only one thing.... provide a full and complete financial disclosure.

This disclosure is made in several ways. The debtor must file schedules and statements on the forms required by the Court. These written submissions include assets, liabilities, income, expenses, and a host of other financial information.

Second, the debtor must attend what is known as a Meeting of Creditors. Sometimes this meeting is called the "341 Meeting", referring to the section of the Bankruptcy Code which requires the meeting and the debtor's attendance. The debtor is under oath at the meeting and must answer questions from the Trustee administering the case and any interested party who appears.

Finally, the debtor must comply with any discovery requests permitted by law. Discovery is a common

process in most lawsuits, and includes both answering questions under oath and providing documents.

A 2004 Examination is part of this discovery process. The name refers to Bankruptcy Rule 2004. Once served with the Order to Appear, the debtor must do so and be placed under oath.

The scope of the questioning is quite broad. It permits an interested party to ask about the debtor's assets, liabilities, financial affairs, and virtually anything else in any way related to the bankruptcy estate. A number of courts have referred to 2004 Examinations as "fishing expeditions".



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Comments? Contact Wendy at (608) 310-3405 or email [wbaker@ks-lawfirm.com](mailto:wbaker@ks-lawfirm.com) so we can make things right.

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# JUDGMENT INTEREST RATES REMAIN AT 6.5%

The interest rate applicable to judgments in Wisconsin are set at 1% over the prime interest rate in effect on January 1 and July 1 of each year. The July 1 prime rate has not changed, which means Wisconsin judgment interest rates remain at 6.5%. Judgments entered after June 30 shall have that rate. The interest rate remains in effect from the date of entry of judgment until the judgment is paid.

As long as we are talking about judgments, let's consider:

## PAYMENT OF JUDGMENT LIENS

An attorney asked me about how judgment liens need to be paid. He questioned whether a judgment debtor with multiple judgment liens on a property should be paid pro rata or if the judgments get paid in some particular order.

In order for a judgment to be a lien it must be docketed with the clerk of courts. Once docketed, the judgment becomes a lien on all property owned by the judgment debtor in that county.

The docketing is recorded by date and time. The earliest recorded judgment lien is first in priority. Its lien is prior to the lien of any subsequently docketed judgments. Judgments should therefore be paid in the order of their priority.

There are often circumstances or instances in which we can avoid paying a judgment lien only in part, or even entirely. We do not recommend that you pay any judgment liens until you have explored all your options.

## DEBT COLLECTION COMPLAINTS ABOUND

Over a half-million consumer complaints were lodged about debt collection activities in 2018. And this total includes only those submitted to the Consumer Financial Protection Bureau and the Federal Trade Commission.

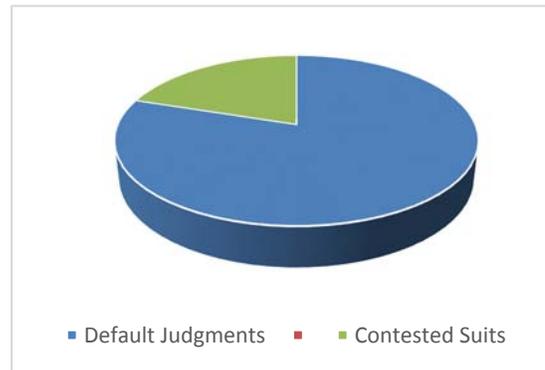
The complaints were about abusive debt collection practices, including:

- Attempts to collect debts that had already been paid
- Collecting from the wrong person
- Threats and confrontations
- Physical intimidation

Fortunately, we have both state and federal laws to protect you from abusive debt collectors. Oftentimes, our clients are even able to recover statutory damages and all of their attorney fees.

## DID YOU KNOW...

That over 80% of debt collection lawsuits result in default judgments?



## QUESTION OF THE MONTH



**Question:** "I've heard that only the debtor can be discharged of debt in bankruptcy, but I have also heard that third parties can be released from debts as well. Which is true?"

**Answer:** Both, depending on the circumstances. The bankruptcy discharge only applies to the debtor. Someone who has co-signed a loan or guaranteed payments under a lease, or is in any way liable with the debtor, normally would not get the benefits of that discharge.

However, in reorganization cases, like Chapters 11, 12, and 13, third parties who are liable with the debtor have sometimes been able to get releases as part of the reorganization plan confirmed by the court.

Within the past year courts in both New York and Delaware have ruled that such releases are constitutional. But these releases are not favored in the law and are not easy to get.

# EFFECTS OF BANKRUPTCY FILING BY MEMBER OF LLC

You have a judgment against an LLC. Members file bankruptcy. What happens?

More than likely, nothing. Your judgment is against the limited liability company (LLC). In the eyes of the law the LLC is a separate person.

When a person files bankruptcy, an automatic stay is imposed. That stay prevents any collection efforts, subject to a few exceptions. In this instance a person filed bankruptcy, but that person was not your judgment debtor. The automatic stay therefore does not apply to you and your collection efforts against the LLC.

The person who did file bankruptcy, and to whom the automatic stay applies, is a member of the LLC. You will want carefully to review the bankruptcy schedules filed by that member/debtor. The filing of a bankruptcy creates a bankruptcy estate, and all property interests of the debtor go into that bankruptcy estate.

That means that the members' LLC membership interest is an asset of the bankruptcy estate. The debtor will place some value upon that interest, but that valuation is not binding upon you, the bankruptcy trustee, or the court.

Debtors are allowed to claim certain kinds and types of property as exempt up to certain amounts. In Wisconsin the debtor gets a choice of using either Wisconsin exemptions or federal exemptions. You will want carefully to review the debtor's schedules to determine how the LLC is valued and what set of exemptions the debtor is claiming.

This bankruptcy filing may provide you with an opportunity. If you are interested in acquiring the debtor's membership interest you may be able to make an offer to the bankruptcy trustee to purchase that interest. Having an ownership interest in your judgment debtor could prove very valuable.

You may also want to attend the meeting of creditors for the debtor. The debtor will be placed under oath and you will have an opportunity to ask questions relating to the debtor and the bankruptcy estate. These questions certainly could include the manner by which the debtor has valued the LLC interest and the assets and liabilities of the LLC. You might also wish to pursue questions regarding any distributions the debtor has received from the LLC.

The filing of a bankruptcy is not always harmful to a judgment creditor's interests. In this instance the automatic stay does not prevent you from continuing your collection efforts against the LLC, and the bankruptcy filing may afford you opportunities you would not otherwise have had.

# PREVENTING MORTGAGE PAYMENT ERRORS

A client recently called me, very upset that her lender sent her a notice stating that she had missed 15 monthly mortgage payments. She vehemently denied this. Unfortunately, she was not sure what payments she had or had not made.

Mortgage lenders make mistakes, and lots of them. Some people even claim the "mistakes" are intentional. Remember the robo-signing scandal with Bank of America back around 2010 or so?

I do not believe these are intentional acts, but I know from personal experience with thousands of clients that the errors are many and often significant.

So how should you make your mortgage payments to avoid these problems? Here are two tips:



1. **Pay by check or automatic withdrawal from your account.** In this way, you will always have a record of the payments made. My client described above made some of her payments by cash, and has no record or proof of the payment. If you are going to pay by cash, be sure to get a receipt and be sure to save the receipt.
2. **Check your payment records every month.** You should, of course, be doing this in any event when you reconcile your bank accounts and credit card statements. The mortgage payment should be easy to find, since for most of us it is our largest monthly payment.



# ELIMINATING INCOME TAXES

Another lawyer asked me how his clients might be able to discharge income tax obligations for the year 2017. The clients filed the tax returns in a timely manner, and there was no fraud involved. But now the IRS is garnishing the clients' Social Security, which is their only source of income.

The attorney wants to file a Chapter 13 now, in order to stop the garnishment, and then convert the Chapter 13 case to one under Chapter 7 in 2020. The attorney was aware that income taxes become dischargeable after 3 years.

It was a good thing that this lawyer sought additional advice. He correctly analyzed that filing a Chapter 13 would stop the garnishment, however, the clients would have to pay the taxes in full over the life of the Chapter 13 plan, which is 3-5 years.

The attorney was incorrect in thinking that he could convert the case to Chapter 7 and that doing so would be effective to discharge the taxes. When a Chapter 13 case is converted to Chapter 7, the original Chapter 13 date is still used as the date of filing. In this instance, this would mean that the 3 years had not expired and none of the taxes would be discharged.

The lawyer also was not calculating the 3 years correctly. The 3 years is counted from the date that the tax return was due, not from the tax year for which the taxes are owed. He therefore should not have been counting from 2017, but instead from either April 15, 2018 or October 15, 2018 (if an extension was requested).

Hopefully, this lawyer avoided malpractice by seeking a second opinion. Second opinions are often extremely valuable. It is one of the reasons that we discuss our cases amongst ourselves in our office at our weekly attorney meetings. Our combined knowledge is a major competitive advantage over other bankruptcy law firms.



Have a question? Idea for a future article?  
If you ask for it – we will write it!  
E-mail Wendy Baker at  
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# WHERE'S KREKELER ?

## ATTORNEY BEN WAGNER JOINS OUR TEAM



Attorney Ben Wagner has joined Krekeler Strother, S.C. and will focus primarily on litigation in consumer matters. Ben previously worked in the Janesville office of the State Public Defender, representing indigent clients facing felony and misdemeanor charges, mental health commitments, and child support contempt actions.

In 2016, he graduated, cum laude (that means "with distinction") from Northern Illinois University College of Law. Ben is a veteran, having served our country for 13 years in the Army and Army Reserve. He was a Staff Sergeant and Automated Logistics Specialist.

Ben grew up in the suburbs of Chicago, and is a faithful Chicago/NIU sports fan. Ben lives with his wife, Sara, sons, Louis and Alex, and step-daughter Lucy, here in Madison. He enjoys watching and playing games, traveling, reading, playing bass, grilling in the back yard, and spending time with family.

## KREKELER STROTHER, S.C.

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