What Every Matrimonial Attorney Should Know About Bankruptcy

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Divorce and bankruptcy are often treated as separate practice areas, but in today's economy they frequently intersect. A client facing marital dissolution is often also facing overwhelming debt, making the timing and coordination of a bankruptcy filing critically important. Proper planning can preserve assets, reduce conflict, and improve the financial outcome for both parties. Poor planning, however, can create unnecessary tax liabilities, expose assets to creditors, and complicate already difficult matrimonial litigation.

For matrimonial practitioners, understanding several basic bankruptcy principles can prevent costly mistakes.

One of the most important concepts is the **Domestic Support Obligation (DSO)**. Child support, maintenance, many court-awarded attorney's fees, and certain court-ordered payments such as mortgage or utility obligations may qualify as DSOs under the Bankruptcy Code. Properly characterizing these obligations in separation agreements and judgments of divorce can significantly affect their treatment in a subsequent bankruptcy case.

Attorneys should also counsel clients to avoid making financial decisions driven by fear or emotion before consulting bankruptcy counsel. Clients frequently believe they should liquidate retirement accounts, pay favored creditors, transfer assets to family members, or rush to satisfy debts before filing bankruptcy. These actions often create far greater problems than they solve. Liquidating retirement accounts may generate nondischargeable tax liabilities, while payments to relatives can become avoidable preferential transfers recoverable by a Chapter 7 trustee.

Similarly, decisions involving tax returns deserve careful consideration. Filing separate returns during a pending divorce may appear advantageous but can reduce available refunds or eliminate planning opportunities. In many situations, maximizing joint tax benefits and coordinating tax strategy with bankruptcy planning produces a better overall result.

Another common misconception involves secured debt. Clients frequently assume they should immediately surrender homes or vehicles they believe they cannot afford. In reality, retaining certain secured obligations may improve eligibility for Chapter 7 relief under the Bankruptcy Code's means test. Because Chapter 7 generally provides a faster and less expensive discharge than Chapter 13, preserving these options before filing can substantially benefit the client.

When both spouses require bankruptcy relief, practitioners should also consider whether a joint bankruptcy filing is feasible before the matrimonial action becomes fully adversarial. A joint filing often reduces costs, eliminates duplicate legal fees, and resolves marital debt more efficiently than two separate bankruptcies. Although emotional considerations frequently discourage cooperation, clients should understand that resolving dischargeable debt together may preserve resources for maintenance, child support, and attorney's fees.

Household composition is another factor that matrimonial attorneys often overlook. The size of the debtor's household, living arrangements, and financial contributions of other household members can affect eligibility for Chapter 7 or Chapter 13 relief. Decisions regarding when a spouse moves out, whether a client begins living with a new partner, or when support obligations become effective may significantly influence the available bankruptcy options.

Practitioners should also recognize that bankruptcy law places Domestic Support Obligations at the highest priority for payment. Support obligations generally receive favorable treatment throughout the bankruptcy process, making careful drafting of matrimonial agreements especially important.

Perhaps the most valuable lesson is that timing matters. A bankruptcy filed before a divorce may produce a dramatically different outcome than one filed afterward. Likewise, seemingly routine decisions made during a matrimonial action—transferring property, paying creditors, withdrawing retirement funds, or changing living arrangements—may carry significant bankruptcy consequences.

No matrimonial attorney is expected to become a bankruptcy specialist. However, recognizing the warning signs and involving experienced bankruptcy counsel early can protect clients from avoidable mistakes while creating opportunities that might otherwise be lost.

The intersection of matrimonial and bankruptcy law continues to grow more significant as economic pressures affect families. Attorneys who understand how these two areas interact are better positioned to preserve assets, reduce litigation costs, and help clients emerge from both divorce and financial distress with the strongest possible foundation for the future.