

COOKE & KLINE LLC

5 PUBLIC SQUARE, SUITE 200 HAGERSTOWN, MD 21740

93 N MAIN STREET, PORT DEPOSIT, MD 21904

TEL 240 347 4944; FAX 443 773 3316

RKLINE@COOKEANDKLINE.COM

WWW.COOKEANDKLINE.COM

ROBERT L KLINE III, MANAGING PARTNER

STUDENT LOAN DEBT – DISCHARGEABLE IN BANKRUPTCY?

As student loan debt levels continue to soar, and parents are finding themselves in the crosshairs of lenders seeking repayment, our office is constantly receiving phone calls seeking advice for whether the person's student loan obligation can be discharged through a bankruptcy petition.

While not exhaustive, the following is a short list of factors and considerations taken by the Court in determining whether the student loan is dischargeable.

For, example, if you were to file a Chapter 7, after filing the petition we would file an Adversary Complaint in the U.S. Bankruptcy Court to have the U.S. Bankruptcy Court determine that the student loan is a hardship and should be discharged with the other debts listed in the bankruptcy petition.

Unfortunately, there is no definition of "hardship" in the Bankruptcy Code, so we are left with examining Court opinions from Maryland and other states that detail how the Court would find that a "hardship" exists, thereby granting our request to have the student loan determined dischargeable with the other debts listed in the bankruptcy petition.

A review of Maryland law and surrounding states suggests that the U.S. Bankruptcy Court is most likely to examine the following three (3) areas in determining if the debt is a "hardship":

1. Would you have less than a minimal standard if forced to repay the loans. Examples would be (in no particular order of importance):
 - a. Would you have a current income below poverty;
 - b. Would you qualify for food stamps or SSI if forced to repay the debt;
 - c. Do you own virtually nothing;
 - d. Are you suffering from psychological issues;
 - e. Do you live frugally and still cannot make ends meet;
 - f. Is the degree is worthless that you owe the debt on;
 - g. Are you supporting minor dependents;
 - h. if you pay the student loan back will you be poverty stricken;

2. Is your financial situation likely to improve
Examples would be (in no particular order of importance):
 - a. Have you suffered debilitating injuries from personal injury;
 - b. You cannot find steady work due to physical or mental issues;
 - c. You have physical and/or mental impairments that are not likely to get better soon;
 - d. You are living below poverty levels.
3. You made a good faith effort to pay the loans back.
Examples would be (in no particular order of importance):
 - a. You tried to restructure debt before filing bankruptcy;
 - b. You used all available resources to pay debt;
 - c. Your failure to pay back the student loan(s) is beyond your control;
 - d. You have tried to maximize income and minimize expenses and was unsuccessful;
 - e. You did not run to file bankruptcy first, you tried other avenues to resolve issue

Of course, each case is different. And each of the above examples has been drawn from a case with its own particular set of facts. Each case must be reviewed on each case's own particular facts. No one factor listed above will be determinative of your success or failure before the U.S. Bankruptcy Court. As much as being able to demonstrate the above factors and/or conditions, an experienced attorney handling such matters is also important. As such, you should consult with an experienced bankruptcy attorney to discuss your particular facts to determine the best course of action for you.