



## Tip of the Month November 2019

### Bankruptcy and Shame

Submitted by: Chris Kramer, Resource Attorney  
Volunteer Lawyers Network

Humiliation. Distress. A guilty conscience. Society's disapproval. Misinformation. No way forward. No way back.

Internal and external shame can limit our clients' ability to think clearly about bankruptcy. I have encountered this issue many times with my clients, and I am sure many of you have had the same experience. In my worst case, I had a client who would have greatly benefited from bankruptcy irrevocably decide he would not file for bankruptcy because another person he consulted for advice told him it was immoral.

No, bankruptcy is not immoral. It is a legal process for honest persons to obtain relief from crushing debt. It is a chance at a "fresh start." People with immoral intentions in bankruptcy will have to deal with the full force of the US Trustee's Office.

In Bankruptcy Code section 523, the "Exceptions to Discharge" make it clear that the law does not allow for an "anything goes" interpretation when it comes to discharging debts through bankruptcy. For example, Section 523 does not allow the discharge of debts obtained through "false pretenses, a false representation, or actual fraud..." (523(2)(A)).

The vast majority of people filing for bankruptcy are good people who need the help of the Bankruptcy Code to get beyond a significant financial crisis (or likely crises) in their life. This is not to say bankruptcy does not have any real-world consequences – it can, such as serious damage to one's credit rating or possible social disapproval. But bankruptcy also offers a "floor" from which to build a new life – a "fresh start."

#### Ideas for talking about shame

These ideas won't work for every client. You will also have to decide which ideas resonate with you – you don't want to say things that don't "ring true" for either of you.

1. Normalize the experience
  - a. Let the client briefly speak about their shame
  - b. Discuss how it is common for people to feel shame about filing for bankruptcy
  - c. Address the shame by challenging its underlying assumptions
    - i. Affirm the client's statements that they always meant to pay the debt back
    - ii. Discuss how most people live paycheck to paycheck by necessity
    - iii. Discuss how often it only takes one or two major life events to significantly harm a person financially (e.g., divorce, medical problems, lost income)
    - iv. Mention how filing statistics show that bankruptcy is common

1. Minnesota statistics:
  - a. [Since 2016, between 9,470 – 9,761 cases have been filed each year \(combined totals of chapters 7 & 13\).](#)
2. National statistics:
  - a. [March to March yearly filing statistics](#) show the following totals from 2016 - 2019:
    - i. Chapter 7: 477,106 – 523,394 cases/yearly
    - ii. Chapter 13: 288,039 – 302,193 cases/yearly
2. Explain the Bankruptcy Code's goal of a "fresh start"
  - a. The debtor benefits by removing this crushing load of debt
  - b. Society benefits by transforming a debtor into a restored consumer (note: emphasize carefully rebuilding credit by selectively using credit in small amounts while keeping cards paid-off monthly – and always paying bills by the due date or earlier)
3. Discuss the creditors' need for shame to control the debtor
  - a. Lending money is a risk/reward business. Creditors have already factored-in the likelihood that some of their clients will not be able to pay them back. They are going to make plenty of money, so debtors don't need to let the fate of big banks keep them from taking the actions necessary to get out of their own financial crises.
  - b. The typical lender does not share our desire to see the debtor ever succeed, for long-term entrapment in debt is normally the goal. For example, a creditor's "dream debtor" pays the minimum each month and thereby takes many years to pay off even small debts, for they are mostly paying interest charges, not principal.
  - c. Shame keeps the debtor immobile and trapped. For example, I commonly see shame causing people to wait far too long to file for bankruptcy help, even cashing out pensions and other retirement funds that would have been protected in bankruptcy. Shame can lead to very bad decisions, but it is natural for people to want to be able to say they "tried everything" before considering bankruptcy.
4. If you and the client feel comfortable doing so, discuss cultural and spiritual attitudes such as grace, forgiveness and rebirth. Jewish and Christian traditions, for example, contain positive stories of debt forgiveness in the Year of the Jubilee. With a few clients, I have familiarized myself with a tradition that is meaningful to them and suggested they consider it.

In summary, many of our clients are feeling some shame about filing for bankruptcy. We can help our clients deal with this shame by addressing it appropriately based on the needs of each client. I typically don't dwell on the topic of shame, but I do address it briefly in the initial client meeting – and prepare myself in case it comes up again.