

*In the last article, Financial Professionals Should Stop Pretending and Face Reality, Part III, “the Chorn” warned financial professionals of the dangers to themselves and their clients by being forced into the bankruptcy court system by writing, “But did you know that when you enter the bankruptcy court system, the fundamental rights guaranteed in the Bill of Rights are no longer in affect?” Wally Cato, Editor*

## **FINANCIAL PROFESSIONALS SHOULD STOP PRETENDING AND FACE REALITY, PART IV**

One question that I am hardly ever asked by financial professionals is, “What are my chances statistically of going into bankruptcy?” But this is a question that they should be asking considering their financial vulnerabilities. Let us assume, although we know differently, that the number one target for litigation in the United States, the financial professional, is no more vulnerable to file for bankruptcy protection because of financial adversity than that of the general population.

**CHECK THE TREND FOR PERSONAL BANKRUPTCIES: By the year 2010, one out of every 50 households in the United States will be in bankruptcy and under the jurisdiction of the federal bankruptcy court system.**

The alarming trend in the chart below are based upon information from the federal government’s own statistics. Source for the 1980, 1993 and 2003 statistics, the Administrative Office of U.S. Courts and the U.S. Bureau of the Census.

Year 1980	3 of 1000 households	1 of 336 households
Year 1993	8 of 1000 households	1 of 114 households
Year 2003	13 of 1000 households	1 of 73 households
Year 2010	Trend prior to Katrina 20 of 1000 households	1 of 50 households

**In reality, the current trend appears to be worse.** As a result of natural disasters due to Katrina and Rita; the rise in the price of commodities, particularly oil related products, and the failure of large pension funds; rising interest rates, it appears as if 1 out of every 50 households will be in bankruptcy before the next 4 years. The “Chorn” sees the trend of the

percentages of households going into bankruptcy intensifying with the introduction of a new tax code, placing higher burdens on the U.S. homeowners due to a decrease in the amount of mortgage interest deductions. Regardless, let's conclude that **the chances of the financial professional going into bankruptcy exceed the statistics of one out of fifty as listed in the chart above.**

## **ONCE IN BANKRUPTCY, YOUR WHOLE WORLD WILL BE TURNED UPSIDE DOWN**

Although it is not true in every case, many financial professionals are small businessmen, who have at times pledged their home and other assets to obtain funding from banks and others to finance their businesses. Once you petition yourself or your company into a "voluntary" bankruptcy or are involuntarily petitioned by your creditors into a bankruptcy, your whole world will be turned upside down. And if things could not seem worse, they really are because a more onerous bankruptcy law went into affect on October 17, 2005.

Regardless of how the financial professional ended up within the jurisdiction of the federal bankruptcy court system, once there, your books and records fall under the scrutiny of parties in the bankruptcy. The new law has stiffer requirements for what records must be produced by the debtor. The privacy of your finances and subsequently those of your clients are, now as prior to the new law, made privy to the U.S. Trustee, who is an adjunct to the Justice Department; a court appointed Examiner or Trustee in bankruptcy, if you are not a Debtor in Possession running your former business; attorneys for your clients and unsecured creditors as well as attorneys for the banks, your secured creditors.

While your books and records are under scrutiny by all of the parties listed above, if you and your records are not "squeaky clean" you may fall under attack from other government agencies like the I.R.S., S.E.C., N.A.S.D. or you may have the court accuse you of concealing records and other information on you or anyone of your clients, who becomes targeted by these federal agencies.

If a financial professional does not want to reveal information on his client while in the bankruptcy arena, he is labeled as a troublemaker and is accused by the court as obstructing the process. In my case, when the records

concerning clients holding assets in a bearer form were not produced by me, I was fined \$200,000 by the court for obstructing the process. Delving into the financial records of the financial professional and his clients can also lead to criminal charges as well as to civil charges.

## **WHAT EVER HAPPENED TO THE RIGHT TO PRIVACY AND OTHER FUNDAMENTAL RIGHTS OF THE DEBTOR?**

Before answering that question, we must think about the status of our clients. Who do these clients belong to? Do they belong to you, the financial professional, who has serviced them, who has advised them to protect their assets, who has gathered information about their family and finances or does all the information concerning your clients belong to some corporate group or entity, perhaps containing your own name. While we're at it asking these types of questions, ask yourself, who owns the mail delivered to your office/home, whether the mail is addressed to the financial professional as C.E.O, C.F.O. or President of the corporation or some other company designation. And who owns the telephone numbers and all the calls and messages left for your clients to hear when you are not there to talk to them?

In many cases, like my case, the company and not the financial professional were petitioned into bankruptcy. The clients in my case belonged to the company and not to me, the financial professional. What all this meant to my clients was that eventually, the parties in the bankruptcy process claimed that all the books, records and computer discs concerning my clients belonged to the company; that all the private information concerning my clients belonged to the company; that all the mail directed to me belonged to the company; that all the telephone calls belonged to the company. And because everything belonged to the company and not to me, the information was disclosed to those involved in the civil process of bankruptcy and eventually to those involved in the criminal process. In order to insure that my clients were kept in the dark, for a two-year period subsequent to me being indicted, I was enjoined by an order of the bankruptcy court from even contacting these same clients.

*In the next chapter on FINANCIAL PROFESSIONALS SHOULD STOP PRETENDING AND FACE REALITY, PART V, you will see how the "Chorn's" constitutional rights were violated while in bankruptcy, which*

*begs the question, “What ever happened to our right to privacy and other fundamental rights?”*

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