

## **Attorneys Fees: YOURS and MINE!**

**by: Bruce Steinfeld**

**Question:** Delbert has filed a Bankruptcy Petition, seeking, in part, to get out paying Wanda's attorneys fees that were awarded to her blood sucking divorce lawyer by that not-so-bright Judge. (What is the impact of a former Spouse filing to bankruptcy on a previously issued award of attorney's fees to the non-bankrupting former spouse?)

**Answer:** Under Georgia law, an award of attorney's fees is considered part of alimony. Delbert is stuck.

*See* O.C.G.A. § 19-6-2; and *McClain v. McClain*, 237 Ga. 80, 227 S.E.2d S (1976). Payments in the nature of alimony, maintenance and support are nondischargeable pursuant to 11 U.S.C. §S23(a)(S). Therefore, an award of attorney's fees in divorce proceedings is nondischargeable in bankruptcy. *Westmoreland, Patterson & Moseley v. Painter*, 21 Bankr. 846 (Bankr. M.D. Ga. 1982). In a State in which attorney's fees are *not* considered part of alimony, however, the result could be different. In addition, an award of attorney's fees is *always* nondischargeable in a Chapter 7 bankruptcy case.

**Question 9(B)**

Not only that, but Delbert has also asked that he get out paying his own attorneys fees because his attorney didn't do anything for him, anyway. (What is the impact of a bankruptcy filing where a client in a family law matter owes his own attorney fees?)

**Answer:** Sadly, The attorney is just another unsecured creditor. **The attorney's fees are dischargeable.**

## **ATTORNEYS FEES- CAN WE GET PAID?**

### **ROB WELLON**

The potential divorce client is quoted a \$10,000 retainer, and the client states he will use his Pink Pony Premier Visa credit card to charge the amount requested. However, the client also states that he intends to file bankruptcy and the charge may be ultimately discharged. Are there any ethical or professional prohibitions regarding this transaction? What if the divorce lawyer then states, "Well, in that case, make it \$20,000"?

**ANSWER:** No. No. According to Bar counsel and the professionalism instructor at Emory Law School, there are no ethical violations as long as the lawyer defines his retainer as such and obtains a written contract explaining the details of the retainer agreement, specifically that should the lawyer's time multiplied by his hourly rate and expenses fail to consume the total retainer, the lawyer has agreed to return the unused balance of the retainer. This is especially true if the lawyer ups the ante to double his retainer after he has set a reasonable fee. Surely protecting the fee and enhancing the fee is important if the attorney envisions a scenario in which the client is unable to pay future sums due to his financial condition.