

**Charles Longstreet Welton Family Law Inn of Court  
Team 5 Presentation  
Rob Wellon**

**TIMING IS EVERYTHING**

What if one spouse wants to file a bankruptcy proceeding and the other does not? Does the timing, *i.e.*, whether the bankruptcy is filed before, during, or after a divorce, make a difference?

**ANSWER:**

Best Advice:

Bankruptcy should almost always be filed AFTER the divorce is final.

Divorce judgment always establishes obligations. Those obligations are not final until after the Judgment enters and the parties are aware of them. By agreement the parties may even plan for such an action. Conversely, filing prior to or during divorce proceedings could bring into play the §362(a) stay provisions of the Bankruptcy Code, which might mean the divorce cannot be finalized absent the lifting of the stay. However, under the new Bankruptcy Abuse and Consumer Protection Act of 2005 (BAPCPA) the automatic stay provisions do not apply to a civil action for the establishment or modification of an order for a domestic support obligation, child custody, or dissolution of marriage §362(b). It is also imperative that divorce counsel refer the client to a competent bankruptcy lawyer to obtain advice on these issues, or the divorce lawyer may be deemed to be a “debt relief agency” and therefore subjected to the penalties and liabilities of BAPCPA, see e.g. §526(c)(2).