

Bankruptcy Court Authorizes Destruction of Client Files

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In re Howrey LLP, No. 11-31376 (Bankr. N.D. Cal. March 2, 2012) see also (Trustee's motion)

Brief Summary

The Bankruptcy Court, Northern District of California, granted a motion by the Trustee of a bankrupt law firm allowing the Trustee to destroy client files that remained in the firm's possession after giving notice to affected clients and an opportunity to claim such files.

Complete Summary

Following the dissolution of a national law firm, the Chapter 11 Trustee handling the firm's bankruptcy moved the Bankruptcy Court (Northern District of California) to adopt a process for dealing with the disposition of client files. The court granted the Trustee's motion and adopted the proposed procedures. Those procedures set out detailed requirements for notifying affected clients, but generally allowed for the destruction of unclaimed files following a waiting period triggered by such notification.

The files at issue generally related to closed matters. Most of the firm's active files had been transferred to different firms. Nonetheless, the remaining files were substantial, amounting to roughly 220,000 boxes and costing roughly \$55,000 per month to store. At least one third-party storage facility had threatened to auction off such files in the event its storage fees were not paid.

The Trustee claimed to have authority to abandon the files under Sections 541 and 544 of the Bankruptcy Code. Section 541 defines "property of the estate" broadly and Section 544 authorizes the abandonment of property that is burdensome to the estate or of inconsequential value. Despite such authority, the Trustee found it prudent to adopt procedures that were guided by the ethical rules applicable to attorneys.

The Trustee looked to guidelines for dealing with client files contained in rules related to termination of representation and the sale of a law practice. Those rules provided guidance for the procedures related to client notification and the appropriate waiting period following notification.

Moreover, concerns regarding client confidentiality, combined with concerns about the cost of storage led the Trustee to propose destruction of unclaimed files as the best course of action. And while many jurisdictions' ethical rules require the preservation of client files for a certain number of years, the Trustee's motion noted that such rules do not expressly contemplate bankruptcy. The procedures did, however, provide for the preservation of certain documents with intrinsic value, such as wills and trusts, or documents related to criminal defense.

Significance Of Opinion

This disposition provides one reasoned and principled approach to the handling of client files by bankrupt law firms. Ethical rules can, and in this case do, provide some guidance. It should be noted, however, that jurisdictions vary regarding lawyer responsibility for closed files. Moreover, a Bankruptcy Trustee may be concerned principally with the bankrupt law firm's obligations, whereas the Court ultimately also must be mindful of the individual lawyers and the clients whose interests may be impacted as well.

For More Information On Client Files See:

Robert W. Hillman & Allison Rhodes, *Client Files and Digital Law Practices: Rethinking Old Concepts in an Era of Lawyer Mobility*, 43 Suffolk U. L. Rev. 897 (2010)

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