

The Difficult Debtor: Dealing with the Disabled (Incompetent), Dead, Divorcing, Disappearing, and Disagreeable Debtor

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I. The Disabled Debtor

Hypothetical:

- John and Mary Smith, a married couple in their late 50s, carry significant secured and unsecured debts, though the primary residence is solely owned by John and is currently facing foreclosure.
- Mary serves as the main income provider, while John has ceased working due to multiple strokes that have resulted in cognitive impairments impacting his memory, communication, and decision-making abilities.
- The majority of their debts are joint, including vehicle loans, credit cards, and medical expenses mainly associated with John. Mary believes that filing a joint Chapter 13 bankruptcy is necessary to save their home and restructure their debts.
- Mary has consulted with bankruptcy counsel to pursue a joint Chapter 13 filing; however, John did not participate in the consultation.



I. The Disabled Debtor



- Mary reports that John has been hospitalized following a subsequent stroke, and medical professionals have determined that he lacks the capacity to make legal decisions. Mary has managed all household financial matters for several years.
- Six weeks prior, Mary obtained a general durable power of attorney appointing her as John's agent. While notarized, the document does not explicitly grant authority for bankruptcy or litigation matters and is not supported by any medical evaluation.

Issue:

- Is it permissible for Debtor's counsel to file a joint Chapter 13 bankruptcy petition for Mary and John without directly consulting John?

Uniform Power of Attorney Act

See O.C.G.A. 10-6B-70 for details.

Practice Tip: Employ the Standard Form.

https://aging.georgia.gov/sites/aging.georgia.gov/files/Statutory%20Power%20of%20Attorney_2017.pdf

DESIGNATION OF AGENT

I, _____ (Name of principal)
name the following person as my agent:

Name of agent: _____
Agent's address: _____
Agent's telephone number: _____
Agent's e-mail address: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of successor agent: _____
Successor agent's address: _____
Successor agent's telephone number: _____
Successor agent's e-mail address: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of second successor agent: _____
Second successor agent's address: _____
Second successor agent's telephone number: _____
Second successor agent's e-mail address: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in O.C.G.A. Chapter 6B of Title 10:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All preceding subjects" instead of initialing each subject.)

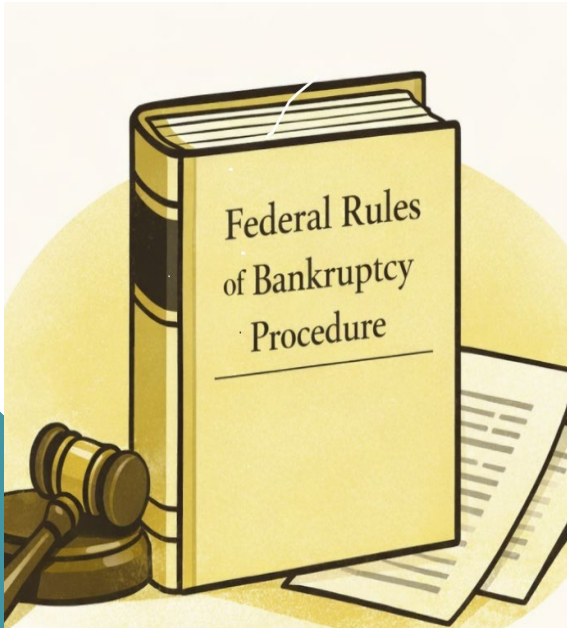
- | | |
|--|---|
| <input type="checkbox"/> Real property | <input type="checkbox"/> Claims and litigation |
| <input type="checkbox"/> Tangible personal property | <input type="checkbox"/> Personal and family maintenance |
| <input type="checkbox"/> Stocks and bonds | <input type="checkbox"/> Benefits from governmental programs or civil or military service |
| <input type="checkbox"/> Commodities and options | <input type="checkbox"/> Retirement plans |
| <input type="checkbox"/> Banks and other financial institutions | <input type="checkbox"/> Taxes |
| <input type="checkbox"/> Operation of entity or business | <input type="checkbox"/> All preceding subjects |
| <input type="checkbox"/> Insurance and annuities | |
| <input type="checkbox"/> Estates, trusts, and other beneficial interests | |

I. The Disabled Debtor

Fed. Rule Bankr. P. Rule 1004.1

Voluntary Petition on Behalf of an Infant or Incompetent Person

- (a) Represented Infant or Incompetent Person. If an infant or an incompetent person has a representative-such as a general guardian, committee, conservator, or similar fiduciary-the representative may file a voluntary petition on behalf of the infant or incompetent person.
- (b) Unrepresented Infant or Incompetent Person. If an infant or an incompetent person does not have a representative:
 - (1) a next friend or guardian ad litem may file the petition; and
 - (2) the court must appoint a guardian ad litem or issue any other order needed to protect the interests of the infant debtor or incompetent debtor.



I. The Disabled Debtor

Guardian ad litem versus Next Friend

- Next Friend- stop gap to file the petition but need Guardian ad Litem

GAL duties:

In a limited guardian ad litem role:

- (1) may, on behalf of Debtor, retain and instruct legal counsel for Debtor;
- (2) may file, prosecute, or defend any pleading, motion, objection, or response;
- (3) may seek conversion or dismissal of Debtor's bankruptcy case;
- (4) may request the entry of discharge;
- (5) may take any other action on behalf of Debtor in this bankruptcy case; and
- (6) shall not be entitled to compensation for her role as guardian ad litem for the Debtor, unless otherwise permitted by order of the Court.

See (*In re Saladana* 2025 WL 1335115 (USBC CD Cal 2025))



I. The Disabled Debtor

Case Law

In re Rivas, 656 B.R. 898, (Bankr. E.D.Mo. 2023)- discussion of POA and next friend motion under 1004.1.

In re Benson, 2010 WL 2016891 at 3 (Bankr. N.D.Ga. 2010) – Judge Bonapfel case on Next Friend

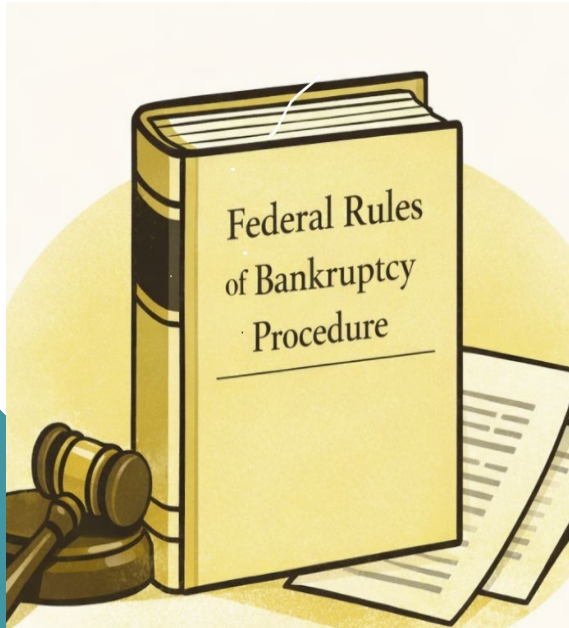


I. The Disabled Debtor

Fed. Rule Bankr. P. Rule 9010

Rule 9010. Authority to Act Personally or by an Attorney; Power of Attorney

- (a) In General. A debtor, creditor, equity security holder, indenture trustee, committee, or other party may:
- (1) appear in a case and act either on the entity's own behalf or through an attorney authorized to practice in the court; and
 - (2) perform any act not constituting the practice of law, by an authorized agent, attorney-in-fact, or proxy.
- (b) Attorney's Notice of Appearance. An attorney appearing for a party in a case must file a notice of appearance containing the attorney's name, office address, and telephone number—unless the appearance is already noted in the record.
- (c) Power of Attorney to Represent a Creditor. The authority of an agent, attorney-in-fact, or proxy to represent a creditor—for any purpose other than executing and filing a proof of claim or accepting or rejecting a plan—must be evidenced by a power of attorney that substantially conforms to the appropriate version of Form 411. A power of attorney must be acknowledged before:
- (1) an officer listed in 28 U.S.C. §459 or §953 or in Rule 9012; or
 - (2) a person authorized to administer oaths under the state law where the oath is administered.



II. The Deceased Debtor

Hypothetical:

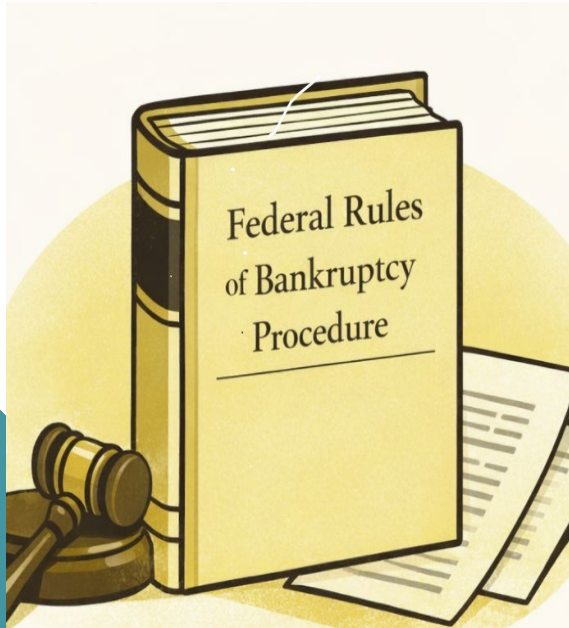
- A joint Chapter 13 case is filed and confirmed. Several months later, John passes away. Mary remains employed and intends to continue making plan payments, retain the home, and complete the Chapter 13 case to obtain a discharge. Given that John had minimal income but substantial joint debt, can the case proceed? What actions should the attorney undertake?



II. The Deceased Debtor

Fed. Rule Bankr. P. Rule 1016

Death or Incompetency of a Debtor



- (a) Chapter 7 Case. In a Chapter 7 case, the debtor's death or incompetency does not abate the case. The case continues, as far as possible, as though the death or incompetency had not occurred.
- (b) Chapter 11, 12, or 13 Case. Upon the debtor's death or incompetency in a Chapter 11, 12, or 13 case, the court may dismiss the case or may permit it to continue if further administration is possible and is in the parties' best interests. If the case continues, it must proceed and be concluded in the same manner as though the death or incompetency had not occurred.

II. The Deceased Debtor

In re Feiffer, No. 24-60942-pgr (Bankr. N.D.N.Y. Mar. 28, 2025): The court declined to permit the non-filing spouse to continue the deceased spouse's unconfirmed bankruptcy case

In re Price, No. 24-50592 (Bankr. S.D. Ohio Dec. 15, 2025): Mr. and Mrs. Price jointly filed for Chapter 13 bankruptcy, owning their home as joint tenants with right of survivorship. Mr. Price died shortly after confirmation, leaving Mrs. Price as sole owner. The court, citing Rule 1016, allowed continuation since Mrs. Price could fund the plan, and it was in the best interests of all parties. The confirmed plan established binding obligations for debtors and creditors, defining the scope of claims under the plan.

- *In re Thomas*, No. 24-22030 (Bankr. W.D. Tenn. Aug. 22, 2025): Ms. Thomas, a pro se Chapter 13 filer struggling with mortgage payments on her Michigan property, died before plan confirmation. Her daughter, Ms. Towers, acting under power of attorney, submitted an amended plan funded by her income. Applying Rule 1016(b), the court held that further administration was permissible as Ms. Towers voluntarily funded the plan and continuation served the best interests of all parties, including the Bank and unsecured creditors.



III. The Divorcing Debtors



Hypothetical:

- Prior to the completion of the plan, John has miraculously recovered from his stroke, has a new lease of life and plans to divorce Mary. He now seeks financial separation and questions his ongoing liability for joint debts covered under the Chapter 13 plan. What should Debtor's counsel do?

III. The Divorcing Debtors



Issue: Is it ethically acceptable for an attorney to maintain representation of one or both debtors?

Georgia Rules of Professional Conduct:

- **Rule 1.6 – Confidentiality of Information**
- **Rule 1.7 – Conflict of Interest**
- **Rule 1.7(c) – “Informed Consent”**
- **Rule 1.9(a) – Conflict of Interest: Former Client**
- **Rule 1.4 – Communication**
- **Rule 1.14 – Client with Diminished Capacity**
- **Rule 1.16 – Termination of Representation**

III. The Divorcing Debtors

Georgia Rule of Professional Conduct 1.7 Conflict of Interest: A General Rule



- a) “A lawyer shall not represent or continue to represent a client if there is a significant risk that... the lawyer’s duties to another client, a former client, or a third person will materially and adversely affect the representation of the client.”
- b) A lawyer may represent the client nonetheless if: “each affected client or former client gives informed consent in writing...” This “informed consent” is not allowed in certain circumstances.

III. The Divorcing Debtors

“Conflict Waivers”



Rule 1.7(b) sets out the requirements for “informed consent”:

“If client informed consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected client or former client gives informed consent, confirmed in writing, to the representation after:

1. consultation with the lawyer...;
2. having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation; and
3. having been given the opportunity to consult with independent counsel”

III. The Divorcing Debtors

“Non-Waivable Conflicts”



Rule 1.7(c) states:

Client informed consent is not permissible if the representation:

1. is prohibited by law or these rules;
2. includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or
3. involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

III. The Divorcing Debtors

Georgia Rule of Professional Conduct 1.14 (Client with Diminished Capacity)



What if John was still incompetent?

- When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken... the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
- When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

III. The Divorcing Debtors

Bankruptcy Code § 362(b):



Bankruptcy does not operate as a stay of: the commencement or continuation of an action against a debtor to (i) establish or modify domestic support obligations, or (ii) for the dissolution of the marriage (except to the extent that such proceeding seeks to determine the division of estate property).

III. The Divorcing Debtors

In re Johnson, 655 B.R. 83 (Bankr. S.C. 2023) (Gasparini, J.)



“An equitable distribution determination by the family court would necessarily involve property of the bankruptcy estate.”

III. The Divorcing Debtors

In re Williford, 294 Fed. Appx. 518
(11th Cir. 2008)



“Limited to its proper role, the bankruptcy court will not duplicate the functions of state domestic relations courts, and its rulings will impinge on state domestic relations issues in the most limited manner possible.”

III. The Divorcing Debtors

The Attorney-Client Privilege (Joint Representation)

In re Behn, No. 3:12-bk-5146-PMG, 2013 Bankr. LEXIS 5820, at *8-9 (Bankr. M.D. Fla. Apr. 17, 2013)



Under Rule 501, "federal Common [law] governs privileges in cases where federal law supplies the rule of decision, while state privilege law governs in civil cases involving 'a claim or defense for which state law supplies the rule of decision.

III. The Divorcing Debtors

Teleglobe Communs. Corp. v. BCE, Inc. (In re Teleglobe Communs. Corp.), 493 F.3d 345 (3d Cir. 2007)

“The great caveat of the joint-client privilege is that it only protects communications from compelled disclosure to parties outside the joint representation. When former co-clients sue one another, the default rule is that all communications made in the course of the joint representation are discoverable.”

Attorney client relationship after litigation - *Peterson v. Baumwell*, 202 Ga. App. 283, 284-85, 414 S.E.2d 278, 280 (1991)

“Thus, ‘[i]f two or more persons jointly consult [or retain] an attorney the communications which either makes to the attorney are not privileged in the event of any subsequent litigation between the parties. In such situations it is considered that the attorney does not have an attorney-client relationship with either of the joint parties.’”



III. The Divorcing Debtors

Severing the Joint Case

In re Monplaisir, 699 B.R. 717 (Bankr. S.D.N.Y. 2025)



Bankruptcy Code § 302(a) permits joint petitions “for the procedural purpose of allowing married couples to avoid the expense of paying two filing fees and the inconvenience of filing two separate petitions.”

Section 302 does not expressly address severance of a joint petition. Section 302(b) gives courts the authority to ‘determine’ the extent to which the debtor’s estates shall be consolidated. Courts interpret this provision as giving courts the discretion to sever a joint case.

III. The Divorcing Debtors

Severing the Joint Case

In re Seligman, 417 B.R. 171 (Bankr. E.D. N.Y. 2009)

Courts have exercised their discretion to sever a joint case when a debtor has sought a change in marital status. The court in *Seligman* severed the chapter 13 case to allow one of the debtors to convert to chapter 7.

“[I]f one spouse had the ability to block severance by withholding consent, the threat of one party holding the other’s discharge hostage could be used offensively in divorce proceedings.”

See also *In re Estrada*, 224 B.R. 132 (Bankr. S.D. Cal. 1998)

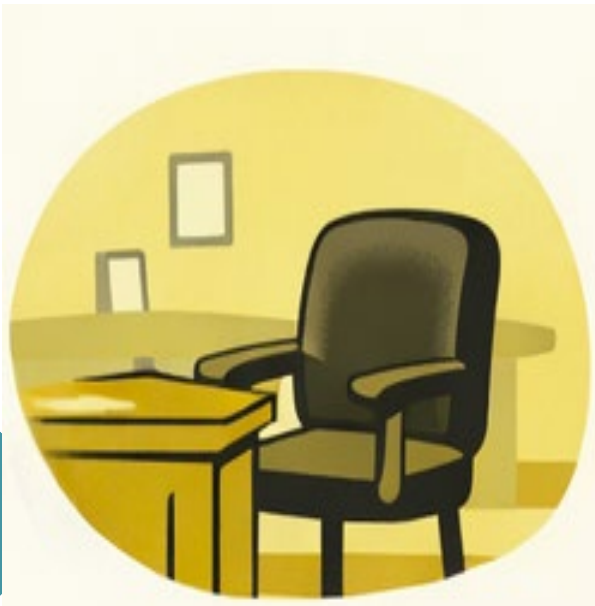


IV. The Disappearing Debtor



- **Hypothetical:** (New development—disregard the divorce):
After confirmation, Mary stops all communication with counsel, stops making plan payments, moves without providing notice and becomes unreachable. Debtor's counsel becomes aware of John's death. The Chapter 13 Trustee files a motion to dismiss.
- What steps can or should the Debtor's counsel pursue?

IV. The Disappearing Debtor



Withdrawal? See NDGA BLR Rule 9010-5

- Must have Bk Court Permission
- Send 14 day letter to client
- Unless consent, attorney must file Motion with Bk Court requesting permission to withdraw

IV. The Disappearing Debtor



Unclaimed Funds- Court Registry

<https://www.ganb.uscourts.gov/unclaimed-funds>

\$11.5 million in GANB Court registry

V. The Disagreeable Debtor



- Hypothetical:
- Mary begins conducting her own research online and determines that she can independently draft pleadings and manage any required appeals using AI, without your assistance.
- How should the Debtor Attorney proceed?
- What actions should the judge take?

V. The Disagreeable Debtor



- Case Law
- *In re Martin*, 670 B.R. 636 (Bankr. N.D. Ill. 2025) –sanctions for improper use of AI in court submissions
- *In re Jackson Hospital & Clinic, Inc.*, 2025 WL 3251167 (Bankr. M.D. Ala. 2025)
- See www.damiencharlotin.com/hallucinations/ for a database of legal decisions about generative AI use compiled by Professor Damien Charlotin, a senior research fellow and lecturer at HEC Paris (Paris).

Questions?

