

Syllabus for University of St. Thomas Bankruptcy Clinic

Overview

FIRST MEETING: January 7, 2010

MEETING TIME & PLACE: To be posted and as set forth below.

INSTRUCTOR(S):	Steven H. Silton	Thomas G. Wallrich
ADDRESS	333 S 7 th St, #2000 Minneapolis, MN 55402 ssilton@hinshawlaw.com 612-333-3434	333 S 7 th St, #2000 Minneapolis, MN 55402 twallrich@hinshawlaw.com 612-333-3434

A comprehensive clinical legal program that provides classroom session on bankruptcy law, and guidance through one of two practical bankruptcy situations in the representation of real clients.

The first clinical scenario would be filing of a Chapter 7 bankruptcy proceeding on behalf of a debtor. The student would participate in the intake and retention of the client, would learn to analyze the financial situation of the debtor, would file the bankruptcy petition, appear on behalf of the debtor at the the first meeting of creditors, and monitor the case through discharge.

The second scenario involves the student defending a debtor who has been sued for a denial of discharge, or a case commenced by a creditor to have one or more of the creditor's claims declared non-dischargeable. The student would be responsible for interviewing the client and investigating the facts surrounding the dischargeability matter. The student would draft the Answer, conduct discovery, participate in motion practice, if appropriate, and finally, defend the client at the trial.

Both of the scenarios take approximately 90-120 days from beginning to completion, and should fit nicely within one semester. Students would participate in all aspects of either of the aforementioned scenarios. The students would practice under the student practice rules of Federal Court and under the guidance of local bankruptcy attorneys. Students would actually appear in court, and in front of the bankruptcy judges, would argue motions, defend depositions, participate in settlement negotiations, counsel clients on the litigation risks, and try a jury trial in Bankruptcy Court.

REQUIRED MATERIALS:

- (1) Bankruptcy Code (United States Code, Title 11);
- (2) Federal Rules of Bankruptcy Procedures; and
- (3) Local Rules (available on the Bankruptcy Court's website www.mnb.uscourts.gov)

In lieu of purchasing the books, you may rely on online availability of the materials if convenient. However, fair warning is given that in class we will frequently refer directly to the text of the Code and Rules, and we expect the students to be able to refer to the same text.

Class composition. The clinic will involve six students, split into three “Teams” of two. Two of the Teams would handle the filing of an individual bankruptcy case, while one Team would handle the defense of a discharge or dischargeability action.

Attendance policy. Students must attend **all** classes, unless they receive consent of the professors in advance to miss a class. Students must consult with the professor to find out about the required make up for any unavoidably missed classes. Skipped classes and/or failure to complete assigned make-ups will affect the student’s grade. Students may miss one class per semester to attend a mentoring program event. Please give notice to the professors in advance.

Case Rounds. Case rounds will be held periodically throughout the semester on Tuesdays during regular class time and on Thursdays from 5:30-7:30 when noted. One or two case Teams will be asked to present an issue or issues from current cases. Rounds can be used to brainstorm ideas for case handling, to share a strategy or tactic that worked particularly well (or not so well), or to even try out a risky idea in the form of a moot. There are two types of case rounds.

ASSIGNMENTS AND EXAMS:

The primary assignments will be the client assignments that you will receive throughout the year. The final assignment will be to submit your actual time sheets (you should maintain contemporary timesheets during the class term) containing a statement of time spent on client work and a detailed description of the work performed, (sample time sheet is in the materials to be supplied); the condition and organization of the physical files for each client that you’ve dealt with; a completed closing form for each file that was assigned to you; a composite timesheet reflecting all client files you worked on and hours per file that you have expended.

Your grade is determined by the following:

- (1) The quality of the work;
- (2) The amount of work completed;
- (3) The quality of any bankruptcy filing(s);
- (4) The timeliness of the work;
- (5) Attendance at and participation in class meetings; and

- (6) Initiative taken by the student to get all appropriate help from the professor(s) and the clinic director(s).

Your grade will be reduced if any of the following apply:

- (7) Failure to meet with clients on a timely and appropriate basis, timely respond to client inquiries; and timely prosecute the client's case;
- (8) Failure to fully and contemporaneously document the file to provide a complete, accurate, organized and usable client file. This requirement includes documenting all oral communications with the client and parties to the case and all communications (e.g. emails) connected to the file, including emails with the professor;
- (9) Failure to seek and obtain prior review and approval of all work, including correspondence with the client, correspondence with other parties, and all pleadings;
- (10) Failure to follow procedures and directives from the professor(s) and/or the director(s) regarding the representation of the client;
- (11) Failure to provide contact information at the end of the year for the purpose of permitting the professor(s), director(s), or subsequent students to contact you in the event that your casework is not completed before the class year ends;
- (12) Failure to meet stated deadlines within the case and/or for completion of assignments; and
- (13) Failure to promptly draft retainer letters and obtain client signatures at the appropriate time during the case.

EXPECTATIONS & PROCEDURES:

- (1) Types of Assignments.

As noted above, there generally will be three types of assignment available for students: (a) consultation and/or case filing; (b) adversary proceedings; and (c) judgment removal or other administrative matters. We anticipate that every student will experience at least two of the three types.

- (a) Consultation and/or Case Filing. This assignment entails contacting the client, learning the client's financial circumstances, determining appropriate remedies available to the client, counseling the client on his/her choice of remedy, and carrying out the client's choice of remedy.

If the client's choice is to file bankruptcy, the assignment then entails getting from the client all detailed information and documents necessary to complete a bankruptcy filing, generating the bankruptcy petition and schedules, reviewing the schedules with the client and obtaining the client's signatures, electronically filing the bankruptcy documents with the court, representing the client at the meeting of creditors, and completing all communication with the client, court, trustee and creditors to fully administer the case.

(b) Adversary Proceedings. This assignment may entail one of the following: (1) commencing and completing a lawsuit for a hardship discharge of a student loan debt; (2) commencing and completing a lawsuit for a judgment that a specified debt is discharged; or (3) defending a lawsuit commenced by a creditor for a court order that a particular debt was not (or should not be) discharged.

This assignment involves meeting with the client, drafting the complaint or answer, engaging in discovery (either generating discovery requests and/or responding to same), preparing for trial, and trying the case.

(c) Judgment Removal. This assignment will entail getting judgment information from the client and outside source; drafting and serving an application to remove judgment(s); monitoring the objection period of 20 days; and obtaining certificates from court that the judgment(s) were vacated.

(2) Time Deadlines.

You must complete your assignments (i.e., fully administer the cases and matters assigned to you) before the end of the school year. To do this, the following deadlines must be met for each of the following types of assignments. These deadlines apply to the cases assigned to you in the first few weeks of class. Other deadlines may apply in assignments that may arise later in the year; however you should make your best efforts to abide by the deadlines for all files assigned to you so that the files can be completed before the end of the school year.

(a) Bankruptcy Filings.

You may likely consult with several potential clients and may only file one or two bankruptcy cases. It is important to the potential clients waiting for help, and for your grade, to promptly contact and meet with all potential clients assigned to you so that you can promptly determine whether a bankruptcy case filing is warranted. It is your responsibility to initiate and complete contact or to terminate contact based on lack of response from the potential client. There are many people that need help and the help needs to be extended to those potential clients willing to do their part in getting the help.

Prompt contact and resolution of the course of action is needed so that you get an early start on the bankruptcy case(s) that you will file. **You must contact and meet with your initial client on or before February 1.** After February 1, you will likely need a month to get all information from your client. Thereafter, you will need approximately one month to complete the bankruptcy papers and be ready for an electronic filing.

The very latest that you may file the bankruptcy petition and schedules no later than **March 15**, and you must be able to attend the meeting of creditors.

You must submit your time sheet, closing report and physical client file for all clients assigned to you before you will get a grade.

(b) Adversary Filings.

Prompt contact of clients is necessary for any adversary proceedings because of the need to complete the adversary within the school year and because the timeframe for completing an adversary proceeding is governed in part by deadlines imposed by the Bankruptcy Court. Frequently, the Court imposes a 60 day discovery period (and sometimes even a 90-day discovery period). For that discovery period to run and the case proceed to trial before the end of the school year, the case needs to commence early in the school year.

You must timely meet all court deadlines so that we do everything to ensure that a trial can be held before the end of the school year.

If the trial in your adversary is not scheduled for a date before the end of the school year, and if you are unable to complete the trial, yourself, you must make arrangements for another student to become involved in the file and to cover the trial in your absence.

(c) Judgment Removals.

You must file any application for removal of judgments no later than February 15.

(3) Communications with clients.

It is also expected that you will keep in close contact with all of your clients at all times while their matter or case is pending. This means that it is expected that you will return their calls as soon as possible and that your clients will be notified prior to any time that you will be spending away from school, i.e. vacations and Winter & Spring Break, so that in the event that an emergency should arise, they know where to call and/or when you will be back. It is important that you understand fully that all clients are real people with real problems. This is not a “mock clinic” and indifference, lack of consideration and lack of concern for your clients will not be tolerated.

(4) Accepting Assignments.

It is an expectation that you will take all cases given to you unless you have more than 4 clients at that time or you have knowledge of another student in the clinic without any clients – in that event, pass the client on to someone else. In most cases, the number of

clients you and the other students have will be monitored, but in the event of an oversight, please pass the client on if the situation requires.

It is important that ALL clients sign a retainer agreement with the Bankruptcy Clinic before you agree to represent them and/or take any action on their behalf is taken. Any indecision regarding the acceptance of a specific client should be taken up with the instructors.

(5) Word Processing and Service and Filing.

You are expected to do ALL word processing of all correspondence and pleadings, including any bankruptcy petitions and schedules, required for your assigned cases. You will be responsible for the filing and service of all pleadings. You will be responsible for putting all pleadings in the proper format for electronic filing.

(6) Prior Approval.

All proposed pleadings must be approved by the instructor(s). After the director's approval is obtained, you will deliver to instructor, a paper and an electronic copy of the pleading(s), and the client file. After all changes required by instructors are made, the student shall send the pleading(s) to the client in draft form for review and approval. Final approval must be received from instructors prior to filing. The debtor MUST sign the documents in person. The student shall obtain from the client the appropriate filing and other fee by cashier's check or money order made payable to the University of St. Thomas Law Clinic. The filing fee will be deposited in the Clinic Trust Account. Please communicate with Clinic staff to make arrangements for the issuance of a check or other method of payment of the court fees.

Evaluation. Evaluation is laid out in detail in the Legal Services Clinic Manual.

Class requirement and "Front Loading." Due to the financial and legal implications of the cases handled by the students, the clinic will be fairly rigorous and will require a substantial commitment of time. The clinic will require weekly Team meetings (scheduled between groups and the Professor) to go over the status of the cases, as well as all time necessary to perform the work required. This will vary depending on the stage of the case. In addition to the group meetings, the Clinic will have 6 classroom sessions (scheduled on Tuesday from 5:30-7:30—though some may last longer) unique to bankruptcy practice as described below. Students will also be expected to take part in a limited number (4-6) of joint classes with other components of the UST Interprofessional Center for Counseling and Legal Services (such as discovery, interprofessional ethics, negotiation, client interviewing).

You will begin practicing law in the clinic almost immediately. In order to equip you as rapidly as possible, we will be having classes much more frequently at the beginning of the semester. Fewer formal classes are offered at the end of the semester, when case work will be your predominate concern.

Practice Groups/Joint Classes. As a general rule (with numerous exceptions), Tuesday classes will be joint classes with all of the students. Social work and psychology students may also often be a part of the Tuesday classes. It is very important that you carefully read the syllabus in order to be clear on what classes and exercises are upcoming.

Default Class Locations. Unless otherwise noted in the Course Calendar, classes will be held at the following times and locations:

Tuesday classes, 5:30-7:30 pm _____

Weekly group meetings will occur at scheduled times at the professor's office at 333 South Seventh Street, Suite 2000, Minneapolis, MN 55402. It is most likely these meetings will occur on Monday or Tuesday morning.

Note: Some classes have already been scheduled in other locations. Please remain in touch with your group and supervisor, as additional classes may change location. You should consider your clinical experience more like a job than a course; in a law firm for example, the location and times of meetings can often change.

Books and Materials/User's fee. Class materials title the *ABC's of Bankruptcy*, have been prepared by the professors, and will be offered free of charge. You will be required to purchase the 2009 U.S. Bankruptcy Code & Rules Booklet, which is \$25.00 at <http://www.legalpub.com/product-us-bankruptcy-code.html>

ACCOMMODATION OF DISABILITIES:

In compliance with the University of St. Thomas policy and disability laws, clinic faculty are available to discuss academic accommodations that you may require as a student with a disability. Students are encouraged to register with the Enhancement Program-Disability Services office for disability verification and for determination of academic accommodations. Please do so within the first two weeks of the term. Appointments can be made by calling 651-962-6315 or 800-328-6819, extension 6315. Telephone appointments are available as needed. You may also make an appointment in O'Shaughnessy Educational Center, room 119. For further information, you can locate the Enhancement Program on the web at <http://www.stthomas.edu/enhancementprog/>.

Individual Classroom Sessions

The Bankruptcy clinic will provide 6 classroom sessions addressing issues specific to Bankruptcy practice.

Tuesday, January 12, 2010

Steven Silton & Thomas Wallrich

Session 1. What is a Chapter 7 Bankruptcy. *Petitions, Schedules, Filing, the Automatic Stay, Exemptions, and the 341(a) Hearing.* This session will discuss case venue, the reasons for filing the petition, and the resultant automatic stay. We will also discuss scheduling assets and liabilities, and objections to claimed exemptions, claims, and the first meeting of creditors under Section 341(a).

Reading Requirements:

Chapter 1 of the ABC's of Bankruptcy

Statutory Readings: 11 U.S.C. Sections 101, 109, 301-303, 305, 361-362, 704, 706-707, 1110, 1168, 1325, and 1329.

Tuesday, January 19, 2010

Steven Silton & Jamie R. Pierce

Session 2. *Initial Client Meeting, disclosures and retention.* This session will discuss the initial client interview or potential intake of a new bankruptcy client. We will discuss the nature and types of insolvency focusing on UCC Insolvency, "Code" insolvency, and the unique nature of consumer debt. We will discuss the "new" counseling and disclosure requirements of the 2005 amendments to the Bankruptcy Code, the preparation of the bankruptcy petition, schedules, and statement of financial affairs.

Reading Requirements:

Chapter 2 of the ABC's of Bankruptcy

Statutory Readings: 11 U.S.C. Sections 101, 109, 111, 521, and 707.

Tuesday, February 9, 2010

Steven Silton

Session 3. *The practical, psychological and ethical issues of working with clients' in financial distress.* The session will discuss the business and ethical issues that are implicated in a bankruptcy. In addition, the session will discuss the psychological triggers to a bankruptcy, as well as the psychological problems that result from a bankruptcy.

Tuesday, February 2, 2010
Thomas Wallrich & Joel Nasset

Session 4. *The Discharge. Objections to Discharge and Denial of Discharge.* This session will discuss the contours, nature, and scope of the bankruptcy discharge under Section 727 of the Bankruptcy Code. We will also discuss the nature and scope of the Chapter 13 discharge and touch on the applicability of the Chapter 11 discharge and individual cases. We will address claim priority and tax debt. This session will focus on creditor efforts to seek exception of creditor claims from discharge in bankruptcy. We will discuss the exception of certain claims from discharge due to the nature or type of claim as well as debtor "bad acts" in incurring the debt under Section 523. We will discuss the denial of discharge for certain kinds of debtor misconduct under Section 727(a). This session will discuss the future effect of the discharge injunction, case closure, and restrictions on future bankruptcy case filings.

Reading Requirements:

Chapter 4 of the ABC's of Bankruptcy

Statutory Readings: 11 U.S.C. Sections 101, 152, 507, 523-525, 727, 1141, and 1328.

Tuesday, January 26, 2010
Judge Gregory Kishel

Session 5. *Bankruptcy Court Litigation, Jurisdiction, and Venue, Professional and Courtroom Decorum.* This session will discuss Bankruptcy Court litigation focusing on "core" and "non-core" bankruptcy jurisdiction. We will discuss the application of Bankruptcy Rules 7000, et seq., and compare and contrast those rules with the Federal Rules of Civil Procedure, and venue of Bankruptcy Court litigation.

Reading Requirements:

Chapter 5 of the ABC's of Bankruptcy

Statutory Readings: 11 U.S.C. Section 305; 28 U.S.C. Sections 157-158, 1334, 1406, 1408-1409, 1412, and 1452.

Tuesday, February 16, 2010
TBD

Session 6. *Trustee Powers and Avoidance Claims.* This session will discuss the nature of the bankruptcy estate, the powers of the bankruptcy trustee, and the trustee's powers with respect to turnover of property to the estate and avoidance of pre-petition transfers.

Reading Requirements:

Chapter 6 of the ABC's of Bankruptcy

Statutory Readings:

28 U.S.C. Section 586; 11 U.S.C. Sections 109, 303, 341, 541, 544-553, 701-702, 704, 1102, 1104, and 1307.

Biography of Professors

Steven H. Silton- Steven Silton represents small to mid-sized corporations, banks, credit unions and financial groups in commercial and complex bankruptcy matters. He has been instrumental in the reorganization of a number of businesses, and has been appointed as counsel for creditor committees. Mr. Silton has filed more than 75 consumer cases and litigated numerous adversary proceedings. In his corporate practice, he counsels his clients on purchase and sale of businesses, secured financing transactions, securities placements and negotiation of corporate documents. He often consults and/or associates with lawyers regarding their financially distressed business clients. Mr. Silton has been rated by Martindale-Hubbell for ethics and legal ability, and was named a Rising Star in 1999 by *Minneapolis-St. Paul Magazine* and *Law & Politics Magazine*. Since 2002 he has annually been named a “Super Lawyer” by *Minneapolis-St. Paul Magazine* and *Law & Politics Magazine*. Mr. Silton has been regionally and nationally published, and lectures on business and bankruptcy-related issues to and for many organizations, including ATLA, Hennepin County Bar Association, Minnesota State Bar Association, and both Lorman Education Services and National Business Institute. He and Hinshaw partner, Thomas G. Wallrich speak annually at the Minnesota State Bar MNCLE.

Mr. Silton’s presentations include:

- “Secrets to Conducting the Initial Client Interview,” “Bankruptcy Litigation and Procedure,” “Chapter 11 Essentials,” “Essential Bankruptcy Issues Related to Foreclosure Proceedings,” and “Fraudulent Conveyance,” parts five through nine, in an 11-part, live teleconference series, National Business Institute, July 2009.
- “A Case Study of a Real Estate Workout,” Illinois Bankers Association 118th Annual Conference & Trade Show, Las Vegas, Nevada, June 2009.
- “Bankruptcy Reform and Current Issues,” “Introduction to the Bankruptcy Code,” “Chapter 7 or Chapter 13?” and “The Means Test – From the Trustee’s Viewpoint,” parts one through four in an 11-part, live teleconference series, National Business Institute, June 2009.
- “Surviving the Death of the Old Economy: How Bankruptcy Can Give Your Company New Life,” Minnesota CLE Seminar “The 2009 Business Law Institute,” Minneapolis, Minnesota, May 2009.
- “Exit Strategies,” Minnesota CLE Seminar, “Business Law 103,” Minneapolis, Minnesota, October 2007.
- “Loan Documentation,” Lorman Education Services seminar, “Commercial and Real Estate Loan Documents: More Than Just Papers in Minnesota,” Bloomington, Minnesota, September 2007.
- “The Bankruptcy Reform Act,” plenary session and “Counseling a Financially Distressed Business Client,” breakout session, MNCLE Business Law Institute, Minnesota, May 2006.

Thomas G. Wallrich- Thomas Wallrich is a partner at Hinshaw & Culbertson, PLLP and the Chair of the firm's bankruptcy department. Mr. Wallrich's bankruptcy practice includes representing debtors, creditors, and committees in complex reorganization proceedings and work-outs, as well as debt and equity restructurings. In 2008, Mr. Wallrich was named as a "Super Lawyer" in the area of Bankruptcy & Creditor/Debtor Rights by *Minnesota Super Lawyers* magazine.

Mr. Wallrich is the author of *Bankruptcy Reform*, published in 2006 by the Minnesota State Bar Association. His other publications include:

"Lien Stripping, Lien Avoidance, and Valuation of Secured Claims After *Dewsnup*," 69 N.D. L. Rev. 129, 1993.

- "The Night Before Bankruptcy, the Eighth Circuit's Response to Pre-Bankruptcy Planning," 15 Wm. Mitchell L. Rev. 643, 1989.

He is also speaks regularly on bankruptcy, financing and other topics related to his practice. His presentations include:

- "Secrets to Conducting the Initial Client Interview," "Bankruptcy Litigation and Procedure," "Chapter 11 Essentials," "Essential Bankruptcy Issues Related to Foreclosure Proceedings," and "Fraudulent Conveyance," parts five through nine, in an 11-part, live teleconference series, National Business Institute, July 2009.
- "Bankruptcy Reform and Current Issues" and "The Means Test – From the Trustee's Viewpoint," parts one and four, respectively, in an 11-part, live teleconference series, National Business Institute, June 2009.
- "Workout Issues," Lorman Education Services seminar "Commercial and Real Estate Loan Documents: More Than Just Papers in Minnesota," Bloomington, Minnesota, September 2008.
- "Workout Issues," Lorman Education Services seminar, "Commercial and Real Estate Loan Documents: More Than Just Papers in Minnesota," Bloomington, Minnesota, September 2007.