



LAWYER TO LAWYER MENTORING PROGRAM

WORKSHEET N

MANAGEMENT OF LAW SCHOOL DEBT

Worksheet N is intended to facilitate a discussion about ways to manage law school debt.

WHAT WENT WELL?

Start by sharing with each other a brief story of something that went well in your practice this week:

Share your reflection by on one of these questions: What caused the good event? What does it mean? How did you contribute? Others? How can you have more such events in the future?

ACTIVITIES FOR TODAY

- Share with the new lawyer tips on creating a reasonable budget. Discuss ways to analyze and make decisions about spending habits so that the new lawyer can begin to eliminate debt. The new lawyer may, on his or her own, complete the example budget worksheet that is attached.
- Discuss the benefits and possible consequences of consolidating student loans, including consolidating federal and private loans together and consolidating student loans with a spouse's student loans. If this option interests the new lawyer, see the attached information from the Federal Consolidation Loans Information Center, Borrower Services, at www.loanconsolidation.ed.gov, and the United States Department of Education, at <http://studentaid.ed.gov>.
- Read and discuss the attached article by Terri Harris, *Student Loan Default Could Result in License Revocation*.
- Discuss risks and benefits of different loan re-payment options, automatic withdrawal plans, loan deferment and forbearance and the Student Loan Interest Deduction for federal income taxes. See the attached *Difficulty Repaying* page from the United States Department of Education, at <http://studentaid.ed.gov>.
- If the new lawyer has a job in public service, discuss the attached summary of the Loan Forgiveness for Public Service Employees Program taken from <http://studentaid.ed.gov/students/attachments/siteresources/LoanForgivenessMarch18.pdf>.
- Talk about the importance of financial planning for the future.



- Discuss the following issues concerning responsible financial planning which the new lawyer should evaluate:
 - Plans that allow one to save and invest for both the short-term and long-term
 - Insurance needs, including life insurance, disability insurance, long-term care insurance, etc.

ACTION STEPS

End the session by discussing what action steps you can take to either improve or set yourself up for future success based on today's discussion. Discuss how one or more of your Signature Strengths can help you achieve success in these steps.

RESOURCES

Federal Consolidation Loans Information Center www.loanconsolidation.ed.gov

United States Department of Education <http://studentaid.ed.gov>

Loan Reimbursement Assistance Programs www.equaljusticeworks.org



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Student Loan Default Could Result in License Revocation

By [Terri Harris](#) on Wed, 07/21/2010 - 3:38am

The current trend in public policy is to require professionals to pay back their student loans or risk losing their licenses. According to the Student Loan Borrower Assistance Project, a program of the National Consumer Law Center, Tennessee is among 18 states that impose disciplinary measures against licensed professionals for failure to pay student loans. According to their website, the other jurisdictions include: Alaska, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Minnesota, New Jersey, New Mexico, North Dakota, Oklahoma, Texas, Virginia and Washington.[1]

Initially, the legislation in Tennessee applied to the healing arts professions. But now, other professions are being similarly regulated. Legislation proposed in the just-ended legislative session would have added athlete agents, lobbyists, and K-12 public school teachers to the mix and clarified the authority to declare lawyers in default.[2] The General Assembly did not complete final action on the legislation. New legislation will have to be introduced and work its way through the entire process in the 107th General Assembly to become a reality.

After being prompted by the General Assembly, the Tennessee Supreme Court is considering a proposed new Section 34 amendment to Rule 9.[3] It would provide for license suspension, revocation, denial or some other form of disciplinary action against attorneys who default on their student loans. This could possibly include attorneys who co-sign for a spouse, child or friend whose loan is in default. The new regulation provides that upon a final order of default by the student loan agency, the Board of Professional Responsibility will issue a proposed suspension order and give notice to the attorney. After 60 days, the proposed order will be reviewed by the Tennessee Supreme Court. If approved, the attorney's license will be suspended until the student loan agency lifts its order of default. The court suspended its rulemaking pending legislative and administrative action to address the adequacy of due process protections. The Tennessee Bar Association is expected to urge the court to continue its suspension into next year pending a renewed attempt to pass legislation.

But getting a student loan agency to rescind its declaration of default may not be so easy. Student loans can only be discharged in bankruptcy if the borrower can show an "undue hardship." [4] The U.S. Supreme Court is currently deciding whether the borrower must always show undue hardship or whether this requirement can be waived when the student loan agency does not object to the bankruptcy plan. [5] In the meantime, the Wall Street Journal reports that "unlike other kinds of debt, student loans can be particularly hard to wriggle out of. Homeowners who can't make their mortgage payments can hand over the keys to their house to their lender. Credit-card and even gambling debts can be discharged in bankruptcy. But ditching a student loan is virtually impossible, especially once a collection agency gets involved. Although lenders may trim payments, getting fees or principals waived seldom happens." [6]

No one knows this better than New York bar applicant Robert Bowman. His story was published in the *New York Times*. [7] Bowman grew up in foster care and his early exposure to the legal system led to his dream of one day becoming a lawyer. But that dream was dashed by \$400,000 worth of student loans when a five-member panel of appellate judges denied his admission to the New York bar. Bowman claimed that his student loans should not have been declared in default. He argued that SLM Corporation, commonly known as Sallie Mae, erroneously charged him interest, fines and penalties for periods of time when his loan should have been deferred. He claimed that his student loans were supposed to be on a deferral status when he was enrolled in school and when he was hospitalized for injuries suffered from a motorcycle crash during college and a Jet Ski accident after law school graduation. The bar review committee found his meticulous financial records to be so convincing that they recommended his admission. However, the Appellate review panel ignored the committee's recommendation and rejected his admission. That ruling was sustained on appeal and Bowman will not be admitted to the practice of law in New York.

In his efforts to be licensed, Bowman was critical of Sallie Mae's collection methods. Among other things, he claimed a representative threatened that he would never be able to get his law license if he defaulted. According to the Times article, "Martha Holler, a Sallie Mae spokeswoman, said that such threats would violate the company's rules." But others share

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Bowman's concerns over Sallie Mae's collection actions. In an *ABA Journal* article, Susan Berson advises new law school graduates, "Never default on your student loan. Harvard law professor Elizabeth Warren once said, 'Student loan debt collectors have power that would make a mobster envious.' This means if you should find yourself in such dire circumstances that you have nothing left to pawn for loan payments, contact your lender to see what options exist before the loan goes into default." [8]

There is little doubt that the ability to bring disciplinary action is a powerful collection tool for student loan agencies. But disciplinary rules are not created to add new weapons to their collection arsenal. Instead, the conduct of attorneys is regulated to preserve the ethical integrity of the legal profession.

In asking the Tennessee Supreme Court to consider disciplinary rules requiring attorneys to pay up on their student loans, lawmakers may be bowing to public pressure. Misconception or not, lawyers are perceived as wealthy, well-to-do, educated professionals with the means to make their student loan payments. The public is likely to question the integrity of lawyers who either selfishly refuse to pay back their student loans or have so mismanaged their finances that they are unable to pay them back.

In Texas, Frank P. Santulli amassed so much personal debt that he defaulted on his student loans. The Houston family law attorney was ordered to undergo consumer credit counseling and get his financial affairs in order. After several attempts, he ultimately did not comply with the order. In revoking his law license, the Texas Board of Law Examiners expressed concern that Santulli could find himself "in a situation where you're in so much debt and under so much pressure that there are opportunities and temptation either to short-shrift your clients or, you know, in the worst case scenario, convert money from your clients to take care of those debts." [9]

Critics of the Santulli decision say it is punishing anticipatory conduct rather than actual wrong-doing. They contrast Santulli to other cases where attorneys are merely censured or placed on probation for the actual diversion of funds. Meaning in a ludicrous sense, attorneys may be better off stealing the money to pay back their student loans rather than defaulting on them.

Help on the Way

Federal reforms are currently underway to make loan payments more affordable and to improve loan servicing. [10] Effective July 1, the Health Care and Education Reconciliation Act provides protection for current and future students seeking financial assistance. It will deprivatize student loans and create greater access to Pell Grants. For current debtors, it will provide some relief by limiting loan payments to 10 percent of the debtor's current income. Additional federal relief for current student loan debtors is being proposed by Rep. Steve Cohen from the 9th District of Tennessee. His proposed legislation, Private Student Loan Bankruptcy Fairness Act, would allow current debtors to bankrupt their private student loans. [11] These reforms should become increasingly more interesting for Tennessee attorneys with the new proposed disciplinary rule on the horizon.

Notes

1. <http://www.studentloanborrowerassistance.org/>
2. Tennessee HB 3014 by Sargent (SB 2650 by McNally).
3. Tenn. Sup. Ct. R. 9, Proposed New Section 34.

Section 34. Suspension of Law License for Delinquency or Default Under Guaranteed Student Loan. - 1999 Tenn. Pub. Ch. 476 amended Title 56, Chapter 1, Part 3 (Insurance, Department of Commerce & Insurance, Division of Regulatory Boards) and Title 63, Chapter 1, Part 1 (Professions of the Healing Arts, Division of Health Related Boards, General Provisions) to provide for the suspension, denial or revocation of the license of, or to take other such appropriate disciplinary action against, any person who has defaulted on a repayment or service obligation under any of the student loan programs specified in the Act.

Section 4 of 1999 Tenn. Pub. Ch. 476 went on to provide:

The Supreme Court is encouraged to establish guidelines to suspend, deny or revoke the license of an attorney who is delinquent or in default on a repayment or service obligation under a guaranteed student loan identified in subsection (a) or such attorney has failed to enter into a payment plan or comply with a payment plan previously approved by TSAC [Tennessee Student Assistance Corporation] or a guarantee agency.

Upon due consideration of the General Assembly's request, the Supreme Court establishes the following procedures to promote attorneys' compliance with repayment or service obligations under any of the student loan programs covered by 1999 Tenn. Pub. Ch. 476.

34.01. The provisions of *Tenn. Code Ann.* 56-3-1-141(a) and (b) are hereby incorporated by reference to apply to attorneys licensed to practice law in Tennessee. Upon receipt of a copy of a final order as provided in *Tenn. Code Ann.* 86-3-1-141(b) from the Tennessee student assistance corporation ("TSAC") or a guarantee agency that has an agreement with the United States secretary of education ("guarantee agency"), the Chief Disciplinary Counsel of the

Board of Professional Responsibility ("the Board") shall initiate the suspension procedure set out in this section against any attorney licensed to practice law in this state ("attorney" or "debtor") who has defaulted on a repayment or service obligation under any loan listed in *Tenn. Code Ann.* 5 63-1-141(a).

34.02. The Board and the Court shall accept any determination of default from TSAC or a guarantee agency after TSAC or the guarantee agency has afforded a debtor an opportunity to be heard in accordance with *Tenn. Code Ann.* 5 63- 1- 1 41 (b)(2).

34.03. Upon receipt of a final order from TSAC or a guarantee agency pursuant to section 34.01, the Board shall prepare a proposed order suspending the attorney's license to practice law.

The Board shall serve the attorney with a copy of the proposed suspension order and a Notice of Pending Suspension. The Notice shall state that TSAC or a guarantee agency has issued a final order finding that the attorney has defaulted on a repayment or service obligation under a loan covered by this section and that the Board is initiating a suspension of the attorney's law license pursuant to this section. The Notice shall be served upon the attorney by registered or certified mail, return receipt requested, at the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5 or other last known address.

34.04. The Board shall transmit the proposed suspension order to the Supreme Court upon the expiration of sixty (60) days after the date of mailing of the Notice and proposed suspension order to the attorney named therein, unless the TSAC or guarantee agency terminates its final order pursuant to *Tenn. Code Ann.* 8 63-1-141 (b)(2)(F)(i) prior to the expiration of such sixty (60) day period. Upon the Court's review and approval of the suspension order, the Court shall file the order suspending the attorney's license to practice law. Upon the filing of the suspension order, the attorney's law license shall remain suspended until the TSAC or guarantee agency's final order is terminated pursuant to *Tenn. Code Ann.* § 63-1 -1 41 (b)(2)(F)(i).

34.05. An attorney whose license is suspended pursuant to this section shall comply with the applicable provisions of section 18 of this rule.

34.06. Each attorney who is issued a Notice of Suspension shall pay to the Board a fee in the amount of \$50 to defray the Board's costs in issuing the Notice. Each attorney whose license to practice law is suspended by the Court pursuant to this section shall pay to the Board a reinstatement fee in the amount of \$50 as a condition of reinstatement of his or her law license upon termination of the TSAC or guarantee agency's final order pursuant to *Tenn. Code Ann.* § 63-1 -1 41(b)(2)(F)(i).

The reinstatement fee shall be paid in addition to the fee for issuance of the Notice. Upon termination of the final order and upon payment of the fees imposed by this section, and if the attorney is otherwise eligible for reinstatement, the attorney's law license shall be reinstated without further order of the Court.

4. 11 U.S.C. § 523(a)(8)(B).
5. United Student Aid Funds Inc. v. Espinosa, No. 08-1134 (U.S., argued Dec. 1, 2009), available at: http://oyez.org/cases/2000-2009/2009/2009_08_1134.
6. Mary Pilon, "The \$555,000 Student-Loan Burden as Default Rates on Borrowing for Higher Education Rise, Some Borrowers See No Way Out; 'This Is Just Outrageous Now,'" *The Wall St. J.*, February 13, 2010
7. Jonathan D. Glater, "Finding Debt a Bigger Hurdle Than Bar Exam," *New York Times*, July 1, 2009.
8. Susan A. Berson, edited by Reginald F. Davis, "Investments: About That First Check: Manage your money now so you can gloat later," 94 *A.B.J.* 30, October 2008
9. *Frank P. Santulli III v. Texas Board of Law Examiners* (Texas Court of Appeals, Third District, at Austin, No. 03-06-00392-CV) April 10, 2009.
10. The Health Care and Education Reconciliation Act of 2010, Pub. L. no. 111-152, 124 Stat 1029 (2010).
11. HR 5043, Private Student Loan Bankruptcy Fairness Act of 2010, 111th Congress, 2009-2010.



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