

## **Development of Client Strategies**

Stephen Stapleton, head of Cowles & Thompson's Bankruptcy Group, has written a book chapter on client strategies, published by Aspatore Books as part of their C-Level Business Strategies. The book entitled "Bankruptcy and Financial Restructuring Client Strategies," offers the C-Level reader insight into the development of a client's strategy in a bankruptcy context. Steve's chapter, entitled "How Ethics Shape and Inform Client Strategies," focuses on the development of that strategy, the ethical underpinnings guiding that strategy and the need to be aware and thoroughly understand the background of the parties to the bankruptcy case, including the judge handling the dispute. A synopsis of the chapter follows:

In civil litigation, there generally are two sides to a dispute. Bankruptcy, however, is different. While most of the disciplinary rules governing the conduct of lawyers in American jurisprudence is premised on a standard of advocacy predicated on the traditional bilateral civil litigation model, virtually every bankruptcy reorganization case involves a process by which disputed claims are routinely resolved multilaterally, with similar claims accorded similar treatment, resulting in the restructuring of the debtor's contractual and course-of-dealing relationships with and its obligations to its creditors and creditor constituencies. There may be hundreds if not thousands of different parties, each with unique and disparate complaints, agendas and interests.

This multilateral restructuring process is rarely consensual, almost always involves intense negotiation, requires ceaseless intervention from the bankruptcy court and is cause for

numerous opportunities to run afoul of the professional conduct rules governing conflicts of interest and other ethical considerations.

Yet the rules governing the conduct of lawyers in this process are premised upon the traditional advocacy model of conventional, bilateral litigation. This bilateral litigation model has been described generously (if not quite accurately) as warfare without guns. Conversely, the process of bankruptcy adjudication, with its continually shifting alliances, is a confluence of differing pacts and loyalties with an overlayment of fiduciary and administrative obligations. Indeed, as a dispute resolution model, bankruptcy is more akin to the world's monetary and commercial markets, a regulated system in which dozens of different parties spar over a hoped-for increase in market share.

This bilateral ethical model of professional responsibility layered over this multilateral parrying for position is imbued with additional standards for determining conflicts of interest and other ethical conundrums that are endemic to bankruptcy alone. These bankruptcy-related ethical prescriptions and prohibitions and their interplay with the more traditional concepts of professional responsibility has as much an effect on client strategy as does the client's wants and desires. Considering and applying those precepts to the unique facts of each bankruptcy case and procuring the vital information about each constituency in the process is fundamental to effective client counseling.