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UpRight: A Cautionary Tale of a National Consumer Law Firm

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The Western District of Virginia is a predominantly rural expanse that extends nearly 400 miles from north to south. Along with its cities, towns and universities, it boasts the Shenandoah Valley and a significant slice of Appalachian coalfields. While it is a beautiful destination, the size and scope of the Western District of Virginia means that convenient access to lawyers — especially bankruptcy lawyers — is limited for many of its residents.

Enter the internet. Just as consumers generally have demonstrated a need and desire to purchase goods online rather than visit traditional "brick-and-mortar" retail locations, legal consumers are turning increasingly to the internet to find legal representation. In addition to advertising online, tech-savvy lawyers are utilizing programs like Skype for meetings with distant clients, filing bankruptcy petitions and pleadings electronically, and otherwise making use of technological advances in their practices. However, problems arise when those employing the tools of modernity disregard the continuing duties of a bankruptcy lawyer to meet with and counsel a client, or to obtain the client's original signature on a petition prior to filing.

UpRight Law LLC, a d/b/a for Law Solutions Chicago LLC (LSC), was founded to capitalize upon the business opportunity provided by numerous consumers searching online for bankruptcy assistance. UpRight established an internet presence to offer bankruptcy services nationwide, including to those within the Western District of Virginia. UpRight's business model, practices and other issues were the focus of a multi-day trial held in the U.S. Bankruptcy Court for the Western District of Virginia in combined cases brought by the Office of the U.S. Trustee, resulting in an extensive opinion covering a variety of legal and ethical issues. As of the date of this article, the ruling remains on appeal, but the facts and issues discussed and the court's extensive analysis highlight many of the potential issues and areas of concern with "national" legal practices.

In the *UpRight* case,[2] the court found that prospective clients who initiated contact with the firm following an internet search were called back first by a nonattorney "client consultant" in Chicago, who gathered basic information, including the client's ability to pay. If such basic qualifications were met, the court then found that the prospect was passed on to a "senior client consultant," who identified the consumer's motivations and desires, their goals, and whether a precipitating event was driving them to seek bankruptcy.

Both the client consultants and senior client consultants were compensated through a base salary plus commission based on the number of clients "closed." The sales employees were trained by UpRight and provided a "sales playbook," which included high-pressure tactics. Minimum numbers of "closes" were set for bonus eligibility, and a minimum number of "sales" was required in order to maintain employment. In at least those instances discussed in its opinion, the court found that nonlawyer sales personnel also offered legal advice.

For example, one prospect was advised by a senior client consultant to hide a vehicle from the secured creditor. Other prospective clients were advised that they could omit select creditors from their schedules. Not until a client was "closed," either with money received or installment payments scheduled, was an "oral retention" agreed upon and the new client finally transferred to an LSC attorney. No conflicts checks were run before this point.

The involvement of local lawyers was necessary for UpRight to file consumer bankruptcies on a multijurisdictional scale. As a result, UpRight brought on local attorneys around the U.S. as "partners" who signed a limited partnership agreement providing a marginal, non-voting interest and no rights in management of the firm. These local attorneys generally maintained their own practices, with limited additional signage and advertising indicating an affiliation with UpRight. A separate CM/ECF case-filing password was obtained for use in performing UpRight's work.

The court further found that prior to September 2015, UpRight's senior client consultant would set up a recurring payment plan for a client to begin paying his/her fee, and an engagement agreement was generated and sent to the client. At this point, the local partner was brought in to contact the client. If the partner approved the representation and had no modification to the terms of engagement, then the partner confirmed the representation to UpRight.

1 The opinions expressed herein are provided as a result of Ms. Gunn's own experiences and not as a representative of the Attorney General or the Division of Child Support Enforcement. She is also co-chair of ABI's Legislation Committee and co-authored *ABI's Consumer Bankruptcy: Fundamentals of Chapter 7 and Chapter 13 of the U.S. Bankruptcy Code, Fourth Edition.*

2 *Williams v. Robbins (In re Williams)*, 2018 Bankr. LEXIS 382 (Bankr. W.D. Va. Feb. 12, 2018).

Once the client completed full payment, UpRight would collect required documents from the client. An associate would also prepare an initial draft of the petition and conduct an initial client interview via Skype. A second interview and petition review were then conducted by the local partner, who would make any final revisions, file the petition and attend the meeting of creditors with the client.

After September 2015, the process was the same until the client paid in full. In exchange for additional compensation, the local partners thereafter assumed responsibility for collecting information and preparing the petition. At all times, UpRight retained control of preparing the Rule 2016 disclosure of compensation required for each case.

In examining the disclosures made regarding compensation, the court found that UpRight signed agreements with its local partners providing them with a share of revenue generated by each partner's clients, and a bonus pool was formed from revenue generated in the local jurisdiction. The partners also received Schedule K-1s for their UpRight-related income and had access to UpRight's "Salesforce" software system, case-management system and "Best Case" bankruptcy software system. Partners also received an UpRight credit card for the payment of filing fees, and were covered by UpRight's malpractice insurance.

Another major issue considered at trial involved the alliance forged between UpRight and the "new car custody program" of Sperro LLC. This program was pitched as a service to debtors who wished to surrender a vehicle to a secured creditor. When a participating debtor turned over his/her car, Sperro purportedly provided the finance company with the option of using Sperro's auction services or recovering the vehicle from Sperro after payment of its fees and charges.

In consideration for the referral of debtors hoping to surrender their vehicles, Sperro proposed to pay UpRight the attorneys' fees and costs of those debtors who agreed to participate. This Sperro funding arrangement partially solved for UpRight the problem of would-be clients who failed to complete their payment plans. Through Sperro's program, UpRight could promptly receive payment in full for the participating debtor.

Unfortunately, the court concluded that the Sperro program was a scam. Depending on where the vehicle was picked up, Sperro would immediately tow the lender's collateral to a storage location in Nevada, Mississippi or Indiana. Only after the vehicle was moved to one of those states and held for the applicable statutory period would Sperro contact the secured creditor. Interstate transport of the surrendered vehicle was generally crucial to the scam because the three named jurisdictions provide towing companies with a statutory lien for their charges and expenses, which primes the lien of the secured creditor.

Sperro further required payment by the secured lender of unnecessary charges as high as $4,500 to $5,000 before releasing a vehicle suddenly located in another state. The vehicle was often auctioned by Sperro just to recover its own charges. UpRight was aware that Sperro was towing vehicles from their home states to those with priming liens for the purposes of holding the secured lenders hostage. UpRight's referrals to the Sperro program stopped after a lender sued Sperro for conversion of its collateral, and after Sperro also became slow in its payments to UpRight. The *UpRight* opinion specifically addressed representation provided in two separate chapter 7 cases.

The Williamses

Timothy and Andrian Williams contacted UpRight seeking representation in what became a chapter 7 case filed in the Western District of Virginia. When Mr. Williams inquired about continuing to pay on several payday loans, UpRight's nonattorney consultant stated that the trustee would decide whether these loans would be included in the bankruptcy. The Williamses also wished to surrender their Ford Taurus to a secured lender who had been pressuring them.

UpRight's salesperson recommended the Sperro program and advised the Williamses to hide the vehicle until Sperro could pick it up. When Mr. Williams inquired as to the program's legality, an UpRight attorney not licensed in Virginia advised that the program was legal. The Williamses were not advised that their car would be towed out of state.

UpRight referred the Williamses to a Virginia licensed partner (Partner DD), who accepted the representation. Sperro picked up the Taurus before the Williamses ever spoke with Partner DD. Once Sperro had paid UpRight the agreed-upon fees and costs, the Williamses' chapter 7 case was filed and assigned to Hon. **Paul M. Black**. The Sperro program came to light at the 341 meeting, where Partner DD denied knowing why Sperro paid the Williamses' fees and costs. The chapter 7 trustee referred the matter to the U.S. Trustee, and a Rule 2004 examination followed.

Ms. Scott

Jessica Scott of Virginia also contacted UpRight about a bankruptcy filing after conducting an internet search. UpRight's consultant asked her what chapter she wished to file. Because she initially desired to wipe out her debt, the consultant concluded that a chapter 7 case would be filed. Ms. Scott was also interested in surrendering her vehicle and was told about the Sperro program.

Later, Ms. Scott expressed concern that her filing would include a debt co-signed by her ex-husband. UpRight's consultant advised that the debt could be left off the petition. She was referred by UpRight to another partner licensed in Virginia ("Partner JM"). Partner JM spoke with Ms. Scott by phone and approved the representation. He only met Ms. Scott in person when she was deposed in the U.S. Trustee's subsequent litigation. Ms. Scott met with the non-lawyer wife of Partner JM, who prepared and filed the petition. Another attorney attended her § 341 meeting.

Sperro towed Ms. Scott's Pontiac Sunfire from Virginia to Indiana and advised the secured lender that $3,258.80 was owed for towing, storage and related service expenses. After Sperro paid the agreed fees and costs to UpRight, the chapter 7 case was filed, and the Scott case was also assigned to Judge Black. Partner JM's Rule 2016 fee disclosure, prepared by UpRight, stated an incorrect amount for the fee and failed to mention that all but $100 of the amount paid had come from Sperro.

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Claims Brought and Sanctions Imposed

The *UpRight* case was not the Western District Bankruptcy Court's first experience with a "national law firm." On Nov. 15, 2016, the court issued an opinion in which it stated:

> These cases reflect the Pandora's Box of ethical issues opened by multijurisdictional practice [through] the "national law firm" business model, where law firms in distant locations around the country advertise on the internet, and then seek to retain a local attorney to become a local "member"—albeit one with limited, if any, rights other than in the cases they actually take.[3]

The court further observed that multijurisdictional local partnership arrangements "are often nothing more than disguised independent contractor arrangements designed to increase revenue streams by attempting to evade the fee-splitting prohibitions in the Bankruptcy Code and Bankruptcy Rules."[4] In the *UpRight* case, the U.S. Trustee's complaints asserted six counts against the debtors, UpRight parties and Sperro that were focused on §§ 329, 526 and 105 of the Bankruptcy Code. The relief sought included disgorgement of fees, injunctive relief against future violations of § 526, civil penalties, monetary sanctions, disgorgement of all funds received through the Sperro program, and prohibitions against future practice before the court.

In its opinion, the court focused on overarching concerns regarding oversight and responsibility in the representation of debtors. Rather than having its opinion turn on the Rule 2016 disclosures and issues of fee-splitting, the court found Partners DD and JM to have been "regularly associated with" or "counsel to" UpRight, and that a law firm therefore existed. Ironically, this finding was consistent with the agreements and assertions of both UpRight and its local partners.

The result was a further finding of shared responsibility for the handling of the Williams and Scott bankruptcy cases. UpRight, its principals and its local partners were all held equally accountable for the tactics, conduct and unauthorized legal practice of the UpRight personnel, and for the resulting referrals of the debtors into the Sperro program. The performances of Partners DD and JM — each of whom had disciplinary histories — were also critiqued with regard to these two representations. The privileges of UpRight, its principals and its affiliates to file and conduct cases in the Western District of Virginia were revoked for five years. These parties were also fined $250,000, and one UpRight principal was fined an additional $50,000 for engaging in the Sperro scheme.

All fees received by Upright from Sperro were ordered to be disgorged. Likewise, the privileges of Partner DD to practice before the court were revoked for one year, and Partner JM's privileges to practice before the court were revoked for 18 months. Both were sanctioned $5,000 each.

In addition, the court made it clear that the Williamses and Ms. Scott had been victims and done nothing wrong. The *UpRight* decision is replete with memorable language. Notably, the court concluded its opinion by issuing the following caution:

> Local attorneys joining multijurisdictional law firms as local or limited partners cannot be both tall and short. An attorney cannot claim to be a partner in the firm and file cases with the Court as lead counsel, but yet claim no responsibility for what happens in the main office on the files the attorney decides to take. Attorneys considering joining firms with this business model should understand that, in this Court, while an injury might be initiated elsewhere — there is a real possibility the pain is going to be felt at home.[5]

Conclusion

The facts of the *UpRight* case clearly illustrate the problems that can arise when bankruptcy representations are initiated nationally through use of the internet, with services then being provided, at least in part, through local attorneys. However, the court's opinion also helps to show how such modern law practice might properly and ethically succeed through continued adherence to the basic requirements of bankruptcy practice and professional responsibility. To be sure, residents of the Western District of Virginia and elsewhere will continue to turn to the internet in their search for legal services, so an acceptable way forward needs to be collectively found. abi

3 *Robbins v. Barbour (In re Futreal)*, 2016 Bankr. LEXIS 39724 at 41-42 (Bankr. W.D. Va. Nov. 15, 2016).
4 *Id.* at 42.
5 *Williams*, 2018 Bankr. LEXIS at 20.