

ABA DISCUSSION DRAFT (1/6/10)

111th Congress
2nd Session

To amend title 11, United States Code, to make technical amendments relating to bankruptcy,
and for other purposes

IN THE _____ OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to
the Committee on _____

A BILL

To amend title 11, United States Code, to make technical amendments relating to
bankruptcy, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United
States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Effective Bankruptcy Attorney Discipline Act
of 2010”.

SEC. 2. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the
date of enactment of this Act.

SEC. 3. REPEAL OF SPECIAL DEBTOR BANKRUPTCY ATTORNEY

SANCTIONS RULE

(a) Section 707(b)(4) of title 11, United States Code, is stricken in its entirety.

(b) Sections 707(b)(5), 707(b)(6) and 707(b)(7) of title 11, United States Code, are redesignated as sections 707(b)(4), 707(b)(5) and 707(b)(6), respectively.

SEC. 4. GROUNDS FOR AWARD OF COSTS

Subparagraph (A) of section 707(b)(4) of title 11, United States Code, as redesignated by section 3(b) of this Act, is amended to read as follows:

“(A) Except as provided in subparagraph (B) and subject to paragraph (5), the court, on its own initiative or on the motion of a party in interest, may award a debtor all reasonable costs (including reasonable attorneys’ fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee, (or bankruptcy administrator, if any)) under this subsection if –

- (i) the court does not grant the motion; and
- (ii) the position of the party that filed the motion violated rule

9011 of the Federal Rules of Bankruptcy Procedure.”

SEC. 5. REAFFIRMATION AGREEMENT CERTIFICATIONS

Section 524(k)(5) of title 11, United States Code, is amended—

- (1) by striking subparagraphs (B) and (C); and
- (2) by striking “consist of” and all that follows through “(A) The

following” and inserting “consist of the following”.

SEC. 6. DEFINITION OF DEBT RELIEF AGENCY.

(a) Section 101(4A) of title 11, United States Code, is amended by inserting “, other than by an attorney or an employee of an attorney,” after “assisted person” and by striking “or providing legal representation”.

(b) Section 101(12A) of title 11, United States Code, is amended by inserting “, other than an attorney or an employee of an attorney,” after “means any person”.

SEC. 7. DISCLOSURES.

Section 527(b) of title 11, United States Code, is amended—

- (1) by striking “AN ATTORNEY OR” each place that term appears and inserting “A”; and
- (2) by striking “THE ATTORNEY OR” and inserting “THE”.

SEC. 8. SENSE OF CONGRESS REGARDING FEDERAL BANKRUPTCY COURTS’ EXERCISE OF SANCTIONS AND DISCIPLINARY AUTHORITY OVER ATTORNEYS.

Title III of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8, 119 Stat. 75) is amended by striking section 319 and inserting the following:

“SEC. 319. SENSE OF CONGRESS REGARDING FEDERAL BANKRUPTCY COURTS’ EXERCISE OF SANCTIONS AND DISCIPLINARY AUTHORITY OVER ATTORNEYS.

It is the sense of Congress that the potential for significant fraud and abuse exists in the bankruptcy system, and that in order to protect the integrity of the

bankruptcy system, Federal bankruptcy courts should vigorously exercise their authority, whether inherent, statutory or granted by rule of procedure, over parties and their attorneys, including, where appropriate under the circumstances, the issuance of sanctions and institution of disciplinary actions against attorneys.”

SEC. 9. AUTHORITY TO DISCIPLINE ATTORNEYS.

Section 157 of title 28, United States Code, is amended—

- (1) by striking “and” at the end of subsection (b)(2)(O);
- (2) by striking the period at the end of subsection (b)(2)(P) and inserting “; and” and
- (3) by adding at the end of subsection (b)(2) the following:
“(Q) proceedings to uphold the dignity of the court, including the disciplining of attorneys practicing therein.”