

**NAVIGATING THE ETHICAL PROBLEMS ARISING IN
THE “SMALL WORLD” OF BANKRUPTCY**

**American College of Bankruptcy
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Panel

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Hon. Deborah L. Thorne, U.S. Bankruptcy Court, N.D. Illinois
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I. Disclosure Topics

- A. First, a Reminder from Texas that the “Small World” of Bankruptcy
Should Revolve Around an Abundance of Disclosures

“[S]omething that has bothered me from day one, is that everybody seems to bring in everybody that they’ve worked with, and everybody seems to have some interest in that they work together and they cooperate with each other in a manner that may or may not be in the best interest of the estate and the people related to the estate.

Everybody seems to have a special interest in working with each other, and – and I think that’s what led to a lot of the issues in all of these cases from day one, ***a lack of disclosure and honesty*** in all of these cases. That really bothers me. . . .

Well, and part of ***the problem***, too, ***is the bankruptcy world is a very small world***, so you’re going to work with some of the people over and over again whether it’s . . . on a good basis or a bad basis. You’re going to work with each other over and over again, but the problem that led to a lot of these issues that are now before this Court and have been before this Court for over a year came from the fact that there was . . . a personal relationship with the Court, [and] ***a lack of disclosure*** from parties.”

Bouchard v. Jones et al., No. 4:24-CV-693 (S.D. Tex. May 22, 2025) (Moses, J.) [ECF No. 95 at 42:14 – 44:6]

- B. Professional Employment and Disclosure

1. Where are the primary disclosure requirements for professionals?
 - a. Fed. R. Bankr. P. 2014(a)
 - b. Fed. R. Bankr. P. 2016(b)

- c. 11 U.S.C. § 327
 - d. 11 U.S.C. § 329
 - e. 11 U.S.C. § 526
- 2. What is enough in terms of disclosure?
- 3. When do you update?
- 4. Recent cases of note
 - a. *In re Prof'l Fee Matters Concerning the Jackson Walker Law Firm*, No. 4:23-cv-04787-AM (S.D. Tex.) (§ 327(a) and Rule 2014 disclosures)
 - b. *In re Shastal*, No. 20-31468-jda (Bankr. E.D. Mich. Sept. 17, 2025) (§ 329 and Rule 2016(b) disclosures)
 - c. *In re Fresh Acquisitions, LLC*, 2025 WL 2231870 (Bankr. N.D. Tex. Aug. 5, 2025) (post-confirmation disclosures)
- C. Fee Applications and Disclosure
 - 1. What are the guardrails (i.e. general rules and recommendations?)
 - 2. Remember that the UST is watching and can access a lot of information.
 - a. The cautionary tale of *In re LL Flooring Holdings, Inc.*, Case No. 24-11680 (Bankr. D. Del. 2025)

II. AI Topics

- A. The Basics - Open AI v. Closed AI
- B. AI as a revolutionary tool for the legal profession and the judiciary to harness vast quantities of information (if used responsibly).
 - 1. Deposition/Trial Transcripts
 - 2. Voluminous Documents
 - 3. Legal Research?
- C. The Current Legal and Ethical Framework Around AI Use
 - 1. Applicable Federal and Local Rules

- a. Rule 11
- b. The Local Rule Patchwork – A Gamut Running from Outright Prohibition to Conditional Permission
 - i. *See generally* Joseph R. Tiano, Nancy B. Rapoport & Joseph D. Wilson, *AI Use in Bankruptcy: Court Orders, Rules, and Guidelines Tracker*, 2024 WL 2169226
- 2. Applicable Professional Responsibility Rules – ABA Formal Opinion 512 (July 29, 2024)
 - a. ABA Model Rule 1.1 - Duty of Competence
 - b. ABA Model Rule 1.4 – Duty to Communicate
 - c. ABA Model Rule 1.6 – Duty of Confidentiality
 - d. ABA Model Rules 5.1 and 5.3 – Duty of Supervision Over Lawyers and Non-Lawyers
- D. Some Proposed Rule Changes
 - 1. Proposed Fed. R. Evid. 707: Machine Generated Evidence (“When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of rule 702(a)-(d). This rule does not apply to the output of simple scientific instruments.”)
- E. The Punchline of Bankruptcy AI Cases – *Caveat Utilitor* (User Beware)!
 - 1. *In re Martin*, 670 B.R. 636 (Bankr. N.D. Ill. 2025)
 - 2. *In re Richburg*, 2025 WL 2470473 (Bankr. D. S.C. Aug. 27, 2025)
 - 3. *In re Whitehall Pharmacy LLC*, No. 4:25-bk-12406 [ECF 101] (Bankr. E.D. Ark. Sept. 3, 2025)