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**4/73 Attorney for bankrupt debtor also  
representing creditors**

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This inquiry concerns the ethical propriety of an attorney who has been retained to represent an individual person who seeks to file a petition in federal bankruptcy court under circumstances in which a corporate creditor of such client would become responsible for paying the legal fees and court filing fees for such petition, for which the debtor-client would sign an additional note and agree to reaffirm such obligation, of which proposed action the attorney has knowledge. In addition the attorney previously has represented the corporate creditor and debtor.

In the committee's opinion, this proposed conduct would not only be improper under the Code of Professional Responsibility but imprudent in that he would not be giving his individual client the independent, prudent advice to which he is entitled.

This committee in a 1965 informal opinion held that it is improper for an attorney representing a block of creditors to represent an individual debtor and file a bankruptcy petition in his behalf while continuing to represent the multiple creditors. This would result in an inherent conflict of interest between two classes of clients, making it impossible for the lawyer to proceed with the proceedings in which the clients' interests were totally adverse to each other. "It would be impossible for him to maintain the undivided fidelity and bond of confidential relationship which must continue to exist," stated this committee. Likewise, ABA Formal Opinion 40 concludes, "Inasmuch as the interests of a bankrupt and the interests of his creditors are adverse, it is professionally improper for an attorney to represent both the bankrupt and his creditors in such a proceeding." Formal Opinion 103 also supports this opinion.

Under the facts in this opinion, the matter of advising the client as to the propriety of reaffirming the corporate creditor's debt would raise a practical question. The lawyer would have to advise both prospective clients that such proposed action would in fact give a preference to one creditor above others, thus frustrating the intent of the bankruptcy law and subjecting the proceeding to likely dismissal. He would have the obligation to advise the individual client

that he could reaffirm the debt but that he need not do so, as well as the consequences of such reaffirmation.