

## **Slow Down! An Analysis of Whether Traffic Tickets Are Discharged in Bankruptcy**

By Camille J. Iurillo and Sabrina C. Beavens

*Facts:* Potential client seeks to file a Chapter 7 personal bankruptcy. She tells a compelling story about a mountain of medical bills incurred during a period of a gap in her medical insurance and an unexpected hospitalization. She has a few thousand dollars of credit card debt as well. Her income is within the “no-questions-asked” range for a Chapter 7, her debts are standard consumer debts and she owns only a few assets with a nominal value. The lawyer asks “Any other debts or assets you have not told me about?” “Nope!” Fees are quoted and the bankruptcy process is explained in detail. The potential client thanks the lawyer for her time and is relieved that her “fresh start” is achievable. She puts on her coat and says “Oh, I *did* forget one thing. Are traffic tickets dischargeable?” Bells and alarms go off. “How many traffic tickets?” the lawyer asks. “Well, my license is suspended in this state, but I can still drive because my license is issued out of another state (in which the potential client no longer resides) and I still have it. I think I have warrants out after I did not pay tickets in about 6 or 7 states. I am not really sure. Nothing ever happened so I just ignored it.” The potential client consultation just went into overtime.

11 U.S.C. § 523(a)(7) provides that “a discharge under section 727, 1141, 1228(a), or 1328(b) of this title does not discharge an individual from any debt – to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty.” Accordingly, in a Chapter 7 bankruptcy case, the answer is straight forward – the traffic tickets are non-dischargeable.

However, Chapter 13 could be Plan B. Generally speaking, in a Chapter 13 certain fines are still dischargeable. Under § 1328(a)(3) a Chapter 13 debtor who completes all payments under the Plan receives a discharge “of all debts provided for by the plan or disallowed under section 502 of this title, except any debt – for restitution, or a criminal fine, included in a sentence on the debtor’s conviction of a crime.” (Emphasis added). Thus, the key is whether the parking or traffic violations are deemed “crimes” under the state law where the offenses occurred. In some states “crimes” are defined as misdemeanor and felonies and not civil infractions, moving-violations and other categories of offense for which typical traffic tickets are issued.

For example, in Florida, traffic offenses are divided into 2 categories: crimes and civil infractions. Criminal traffic offenses include DUI, reckless driving, leaving the scene of an accident and knowingly driving with a suspended license. In contrast, civil traffic offenses include speeding, running a red light or stop sign, illegal U-turns, failure to yield to emergency vehicles and non-moving violations.

If the fines are non-criminal and therefore dischargeable, the debts are pooled together with other unsecured creditors such as medical bills, credit cards and personal loans and paid a percentage of the total claim amount as provided for in the debtor’s Plan. It is important to note that even non-dischargeable criminal fines or penalties may still be paid through a Chapter 13 Plan; however the balance remaining at the conclusion of the Plan, which usually lasts 36 – 60

months, will not be discharged. The advantage of paying a portion of the debt through the Chapter 13 Plan is that the automatic stay should stop collection efforts against the debtor such as revocation of their driver's license or incarceration due to non-payment. Lastly, if the governmental unit does not file a proof of claim (which is not uncommon), the debtor should file one on its behalf so that the pro rata share of the payments is paid to it and the debt reduced. Fed. R. Bankr. P. 3004.

At the end of the day (and a long initial consultation), there was still hope for the potential bankruptcy debtor above whose case at first blush seemed like a run-of-the-mill Chapter 7. However, a significant amount of additional time would be necessary to investigate where traffic fines were outstanding and each state's definition of a crime. Also, "quick fix" Chapter 7 was not an alternative if the potential client wanted to discharge her traffic fines which were eligible for discharge in a Chapter 13. Of course, a debtor may choose to file a Chapter 7 knowing certain debts are not discharged and deal with those after the bankruptcy. Depending on the amount of the fine and whether there are any additional reasons to consider a Chapter 13 bankruptcy, practically speaking a Chapter 7 may still be the best alternative.

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