



**BANKRUPTCY ATTORNEYS BEWARE: YOU MAY
HAVE TO REVEAL CONFIDENTIAL CLIENT INFORMATION**

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It is commonly understood that a spouse cannot be forced to reveal marital communications, a confessor cannot reveal a penitent's sins, and an attorney cannot reveal a client's confidential information. But late last year a court in Ohio held that attorneys could be forced to reveal client communications in a bankruptcy proceeding. It is well known that the Trustee in a bankruptcy case takes over the interests of the Debtor. The [bankruptcy court in Ohio](#) expanded this concept to confidential communications between the Debtor and his bankruptcy attorneys, holding that the bankruptcy Trustee owns the attorney client privilege and may chose to waive it. If the Trustee waives the privilege, the attorneys must disclose their communications with the client.

In 1985, the [United States Supreme Court](#) held that corporations which file for bankruptcy protection surrender the attorney client privilege to the Trustee. Since then, federal courts around the country have disagreed whether this rule applies to individual persons filing for bankruptcy protection or just corporations. Some courts have held that the same rule applies to corporations and individuals. Other courts say the privilege always remains with the individual Debtor and therefore may never be waived by the bankruptcy Trustee. The court in Ohio took a middle ground position, holding that the Trustee's right to waive the attorney client privilege of the Debtor must be decided on the particular facts of each case.

The facts in that case were especially interesting and serve as a warning to bankruptcy attorneys. The Trustee in that case was alleging that the individual Debtor had a legal malpractice claim against his bankruptcy attorneys for advice given about potentially concealing assets from the bankruptcy court. Since the Trustee's malpractice claim against the attorney would actually benefit the Debtor by increasing his assets, the court concluded that there was no adversity of interests between the Trustee and the Debtor. Therefore the Trustee in these circumstances owned and could waive the attorney-client privilege and discover all communications between the Debtor and his attorneys. The court did note that the Trustee in that case was not pursuing a fraudulent concealment claim against the Debtor, an obvious strategy on the part of the Trustee to penalize the attorneys with a malpractice claim for supposedly advising the Debtor on how to conceal his assets. As of today's date, the Trustee's malpractice claim against the attorneys is still pending.