



NEWS AND UPDATES — MAY '07

CHAPTER 7 BANKRUPTCY CASE SETS PRECEDENT

When an American's debts are discharged via Chapter 7 Bankruptcy, those debts are gone and the person in question gets a fresh start. That's the law.

But a case involving Nebraska Workforce Development challenged the effects of Chapter 7 when it attempted to collect on a debt already discharged in bankruptcy from a client of Legal Aid of Nebraska. Nebraska Workforce Development is part of Nebraska's Department of Labor, and administers unemployment benefits.

Legal Aid Attorney Kate Owen fought the attempt on behalf of the client and won a decisive victory in Federal District Court. Client Florence McClinton had been overpaid unemployment benefits by Nebraska Workforce Development. With Legal Aid's assistance, she filed a Chapter 7 bankruptcy and gave notice to Workforce Development that she intended to discharge her overpayment debt via the bankruptcy.

Nebraska Workforce Development did not file objections, so Ms. McClinton received her Chapter 7 discharge, which got rid of her unemployment overpayment along with the rest of her unsecured, non-priority debt. A year later, Ms. McClinton applied for unemployment benefits and was shocked when Nebraska Workforce Development withheld money from her benefits to recover the pre-bankruptcy debt. Nebraska Workforce Development refused to return the money to Ms. McClinton because a Nebraska statute allows for "recoupment" of overpayments from ongoing unemployment benefits.

Legal Aid filed a motion to reopen Ms. McClinton's bankruptcy case so it could recover the seized money. Attorney Owen argued that federal bankruptcy law defeated Nebraska's collection statute and that Workforce Development violated bankruptcy law by collecting on a debt which had been discharged in bankruptcy. The Federal Court agreed with Legal Aid.

The United States District Court decision said that Nebraska Workforce Development cannot recoup pre-bankruptcy debt from post-bankruptcy unemployment benefits. Ms. McClinton has now been reimbursed the seized money, and is receiving the protection to which she was entitled under bankruptcy law.

Because this case is precedent-setting, any future case in a Bankruptcy Court in the State of Nebraska will be decided the same way. This means that Legal Aid has helped not only Ms. McClinton, but any other person in a similar situation who is relying on unemployment benefits to pay for food and shelter while looking for another job, and who had a prior overpayment that was discharged in bankruptcy.



Attorney Kate Owen

NEW HIRES AND PROMOTIONS . . .

- **Elise Emanuel**, new paralegal for Legal Aid's Native American Program. Formerly AccessLine™ intake paralegal.
- **Amanda McMahan**, promoted to managing attorney of North Platte from staff attorney, North Platte. 2006 graduate, University of Nebraska School of Law. Also licensed in South Dakota.
- **Anne McShane**, hired as a staff attorney for North Platte. She is a graduate of New York University School of Law. NYU was ranked 4th in the nation among all law schools by US News & World Report this year.
- **Casey Miller**, new staff attorney in Scottsbluff. Formerly in private practice. A 2005 graduate of Creighton University School of Law. Native of Bayard, Neb.
- **Jen Gaughan**, promoted to managing attorney in Lincoln. Formerly North Platte managing attorney.
- **Mark Bestul**, new staff attorney in Lincoln. Previously in private practice with Vincent Powers and Associates; 2002 graduate of UNL Law.
- **Scott Hahn**, new intake attorney/paralegal with the AccessLine™. Creighton University Law graduate, 2006. Former clerk for Kutak Rock law and Legal Aid.



Jen Gaughan, managing attorney, Lincoln

Legal Aid of Nebraska

Doug German, Executive Director
Jim Gordon, Board Chair & President

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