

You are an attorney representing a rock group that wants to get out of its present recording contract in order to take advantage of a much better offer. The group's contract is a "new kid" agreement common in the recording industry, whose terms heavily favor the record company. For example, although the contract calls for the group to make eight records, the company can drop the group at any time. In contrast, however, the group cannot terminate the agreement at will, but instead must stay with the company and make all eight recordings, which could take twelve years to produce. Record companies say they have to rely upon "new kid" contracts to balance the financial risks of signing and producing many new artists, most of whom do not pan out. The group you represent signed its contract several years ago before you represented them, when the group members were just out of high school. A lawsuit requesting a court to release the group from its contract could go on for years. You know about another legal strategy, however, that could generate the same result much sooner -- declaring bankruptcy. Under federal bankruptcy law, courts may free debtors from contracts the court views as burdensome. The purpose of the bankruptcy law is to enable debtors to make a fresh start, and not simply to make it possible for individuals to get out of contracts whose terms they have come to dislike. Nonetheless, you realize that the group might be able to get out of its contract if the group members all rapidly accumulate enough debt to convince a judge of their financial insolvency.

Should you advise your client, the rock group, to follow the above strategy? If so, why? If not, why not?

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