

# DIALOGUE

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## News and Perspectives from the ABA Division for Legal Services

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Pro Bono Feature

IOLTA

**Bankruptcy Assistance: Creative Strategies**

Pro Bono

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**Bankruptcy  
Assistance:  
Creative  
Strategies**

As unemployment rates soar and the weakened economy stresses individual finances, more consumers are turning to the bankruptcy process for protection from creditors. According to the National Bankruptcy Research Center, consumer bankruptcy filings between April 2009 and April 2010 rose 15%. In some states, filing rates are even higher. Filings in Arizona and California, for example, are up 40% or more from the prior year. A recent *USA Today* headline reads "Only a Fraction of Those in Need File for Bankruptcy." The author cites a lack of affordable legal assistance as a primary reason why most debtors don't file for bankruptcy.

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More concerning, however, are the number of debtors who attempt to file pro se. A recent study comparing Chapter 7 pro se filings made during 2007 to those made during 2001 found a significant increase in the number of pro se filings. Furthermore, in 2007, 20% of the Chapter 7 cases filed pro se were dismissed or converted to a Chapter 13 case whereas in 2001, only two percent of the Chapter 7 cases filed by an unrepresented debtor were dismissed or converted.

LAMP

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Bankruptcy courts, legal services organizations and pro bono programs have all noticed the dramatic increase in the need for bankruptcy legal assistance as well as most pro se filers' lack of success. Often working together, these groups have devised creative and effective ways to help consumers by maximizing scarce volunteer resources. The most successful of these involve the collaboration of all stakeholders: bankruptcy judges and court staff; members of the state, local and bankruptcy bars; legal services agencies; and volunteer lawyer programs.

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Bankruptcy experts agree the best form of debtor assistance is full representation by an experienced consumer bankruptcy practitioner through the entire bankruptcy process. Dedicated volunteers continue to make this possible in many instances, through programs such as the Rutgers University School of Law - Camden Bankruptcy Pro Bono Project, which pairs volunteer lawyers with law students to provide debtors with full bankruptcy representation. The ABA Business Law Section's *How to Begin a Pro Bono Program in Your Bankruptcy Court* remains one of the most downloaded pro bono publications offered by the ABA.

Many bankruptcy pro bono programs, however, have faced a shortage of volunteers for the last few years. In part, this is due to the myriad of changes to the bankruptcy process imposed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. In addition, the current economy has meant a booming business for consumer bankruptcy attorneys, who may not have the time to take on pro bono matters. As a result, many pro bono programs are exploring alternative ways to help debtors.

### **Low Bono Representation**

Maryland debtors have access to a Debtor Assistance Project (DAP). Bankruptcy court personnel coordinate the DAP, though which a debtor may seek pro bono representation. If a debtor is not financially eligible for pro bono representation, he or she may seek reduced-fee, or "Low Bono" services from a volunteer bankruptcy attorney.

The Low Bono portion of the DAP is a list of attorneys developed from those who have completed an on-line DAP volunteer information form. In order to be included on the Low Bono list, attorneys must already serve the DAP in some other capacity, either by staffing the DAP office (help desk) periodically or by completing a bankruptcy pro bono case through the Maryland Volunteer Lawyers Service's Pro Bono Panel. If a lawyer signs up for Low Bono representation, her name is included on a list made available to the debtors who have first come to a DAP clinic. Lawyers on the list agree to take on cases at reduced fees. There is no established reduced-fee structure, but Low Bono lawyers have copies of area legal aid and pro bono program client qualification guidelines. Low Bono lawyers have agreed to negotiate a reduced fee with the client consistent with the client's financial situation. The DAP does not match lawyers with debtors. Rather, a debtor has access to the Low Bono list and is invited to contact a lawyer and negotiate a lower fee.

### **Clinics / Consultations**

Many times, debtors seek to file bankruptcy without first understanding the process or the implications of filing. A number of organizations sponsor clinics in which volunteer lawyers provide general education about the bankruptcy process or meet with the unrepresented debtors one-on-one to answer questions and explain all aspects of the bankruptcy process. The DAP, mentioned above, uses volunteer bankruptcy lawyers to meet with debtors individually. The Legal Aid Center of Southern Nevada, on the other hand, partners with the William S. Boyd School of Law to conduct a community legal education class on bankruptcy. They provide an accompanying manual and have made a video of the class available online. Legal Aid Services of Oregon works with volunteers for the Debtor-Creditor Section of the Oregon State Bar both to hold regular bankruptcy education classes and to follow each class with individual consultations with a volunteer lawyer.

### **Pro Se Help Desks**

On a minimal budget, business bankruptcy lawyers in the Eastern District of Wisconsin (Milwaukee) staff a help desk for a few hours each week, answering debtors' questions and providing them with a handful of sample documents for their use. The desk is located in the courthouse, and volunteers have a good relationship with the court, the clerk's office and filing desk personnel.

A similar program is the bankruptcy assistance desk in the Northern District of Illinois. The desk is staffed by an employee of the Legal Assistance Foundation of Metropolitan Chicago, who is available during the morning hours on any day the court is open. The project was funded indirectly with moneys remaining from a Chapter 11 case resulting in the debtor's liquidation. The court made a cy pres grant of the funds to the Chicago Bar Foundation, intending to support the bankruptcy assistance desk. The person staffing the desk answers questions, directs petitioners to forms and schedules, provides explanations, and unofficially reviews prepared documents.

In Phoenix, the local bankruptcy bar has been instrumental in setting up a walk-in Self Help Center at the courthouse. There, debtors can find on-line and printed information about how the bankruptcy process works in Arizona. The Self Help Center is open daily, with volunteer law students assisting debtors with basic questions, and volunteer bankruptcy lawyers available for individual consultations.

### **Pro Se Filing Preparation**

In some locations, legal services organizations have determined the most effective use of resources is to assist pro se filers with the preparation of bankruptcy petitions and schedules. Legal Services NYC's Bankruptcy Assistance Project (BAP) utilizes staff and volunteers to provide basic bankruptcy education and to prepare filings. The staff conducts a final review of petitions and schedules and then facilitates the filing of the petition with the bankruptcy court. And while recruiting volunteer lawyers

from certain law firms would ordinarily be problematic due to conflicts, the BAP relies on an ethics opinion issued by the Bar of the City of New York setting out the circumstances under which volunteers may assist pro se filers without raising conflict issues.

### **Reaffirmation Clinics**

Chapter 7 debtors quite often owe balances on items such as car loans. The bankruptcy process offers them the opportunity to agree to repay, or reaffirm, the debt. Many debtors agree to do this in order to retain possession of the property. A car, for example, may be a consumer's only form of transportation and may make the difference between a paycheck and unemployment. In many instances, however, consumers reaffirm these debts when it may not necessarily be in their best economic interest.

Legal services programs and volunteer lawyers have been joining in the effort to educate Chapter 7 debtors on the reaffirmation process. They work with bankruptcy courts to consolidate reaffirmation hearings, and then schedule reaffirmation education clinics beforehand to prepare debtors. Volunteer lawyers and legal services attorneys develop reaffirmation information packets for debtors and take the time to go over the reaffirmation process and explain the benefits and disadvantages of reaffirming a debt.

Hundreds of consumers have been helped this way in clinics across the country. In Los Angeles, Public Counsel's Debtor Assistance and Consumer Law Projects have been counseling consumers on reaffirmations for over ten years. In Atlanta, volunteer lawyer John Mills replicated the Los Angeles model in the United States Bankruptcy Court for the Northern District of Georgia.

### **Adversary Representation**

There are circumstances in which a pro se filer's case has not yet been dismissed, but a creditor has raised an issue in an adversary proceeding. Some organizations have created projects where bankruptcy attorneys volunteer to represent the debtor through the adversary proceeding. In Denver, Faculty of Federal Advocates Bankruptcy Pro Bono Program volunteers furnish free legal services to debtors in pending bankruptcy cases. In Minnesota, the Minnesota State Bar Association Bankruptcy Section, partnering with the U.S. Bankruptcy Court for the District of Minnesota and the Volunteer Lawyers Network in Minneapolis, created a project to represent indigent defendants in adversary proceedings.

### **Funding**

Some traditional, IOLTA-funded sources are strained at this time and may not have funds for new debtor assistance programs. A state or local bankruptcy bar or the bankruptcy section of a state or local bar, may be able to provide some monetary assistance. In addition, the American College of Bankruptcy (ACB) may be a source of funding. The ACB has a well-funded grant program and generously distributes funds each year to facilitate the growth of bankruptcy pro bono programs. Finally, if members of an area business bankruptcy bar are involved in Chapter 11 cases that result in liquidation, unclaimed funds may be available for the court to make cy pres awards to fund bankruptcy assistance programs.

### **Conclusion**

This article briefly presents just a few of the many new ideas legal services organizations and pro bono programs are using to help the greatest number of debtors possible with scarce resources. Staff creativity is resulting in extensive unbundling within the bankruptcy process, as well increased use of volunteers for limited-scope tasks. The bankruptcy community as a whole is committed to an open, accessible, bankruptcy system, and the future promises even more innovation in the delivery of justice for consumer debtors.

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