

WHAT'S NEW IN BANKRUPTCY PRO BONO AND WHY IT MATTERS - NOW

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I. INTRODUCTION

Specialized bankruptcy pro bono programs are modeled after general pro bono programs but have three distinctive characteristics. (1) They focus on the needs of individuals for representation in bankruptcy courts and debtor-creditor matters generally. (2) They have the active involvement of the organized bankruptcy bar. (3) They usually have the active involvement of the bankruptcy judges. The combined effect of these characteristics is that there can be increased representation and different kinds of representation than would otherwise be provided by general pro bono programs and legal aid offices. The oldest of these programs trace back at least to 1992. There are now at least 70 of these programs around the country.

II. EARLY PROGRAMS AND MODELS

One of the first programs was developed here in Minneapolis. It was sponsored by the Bankruptcy section of the Minnesota State Bar Association. It had the active support of the bankruptcy judges. It matched volunteers with debtors already in bankruptcy who needed assistance in adversary proceedings.

Another started at the same time was developed in Philadelphia and was sponsored by bankruptcy attorneys with the assistance of bankruptcy judges. It represented individuals in filing chapter 7 cases.

A third, operating at the same time, had a more informal liaison between the legal aid office in South Carolina and a bankruptcy bar leader who recruited bankruptcy lawyers to assist.

III. THE STARTER KIT

In 1994, the ABA Litigation Section and the ABA Business Law Section sponsored the publication, “How to Begin a Pro Bono Program in Your Bankruptcy Court; A Starter Kit of Lawyers and Judges”. That publication was widely distributed and did a second printing. A second edition came out in 1999. It is still in print and is available through the ABA Center for Pro Bono in its “Knowledge Center.” A link to the order form is below.

https://americanbar.qualtrics.com/jfe/form/SV_1S7noLRKkjYgRCJ?folder=Bankruptcy_Debt_Counseling_%28E%29&item=5934&Q_JFE=qdg

IV. TEN KEYS TO SUCCESS

Keys to success of these programs, as presented in the Starter Kit, are:

1. One or more highly respected bankruptcy lawyers leading the charge to create the program.
2. One or more interested bankruptcy judges actively involved in designing and promoting the program.
3. Ownership by the bankruptcy bar association, thus giving access to volunteers, expertise, energy, and funding.
4. Thoughtful analysis of the kinds of cases to be handled and how the prospective clients will find their way to the bankruptcy pro bono project.
5. Successful recruitment campaigns to assume the necessary number of volunteers and the provision of training and back-up help.
6. Thoughtful analysis of the administrative tasks involved with the project, the costs, and the sources of funding.
7. Integration with the existing local legal services offices and volunteer attorney programs.

8. Funding sources to pay for costs incurred by volunteers, to fund cooperation with local legal services officers or volunteer attorney programs, etc.
9. Cooperation with other groups in the community.
10. A three-way balance among the number of clients, the volunteers, and the administration of the programs.

V. FUNDING

These programs obviously add administrative costs since the matching of volunteers with clients is a critical link that requires staff. But these programs can generate some or all of their own funding.

The American College of Bankruptcy provides grants to support these programs. Total annual grants have been approximately \$500,000 per year. Individual program grants are up to \$10,000 per year and many programs apply and receive grants each year. In addition, it awards a grant of up to \$15,000 for a new program or significant innovation. The grant application form and guidelines are attached. **The deadline is June 1, 2022.** New this year will be attention to DEI (Diversity, Equity, and Inclusion). So, information about the demographics of the clients served will be a consideration.

In addition, because the programs are supported by the bankruptcy bar—which takes pride in their bankruptcy pro bono programs—they often provide funding.

Volunteers also often make contributions. Contributions from bankruptcy judges are sometimes received. One program received a \$1 million testamentary gift.

VI. MULTIPLE DELIVERY MODELS

It is surprising the number of delivery models utilized by these programs. We offer a list and encourage the attendees to offer more during this discussion. This presentation will involve descriptions of programs in use and a frank discussion of their merits or weaknesses.

1. Community education;
2. Brief advice as to whether bankruptcy filing would be a prudent course of action perhaps followed with direct representation by another volunteer;
3. Lettering writing, in which the volunteers write a letters to creditors advising the creditor that the client is judgment-proof;
4. Pro se assistance in which volunteers help those who will file pro se or those who have filed pro se and now have problems and need help;
5. Full representation in consumer debtor chapter 7 cases;
6. Full representation in contested adversary proceedings;
7. Litigation defense on merits including state and federal consumer law defenses;
8. Remote assistance in rural areas;
9. Local or national assistance during and following disasters;
10. Bankruptcy appeals
11. Reaffirmation hearings;
12. Chapter 13 case issue?;
13. Clients whose attorneys have collected a fee but not completed service because of death, disability or their own financial problems;
14. Student loan discharges; and
15. Creditor representation

VII. SOME NEWER AND INNOVATIVE MODELS

Newer programs, rather than providing assistance broadly in a geographic area, sometimes provide assistance to targeted populations. Others address hard to reach rural populations.

A New York program that received a \$15,000 grant last year assists the LGBTQ+ population.

There has been a recent award of \$15,000 to a program that assists the veteran community.

There are some that address particularly rural areas such as Montana, the “Inland Empire” in Southern California, and the Eastern Shore of Maryland.

VIII. REMOTE SERVICE

The COVID-19 pandemic has changed so much. Bankruptcy courts have had remote hearings, and 341 meetings have been remote. Likely, we have learned things that will help us in the long run. Many things can be done remotely and more efficiently. In person meetings with the clients are not always necessary. But there have been challenges. It is more difficult for clients to send information to the attorneys. It may be more difficult to develop trust and bridge the differences in race, class, language and culture, etc. when the communications are not in person.

IX. LAW STUDENTS

While the volunteers are usually lawyers, some programs make very good use of law students. In some states, such as New York and Florida, law students meet with clients (directly or remotely) to interview the clients and help with their petitions.

X. ASSISTED PRO SE

Clients can often help themselves if the situation is not complex and can file their petitions pro se. Some programs provide volunteers (including law students, as discussed above) who give guidance to individuals and may review petitions or answer specific questions. These programs make volunteers available later if specific problems arise.

XI. MINORITY POPULATIONS

In recent years, there has been study of the filing in some southern states of chapter 13 cases by African Americans in much greater proportion than whites. Only a fraction of them complete their cases, and as a result, continue in poverty during and after their bankruptcy cases. An author of papers on that topic is Professor

Robert Lawless at the University of Illinois School of Law. He has now been joined by two other law professors. They have completed the first comprehensive study of bankruptcy filers, which may provide guidance to policy makers and perhaps those who design pro bono programs. They find nine distinct patterns: car owners, homeowners, Black households, women, Black women, single mothers, the self-employed, property owners and people who have long term struggles with debt. Their study is forthcoming and will be published in the Georgia Law Review. We will attempt to get more information on this study to those who are interested.

XII. THE COMING TSUNAMI

Bankruptcy filings of all types have been low for a number of years. Most observers expected much more financial distress with the coming of COVID. Many lost their employment. But government programs pumped a lot of money into system, and creditors such as landlords have been slower to exercise their remedies, often compelled to do so by state and federal legislation. Now, most observers expect an increase in filings, with possible dramatic increases in both consumer and business filings. A recent ABI article cited a study which found that 65% of respondents expected an increase in the coming year. An increase in consumer filing will tell us that there are even larger numbers of people who need help and can't afford it or don't know where to find it.

XIII. NATIONAL CONSUMER LAW CENTER LISTSERV

The National Consumer Law Center (NCLC) has a listserv, which includes a discussion of consumer bankruptcy practice issues for attorneys at legal services or similar non-profit or pro-bono programs that assist eligible clients. NCLC is in the process of revising its enrollment process, but you can contact nclc.org to be added to the list.

One question for the participants in the EJC program is whether a listserv hosted by the ABA Center for Pro Bono would be valuable for bankruptcy pro bono program staff or leadership. They could share questions and successes on program management issues.

XIV. BANKRUPTCY PRO BONO TRAINING MATERIALS

The NCLC has developed high quality materials to help train volunteer attorneys. The training materials are free to legal services and pro bono programs. They are available at: <https://www.nclc.org/issues/pro-bono-bankruptcy-training-program-material.html>.

XV. LISTSERV FOR BANKRUPTCY PRO BONO ADMINISTRATORS

Would it be valuable to have a listserv for people involved in starting or running bankruptcy pro bono programs, which would focus on organizational issues such as developing the programs, involving the judges, recruiting volunteers, fund raising and delivery models? If there is a sufficient expression of interest, we may be able to arrange that.

XVI. POSSIBLE ADDITIONAL STUDY?

Would a new study of bankruptcy pro bono programs and their methods of delivery of service be of benefit to established programs or those in prospect? It may be that researchers would develop a questionnaire and send it to bankruptcy pro bono programs and use the answers to develop an analysis of these programs. Would you provide information and participate in follow-up interviews?