

OFFICIAL PUBLICATION OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS

# JOURNAL

CONSUMER  
BANKRUPTCY

Spring 2025

**MAKING A RECORD  
AT TRIAL:**

**THE KEY TO A  
STRONG APPEAL**

**2024 HILTON  
HEAD ISLAND,**

**SOUTH CAROLINA  
WORKSHOP WRAP UP**

**BANKRUPTCY  
LAW MEETS**

**THE GLAMOUR  
OF TINSELTOWN!**

**BEYOND THE PAPERWORK**  
**THE TRUTH ABOUT FILING  
FOR BANKRUPTCY**



# BEYOND THE PAPERWORK IT'S NOT JUST FILLING OUT FORMS!

BY SONDRA O. BRYSON, ESQ.

**A**s a seasoned consumer bankruptcy attorney with 16 years of experience, I have had a wide range of interactions with clients, opposing counsel and judges. One interaction that stands out to me is the client who wanted to hire me “for my bankruptcy software.” They had already filed a skeletal Chapter 7 pro se, riddled with deficiencies, and simply wanted me to use my software to help them complete their filing. In hindsight, I should have declined, but as a young attorney eager for business, I took the case. What followed was anything but simple—the client had not fully grasped the impact of filing Chapter 7 before initiating the process on their own.

Consumer bankruptcy is often mistakenly perceived as a straightforward process involving little more than completing forms. In reality, filing for bankruptcy is not a simple checkbox exercise. It is a deeply nuanced legal proceeding requiring strategic decision-making and a thorough understanding of financial, legal and procedural complexities—an understanding that many without direct experience in filing consumer bankruptcies often lack.

Take the client who just needed me for my software—nearly every document they had filed required amendments to accurately reflect their assets, exemptions, financial information and creditors. This client wasn’t attempting to hide anything—they just did not understand what an asset was, or they owned their house and car despite the money still owed. They had no idea that personal belongings such as clothing, furniture and electronics all carried

monetary value, even if they had acquired them for free. They didn’t know to look at their mortgage to determine whether it properly created a lien on their home<sup>1</sup>, or to look at the car title to make sure their lender hadn’t accidentally taken a preferential lien on their vehicle<sup>2</sup>.

Potential debtors are not the only ones who struggle to avoid these pitfalls. I once assisted an attorney who was just dabbling in bankruptcy. They had filed a



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case for a client with an avoidable lien on his car title but failed to recognize why the Chapter 7 trustee was attempting to sell the car despite it being properly exempted. I had to explain to the attorney and debtor that the exemption did not function as they had expected due to the avoidable lien. The debtor ultimately had to pay the trustee to retain the car—an outcome that could have been avoided had the attorney identified the issue before filing. By advising the debtor to wait until the preference period expired, the attorney could have saved the debtor thousands of dollars.

Bankruptcy attorneys play a crucial role in guiding clients through a series of complex legal decisions as they are preparing a case for filing. Debtors must first determine whether bankruptcy is even appropriate for them and if so, which chapter should they file. This decision hinges on numerous factors, including income, assets, available exemptions, types of debt and long-term financial goals. A misstep in this critical choice can have profound consequences from loss of valuable assets to the dismissal of a case.

Once the filing path is chosen, additional hurdles arise. Attorneys must determine where and how to list assets and debts, how to answer the questions on the SOFA, verify that secured creditors have taken necessary steps to perfect liens (or, if they haven't, leverage that in the client's favor), ensure compliance with mandatory financial education requirements, navigate the means test, apply appropriate exemptions and adhere to an array of procedural rules including the Federal Rules of Bankruptcy Procedure, local rules, general orders and specific judicial preferences. Nearly every single line, checkbox and question in the petition, schedules and statements involves a series of small but critical legal decision, often requiring investigation and research. Failure to meet disclosure requirements and deadlines can lead to case dismissal or even allegations of bankruptcy fraud, potentially resulting in denial of discharge<sup>3</sup> or criminal prosecution<sup>4</sup>. These complexities disproportionately impact low-income individuals who often lack access to competent legal representation.

I have spent the last eight years of my legal career as a Legal Aid attorney, providing free bankruptcy services to low-income and senior Ohioans. One might assume that these cases are relatively simple, but this could not be further from reality. While it's true that my clients now often have fewer assets, their cases frequently involve complex legal issues. From clients who inherited real estate that hasn't been probated, to clients with mass tort claims, to clients who have lived in multiple states in the years before they come to me for a bankruptcy, I constantly find myself conducting legal research and investigation into issues that I have not come across before.

In recent years, bankruptcy judges have increasingly scrutinized consumer bankruptcy attorneys' fees. The intent behind these inquiries is commendable—debtors shouldn't be raked over the coals to have access to this remedy. However, it has led to judicial determinations of what constitutes a “routine” bankruptcy case and how much it should cost—sometimes without direct experience representing consumer debtors. The attorneys defending their fees have provided varying amounts of evidence justifying their fees, but most often these decisions reduce the fee to which the attorney is entitled.

A completed bankruptcy petition may appear straightforward, but this finished product does not reflect the extensive legal work required to produce it. A brief description of a mass tort claim on Schedule A/B does not show the time spent contacting the mass tort attorney, searching court records and reviewing client-provided documentation. A secured creditor listed on Schedule D does not reveal the time spent analyzing deeds and mortgages to verify perfected security interests. The answers on the SOFA do not capture the multiple interviews, document reviews and legal interpretations necessary to ensure accurate responses.

Consumer bankruptcy is far more than a set of forms. It is a sophisticated legal and financial process with significant ramifications for both debtors and creditors. While some law firms, attorneys, and judges treat consumer bankruptcy as routine, this does not make it so. Attorneys representing debtors in consumer bankruptcy cases are on the hook for making sure their clients understand the long-term impact of filing, its effects on creditworthiness and financial stability, as well as their duties and requirements under the Bankruptcy Code and rules. All parties involved must recognize the complexities involved to uphold the integrity of the bankruptcy system and ensure it fulfills its fundamental purpose: providing meaningful

relief to debtors while maintaining fairness to all parties involved.

#### FOOTNOTES

1. *In re Oakes*, 917 F.3d 523 (6th Cir. 2019)
2. *In re Haggerty*, 562 B.R. 692 (Bankr. S.D. Ohio 2016)
3. *Eifler v. Wilson & Muir Bank & Tr. Co.*, 588 F. App'x 473 (6th Cir. 2014)
4. 18 U.S.C. §152



# BEYOND THE PAPERWORK UNDERSTANDING THE

BY RACHEL FOLEY, ESQ.

## ATTORNEY'S ROLE

Consumer bankruptcy is often perceived as a straightforward process—a debtor files, forms are completed, and a discharge follows. In reality, bankruptcy attorneys navigate a complex landscape of legal, financial and procedural challenges to ensure compliance, protect debtor rights and achieve sustainable financial outcomes. Understanding the depth of work involved in these cases provides valuable insight into the decisions attorneys must make before a case ever reaches a courtroom.

### SELECTING THE RIGHT CHAPTER: A STRATEGIC DECISION

While some cases may appear to fit neatly within Chapter 7, a careful review of a debtor's financial and personal circumstances often reveals that Chapter 13 is a more effective option. For example:

- **Student Loan Debt:** Although generally non-dischargeable, student loans can often be better managed in Chapter 13, where a structured repayment plan may provide relief from aggressive collection tactics and unpredictable servicer requirements.

- **Chronic Medical Expenses:** For debtors or their immediate family members with ongoing medical conditions, Chapter 13 can provide a critical safeguard against the rapid accumulation of post-discharge medical debt, ensuring that essential healthcare remains accessible.
- **Asset Retention:** Even where Chapter 7 appears viable, it may not be the best financial decision if the debtor risks losing essential property. Chapter 13 allows debtors to preserve assets while making structured payments.

Determining the appropriate chapter requires more than a simple means test analysis; it involves assessing long-term financial viability, potential future hardships and the debtor's ability to sustain a repayment plan.

### EXEMPTIONS AND ASSET PROTECTION: A CRITICAL BALANCING ACT

A common misconception is that asset protection in bankruptcy is straightforward. In reality, attorneys must carefully apply exemption laws, often balancing federal and state-specific rules, to ensure debtors



retain necessary property while remaining compliant with the law.

Key considerations include:

- State vs. Federal Exemptions: Understanding which exemptions apply and how best to utilize them for debtor protection.
- Pre-Bankruptcy Transactions: Identifying and addressing potential fraudulent transfer risks to avoid trustee challenges or clawbacks.
- Valuation Disputes: Ensuring fair and accurate valuations of assets to prevent unnecessary liquidation.

Strategic exemption planning requires meticulous case preparation, as an oversight can lead to avoidable asset loss or legal disputes.

#### **TAX RETURN SCRUTINY: ADDRESSING COMMON AUDIT TRIGGERS**

Tax returns play a critical role in bankruptcy cases, as they provide a snapshot of the debtor's financial status. Certain elements frequently attract scrutiny, including:

- Earned Income Credit (EIC): A common area of review for inconsistencies or potential overstatements.
- Head of Household (HOH) Status: Claims that may not align with other financial disclosures can prompt further investigation.

Bankruptcy attorneys must carefully review tax returns to ensure that reported income, household structure and tax credits align with the information disclosed in bankruptcy filings. Addressing discrepancies before filing can prevent complications and unnecessary delays.

#### **NOT ALL DEBTS ARE EQUAL: MANAGING EXPECTATIONS**

While many debts are dischargeable in bankruptcy, others require careful handling. Attorneys must ensure debtors understand that:

- Certain obligations—such as child support, recent tax debts and student loans—are generally non-dischargeable.
- Creditors may object to dischargeability if debts were incurred under questionable circumstances, such as recent luxury spending or cash advances.
- Some tax liabilities can be discharged, but eligibility depends on the timing and nature of the debt.

A thorough legal analysis of dischargeable and non-dischargeable obligations

helps prevent misunderstandings and post-discharge financial surprises.

#### **RECOGNIZING THE COMPLEXITY OF CONSUMER BANKRUPTCY PRACTICE**

Each consumer bankruptcy case is unique, and the work of a skilled attorney ensures that it is treated as more than just another filing. By not approaching the process as a routine form-pleading exercise, consumer attorneys bring their clients' cases to life, presenting them as individuals with real financial struggles, not just case numbers in


a system. A well-prepared case tells a debtor's story, demonstrating the circumstances that led to bankruptcy and the path toward a fresh start.

Accomplishing this takes time, effort and careful legal analysis. Attorneys must thoroughly review financial records, tax returns, and debt structures, anticipate potential objections and strategically position their clients for the best possible outcome. Ensuring that each debtor's case is properly prepared requires diligence, foresight and a commitment to making the bankruptcy process work as intended to provide real relief to those in need. ■

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Attorneys Dorothy Mott and Kara Gendron bring a unique combination of experience and leadership to bankruptcy law. As longtime NACBA members, Kara also serves on NACBA's executive board as Secretary. Together, they form one of the only mother-daughter legal teams where both are Board Certified Consumer Bankruptcy Attorneys. Their collaboration ensures that every client benefits from their shared expertise and personalized attention in each case.

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