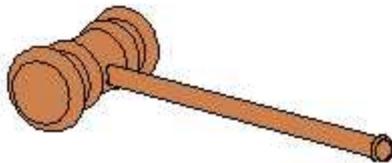


BANKRUPTCY **PRO BONO PROJECT**



CHAPTER 7 **STUDENT TRAINING MANUAL**

2002-2003

ROBERT J. COOPER, ESQ.

Preface

This training manual was created to assist law students and volunteer attorneys associated with the Bankruptcy Pro Bono Project at the State University at Rutgers, School of Law - Camden. It is designed to be used as a reference guide for basic Chapter 7 case preparation. The manual includes general information, definitions and explanations, tables, charts and check lists, copies of a Chapter 7 petition and its related schedules, sample forms, answers to commonly asked questions, and an overall walk-through of the Chapter 7 process compiled from various resources. It is written primarily with law students in mind, but also includes information useful for a beginning practitioner.

The manual begins with a description of the Rutgers Bankruptcy Pro Bono Project, and an overview of the Chapter 7 process. It includes a discussion of the attitude, techniques, and information you should bring to the initial client interview, and the topics and questions that should be discussed with the client. Questions and issues that may arise along the way are briefly discussed, such as the local filing requirements and filing fees, what to expect at the 341(a) meeting, the use of exemptions, the impact of the automatic stay, nondischargeable debts, and reaffirmation and redemption. This manual is not intended as a substitute for a substantive course in bankruptcy or as a replacement for an attorney's responsibility to research questions of law, but only to serve as a basic reference guide for pro bono representation through the Project.

Classroom training will be provided in addition to and to expand upon the information provided in this manual. The basic Chapter 7 process will be discussed by a panel of respected bankruptcy practitioners, including Judges from the United States Bankruptcy Court for the District of New Jersey, attorneys from the United States Trustee's Office, members of the Camden, Burlington and Gloucester County Bar Associations, and practicing Chapter 7 Trustees. Students will be given the opportunity to observe a mock interview and to prepare a practice petition.

This is the sixth revision of this manual, as updated in August 2002. This revision includes the 1998 revisions to the bankruptcy petition and related schedules, the automatic adjustment of certain dollar amounts in the bankruptcy code, effective April 1, 2001, and the recent changes in the filing fees. Questions and/or suggestions regarding the materials included in this manual should be directed to:

Robert J. Cooper, Esq.
U.S. Bankruptcy Court - D.N.J.
U.S. Post Office & Courthouse Bldg.
P.O. Box 2067
Camden, New Jersey 08101-2067

[This manual was prepared by Robert J. Cooper, Esq., adjunct Professor of Law at Rutgers, and permanent law clerk to the Hon. Judith H. Wizmur, U.S.B.J.]

Contents

I.	Introduction	1
II.	Understanding Chapter 7	3
	▶ Filing the Petition	3
	▶ Schedules	3
	▶ Filing Fees	4
	▶ The Automatic Stay	5
	▶ The Bankruptcy Estate	5
	▶ Exemptions	6
	▶ The Chapter 7 Trustee	7
	▶ 341 Meeting of Creditors	7
	▶ Distribution	8
	▶ Lien Avoidance	8
	▶ Discharge	9
	▶ Nondischargeable Debts	9
	▶ Reaffirmation	10
	▶ Redemption	10
III.	The Initial Interview	11
IV.	Discussing the Options	13
	▶ Creditor Work Outs	13
	▶ Counseling Agencies	15
	▶ Chapter 13 Considerations	16
	▶ Chapter 7 Considerations	17
V.	Preparing the Chapter 7 Petition	18
	▶ Petition Information	18
	- Schedule A	19
	- Schedule B	20
	- Schedule C	23
	- Schedule D	23
	- Schedule E	25
	- Schedule F	25
	- Schedule G	26
	- Schedule H	27
	- Schedule I	27
	- Schedule J	28
	- Statement of Financial Affairs	29
VI.	Concluding the Interview	32
VII.	The 341(a) First Meeting of Creditors	33
	▶ General Procedures	33
	▶ General Questions	34

I. Introduction

What is the Rutgers Pro Bono Bankruptcy Project?

The Rutgers Pro Bono Bankruptcy Project began operations during the fall of 1993. The Project was created as a response to concerns raised by Judge Judith H. Wizmur and Judge William Gindin of the United States Bankruptcy Court for the District of New Jersey regarding the availability of adequate representation to indigent and other pro se filers. Since its inception, the Project has interviewed 980 clients. Last year alone, the Project accepted 123 out of 127 prospective clients.

The primary purpose of the Project is to expand the referral services available to Camden Regional Legal Services for bankruptcy cases by establishing a volunteer program at the law school staffed by second and third year students and volunteer attorneys. The Project brings together various segments of the legal community, including Camden Regional Legal Services (“CRLS”), the Law School, the federal bankruptcy court, the local bar associations, volunteer students and attorneys. The Project provides not only an important community service, but also increases interaction between the law students and local attorneys, expands the learning experience for the students, and provides expanded pro bono opportunities for the attorneys.

Who are the clients?

The Project’s clients are referred primarily through the CRLS offices, which serve Camden, Burlington, Gloucester, Cumberland and Salem counties, where the applicants are screened for income and asset eligibility. The program also receives referrals from the Camden Center for Law and Social Justice, the Community Health Law Project, and the Aids Coalition of Southern New Jersey. In order to be referred to the Bankruptcy Pro Bono Project, prospective clients must satisfy either the Legal Services income eligibility guidelines or the expanded levels accepted by the Project. The income eligibility level for CRLS is set at 125% of the Federal Poverty Guidelines. A table illustrating the applicable income levels and a brief discussion of the CRLS guidelines are included in the Appendix at page 3. Clients seeking bankruptcy assistance and satisfying the CRLS guidelines are sent a letter referring their case to the Project. The prospective clients referred to the Project are then scheduled for interviews.

What is the student's role?

Rutgers coordinates scheduling the volunteer attorneys, the prospective clients, and the second and third year student volunteers. The law students are solicited for participation in the program at the beginning of the fall semester. Generally, a second year and third year student are paired with a volunteer attorney to form a team for each interview. Often the third year student will have been a volunteer in the Project the preceding year, and will then act as the lead for the team. It is recommended that the students meet with the attorney assigned for their night, or with the Supervising Attorney, in person or by telephone prior to the interview to discuss any procedural questions the students might have. It is expected that the students will conduct the interview and prepare the petition and schedules when required. A Supervising Attorney will be available as a source of direct feedback, guidance, and supervision, as needed, for both the students and the attorneys.

The students' participation does not end with the interview and the preparation of the petition and schedules. It continues at least through the section 341(a) First Meeting of Creditors, and commonly for any other court hearings which occur during the fall or spring semesters. Third year students may appear with the clients at the 341(a) meeting, supervised by the team's attorney, in conformance with Local Civil Rule 101.1(h) of the United States District Court for the District of New Jersey.

While the students will be conducting the interview and preparing any necessary paperwork, the volunteer attorney is ultimately responsible as the attorney of record for the cases undertaken by the Project. The attorney is also responsible for the administrative processing of the case, although this too can be done by the students with the appropriate supervision.

If the team decides that a bankruptcy petition should be filed, the necessary legal services will be provided by the team on a pro bono basis. These services do not include payment of the petition filing fees. All fees and costs are the responsibility of the client. The various filing fees currently in use before the U.S. Bankruptcy Court for the District of New Jersey are included in the table provided in the Appendix at page 5.

To ensure the success of the Project, the team must be familiar with the basic Chapter 7 process, and must be able to effectively interview and examine the client and his/her financial condition. The following section provide an overview of the Chapter 7 process.

II. Understanding Chapter 7

Most bankruptcy petitions are filed under Chapter 7 of the Bankruptcy Code. They are sometimes referred to as “straight” bankruptcies, or liquidating bankruptcies. In most Chapter 7 cases, the debtor does not own any real property, has primarily unsecured debt, and wishes to simply and inexpensively free themselves of debt and obtain a “fresh start”.

Filing the Petition

A Chapter 7 case begins from the moment that the debtor files a petition with the bankruptcy court. The debtor's filing constitutes an order for relief. 11 U.S.C. § 301. The order for relief triggers the automatic stay, creates the bankruptcy estate, and commences the Chapter 7 process. The creditors listed in the debtor's schedules will receive notice of the filing of the petition from the Clerk of the Bankruptcy Court. All petitions handled by the Project should be filed with or addressed to the Clerk's Office for the United States Bankruptcy Court for the District of New Jersey, U.S. Post Office & Courthouse Bldg. P.O. Box 2067, Camden, New Jersey, 08101-2067. D.N.J. LBR 1073-1. The Clerk's Office has recently converted to electronic filing and various administrative procedures have been promulgated by the Court. D.N.J. LBR 5005-1. The petitions may be filed on an individual basis, or jointly on behalf of a husband and wife. 11 U.S.C. § 302(a). Along with the petition, the debtor is required to file with the court various schedules, reflecting the debtor's assets and liabilities, current income and expenditures, all executory contracts and unexpired leases, and a statement of the debtor's financial affairs. FED.R.BANKR.P. 1007(b). The debtor may file a petition without including the necessary schedules, simply in order to commence the case and to initiate the automatic stay, but the schedules must be filed within 15 days of the filing of the petition, or the case may be dismissed. FED.R.BANKR.P. 1007(c).

A person may file a petition under Chapter 7 regardless of the amount of their debts or whether they are solvent or insolvent. Relief is not available, however, if during the preceding 180 days the debtor had a prior bankruptcy petition dismissed due to his/her willful failure to appear before the court or failure to comply with orders of the court. A new petition for relief will also be denied where the debtor's previous case was voluntarily dismissed after the debtor's secured creditors sought relief from the automatic stay to foreclose on their interest. 11 U.S.C. §§ 109(g), 362(d) and (e).

Schedules

As part of your initial interview with the debtor, you will be helping them to prepare the petition and schedules. The schedules and the questions that you will need to ask to complete them are very lengthy and time consuming. The specific questions will be discussed later in this manual, and a copy of the schedules is included in the Appendix. In general, in order to

complete the petition and schedules, the debtor will need to compile the following information:

- A list of all their outstanding debts, whether delinquent or not, including the names and addresses of the creditors;
- The source and amount of the debtor's income;
- A list of all of the debtor's property, real and personal, and
- An itemized list of the debtor's monthly living expenses, including: mortgage or rental payments, food, clothing, utilities, insurances, taxes, transportation, and recreation, etc.

This information allows the court to understand the merits of the petition and allows the creditors notice that their claim may be subject to discharge. The accuracy of the debtor's application is essential for the debtor to receive complete relief.

As part of debtor's petition, the Bankruptcy Code also requires that the debtor acknowledge by his/her signature that he/she was informed of their right to file under either Chapters 7, 11, 12 or 13, and that the relief available under each Chapter was explained to them. Debtor's counsel is required to sign an affidavit stating that the client was informed of the various options available.



Practice Point:

Please include a copy of the Pro Bono Cover Sheet with the petition. An original and 4 copies of the petition, statement of financial affairs, and debtor's schedules are required for filing. D.N.J. L.B.R. 5005-2. See Appendix beginning on page 24. Submit additional copies if you want one or more file stamped copies for your use. A matrix consisting of an alphabetized mailing list of all creditors must be included. For specific requirements see D.N.J. LBR 1007-2.

Filing Fees

The debtor must pay \$200 to file a Chapter 7 case. This fee cannot be waived or done on a pro bono basis. This includes a \$155 filing fee, a \$30 general noticing fee, and a \$15 Chapter 7 trustee's fee. The fees should be paid to the Clerk of the Court upon filing by money order, certified check, corporate check, or by attorney check or preapproved credit card. The debtor may also seek, with the court's permission, to pay the fee in installments.

28 U.S.C. § 1930(a); FED.R.BANKR.P. 1006(b). If the fee is paid in installments, the first payment must not be less than \$60, only four installments are allowed, and the final installment is payable not later than 120 days after the filing of the petition. See sample application in the Appendix at page 6. The court may extend the time of any installment for cause, provided that the last installment is paid not later than 180 days after the filing of the petition. FED.R.BANKR.P. 1006(b). If a joint petition is filed, only one filing fee is charged. If the debtor fails to pay these fees, the case may be dismissed. 11 U.S.C. § 707(a); FED.R.BANKR.P. 1017(b).

The Automatic Stay

The filing of the petition “automatically stays” most actions by creditors against the debtor or the debtor’s property. 11 U.S.C. § 362. This stay arises by operation of law and does not require a hearing or other judicial action. The stay generally prevents creditors from initiating or continuing lawsuits, wage garnishments, or otherwise contacting the debtor demanding payment. The stay is designed to give the debtor a breathing spell from his creditors, and is broad in scope. It stops all collection efforts, all harassment, all foreclosure actions, and all proceedings even if they are not before governmental tribunals. It permits the debtor to attempt a repayment or reorganization plan or simply to be relieved of the financial pressures that drove him into bankruptcy. H.R.Rep. No. 95-595, 95th Cong., 1st Sess. 340 (1977).

The stay remains in effect until either (1) the property is no longer property of the estate, (2) the case is closed or dismissed, (3) the debtor receives or is denied a discharge, or (4) the court grants relief from the stay. The court may grant relief from the automatic stay for cause, for lack of adequate protection, or because the debtor lacks equity in the property and it is not necessary for his relief. Application of the stay cannot be waived by the debtor. Willful violations of the automatic stay are subject to sanctions under § 362(h).

The automatic stay is not, however, applicable to all activities against the debtor’s interest. There are specific exceptions to the automatic stay as provided in § 362(b), such as the commencement or continuation of a criminal action against the debtor; the establishment or modification of an order for alimony, maintenance or support; and an audit by the IRS to determine tax liability.

The Bankruptcy Estate

The potential Chapter 7 debtor should understand that a straight bankruptcy case does not involve a plan of repayment as it does in Chapter 13, but instead is based upon the creation of a bankruptcy “estate” comprised of all of the debtor’s legal and equitable interests. 11 U.S.C. § 541. The estate technically becomes the temporary legal owner of all of the debtor’s property. This estate will be managed and ultimately distributed by a bankruptcy trustee appointed through the office of the United States Trustee. The Chapter 7 trustee will gather all of debtor’s assets, and in accordance with the priorities

established in the Bankruptcy Code, liquidate those assets of the estate to satisfy the debtor's creditors.

The respective rights of the debtor and the creditors under both state and federal law are taken into consideration. Creditors holding liens or mortgages on the debtor's property are considered to be "secured creditors", and will receive distribution of the proceeds of their collateral before other claims are paid. Creditors without a security interest are considered to be "unsecured creditors," and share in the unencumbered property of the estate. The debtor may also retain certain property as "exempt" property. This means that it belongs to the debtor regardless of any outstanding claims that will not be satisfied by the final distribution of the estate. As part of this process, potential debtors should realize that the filing of a petition under Chapter 7 may result in the loss of some of their property.



Practice Point:

Under New Jersey law, individual retirement accounts (IRAs) are excluded from the bankruptcy estate. *In re Yuhas*, 104 F.3d 612 (3d Cir.1997).

Exemptions

In New Jersey, the debtor may elect to take either the exemptions provided for under the Bankruptcy Code, or the exemptions provided for under state law or other federal law. 11 U.S.C. § 522(b). Unless the case is dismissed, property exempted under § 522 is not liable during or after the case is closed for any of the debtor's prepetition debts, EXCEPT for nondischargeable tax obligations under § 523(a)(1), secured obligations, and for alimony and support obligations protected under § 523(a)(5). In other words, this is property that the debtor may retain safe from his/her creditors.

The exemptions provided for under the Bankruptcy Code include for example: \$17,425 for debtor's personal residence, \$2,775 in one automobile, \$1,150 in jewelry, and \$9,300 in household goods. These exemptions are doubled for joint petitions. 11 U.S.C. § 522(m). For the complete list of federal exemptions, see the Appendix at page 7. The New Jersey state law exemptions and other federal law exemptions are listed in the Appendix at pages 10-13.

The Chapter 7 Trustee

An impartial case trustee is appointed by the United States Trustee upon the filing of a Chapter 7 petition, to administer the case and liquidate the debtor's nonexempt assets. 11 U.S.C. § 701, 704. Often in individual Chapter 7 cases, the trustee will discover that all of the debtor's assets are exempt or subject to valid liens, and that there will be no distribution to the unsecured creditors. These cases are referred to as "no asset" cases. In the typical no asset Chapter 7 case, there is no need for creditors to file proofs of claim because there will be no assets available for distribution. If the trustee later recovers assets, the clerk's office will notice the unsecured creditors of that fact and additional time will be designated within which to file proofs of claim.

If the debtor's case is an "asset" case, unsecured creditors will be afforded until 90 days after the first date set for the 341(a) meeting of creditors to file their proofs of claim. FED.R.BANKR.P. 3002(c). Notice of this "bar date" is provided to all creditors by the clerk's office as part of the notice of the commencement of the case. Secured creditors are not required to file proofs of claim in Chapter 7 cases in order to preserve their security interests or liens, but there may be times when it is in their best interest to do so.

In an "asset" case, it is the responsibility of the Chapter 7 trustee to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. The trustee will focus on any property that the debtor owns free and clear of liens and any property which holds sufficient equity value above the amount of any security interest or lien and any exemption that the debtor claims in the property. In making this determination, the trustee often factors in estimated closing costs, tax consequences and other miscellaneous expenses. The trustee also has the ability to pursue causes of action belonging to the debtor on behalf of the bankruptcy estate. The Bankruptcy Code also affords the trustee the ability to file his own causes of action to recover money or property under the trustee's "avoiding powers." These avoiding powers include the power to set aside "preferential transfers" made to creditors within 90 days before the petition, to void security interests and other prepetition transfers of property that were not properly perfected at the time of the petition, and the power to pursue other nonbankruptcy claims such as fraudulent conveyance actions under state law. 11 U.S.C. §§ 547, 548, 549.

341 Meeting of Creditors

A "meeting of creditors" is usually scheduled to be held 20 to 40 days after the debtor files his/her petition. The debtor's attendance at this meeting is mandatory. Creditors may appear and ask questions regarding the debtor's financial affairs and property. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. The Chapter 7 trustee will also attend the meeting, but the judge assigned to the case will not be present. The debtor's cooperation with the trustee is essential to the efficient administration of the case. The trustee will examine the debtor at the meeting to ensure that the debtor is aware of the potential consequences on the debtor's credit history, the effect of receiving a discharge, and the impact of reaffirming or redeeming a debt. 11

U.S.C. § 341(d). Some trustees provide written notice of these issues at or prior to the meeting, to ensure that the debtor is aware of this information. For an example of these questions, see *infra* at page 43.

Distribution

The final distribution of the debtor's estate is governed by section 726 of the Bankruptcy Code, which sets forth the order of payment for all claims. Under section 726, there are six classes of claims, and each class must be paid in full before the next lower class is paid anything. The debtor has no control over who gets paid or what they get paid. Although the debtor does hold the sixth position for distribution, in most cases handled through the Project, there will generally be nothing left to distribute by this point.

Lien Avoidance

Under 11 U.S.C. § 522(f), the debtor may avoid the fixing of certain liens on his/her interest in property to the extent that the lien impairs his/her exemption. This provides the debtor with additional protection for their exempt property by allowing them to avoid the creditor's interest if the debtor's interest in the property would have been exempt but for the creditor's lien. This determination is a simple mathematical calculation comparing the sum of the lien in question, all other liens on the property and the debtor's exemption to the debtor's interest in the property absent all liens. To the extent that the resulting number is negative, the debtor's lien is impaired, and the lien may be avoided.



Practice Point:

In the case of a \$40,000 home with a \$40,000 mortgage, the debtor can avoid all judicial liens in any amount. In the case of a \$50,000 home, a \$40,000 mortgage and a \$10,000 homestead exemption, a \$20,000 judicial lien is avoided in its entirety. In the case of a judicial lien senior to a nonavoidable mortgage where the mortgages on the property exceed the value of the property, the lien is still avoidable.

Discharge

In most cases, the debtor will be granted a discharge within 60 to 90 days after the date set for the first meeting of creditors. FED.R.BANKR.P. 4004(c). If one of the debtor's creditors files a complaint objecting to the discharge or the debtor files a written waiver, the debtor's discharge may be delayed. Generally, with the exception of cases which are dismissed or converted, individual Chapter 7 debtors receive a discharge in more than 99 percent of their cases. A discharge releases the debtor from "personal" liability for the discharged debts and prevents the creditors owed those debts from pursuing the debtor to collect the debts. It is important to remember, however, that a discharge of the debtor's "personal" liability for a secured debt does not remove the lien against the property and does not prevent the secured creditor from pursuing its claim against the property after the bankruptcy. If the debt that is discharged is an unsecured claim, the creditor will have no further recourse against the debtor personally to collect the obligation.

Under the Bankruptcy Code, there are limited grounds for denying an individual debtor a discharge in a Chapter 7 case, and these are construed against the party seeking to deny the discharge. Among the reasons for denying a discharge to a Chapter 7 debtor are that the debtor failed to keep or produce adequate financial records; failed to explain a loss of assets; failed to obey a court order; committed a bankruptcy crime such as perjury, or the debtor fraudulently transferred, concealed, or destroyed property that would have become property of the estate. 11 U.S.C. § 727; FED.R.BANKR.P. 4005. The court may revoke a Chapter 7 discharge on the request of the trustee, a creditor, or the United States trustee if the discharge was obtained through fraud by the debtor or if the debtor acquired property and knowingly and fraudulently failed to report the acquisition of, or surrender the property to, the trustee. 11 U.S.C. § 727(d).

Nondischargeable Debts

A discharge under Chapter 7 does not discharge certain specific types of debts listed in section 523 of the Bankruptcy Code. Among the types of debts which are not discharged in a Chapter 7 case are: alimony and child support, certain taxes, student loans, debts for willful and malicious injury by the debtor to another person or property, debts for death or personal injury caused by the debtor's operation of a motor vehicle while intoxicated from alcohol or another substance, and debts for criminal restitution. 11 U.S.C. § 523(a). For a list of all of the types of nondischargeable debts under section 523, see the Appendix at page 14.

If these types of debts are not fully paid in the Chapter 7 case, the debtor is still personally responsible for them even after a discharge has been granted and the case closed. Generally the burden is on the debtor to prove that these debts are nondischargeable. In certain cases, for example, debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, debts for willful and malicious injury by the debtor to another person or property, and debts arising from a property settlement agreement arising in connection with a divorce or

separation the burden is on the creditor to timely file and pursue a determination of nondischargeability. 11 U.S.C. § 523(c); FED.R.BANKR.P. 4007(c).

Reaffirmation

In certain circumstances, a debtor may desire to keep possession of certain property, subject to a lien, such as an automobile. The Bankruptcy Code allows the debtor to voluntarily repay any debt at any time, even though the debtor's legal obligation to do so was discharged. Beyond voluntary repayment, the debtor may reinstate personal liability on a debt, particularly where the debt is secured by property that the debtor desires to retain. In return, the creditor promises that, as long as payments are made, the creditor will not repossess or take back the automobile or other property. Such an agreement is enforceable only if it meets all of the requirements under section 524 (c), which include that the agreement must: (1) be made before the granting of the discharge, (2) contain a clear and conspicuous statement concerning rescission, (3) be filed with the court accompanied by an affidavit reporting voluntary agreement and no undue hardship, and (4) not have been rescinded prior to discharge or within sixty days after filing. Where the debtor is pro se, the court is required to hold a hearing to determine that the agreement does not impose an undue hardship on the debtor or a dependent of the debtor, and that it is in the debtor's best interest. Generally, reaffirmation agreements allow the debtor to retain possession of collateral which otherwise would be subject to repossession or surrender. It should be noted that the debtor's reaffirmation of a specific debt in one proceeding will not render that debt nondischargeable in a subsequent bankruptcy proceeding.

Where the debtor decides to reaffirm a particular debt, the reaffirmation agreement should be executed prior to the granting of a discharge. The written agreement must be filed with the court and, if the debtor is not represented by an attorney, must be approved by the judge. 11 U.S.C. § 524(c). See D.N.J. Local Form 21. A reaffirmation hearing is required only if the debtor has not been represented by an attorney while negotiating the agreement. 11 U.S.C. § 524(d).

Redemption

The debtor may also elect to redeem certain property of the estate. Redemption is the right to retain property by paying its fair market value to the creditor holding a lien on the property. 11 U.S.C. § 722 This right is particularly useful where the debt exceeds the value of the collateral or asset. For example, a debtor might wish to "redeem" a car for \$500, if a debt of \$1,000 remains due on the car.

With this basic understanding of the Chapter 7 process, you are ready to prepare for the initial client interview.

III. The Initial Interview



The initial client interview takes place in the Rutgers Pro Bono Clinic offices and serves as a way to develop an initial rapport with the client. It allows you to gather information with respect to the client's financial situation, and provides you with a time and place to listen, advise and counsel the client. The initial meeting is an important opportunity to allow you to understand the circumstances that led the client to seek your assistance. At this stage of the process, counseling requires empathetic communication, characterized by concern, helpfulness, a desire for understanding and agreement, and a dispassionate overview. This meeting is not scheduled solely so that you can gather the information necessary to complete a bankruptcy petition. It is to allow you to understand the client's situation so that you can recommend some course of action to the client, whether it is a form of creditor workout or a bankruptcy petition.

It is important to set the client at ease. You should remember that for most clients this is a very traumatic experience. At the beginning of the initial interview, the client should be met with courtesy, consideration, and warmth as he/she enters. If there is some delay in beginning the interview, the students should feel free to introduce themselves and to try to reduce the client's general anxiety. The rooms set aside for the interview process are not large, so please limit participation in the interview process to the client, the attorney, and 1-2 students, or seek a larger room. It is important to make sure to minimize an otherwise potentially intimidating situation, by not overwhelming them.

Explain to the client who you are, who the others in the room are, what the purpose of the Project is, and how it is intended to apply in his or her situation. The students should be conducting the interview, with the volunteer attorney adding points as necessary. Use of one team leader also helps to provide the client with the assurance that he/she is getting competent assistance. It is best to avoid or minimize everyone taking turns asking the client questions as it may serve to either intimidate, confuse or otherwise upset the client. It may also unfairly impact upon your credibility.

Note taking and writing in general may tend to be both intimidating and distracting. It is recommended that the team determine beforehand which student will conduct the interview and which student will take notes. If the interviewing student is not taking notes, it will allow him/her the time to study the client and to adjust the interview process in response to the client's answers. Otherwise, some questions may be missed or the client may forget some details during the interview process as both the questioning and conversation slow down to accommodate the note taking. Remember, even though the interview is scheduled to last only one hour, you are not compelled to ask all of the questions within that first interview. It is appropriate for the attorney or the other student to bring up points that may have been missed or not clear from the initial questions as the one hour period nears its end. **Follow up meetings can be scheduled at a later date at either the attorney's office or at the pro bono offices with appropriate notice.**

Remember that during the interview you should try to maintain a professional demeanor by being cordial and respectful. **Be yourself!** Do not try to “act” like an attorney!! Clients are often uncomfortable and defensive in these types of situations. You should try to convey an attitude of both patience and understanding. Remember, these people are often scared and worried about both their creditors and the system in general. Try not to be judgmental, disapproving, or condescending in discussing the client’s actions leading up to this interview. Your clients can read your sincerity from both your verbal and non-verbal indicators. While you cannot expect the client to trust you based on this one meeting, you can take an important step toward gaining their confidence.

When you begin the questioning process, do not immediately begin by asking the client a list of prepared questions. Allow the client the opportunity to briefly explain their situation as they perceive it. You can ask: “How may we help you tonight?”, “What seems to be the problem that has brought you here?”, “Please tell me about your problem and we can then discuss how we may be able to help.” Your discussion should begin with the areas chosen by the client. Allowing the client to talk first will allow him/her to relax and reduce the chances of placing the client in a defensive posture.

This manual includes a filing checklist and a list of standard questions. It is necessary that you complete all of the items on the checklist, and ask the relevant questions from the question list. There is no one right way to approach the questions you must ask. The course of the interview will often be dictated by the rapport you establish with the client. Often his/her responses will lead you into the next question. It is important that you do not make any assumptions as to the client’s answers. Do not assume that just because the client is living at or near the poverty level that he/she has no possessions, no entitlement to a trust, or is not the potential beneficiary to a life insurance policy or other inheritance. You will not know unless you ask. More importantly, do not assume that your client is stupid or uneducated. Although you should avoid getting into a mechanical reading of one question after another, to a certain degree, this is often unavoidable. Remember, the client’s direct answers may also imply other indirect information. Repeating a question another way later in the interview process may help to clarify an earlier answer or to identify any gaps or inconsistencies.

Once you understand the basic facts of the client’s position, you must then evaluate the alternatives available to help this particular client. The answer is not always: “we can file a Chapter 7 petition for you.” There may be other non-bankruptcy remedies that are more appropriate. It is likely that the volunteer attorney will take the lead in this area of the interview. By discussing the client’s alternatives, also a required part of the bankruptcy process, the client will be more focused upon their situation and may be able to offer additional information. This process will also allow the client to feel that they are part of the team, and that you are there to help them. In discussing the client’s alternatives, you may counsel the client as to the approach you feel is preferable.

In evaluating the information that the client provides, you must inform the client of all his/her options, and explain the advantages and disadvantages of each approach.

IV. Discussing the Options

Although the clients that we will typically be interviewing will be at 125% of the Federal Poverty Guidelines level or lower, this does not mean that a Chapter 7 petition is always the answer to their problems. It is your job to recommend to the client an appropriate course of action to help them with their financial problems. Typically, the client is seeking relief from lawsuits, judgments, wage executions, foreclosures, or other pressure exerted by their creditors. To understand whether a Chapter 7 petition or another solution is appropriate, you must review the client's assets, debts and income. By understanding the client's financial condition and the reason that they are before you, you will be better able to recommend a course of action.

**Creditor
Work-Outs**

It may be more beneficial to the client to attempt a “work out” with his/her creditors rather than filing a petition in bankruptcy. Most creditors have established guidelines by which they will compromise the amount of their claim if a lump sum payment is made. Also, it may be possible to negotiate an extension of time or different payment plan options. The client could also voluntarily surrender the property in question or execute a deed in lieu of foreclosure. In making these arrangements, it is important to ensure that the client's entire debt is satisfied, and to consider any possible tax consequences of the client's actions.

Some common arrangements are noted in the table below:

Creditor/ Telephone Number/ Contact Person	Arrangements
Verizon 1-800-287-9933 (any representative)	**Arrangements made are dependent on the situation of the particular client. Usually, payment of overdue amount is required in full. If the client is unable to make full payment, then they must speak to a representative for further arrangements.

Creditor/ Telephone Number/ Contact Person	Arrangements
South Jersey Gas 1-800-377-8222 (any representative)	**The arrangements are dependent on the situation of the particular client. If service has been shut off, they usually require full payment in 30 days, plus an additional security deposit to avoid service turn-off in the future. **If the customer has a 12 month history of prompt payment, then they are allowed to use any security deposit.
Connective Power 1-800-642-3780 (any representative)	**Arrangements to spread payments out over a period of four months can be arranged. **If power is turned off after the petition has been filed, the client should call the company for immediate restoration of power.
Division of Motor Vehicles 609-292-7500 (Main number) (any representative)	**Installment plans to spread out payments over 12 months can be arranged for clients who are unable to pay surcharges. If 12 months is not long enough, then an additional 6 months may be given, pending receipt of a written petition prior to the end of the initial 12 month period. **If the client has lost their license, they can get it back by paying 20% of total amount of surcharges due and a \$50 restoration fee, and the remaining surcharge balance over time. Note that pursuant to <i>In re Kent</i>, 190 B.R. 196 (Bankr. D.N.J. 1995), surcharges are not dischargeable in a Chapter 7.
Camden County Municipal Utilities Authority 856-541-3700 (Main number) (any representative)	**CCMUA does not shut-off service for nonpayment. If there is an unpaid balance, and if it is overdue by a year or more, they will place a lien against the client's property. To remove the lien, they request payment in full. However, if the client is unable to pay the full amount, then they must speak with a service representative to work out a payment plan.
PSE & G 1-800-357-2262	**Please call the telephone number on your bill for information.**

Counseling Agencies

There are also various for-profit and not-for-profit services and agencies that are available to counsel clients with financial problems. Some services are free, some charge a flat fee, and others charge a percentage of the debt. Some examples include:

Counseling Agency/ Telephone # / Contact Person	Fee	Services Provided
Consumer Credit Counseling of South Jersey 1-800-473-2227 or 856-652-4005	\$35.00 one-time fee for life-time membership;	**They have a two part consultation: 1. A one-hour budget consultation, where they assess your financial situation; 2. Debt Management - they educate the client on how to manage their bills, and avoid getting overrun by the bills or the creditors. **The agency will then negotiate with your creditors, either by lowering your interest rates for the credit cards or lowering the monthly payment amounts. They also arrange for you to make one payment per month to them either by money order or by certified check, and they distribute the funds evenly among your creditors.
Garden State Consumer Credit Counseling 1-800-992-4557 (main number)	one-time fee of \$5, plus a monthly acct maintenance fee of \$2-\$24 (it is dependent on the total amount of your monthly bills)	**GSCCC provides loan consolidation programs for student loans, personal loans, medical bills. They will negotiate with your creditors to obtain lower monthly payments, or reductions in interest rates. **They offer a free phone consultation, or you can make an appointment to speak to a representative.
Consumer Credit Counseling Service of the Delaware Valley 1-800-989-2227 or 856-482-9644	No fee	**CCCS is a Debt Management program. They have five branch offices, one in Cherry Hill. This service provides a budget consultation to assess your financial situation. They work with your creditors, lowering monthly payments and interest fees on the credit cards. You make one payment to them via money order or certified check until your debt is paid off.

Chapter 13 Considerations

It may be more appropriate for the client to file a petition under Chapter 13 of the Bankruptcy Code rather than under Chapter 7. Chapter 13 is designed to allow financially distressed debtors to repay certain of their debts in full or in part over an extended period of time, typically three to five years, during which time those creditors cannot continue with their collection efforts. Some common reasons for filing a Chapter 13 petition include:

- ▶ debtors have defaulted on their home mortgage and a foreclosure proceeding has been threatened or is pending
- ▶ debtors have substantial property which could be lost in a Chapter 7 liquidation
- ▶ debtors' debt may be nondischargeable under Chapter 7
- ▶ debtors have been threatened with repossession of their automobile or it has been repossessed
- ▶ debtor has lost his/her driving privileges due to outstanding motor vehicle fines or surcharges
- ▶ debtor received a discharge under Chapter 7 within the last 6 yrs

There are certain requirements that the client must satisfy in order to file a Chapter 13 petition. The client must have stable and regular income sufficient to make payments under the plan. 11 U.S.C. §§ 101(30), 109(e). The client's noncontingent, liquidated, unsecured debts must be less than \$290,525 and his/her noncontingent, liquidated, secured debts must be less than \$871,550. § 109(e). This manual will not cover Chapter 13 petitions in detail, but mentions them here only as an alternative to a Chapter 7 filing.

If the team decides that the client should file a Chapter 13 petition, they must also determine whether or not the client has the "ability to pay" counsel fees through the Chapter 13 plan. What constitutes an ability to pay has not been definitively established. For purposes of this Project, this determination will be made on a case by case basis by the attorney of record. If the attorney determines that the client has the ability to pay, even if we are talking about \$20-50 per month, the client must be referred to the appropriate Lawyer Referral Service. Neither the team nor the attorney can take the case for pay or refer it to a particular attorney. See Appendix at page 18 for an example of a form letter in these cases.

Chapter 7 Considerations

If you conclude that a Chapter 7 petition is the client's best recourse, you should ensure that the client is aware of

all of the disadvantages associated with filing a petition in bankruptcy. The client may have heard of the “fresh start” concept, but likely is unaware of all of the pros and cons of filing a bankruptcy petition. The client should be informed not only of the benefits of the automatic stay and the Chapter 7 discharge, but also of the negative aspects of filing. The client should be aware that:

- They cannot receive a discharge under Chapter 7 if they have previously received a discharge under Chapter 7 within the last **six years**. 11 U.S.C. § 727(a)(8). Correspondingly, if the client does receive a discharge, they cannot receive another discharge of their debts under Chapter 7 for six more years.
- The discharge only covers **pre-petition** debts, and not any ongoing or post-petition expenses such as medical costs and other debts.
- The bankruptcy filing can appear on your client’s credit record for up to ten years under the Fair Credit Reporting Act. Although there is no law preventing the client from getting credit because he/she filed for bankruptcy, this information will be available to their future creditors and may impact on future credit applications.
- A number of debts are not dischargeable under a Chapter 7 case. For example: most taxes, child support and alimony, criminal fines or restitution. See Appendix at pages 14-17. Some secured creditors and priority creditors may possess special rights, some of which will survive the client’s bankruptcy.
- **Co-signers are not protected** by the client’s Chapter 7 filing. The client’s obligation may be discharged, but the co-signer would still be liable for the full debt.
- The client is responsible for all filing fees.
- Under 11 U.S.C. § 366, utilities have the right to request adequate assurance. Section 366(b) requires that adequate assurance be posted within **20 days** of the filing of the petition. This frequently means that your client will have to come up with a security deposit in order to retain his/her utility service.

V. Preparing the Chapter 7 Petition

With this basic understanding of the Chapter 7 framework and as part of the initial interview, you will be asking the debtor various questions to evaluate their current financial condition. These questions not only help you determine the appropriate course of action to recommend to the client, but they also serve as the framework for completing the Chapter 7 petition and schedules. The following is a list/outline of suggested questions. **Remember that the order in which you ask the questions is not important, but you will need answers to all of the questions in order to complete the petition.** As explained in the interview section, **all of these questions do not need to be asked at the initial interview.** Arrangements can be made for future meetings with the client.

Petition Information

1. List the **full name of the debtor**, or the primary debtor if a joint case is to be filed.
2. What **other names** have you **used** in the last 6 years?
3. What is your **social security number**?
4. What is your **address** (no. & st., city, state, zip code, county)?
5. What is your **spouse's full name** (if a joint petition is filed)?
6. List **all other names** used by your spouse in the last 6 years.
7. What is your **spouse's social security number**?
8. What is your **spouse's address**?
9. What is your **spouse's mailing address**?
10. Where have you **resided for the last 180 days**?
11. Has a **bankruptcy case been filed by or against you within the last 6 years**?
If so, what Chapter was filed, when, where, and what was the case name and number?

Schedule A - Real Property

Do you or your spouse own any **real property (real estate, land, home, cooperative, condominium, time share, funeral plot)**? If so:

- describe the property
- where it is located
- what is your interest in the property (fee simple, tenants in common, tenants in the entirety, etc),
- date the property was acquired
- estimated market value
- amount of any mortgage or lien against the property

Schedule B - Personal Property

1. How much **cash** do you have **on you now**?
2. Do you have **any accounts (checking or savings)**, deposits, or shares in any bank or financial institution? If so, describe what you have (ie., a checking account and account number), where such property is located (ie., the bank's name and address), the amount of the deposit or account, or the value of the shares? Also, what name is the account, deposit, or shares registered under?
3. Do you have any **security deposits** with a landlord, telephone company, utility company, or anyone else? If so, who made the deposit, what is the amount of each deposit, what is the name and address of each holder?



Practice Point:

NOTE: The *following questions* ask for the estimated value of property. You should explain to the debtor that the estimated value is lower than market value. You want to know how much the items would be worth if you sold them at a garage sale. Also, some of the items that you need to ask about may seem unimportant or not relevant to your client. For example, you will probably assume that your client probably doesn't own an airplane, or that they do not own a boat. You may find, however, that they may have an old dilapidated boat up on blocks in their backyard which doesn't run. So rather than make assumptions, and be wrong, be sure to ask about all possible assets.

4. Do you own any **household goods and furnishings**, including **audio, video, or computer equipment**? If so, describe the items owned, where they are located and their estimated value? Household goods such as kitchen utensils and plates can be grouped together. But if it is a big ticket item (i.e., a computer, television, etc.) list the item separately.
5. Do you own any **books, pictures, art objects, antiques, stamps, coins, records, tapes, compact discs, or other collections or collectibles**? If so, describe them, list where they are located, and what they are worth.

6. How much is all of your **clothing** worth? (Remember: the value is what you would get if you placed all of your clothes in one great big box and sold that box at a garage sale, and not the price you paid to obtain them.)
7. Do you own any **furs or jewelry**? If so, identify each item, its location and value.
8. Do you own any **firearms, sports equipment, photographic equipment, or other hobby equipment**? If so, identify each item, lists its location, and value.
9. Do you own an **interest in a life insurance policy**? If so, identify each policy by policy number, owner, name of insurance company, amount of death benefit, name of beneficiaries, and the cash surrender or refund value of each policy.
10. Do you own or have an **interest in an annuity**? If so, identify each annuity by number, owner, and issuer, and list the value and terms of each annuity.
11. Do you have an interest in an **IRA, ERISA, Keogh, or other retirement, pension, or profit sharing plan**? If so, identify each plan and list the present value of your interest in each plan.
12. Do you own any **stock or interests in a corporation**? If so, describe the stock or the interest and its estimated value.
13. Do you own any **interests in a partnerships or joint ventures**?
If so, describe the interest and its estimated value.
14. Do you own any **government or corporate bonds or similar instruments**? If so, describe them and estimate their value.
15. Does anybody owe you any **accounts receivable**?
16. Are you **owed any accrued and unpaid alimony, maintenance, support, or property settlement payments**? If so, how much is owed and what is the nature of the obligation?
17. Are you **entitled to any tax refunds or other money**, the amount of which has been determined? If so, state the amount owed and the entity that owes it.
18. Do you own or have **an equitable or future interest in any property**? If so, describe each interest and list its estimated value.
19. Do you have an interest of any kind in the **estate of a deceased person, in a death benefit plan, in the death benefits in a life insurance policy, or a trust**? If so, describe each interest and list its value.
20. Do you have **any other contingent/unliquidated claims, including tax refunds, counterclaims and rights to setoff**? If so, describe and list its value.

21. Do you have an ownership interest in any **patents, copyrights, or other intellectual property**? If so, describe and list its value.
22. Do you have an ownership interest in any **license, franchise, or similar property**? If so, describe and list its value.
23. Do you own or have an ownership interest in any **automobiles, trucks, trailers, or other vehicles or accessories**? If so, describe each vehicle or accessory, list its location, vehicle identification number, if any, and its value. (Students may want to check the N.A.D.A. or “blue book” value if the debtor can not determine its worth or simply to check if the debtor’s estimate is reasonable.)
24. Do you have an ownership interest in any **boats, motors, or accessories**? If so, describe each item, list its location, and estimate its value.
25. Do you have an ownership interest in any **aircraft or related accessories**? If so, describe each item, list its location, and estimate its value.
26. Do you own any **office equipment, office furnishings, or office supplies**? If so, describe each item or group of items, list its location, and estimate its value.
27. Do you own or have an ownership interest in any **machinery, fixtures, equipment, or supplies used in business**? If so, describe each item or group of items, list its location, and estimate its value.
28. Do you own or have an ownership interest in any **commercial inventory**? If so, describe each item or group of items, list its location, and estimate its value.
29. Do you own or have an ownership interest in any **animals**? If so, describe the animal or group of animals, list location, and estimate value.
30. Do you own or have an ownership interest in any **growing or harvested crops**? If so describe the crops and estimate its value.
31. Do you own or have an ownership interest in any **farming equipments or implements**? If so, describe each item, list its location, and estimate its value.
32. Do you **own or have an ownership interest in any farm supplies, chemicals, or feed**? If so, describe each item or group of items and estimate its value.
33. Do you own or have an ownership interest in **any other property of any kind that has not yet been discussed**? If so, describe the property, list its location, and estimate its value.

Schedule C - Exempt Property

Some of the debtor's property will be considered exempt. The computer software available in the pro bono or computer offices will allow you to choose between the state and federal exemptions. Once you choose the group of exemptions you want to apply, the computer will automatically designate which property is exempt and under which section of the Code. **You will not need to ask the debtor any other additional questions to fill out this Schedule.**

You will, however, need to understand the exemptions that are available under New Jersey state law, federal law, and the Bankruptcy Code to explain to your client the best course of action and to illustrate what will happen to their assets upon filing. The exemptions available under New Jersey state law are available in the table included in the Appendix at page 10. The federal law exemptions, other than under the Bankruptcy Code, are found in the Appendix at page 13. The federal exemptions available under the Bankruptcy Code are found in the Appendix at page 7.

Schedule D - Secured Debts

At this time, if you have not already done so, you should ask the debtor for any bills that he/she has brought with them. Below lists the type of questions that need to be addressed. Some of this information will be available from review of the debtor's bills.

Do any of your creditors have **liens, mortgages, or other encumbrances** against any of your property? If so:

- what is the name and address of the party to whom the debt is owed?
- what is the creditor's account number for the debt?
- if anyone besides the debtor is liable for this debt, what is the person's name and address?
- has this debt been turned over to someone for collection? If so, to whom?
- when did debtor incur this debt (month and year)?

- what did you receive in consideration for this debt?
- does the creditor owe you a debt? (If so, can the debt be setoff?)
- is the debt contingent upon anything?
- has the final amount of the debt been determined?
- do you admit your liability for the full amount of this debt? (If not, explain)
- do you and the creditor agree on the amount of the debt? (If not, explain)
- what is the total amount of the debt?
- do you wish to reaffirm (i.e., remain liable for the debt after bankruptcy) all or any part of the debt?
- if the debt is secured by your property, do you intend to:
 - turn the property over to the creditor;
 - reaffirm the debt and retain the property;
 - claim the property as exempt and redeem it from the creditor; or
 - claim the property as exempt and contest the lien against it?
- are the payments on this debt current or delinquent?
 - If delinquent, how many payments are you behind?
 - What is the total amount of the arrearage?
- has anyone else cosigned, guaranteed, secured, or otherwise became liable for this debt? If so, list the other person's name, address, and relationship to you.

Schedule E - Priority Unsecured Debts

Do you owe any **debts to local, state, or federal government for taxes, customs, duties, or penalties**? If so, describe each debt, list the name and address of the governmental department to whom it is owed, list the amount owed and the date that it first became due.

Schedule F - General Unsecured Debts

These are debts which do not have secured or unsecured priority status. Most of the information you will need for this schedule will be provided on the debtor's bills. The questions that you may want to ask are the same as those listed in the Secured Debt section:

- what is the name and address of the party to whom the debt is owed?
- what is the creditor's account number for the debt?
- if anyone besides the debtor is liable for this debt, what is the person's name and address?
- has this debt been turned over to someone for collection?
If so, to whom?
- when did debtor incur this debt (month and year)?
- what did you receive in consideration for this debt?
- does the creditor owe you a debt? (If so, can the debt be setoff?)
- is the debt contingent upon anything?
- has the final amount of the debt been determined?

- do you admit your liability for the full amount of this debt? (If not, explain)
- do you and the creditor agree on the amount of the debt? (If not, explain)
- what is the total amount of the debt?
- do you wish to reaffirm (ie., remain liable for the debt after bankruptcy) all or any part of the debt?
- if the debt is secured by your property, do you intend to:
 - turn the property over to the creditor;
 - reaffirm the debt and retain the property;
 - claim the property as exempt and redeem it from the creditor; or
 - claim the property as exempt and contest the lien against it?
- are the payments on this debt current or delinquent?
 - If delinquent, how many payments are you behind?
 - What is the total amount of the arrearage?
- has anyone else cosigned, guaranteed, secured, or otherwise become liable for this debt? If so, list the other person's name, address, and relationship to you.

Schedule G - Existing Contracts & Leases

Are you a party to any **contracts or leases** (e.g., an apartment rental agreement or a leased car) that are still in effect? If so, describe each contract or lease and list the name and address of all parties to each contract or lease.

Schedule H - Co-debtors

If you have not yet asked about co-debtors, you should do so now.

Is anyone beside yourself liable for any of your debts. If so, which debt and what is the name and address of each person, who is liable for each debt.

Schedule I - Current Income

1. What is your marital status?
2. List the name, age, and relationship of each of your dependants.
3. Are you or your spouse currently employed? If so, complete for both or either,
 - what is your occupation?
 - list the name and address of your employer.
 - how long have you been employed by this employer?
 - what is your current monthly gross wages, salary, and commissions?
 - what is your estimated monthly overtime?
 - what deductions (e.g., payroll taxes, social security, insurance, union dues) are taken from your wages? What is the amount of the deduction?
 - what is your total net monthly take home? (If the debtor has a pay check stub with them, it may be helpful to look at the pay stub and then determine whether these questions need to be asked.)
4. Do you and/or your spouse receive any other income? If so, what is the source of such income, i.e. alimony, maintenance or support payments, social security, gov't assistance, pension or retirement (be specific)? How much do you receive per month?
5. Do you anticipate your income to increase or decrease in the next year? If so, explain.

Schedule J - Current Expenditures

Most debtors are asked to make a list of their current monthly expenses, and to bring it with them to the initial interview. If you have not yet received this list, it may be helpful to ask for it now. Before you ask any of the following questions, look to see if the information is provided for on the list you received from the debtor.

Ask the client, "How much do you spend on":

1.	Rent or home mortgage payments (include lot for mobile home) - are real estate taxes included? -is property insurance included?	\$	9.	Insurance (not deducted from wages or included in home mtge payments): homeowner's/ renter's? life? health? auto? other?	\$
2.	Utilities (electricity and heating fuel, water and sewer, telephone)		10.	Charitable contributions	
3.	Home maintenance (repairs and upkeep)		11.	Taxes (not deducted from wages or included in home mortgage payments), specify	
4.	Food? Clothing?		12.	Installment payments auto? other?	
5.	Laundry and dry cleaning		13.	Alimony, maintenance, support paid to others	
6.	Medical and dental expenses		14.	Payments for support of addit'l dependents not living at your home	
7.	Transportation (not including car payments)		15.	Recreation, clubs and entertainment, newspapers, magazines, etc	
8.	Regular expenses from operation of business, profession or farm (attach detailed statement)		16.	Miscellaneous other	

Statement of Financial Affairs Information

1. How much gross income have you received from your employment or business for this year, for last year, for two years ago? Your spouse's gross income for this year, for last year, for two years ago?
2. How much income have you and your spouse received over the last two years from other sources?
- 3a. List the names and addresses, dates of payment, amounts paid, and amounts owing for each creditor to whom you or your spouse have paid more than \$600 in the last **90 days**.
- 3b. List the names and addresses, the relationship of the creditor to you, the dates of payment, amounts paid, and amounts owing for each creditor to whom or for the benefit of a **relative or business associate** you or your spouse have paid within the last 365 days.
- 4a. List the name of the case and case number, nature of the case, court and current status of all **lawsuits** you or your spouse have been involved in as a party during the last 365 days.
- 4b. List the name and address of all creditors, the date of seizure, the owner of the property seized, and a description and value of the property seized for all money or property of your's or your spouse that has been **attached, garnished or seized** in a court proceeding within the last 365 days.
5. List the name and address of the creditor or seller, the date of repossession, foreclosure or return, a description and value for the property, and the owner of the property for all property owned by yourself or your spouse that within the last 365 days has been **repossessed by a creditor, foreclosed upon, or otherwise returned to the seller**.
- 6a. Have you or your spouse made an **assignment for the benefit of creditors** within the last 120 days? If so, attach copies of all papers relating to the assignment.
- 6b. Has any of your property or your spouse's property been held by a **custodian, receiver, or other court-appointed official** during the last 365 days? If so, attach copies of all papers relating to the proceeding.
7. List the name and address of the recipient, the relationship of the recipient to you, the date of the gift, a description and value for the gift, and the person who made the gift for all **gifts or charitable contributions** made by you or your spouse within

the last 365 days, except for ordinary gifts to family members totaling less than \$200 per recipient and charitable contributions of less than \$100 per recipient.

8. List the type of loss, the property lost, the date of the loss, the amount of the loss, whether it was covered by insurance, and the person who incurred the loss for any **losses from fire, theft, or other casualty, or from gambling**, that you or your spouse have incurred during the last 365 days.

9. List the name and address of the person paid, the date of payment, the name of the person who made payment, and the amount paid or value and description of property transferred for all transfers of money or property within the last 365 days by or on behalf of you or your spouse to attorneys or other persons for **debt consolidation** or the **filing of a bankruptcy case**.

10. List the name and address of the transferee, the relationship of the transferee to you, the date of the transfer, the description and value of the property transferred, and the owner of the property transferred for all transfers of money or property made by you or your spouse within the last 365 days, other than property or money transferred in the ordinary course of your business or financial affairs and the transfers listed in response to question 9.

11. List the name and address of each financial institutions, the name of the account, the account number and type, the amount of the current balance, and the date of any sale and amount received for all checking, savings, or other financial accounts, certificates of deposits, and shares in banks, credit unions or other financial institutions that you or your spouse have closed, transferred, or sold during the last 365 days.

12. List the name and address of the bank or depository, the names and addresses of all persons with access to that box or depository, a description of the contents, and the date of transfer or surrender if any of all **safety deposit boxes** or other boxes or depositories in which you or your spouse have kept cash, securities, or other valuables within the last 365 days.

13. Has any creditor, including a bank, made a **setoff** against a debt or deposit of you or your spouse within the last **90 days**? If so, list the name and address of the creditor and the date and amount of the setoff.

14. Do you or your spouse hold or control any property owned by another person? If so, list the name and address of the owner, describe the property, and list its value and location.

15. Have you or your spouse moved during the last 24 months? If so, give the address of each place where either of you lived during that period, the name or names used at that address, and the dates of occupancy.

16a. Have you or your spouse, within the last two years, been any of the following: an officer, director, managing executive, or the owner of more than 5% of the voting stock of a corporation; a general partner of a partnership; or a sole proprietor or self-employed person? If the answer for you and your spouse is “no”, the next question need not be answered.

16b. If you or your spouse have been involved in the manner described in Question 16a in any businesses, list the following:

- name and address of business
- nature of business
- dates of beginning and ending of business operation
- owner of business
- names and addresses of any bookkeepers or accountants who kept or supervised books or records of the business within the last six years
 - their dates of service
- names and addresses of any firms or persons who within the last two years audited the books and records of the business or prepared a financial statement for the business
- names and addresses of all firms or persons who now have possession of your business books or records (If books or records are not available, explain why.)
- names and addresses of all banks, creditors, trade agencies, and other parties to whom you have issued a financial statement within the last two years and the date the statement was issued
- for the last two inventories taken of your business property:
 - date of inventory
 - inventory supervisor
 - amount of inventory in dollars
 - basis of inventory
 - name and address of person having custody of inventory records

VI. Concluding the Interview

At the conclusion of the interview, be sure to summarize the understandings reached. At this point, you may or may not have determined the best course of action. Your client may need reassurance that they will be taken care of. They are more likely to go home feeling positive about their prospects of a “fresh start” if you make an effort to show them that you are interested in them and their case. This is often an uneasy time for most debtors and they will be concerned about what will happen to their homes and their families. They are bound to ask a lot of questions, and seek a lot of reassurance. A list of commonly asked questions is included in the Appendix at pages 19.

Clarify again the responsibilities on the client’s part for either future meetings or the production of documents. Explain again the steps you will be taking on the client’s behalf. In particular, be sure to explain the client’s responsibility for filing fees; the extent of the pro bono nature of this representation; how to contact the team and to be informed of the status of their case; the confidential nature of the attorney-client relationship; an overview of what and when things can be expected to occur in their case; and the client’s responsibility to attend certain court hearings. Remember to remind the client that they will need to attend the 341 meeting of creditors. An example of the general procedures followed and the questions asked by the trustee is included after this section. Remember to be patient and to be understanding. Conclude the interview on a positive note for the client.

After the interview has been completed; and the client has left, the attorney should discuss with the students the information gathered to ensure the completeness of the interview and outline what steps need to be taken next. Viewing the client interview as occurring on Day One, a time line is provided in the Appendix at page 1 as a guide to the sequence of events as they will occur in a Chapter 7 case.

A Project evaluation form is included as the last page to the Appendix. All students are asked to please complete the form and turn it in to Pro Bono Coordinator.

VII. 341(a) First Meeting of Creditors

General Procedures

The following is an example of the standard procedures involved in a section 341(a) First Meeting of Creditors. Not all of the questions listed below are asked at each first meeting. These questions and procedures are indicated here to allow you to brief your client and to be prepared for what could occur at the meeting. After the case name is called:

- A. Appearance of counsel for debtor is entered on the record.
- B. Debtor or Debtors (Husband and Wife) should state names and addresses for the record.
- C. Debtors should be asked to stand so that the oath can be administered.
- D. The Interim Trustee reads into the record the name of the matter and the bankruptcy number before commencing the actual examination. The petition is displayed to the Debtor or Debtors (if a joint petition has been filed), and the following statement and inquiry is made:

I show you a copy of what purports to be your Petition, Schedules and Statement of Affairs filed in this proceeding.

 - 1. Did you sign the Petition?
 - 2. Is that your signature?
 - 3. Does this petition contain, to the best of your knowledge, a complete list of your assets, and all of your liabilities?
- E. The next question is often asked in joint petition situations:
 - 1. Who is more familiar with your family money affairs and the content of the petition filed in these proceedings?



Practice Point:

The purpose of this inquiry is to conserve time during the examination by addressing questions to the spouse that claims to be more knowledgeable about the affairs of the debtors and the contents of the bankruptcy petition. By doing this, the spouse that does not initially testify can then be asked if he or she heard the questions asked of their spouse and if his or her answers would be any different than what his or her spouse stated. The spouse testifying at this time should also be asked if he or she has any property other than the property referred to in the petition and/or what his or her spouse testified about. These two questions are probably the only questions that need to be asked of a spouse that does not testify initially. Of course, the circumstances may dictate or require that the Interim Trustee make a more thorough examination of both spouses.

General Questions

The following questions are generally asked at a 341 Meeting, although each question is not always asked in the course of every examination.

1. Have you ever been involved in a bankruptcy proceeding before?
2. Do you own or have you any equitable interest whatsoever in and to any real estate?
 - (A) (If owned) How much did the property cost, what are the mortgages encumbering same, what do you estimate the present value of the property to be?
 - (B) (If the debtor rents) Have you ever owned the property in which you live and/or is the owner of same in any way related to you?
3. How many rooms does your living quarters have?
4. Do you own furniture and appliances in your house or apartment?

(A) (If yes) Describe the furniture and appliances and, as best as possible, state the average age, the original cost and the present value of the same.

(Rather than have the Debtor take time describing each piece of furniture, the trustee may ask a general question about whether any particular piece of furniture exceeds \$400.00 and/or to ask about items of furniture that the Interim Trustee knows normally exceeds a \$400.00 purchase price. The exemption section of the Petition should, if properly completed, describe the debtors exemption requests in sufficient detail so that questions concerning exemption can generally be kept to a minimum).

5. Have you made any transfer of any property whatsoever within the last two years?

(A) (If yes) What have you transferred, to whom was it transferred, what was the consideration received, and what did you do with the funds?

6. Does anyone hold property belonging to you?

(A) (If yes) Who holds said property and what is it?

7. Do you have a banking account, either checking or savings?

(A) (If yes) In what banks and what were the balances as of the date you filed your petition?

8. Does your spouse have a bank account, either checking or savings?

(A) (If yes) In what bank and what is the balance?

9. When you filed your petition, did you have:

(A) any cash on hand?

(B) any U.S. Savings Bonds?

(C) any other stocks or bonds?

(D) Certificates of Deposits?

(E) a safe deposit box in your name or in anyone else name to which you may have access?

10. At the time of the filing of your petition, were you entitled to a refund from the government for income taxes?

11. Does anyone else owe you money?

(A) (If yes) Please explain in detail.

12. Do you own an automobile?

(A) (If yes) What is the year, make and value and do you owe any money on it?

13. Are you the owner of any insurance policies?
(A) (If yes) State the name of the company, face amount of the policy, cash surrender value, if any, and the beneficiaries thereof.
14. Have you been engaged in any business during the last six years?
(A) (If yes) Where and when and what happened to the assets of said business?
15. Are you entitled to a part of the estate of anyone who has died?
(A) (If yes) Please explain in detail.
(B) If you become a beneficiary of anyone's estate within six months of the date your bankruptcy petition was filed, the Trustee must be advised through your counsel of the nature and extent of the bequest and/or devise you will receive.
16. Are you presently involved in any divorce or separation proceeding or do you anticipate that you might realize any property, cash or otherwise, as a result of a settlement agreement or decree arising out of divorce proceedings within the next six months?
(A) (If yes) Debtor must inform Trustee through counsel.
17. Briefly describe what caused you to get into financial difficulty.
18. What amounts have you paid or agreed to pay to the attorney representing you in these proceedings?
(It is not necessary that this question be asked in every situation, however, the Interim Trustee has the responsibility of reviewing attorney fees and bringing to the attention of the United States Trustee's Office any fees that they feel are unreasonable).
19. Do you live together?
(A) (If no) Where does your spouse live?
20. Describe your furniture and how old it is. What did it cost and what is it worth now?
21. Does anyone owe you money?
(A) (If yes) Is the money collectible? (If so) Why haven't you collected it?