

# **THE MORRIS STERN U.S. BANKRUPTCY COURT/ RUTGERS-NEWARK LAW SCHOOL PRO BONO PROJECT**



## **CHAPTER 7 TRAINING MANUAL**

**2016-2017**

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## Preface

This training manual was created to assist law students and volunteer attorneys associated with the Morris Stern U.S. Bankruptcy Court/Rutgers–Newark Law School Pro Bono Project. It is designed to be used as a reference guide for basic Chapter 7 pro bono 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 to expand upon the information provided in this manual. The training will outline the basic Chapter 7 process as explained by a panel of respected bankruptcy practitioners, including judges from the United States Bankruptcy Court for the District of New Jersey, attorneys from Legal Services, members of the local County Bar Associations, and practicing Chapter 7 Trustees. Students will be given an opportunity to observe a mock interview and to prepare a practice petition.

This manual is based on and is essentially identical to the training manual used by the Rutgers Pro Bono Project in Camden, as updated in September 2016. Please note that the Bankruptcy Official Forms were revised effective December 1, 2015, and various Code section dollar amounts were revised effective April 1, 2016. Students should verify the accuracy of the forms before using them. Questions and/or suggestions regarding the materials included in this manual should be directed to:

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## I. Introduction

### What is the Bankruptcy Pro Bono Project?

The Rutgers Bankruptcy Pro Bono Project first began operations during the fall of 2013. The Project was created in response to concerns raised by Judge Morris Stern and Judge Judith H. Wizmur 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. As a pilot program in its first year, the Project interviewed 8 clients during the fall semester. The Project is now designed to run over both school semesters. In 2014, the Project was renamed The Morris Stern U.S. Bankruptcy Court/Rutgers-Newark Law School Pro Bono Project in honor of Judge Stern's contributions.

The primary purpose of the Project is to expand the referral services available to Legal Services for bankruptcy cases by establishing a pro bono 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 Legal Services, 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 helps to increase the interaction between the law students and the local attorneys while expanding the learning experience for the students and providing expanded pro bono opportunities for the attorneys.

### Who are the clients?

The Project's clients are referred primarily through Essex-Newark Legal Services and Volunteer Lawyers for Justice, where the applicants are screened for income and asset eligibility. In order to be referred to the Bankruptcy Pro Bono Project, prospective clients must satisfy the Legal Services income eligibility guidelines, unless expanded levels are accepted by the Project. The income eligibility level for Legal Services is set at 200% of the Federal Poverty Guidelines. A table illustrating the applicable income levels and a brief discussion of the Legal Services guidelines are included in the Appendix at page 3. Federal poverty guidelines are updated annually by the Department of Health & Human Services. (The 2016 guidelines can be found at <https://aspe.hhs.gov/poverty-guidelines>). Clients seeking bankruptcy assistance and satisfying the LEGAL SERVICES guidelines are sent a letter referring their case to the Project. The prospective clients are then scheduled for an interview with a volunteer team from the law school, comprised of a volunteer attorney and two law students, typically one second year and one third year law student. This "team" handles the prospective client's case.

### What is the student's role?

Rutgers coordinates scheduling the volunteer attorneys, the prospective clients, and the second and third year law 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 together 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 for the Project is also available as an additional source of 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 volunteer 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 all 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 effect for the United States Bankruptcy Court for the District of New Jersey are included in the Appendix at page 5. The client may seek to pay the filing fee in installments or request to have his/her filing fees waived under the *in forma pauperis* provisions included by BAPCPA.

To ensure the success of the Project, the team must be familiar with the basic Chapter 7 process and be able to effectively interview and examine the client and his/her financial condition. The following section provides 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" or liquidating bankruptcies. In most Chapter 7 cases, the debtor does not own any real property, has mostly unsecured debt, and wishes to simply and inexpensively free themselves of debt and obtain a "fresh start". The Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 ("BAPCPA") made several important changes to the Chapter 7 process.

## **Credit Counseling**

Prior to filing a petition under the Bankruptcy Code, debtors are required to complete a credit counseling session with an approved nonprofit budget and credit counseling agency. 11 U.S.C. § 109(h). The expected cost of this service is \$50.00 or less, and it must be provided “without regard to ability to pay the fee.” 11 U.S.C. § 111(c)(2)(B). It is expected that most of the Project’s clients will not be required to pay a fee for the credit counseling service. The counseling session must occur within the 180 days preceding the date of the filing of the petition, and lasts on average 90 minutes. It may be conducted by telephone or on the internet, as specifically approved by the United States Trustee’s (“UST”) office for that counseling agency. Certain exigent circumstances may constitute a waiver of this requirement as approved by the bankruptcy court. To obtain a waiver from the credit counseling requirement, the debtor must submit a certification to the court that: “(i) describes exigent circumstances that merit a waiver of the requirement[] . . . ; (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services . . . during the 7-day period beginning on the date on which the debtor made the request; and (iii) is satisfactory to the court.” 11 U.S.C. § 109(h)(3). The requirement may also be excused if the court determines that the debtor is unable to complete the counseling due to incapacity, disability or active military service. The waiver expires after the debtor meets the requirements to obtain such counseling or 30 days after the date of the bankruptcy filing, whichever occurs sooner. The court for cause may extend the time period an additional 15 days.

For a current list of approved credit counselors, check the list posted on the UST’s website at: <https://www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111>. Upon completion of the counseling requirement, the debtor must then include with his/her schedules a certificate of having received such counseling. 11 U.S.C. § 521(b).

## **Initial Preparation**

To prepare for the initial interview, the client will need to compile certain identification, information, and other documents. The Project will send the client a letter detailing the documents to bring to the client interview. See Sample in the Appendix at page 11. The client should bring the following information to the initial meeting with the team:

- a picture ID, evidence of social security number (or written statement that one doesn’t exist);
- a copy of the credit counseling certificate (if completed prior to interview, if not must be obtained prior to filing);
- copies of most recent tax returns (last 2 years is preferred);
- copy of at least one credit report (helpful but not mandatory);
- the source and amount of the debtor’s income, including copies of all pay stubs for the past 60 days;
- copies of all banking statements (checking, savings, money market, etc.);
- a list of all of the debtor’s property, real and personal (bring copies of mortgages, deeds or leases),
- an itemized list of the debtor’s monthly living expenses, including: mortgage or rental payments, food, clothing, utilities, insurances, taxes, transportation, recreation, etc.
- a list of all outstanding debts, whether delinquent or not, including the names and addresses of the creditors.

See FED.R.BANKR.P. 1007, 4002(b). This information will help the team to understand what assistance the client will require.

### **Filing the Petition**

If the team determines that a bankruptcy case should be filed, the Chapter 7 case will begin from the moment that the debtor files his/her petition with the bankruptcy court. All petitions handled by the Project should be filed by the attorney of record with the Clerk's Office for the United States Bankruptcy Court for the District of New Jersey, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Newark, New Jersey 07102. D.N.J. LBR 1002-1. Electronic filing is mandatory for all attorneys filing more than 10 pleadings per year with 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). Under the Bankruptcy Code, the debtor's filing constitutes an order for relief. 11 U.S.C. § 301(b). The order for relief triggers the automatic stay, creates the bankruptcy estate, and commences the Chapter 7 process. 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 14 days of the filing of the petition, or the case will be dismissed. FED.R.BANKR.P. 1007(c). The creditors listed in the debtor's schedules will receive notice of the filing of the petition from the Clerk of the Bankruptcy Court.

A person may file a petition under Chapter 7 regardless of the amount of their debts or whether they are solvent or insolvent. A person may not be a debtor, 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 dismissed 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). To maintain a valid Chapter 7 filing, the debtor must also satisfy the "means test."

### **The Means Test**

The means test was added by BAPCPA as a method of determining whether or not an individual is entitled to relief under Chapter 7, based upon their ability to pay their creditors through bankruptcy. Debtors are required to complete Bankruptcy Form B122A-1 and -2 for means testing purposes. See Appendix at pages 14-24. A presumption of abuse is created if the debtor's current monthly income, minus certain deductions, times 60 (based on a 5 year Chapter 13 plan) is greater than the lesser of either \$12,850 or 25% of the debtor's nonpriority unsecured creditors (or \$7,700 if greater than the 25%). 11 U.S.C. § 707(b)(2). Current monthly income is defined as the 6 month average of income from all sources, taxable or not, and including both spouses if it is a joint case. 11 U.S.C. § 101(10A). Median income information is provided by the census bureau. Current (2016) standards for New Jersey are \$61,347 for one earner, \$73,186 for 2 people, \$90,090 for 3 people, \$111,088 for 4 people and an additional \$8,400 for each person after 4. See [http://www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/median\\_income\\_table.htm](http://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/median_income_table.htm). If the debtor's current monthly income is less than the applicable median family income, the debtor need not calculate deductions and the presumption of abuse does not arise.

If the debtor is subject to the means test after looking at his/her monthly income, the Code provides for certain approved deductions. The IRS standards may be found at [www.irs.gov](http://www.irs.gov). The National and Local Standards for expenses may be found at: [www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/national\\_expense\\_standards.htm](http://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/national_expense_standards.htm). Local standards by state and county are provided for housing and utilities and transportation expenses. For further discussion on means testing, see *infra* at page 16.

It is expected that for the greater majority of clients handled through the Project, the means test will not be an obstacle to filing for relief under Chapter 7.

## **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. A copy of the schedules is included in the Appendix. The information included in the schedules allows the court to understand the merits of the petition and affords the creditors notice that their claim may be subject to discharge. The accuracy of the debtor's application is essential 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 his/her 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. See § 342(b) Notice in Appendix at 84.

Under BAPCPA, the debtor must also file a certificate that he/she received from his/her attorney the notice required by 11 U.S.C. § 342(b), as well as a copy of all pay stubs for the preceding 60 days; an itemized statement of net monthly income, and a statement of any reasonably anticipated increases in income or expenses expected for the upcoming year. 11 U.S.C. § 521. Pursuant to General Order, entered October 6, 2005, the debtor shall present those payment advices to the trustee at the 341 First Meeting of Creditors rather than file them with the bankruptcy court. If the debtor fails to file all required schedules within 45 days of the filing of the petition, his/her case will be dismissed. If the debtor does not timely file the statement of intention as to leased property or as to secured personal property, the automatic stay will terminate as to that property. § 362(h). The debtor no longer has the option of retaining the property and continuing to make the regular scheduled payments without choosing to reaffirm or redeem. § 521(a)(6).

## **Filing Fees**

The debtor must pay a \$335 filing fee to file a Chapter 7 case. This fee includes a \$245 filing fee, a \$75 general noticing fee, and a \$15 Chapter 7 trustee's fee. The fee 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. 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 debtor may seek, with the court's permission, to pay the fee in installments or to have the filing fee waived. 28 U.S.C. § 1930(a); FED.R.BANKR.P. 1006(b). If the fee is to be paid in installments, the petition may be filed without an initial fee, four installments are allowed, and the final installment is payable not later than 120 days after the filing of the petition. See Official Form B103A in the Appendix at page 25. 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). The debtor may also seek to have the filing fee waived. To do so, the debtor must file an application with the court. See Official Form B103B in the Appendix at page 27. The judge may waive the fee if the debtor's income is less than 150% of the federal poverty guideline for family size and the debtor is unable to pay in installments. See table in the Appendix at page 3.

### **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 creditors, and is broad in scope. It stops all collection efforts, including letters and telephone calls, all harassment, most foreclosure actions, and other administrative proceedings even if they are not before a "court".

The automatic stay does not, however, stop all actions against the debtor's interests. 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. Under the BAPCPA amendments, the government may use setoff of an income tax refund for a taxable period ending before the order for relief against a tax liability for a taxable period also ending prepetition. 11 U.S.C. § 362(b)(26). Where the creditor is granted in rem relief from the automatic stay under § 362(d)(4) (i.e., the court finds that the filing was part of a scheme to defraud or delay creditors that involved a transfer of property or multiple bankruptcy filings), the automatic stay will not go into effect in any subsequent case filed within 2 years of that order, except that the debtor may move for relief based on changed circumstances. § 362(b)(20). The stay will also not prevent the continuation of an eviction where the residential lessor holds a prebankruptcy judgment for possession. 11 U.S.C. § 362(b)(22). This eviction exception will be delayed for 30 days, to allow the debtor time to file a certification that he/she can cure the default and to make a deposit with the court of any monies due during that time period. 11 U.S.C. § 362(l). The debtor may also be evicted where the eviction is based on an endangerment of the property or the illegal use of controlled substances on the property. § 362(b)(23). If the debtor objects to the eviction, section 362(m) requires the debtor to respond within 15 days of the landlord's certification. A hearing must be held within 10 days of the debtor's objection and the burden is on the debtor to show that the conditions have been remedied.

Otherwise, the automatic 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 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. The stay will also terminate as to personal property where the debtor fails to timely file a statement of intention or to take timely action specified in that statement. 11 U.S.C. § 362(h). The imposition of the stay cannot be waived by the debtor. Willful violations of the automatic stay by creditors are subject to sanctions under § 362(k).

## **The Bankruptcy Estate**

The potential debtor should understand that a Chapter 7 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 is then managed by a bankruptcy trustee appointed through the office of the United States Trustee. The Chapter 7 trustee gathers all of debtor’s assets, with the exception of property that is exempt, and in accordance with the priorities established in the Bankruptcy Code, liquidates those assets where applicable 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 a distribution of the proceeds of their collateral before other claims are paid if the collateral is in fact sold through the bankruptcy process. 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, with some exceptions, 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.

## **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). BAPCPA requires that the debtor must have been domiciled in the state for at least the 730 days prior to the date of filing in order to elect the state’s exemption laws. 11 U.S.C. § 522(b)(3). If the debtor cannot satisfy the 730 day period, the Code looks next to the place that the debtor resided for 180 days immediately preceding the 730 day period. If the debtor is ineligible for any state exemptions as a result of the domicile rules, he/she can elect to use the federal exemptions. State homestead exemptions are also now capped under BAPCPA at \$155,675. 11 U.S.C. § 522(p).

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, certain fraudulent transactions, and for alimony and support obligations protected under § 523(a)(5). 11 U.S.C. § 522(c). In other words, this is property that the debtor may retain, free and clear from his/her creditors.

The exemptions provided for under the Bankruptcy Code include for example: \$23,675 for debtor’s personal residence, \$3,775 in one automobile, \$1,600 in jewelry, and \$12,625 in household goods. “Household goods” are now defined under BAPCPA (for lien avoidance purposes) to include clothing, furniture, appliances, one radio, one television, one VCR, one personal computer, linens, china, crockery, kitchenware, etc. See 11 U.S.C. § 522(f)(4). IRAs are now exempt up to \$1,283,025 under section 522(n). 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 100. The New Jersey state law exemptions and other federal law exemptions are listed in the Appendix at pages 102-104.

## **The Chapter7 Trustee**

Once a party files a Chapter 7 petition, the United States Trustee will then appoint an impartial panel trustee 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 are no assets to liquidate for 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 send notice to the unsecured creditors fact and additional time will be given within which to file proofs of claim.

If the debtor's case is an "asset" case, unsecured creditors have 90 days after the first date set for the 341(a) meeting of creditors within which 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 or her 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.

Under BAPCPA, the Chapter 7 trustee is obligated to provide notice to the creditor and an explanation of the creditor's rights if there is a domestic support obligation. 11 U.S.C. § 704(a)(10), (c). The trustee must also provide notice of the debtor's current address and employer, the debtor's discharge, any reaffirmations, and any debts excepted from discharge under § 523(a)(2), (a)(4) or (a)(14A).

## **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's representations in his/her schedules are accurate, and that the debtor understands 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 their specific questions 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 37.

Under BAPCPA, the debtor must now also provide the trustee with a copy of his/her most recent year's tax return no later than 7 days prior to the 341(a) meeting. 11 U.S.C. § 521(e)(2)(A). A copy must also be provided to any creditors who request it. By General Order, entered October 6, 2005, the debtor must also present his/her last 60 days of pay stubs to the trustee at the 341 meeting of creditors instead of filing the advices with the court.

### **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. Where there are insufficient funds to satisfy all claimants within a class, they will share the amounts available pro rata. 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. Payments are made first in the order specified in section 507. BAPCPA amended section 507 to place allowed unsecured claims for domestic support obligations in the first priority position, ahead of administrative expenses.

### **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 his/her exempt property by allowing the debtor 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. BAPCPA has amended section 522(f) to protect any judicial lien securing a domestic support obligation from avoidance.

#### **Practice Pointer:**



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% of the 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. 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. However, 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. Some of the reasons for denying a discharge to a Chapter 7 debtor include 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 debtor must also have not received a previous Chapter 7 discharge within the last eight (8) years. 11 U.S.C. § 727(a)(8). Under BAPCPA, the debtor may also be denied a discharge if he/she failed to complete a post petition personal financial management course as now required by the Code. See 11 U.S.C. § 111, 727(a)(11). 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, or failed to explain a misstatement on an audit held in accordance with 28 U.S.C. § 586(f). 11 U.S.C. § 727(d).

### **Debtor Education**

Under BAPCPA, the debtor is required to also complete a post petition personal financial management course. 11 U.S.C. § 111. The UST’s office must approve the agency used to provide the financial training. For a list of approved agencies, see the website as updated by the UST at [https://www.justice.gov/ust/eo/bapcpa/ccde/DE\\_Files/DE\\_Approved\\_Agencies\\_HTML/de\\_new\\_jersey/de\\_new\\_jersey.htm](https://www.justice.gov/ust/eo/bapcpa/ccde/DE_Files/DE_Approved_Agencies_HTML/de_new_jersey/de_new_jersey.htm). The course will provide information on budget development (such as setting short and long term financial goals; calculating gross and net monthly income and identifying expenses); money management (such as keeping adequate financial records; comparison shopping; maintaining appropriate insurance and saving for emergencies); use of credit (such as the different types and costs of credit and loans; debt warning signs and checking credit ratings), and on various sources of consumer information (such as public and nonprofit resources for assistance and applicable consumer protection laws and regulations). The debtor will not be granted a discharge until he/she completes such a course. 11 U.S.C. § 727(a)(11).

### **Nondischargeable Debts**

A discharge under Chapter 7 does not discharge the debtor of all debts. Certain specific types of debts, listed in section 523 of the Bankruptcy Code, are nondischargeable, including: domestic support obligations, 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). Consumer debts in an amount greater than \$675 for luxury goods or services

incurred within 90 days, as well as cash advances aggregating more than \$950 obtained within 70 days, of the order for relief will also be presumed to be nondischargeable. 11 U.S.C. § 523(a)(2)(C). For a list of all of the types of nondischargeable debts under section 523, see the Appendix at page 105.

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, however, the burden is on the creditor to timely file and pursue a determination of nondischargeability, such as where the debts are for money or property obtained by false pretenses, by fraud or defalcation while acting in a fiduciary capacity, and by willful and malicious injury by the debtor to another person or property . 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 that is 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 very specific disclosures as allowed in section 524(k), (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. 11 U.S.C. § 524(c). 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.

Under BAPCPA, if the debtor does not reaffirm personalty included in the statement of intention within 30 days after the date of the first meeting of creditors, the automatic stay as to that property will terminate. 11 U.S.C. § 362(h). A sample reaffirmation form is included in the Appendix at page 88.

### **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 in full at the time of the redemption. 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.

Under BAPCPA, if the debtor does not redeem personalty included in the statement of intention within 30 days after the date of the first meeting of creditors, the automatic stay as to that property will terminate. 11 U.S.C. § 362(h).

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 at the Rutgers Law School, in the S.I. Newhouse Center for Law and Justice at 123 Washington Street 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 the clients.

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 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 he/she perceives 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.

If the team determines that the client should file a bankruptcy petition, they are encouraged to complete a retention agreement with the client. See sample form in the Appendix at page 8. Clients should be referred back to Legal Services, or to an appropriate lawyer referral service, if representation is declined, if there is a conflict of interest, or if a determination is made that the client is not eligible for the Project.

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 or near the poverty level, 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 he/she is 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.

### 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. Under BAPCPA, the length of the plan is now determined by the current monthly income of the debtor as measured against the median income for a family of like size. 11 U.S.C. § 1322(d). 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 8 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 \$394,725 and his/her noncontingent, liquidated, secured debts must be less than \$1,184,200. 11 U.S.C. § 109(e). The debtor must file prepetition tax returns or risk dismissal or conversion. 11 U.S.C. § 1307(e). The debtor must also have the ability to make any post petition domestic support obligation that become due, or risk dismissal or conversion of the case. 11 U.S.C. § 1307(c)(11). 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 an attorney through a Chapter 13 plan, even on a nominal basis, 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 13 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:

- He/She cannot receive a discharge under Chapter 7 if he/she has previously received a discharge under Chapter 7 within the last **eight years**. 11 U.S.C. § 727(a)(8). Correspondingly, if the client does receive a discharge, he/she cannot receive another discharge of their debts under Chapter 7 for eight 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 his/her future creditors and may impact future credit applications.

- A number of debts are not dischargeable under a Chapter 7 case. For example: most taxes, domestic support obligations, criminal fines or restitution. 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, unless he/she qualifies for in forma pauperis relief.
- 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 his/her 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. **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 the questions do not need to be asked at the initial interview.** Arrangements can be made for future meetings with the client.

## VI. Means Test Calculation

As part of BAPCPA, the debtor is required to complete the Current Monthly Income calculations included on Form B122A found in the Appendix at page 14. Current monthly income calculates the debtor's average income over the last 6 months, including income from all sources, taxable or not (but not including social security income) plus any amount paid by an entity other than the debtor on a regular basis toward household expenses.

1. What are your monthly gross wages, salary, tips, bonuses, overtime commissions?
2. What is your income from operating a business?
3. What income do you get from rental property?
4. What interest, dividends or royalties do you get a month?
5. What is your monthly pension or retirement income (not including social security)?
6. What regular contributions do you receive from someone else toward household expenses, including child or spousal support? (This is separate from Column B if this is a joint petition).
7. Do you receive unemployment compensation? What amount?
8. Do you receive any other monthly income? Specify the source.

Your total monthly income is then multiplied by 12 and then compared to the median family income for your household size in New Jersey. See information published at [www.justice.gov/ust/](http://www.justice.gov/ust/). **If your income is less than the median income, there is no presumption of abuse.** If your income is greater than the median income, you must complete the Chapter 7 Means Test Calculation. Now you must calculate the 3 different types of allowed deductions for Means Test purposes.

Part 2 calculates the deductions allowed under the Standards of the Internal Revenue Service. The standards can be found on the UST's website. You will need to add the following deductions based on income or family size:

1. The IRS National Standard for Allowable Living Expenses.
2. The IRS Local standard for housing and utilities, non-mortgage expenses.
3. The IRS Local standard for housing and utilities, mortgage/rent expenses.
4. The IRS Local standard for vehicle operation/public transportation expenses.
5. The IRS Local standard for transportation ownership/lease expense for up to 2 vehicles.
6. Tax expenses including all federal income, self employment, social security and Medicare taxes, and state and local taxes, other than real estate and sales taxes.
7. Other mandatory payroll deductions such as mandatory retirement contributions, union dues, etc.
8. Monthly term insurance premiums.

9. Court ordered payments, such as child support.
10. Education payments for physically or mentally challenged dependents.
11. Childcare expenses.
12. Unreimbursed healthcare expenses.
13. Cellphone, internet or other special phone services needed for the health and welfare of you or your dependents.

Additional expenses are also allowed for (1) premiums for health or disability insurance or a health savings account; (2) care given for elderly or chronically ill members of your household; (3) costs incurred for protection against family violence; (4) home energy costs in excess of the IRS Standards; (5) education costs (not to exceed \$160.42 per child) for dependent children under the age of 18; (6) additional food and clothing expenses in excess of the IRS Standards, and (7) charitable contributions. You are also able to deduct 1/60th of any amounts that are past due for secured claims, priority claims or for future payments on secured claims.

The total deductions are then subtracted from the current monthly income determined earlier to calculate your disposable income. The resulting amount is then multiplied by 60. If this amount is less than \$7,700, then a presumption of abuse does not arise (meaning that if the presumption of abuse arises, the debtor should be filing Chapter 13 instead of Chapter 7). If the amount is greater than \$12,850, a presumption of abuse does arise.

If the amount is greater than \$7,700 but less than \$12,850, you must complete the form. Now you must enter the total of your nonpriority unsecured debt (taken from Schedule F of your petition). Multiply this amount by 0.25. If your disposable income is less than this amount, the presumption does not arise. If it is greater than this amount, the presumption does arise.

## **VII. 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 he/she will be taken care of. He/She is more likely to go home feeling positive about his/her prospects of a “fresh start” if you make an effort to show him/her 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 page 107.

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 he/she 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 the Pro Bono Coordinator.

## VIII. 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 trustee asks the following questions:

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 Pointer:**



The purpose of this inquiry is to conserve time 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 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 in 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?  
(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.

**Practice Point:**



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 \$600 and/or ask about items of furniture that the trustee knows normally exceeds a \$600 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 2 years?  
(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?  
(If yes) Who holds said property and what is it?
7. Do you have a banking account, either checking or savings?  
(If yes) Which 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?  
(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 Deposit?  
(E) a safe deposit box in your name or in anyone else's 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?  
(If yes) Please explain in detail.
12. Do you own an automobile?  
(If yes) What is the year, make and value; do you owe any money on it?
13. Are you the owner of any insurance policies?

- (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?  
(If yes) Where, 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?  
(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 UST's Office any fees that they feel are unreasonable).
  19. Do you and your spouse live together?  
(If no) Where does your spouse live?
  20. Describe your furniture. What did it cost and what is it worth now?
  21. Does anyone owe you money?  
(If yes) Is the money collectible? (If so) Why haven't you collected it?