

"Bankruptcy Made Simple: How to Support Pro Se Litigants Through the Process"

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Ways to Make Bankruptcy Filings Easier for Pro Se Filers:

While not necessarily the most frequently used court overall, a bankruptcy court is statistically the court that a person will experience in their lifetime due to the high number of individuals who may need to file for bankruptcy at some point in their lives, especially during significant financial hardship¹.

One in eleven Americans have filed bankruptcy at some point during their lives. Based on the number of consumer bankruptcy cases initiated during the past several decades, about one million individuals will file every year. This makes bankruptcy courts the leading federal courts with which people have contact².

"Upholding the law with compassion" as a bankruptcy judge means applying legal principles fairly and impartially while also recognizing the human element in each case, considering the unique circumstances and challenges faced by individuals involved, and showing empathy to promote a more just outcome, all within the boundaries of the law itself.

What does it mean to appear Pro Se and how can the proceed in a Bankruptcy case?

Although most individuals, also known as "litigants" or "parties" "debtors or creditors", "appearing before a court, is represented by attorneys, a small percentage appears Pro Se. Litigants or parties representing themselves in court without the assistance of an attorney are known as pro se litigants. "Pro Se" is Latin for "*in one's own behalf.*" The right to appear pro se in a civil case in federal court is defined by statute 28 U.S.C. § 1654. Thus, with some limitations, anyone can appear Pro Se, and anyone who appears before the Court without an attorney is considered Pro Se.

No right to an attorney.

In the United States, you do not have a constitutional right to an attorney in a civil bankruptcy case, meaning you can file for bankruptcy without a lawyer, also known as "pro se" filing; however, due to the complex nature of bankruptcy law, seeking legal counsel is strongly recommended

Can a Judge give legal advice to a Pro Se person?

¹ <https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2022>

²

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5121950#:~:text=One%20in%20eleven%20American%20have%20filed%20bankruptcy,federal%20courts%20with%20which%20people%20have%20contact

No, a judge cannot give legal advice to a pro se person (someone representing themselves in court) because it would violate their duty to remain neutral and impartial in the case; their role is to adjudicate the dispute, not to advise either party on legal strategy.

Can a Court Employee give me legal advice or assistance?

Legal advice should be given only by lawyers to their clients. The Clerk's Office staff and other Court employees are prohibited by law from giving legal advice or performing any legal services on a Pro Se persons behalf, this includes the appointed Trustee. Court employees must remain neutral to preserve the integrity and independence of the Court. However, Clerk's Office employees may provide procedural advice.

Why can't the Clerk's Office or other Court employees tell me what the law is?

This would be considered giving legal advice and Court employees are prohibited by law from giving legal advice to the public, even if the employee is a lawyer.

A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family³.

How do I file a Complaint or Petition?

Complaints, as well as all other papers submitted by Pro se litigants, must be submitted to the Clerk's Office. The complaint must include a caption, a statement of facts, the name and address of the litigant and the litigant's signature. More details regarding this process may be found in the Step-by-Step Guides on various court websites and Trustee websites.

I don't have a computer or a typewriter, can I write my papers in long-hand?

Yes, so long as they are legible, papers may be handwritten.

Can I file my papers electronically?

Pro Se litigants may file electronically, but they are not required to do so. For information on electronic filing, visit the CM/ECF and PACER web pages.

Can I speak to the judge about my case?

Unless appearing in Court before the judge, all communication to the judge must be done in writing.

Will the judge answer my letter?

Generally, the Court will respond to procedural requests, such as extensions of time, that are made in the form of a letter. However, the decision to respond or not to respond to a letter is at the discretion of the judge.

³ [https://www.uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-united-states-judges#:~:text=A%20judge%20should%20not%20practice,B\)%20Civic%20and%20Charitable%20Activities.](https://www.uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-united-states-judges#:~:text=A%20judge%20should%20not%20practice,B)%20Civic%20and%20Charitable%20Activities.)

Will my case go to trial?

Very few civil cases in federal court go to trial. Most cases, whether they are proceeding pro se or with an attorney, are either settled or resolved by the judge's order when one party makes a motion, especially in a bankruptcy court. If the case survives a defendant's motion to dismiss or motion for summary judgment, the judge may set a trial date rarely if almost ever will it be a jury trial.

I do not speak English, what do I do?

The federal courts do not have the resources to provide free interpreters for litigants in civil cases. To conduct business at the Court, you could have someone assist you (such as a trusted family member or friend) by interpreting for you. UST and some clerks do provide free interpreter services.

What should I do if I am hearing-impaired or physically disabled?

You should contact the Clerk's Office for more information about what free services may be available to meet your needs.

Legal Advice vs. Legal Information!

There is no good definition for "legal advice." The American Bar Association and state laws all agree that non-lawyers may not give legal advice and that doing so amounts to the illegal practice of law by a non-attorney. But they have differing views on where the line between information and advice exists. For instance, if a client has a question about a legal issue in their case and the attorney is unavailable, may the paralegal explain the case, or does the client have to wait until the attorney gets back?

Defining Legal Advice.

The practice of law involves an attorney and a client who have established an attorney-client relationship. The attorney agrees to represent the client in a particular legal matter, and the client signs a fee agreement. The client explains the circumstances of the case, and the attorney gives the client an opinion on possible outcomes, the legal basis for these outcomes, an estimate of the number of hours it will take for the legal work, and any filing fees or costs.

Defining Legal Information.

Legal information or legal help is available at legal aid and self-help clinics. Websites and message boards where attorneys review questions and offer opinions are legal information, not advice. Any document or page containing a disclaimer that the information on the site is not legal advice, and the attorney does not represent the user is only information.

The person providing it must distinguish legal information from legal advice. A licensed attorney in good standing with the bar association can give legal advice about your specific case. Anyone else can only provide legal information. Legal aid clinics can explain how to complete legal

documents; most courthouse clinics will tell you where and how to file them. Some no-cost/low-cost clinics may have attorneys who can provide legal representation for some types of cases.

Should you sanction a Pro Se person in bankruptcy court? Does intent matter? Is mistake a defense or ignorance of the law?

Yes, sanctions can be applied to Pro Se litigants in bankruptcy courts, but courts are reluctant to do so. Sanctions are used to punish the abuse of court process and to reimburse litigants for the costs of unfounded or abusive filings. Sanctions for pro se litigants can include monetary sanctions, dismissal, or disbarment from the bankruptcy court.

The court will consider the ability to pay of the sanctioned party. Adequate notice is important before any sanctions are imposed. The court must find that the sanctioned party acted in subjective bad faith or that their conduct was objectively unreasonable. Courts are reluctant to impute bad faith. Hiding assets during a bankruptcy proceeding is not only illegal but can lead to severe legal consequences. Under U.S.

Examples: Bankruptcy Code Section 727, any debtor who is found to have hidden or falsified assets can have their discharge denied. This means that the court will not relieve the debtor of their debts, and they can still be held liable for what they owe. Additionally, concealing assets can lead to criminal charges for bankruptcy fraud, punishable by fines and imprisonment under 18 U.S. Code § 152.

Why Bankruptcy Fraud Must Be Intentional.

Bankruptcy fraud doesn't happen by accident or mistake. You'll only run into trouble if it's believed that you knowingly and intentionally committed a fraudulent act.

For instance, accidentally forgetting to list an asset or incorrectly stating your income or expenses probably wouldn't be considered fraud, especially if you corrected the error as soon as you realized it occurred.

Civil Bankruptcy Fraud.

Civil cases usually arise when a creditor files a lawsuit (adversary proceeding) alleging wrongdoing involving one particular debt (see "Fraud That Starts Before Bankruptcy" above for a list of examples of common allegations). If the creditor proves its case, the court can do one or more of the following:

Criminal Bankruptcy Fraud.

A significant scheme to deprive multiple creditors would be more likely to rise to the level of criminal bankruptcy fraud. Under federal law, criminal fraud cases are investigated by the Federal Bureau of Investigation (F.B.I.) and are prosecuted by the U.S. Department of Justice.

(D.O.J.). You'll find most bankruptcy crimes in federal criminal statutes. (18 U.S.C. §§ 152, 157.) Here are some examples.

Clear and Accessible Resources.

Provide easy-to-understand guides explaining the bankruptcy process in plain language. These should cover the several types of bankruptcy (Chapter 7, Chapter 11& Sub Chapter V, Chapter 12, Chapter 13) and help Pro Se filers understand which one applies to their situation.

Step-by-step instructions should be available for the entire bankruptcy process, from filing the petition to meeting with the trustee and understanding debt discharge.

Communication is Key! Know the local Rules and Practice. Basic Civil procedure When there is an Adversary Procedure, Temporary Restraining Order, or Motion for Relief needed. Consent / Agreed Orders, In Rem Relief, Decorum in Court.

- Respond to pleadings.
- Cite the code and case law.
- Meet all timelines.
- Rule 12(b) provides 7 potential bases for dismissal of an adversary proceeding. The first option, Rule 12(b)(1), addresses lack of subject matter jurisdiction. Standing is jurisdictional, so it falls under that subsection.³
- Rule 12(b)(6), permitting a motion to dismiss for failure of the complaint to state a claim on which relief can be granted is underused.
- Rule 56 motion for summary Judgment. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.
- Federal Rule of Civil Procedure 60(b)(1) authorizes relief from final judgment based on “mistake,” as well as “inadvertence, surprise, or excusable neglect.
- Contact the Trustee’s office.
- Contact Debtor’s counsel.
- Contact the Clerk’s office.
- Contact the Judge’s Chambers.
- Review the Court’s website.

Simplified Bankruptcy Forms.

Bankruptcy forms can be overwhelming, so providing simplified versions of these forms with detailed instructions can help filers avoid mistakes. Consider offering an online form-filling tool that automatically populates forms based on the filer’s responses to basic questions about their financial situation.

Automatic Stay is one of the most powerful injunctions.

The automatic stay is usually triggered the moment the debtor files the bankruptcy petition and remains in place until the bankruptcy case is closed, dismissed, or the court grants or denies a discharge. See 11 U.S.C. § 362(c)(2) However, where the debtor has filed one or more bankruptcies in the year prior to the current case, the automatic stay might not be applicable to the current case. Pursuant to 11 U.S.C. § 362(c)(3)-(4) and 362 (n) the automatic stay may expire or be inapplicable in instances where the debtor has filed multiple cases in one year.

Reason or reasons giving rise to the presumption that the current case was “filed not in good faith”; and the change in the financial or personal affairs of the debtor subsequent to the dismissal of the previous case or any other reason that will support the debtor’s contention that the present case will be concluded with a discharge if filed under Chapter 7 or, if filed under Chapter 11 or 13, will be concluded with a confirmed plan that will be fully performed.

Online Bankruptcy Filing Systems.

Many courts now offer online filing systems for bankruptcy cases, which should be user-friendly and guide Pro Se filers through the process. An online portal could offer easy uploads for required documentation and provide tracking for filing progress.

Educational Workshops and Webinars like the one today can be sent to local bars and clerks around the country.

Provide free educational resources, such as webinars or workshops, to educate Pro Se filers on the bankruptcy process. These could cover frequent questions, tips for filling out forms, and expectations in court hearings. Such resources can be offered online to accommodate a wide audience.

Access to Legal Clinics!

Some areas offer Pro Bono bankruptcy clinics, where experienced bankruptcy attorneys provide free, brief consultations to Pro Se filers. Expanding access to such services, even if it's only for a limited number of hours, could provide crucial guidance.

- Lack of awareness: Some individuals may not be aware of their options or how to initiate the bankruptcy process.
- Geographic barriers: Access to legal aid services can be limited in certain areas, especially in rural communities.

Dedicated Bankruptcy Helplines!

Establish dedicated helplines or live chat services to answer Pro Se filers’ questions about the bankruptcy process. Court staff and bankruptcy professionals could assist with clarifying procedural questions or offering information on what documents need to be filed.

Court and Trustee Discretion!

Judges and trustees could exercise some discretion when working with Pro Se filers to ensure they understand the process and aren't penalized for simple errors or misunderstanding legal jargon. This could include more flexibility in scheduling hearings or guidance during meetings of creditors.

Orders to Show Cause v. Dismissal on Papers.

A "negative notice" in bankruptcy filings is a legal procedure where a party seeking court action includes language in their motion stating that if no objection is filed within a specified time frame, the court will grant the requested relief without holding a hearing, essentially meaning that silence is considered consent to the action; it's a way to streamline unopposed matters in bankruptcy court by eliminating the need for a hearing if no one objects.

The negative notice procedure eliminates the need for hearing in most unopposed matters. This saves time and money for the parties, attorneys, and the Court. Even in the absence of an objection, the Court still may set a hearing to consider the requested relief.

Due Process concerns? Does it matter if a debtor is Pro Se? Does the particular chapter being filed come into play?

An "Order to Show Cause" in bankruptcy proceedings is a court order that requires an interested party to appear before the court and explain why their case should not be dismissed or why they should not face sanctions, usually due to non-compliance with bankruptcy rules or potential fraudulent activity, such as failing to disclose assets or making false statements on their bankruptcy filings; essentially, it is a legal mechanism to compel the debtor to justify their actions and demonstrate "cause" for not following proper procedures.

- Purpose: To give the debtor an opportunity to explain why they should not face consequences like dismissal of their case or other penalties for violating bankruptcy laws or court orders.
- When issued: A court might issue an Order to Show Cause when a debtor fails to file necessary documents, misses deadlines, makes suspicious transfers of assets, or is suspected of fraudulent activity.
- Who can file: A bankruptcy trustee, a creditor, or the court itself can file a motion requesting an Order to Show Cause.

Bankruptcy Education Classes.

Most bankruptcy filers are required to take a credit counseling course and a debtor education course. Offering these courses in multiple formats (online, in-person, via phone) would help Pro Se filers access and complete these mandatory steps without added difficulty.

Disclosing real property.

Real property, like land and buildings, must be disclosed in a bankruptcy petition under Schedule A. Rental property with equity must also be disclosed and protected with exemptions. Protecting real property with exemptions: The homestead exemption protects a debtor's equity in their

primary residence. (Federal exemptions) The wild card exemption protects rental properties with equity. Each state has its own exemptions, and some states allow debtors to choose between state and federal exemptions.

Filing Fee Waivers.

Bankruptcy filing fees can be a significant barrier for Pro Se filers. Streamlining the process to qualify for fee waivers or reduced fees would help ease the financial burden for individuals who are already facing financial hardship.

Rooker-Feldman doctrine!

Under the Rooker-Feldman doctrine, a federal bankruptcy court lacks jurisdiction to the extent that the federal claims are “inextricably intertwined” with the state court's determinations. D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482-84 n. 16 (1983)

Under the Bankruptcy Code, avoidance actions consist of the prosecution of preference claims and fraudulent transfers claims.

One of the key policy objectives of bankruptcy is the maximization of creditor recoveries, which is often achieved through the prosecution of avoidance actions.

The policy underlying Rooker-Feldman is based on the concept that a litigant should not be able to challenge state court orders in federal courts to relitigate matters that have already been considered and decided by a court of competent jurisdiction.

Thus, it is important to understand how the courts discern that the doctrine does not survive this policy objective under the Bankruptcy Code.