Pro Se Creditor's Handbook:

Information for Persons Owed Money by an Individual or Entity that has Filed for Bankruptcy

Introduction

This booklet is provided by the Office of the Clerk, United States Bankruptcy Court for the Eastern District of California. It has been prepared to respond to the questions frequently asked of Clerk's Office staff by non-lawyers. If you have a question that is not covered in this booklet and goes beyond an explanation of filing requirements, it probably requires the giving of legal advice and therefore cannot be answered by Clerk's Office staff. Individuals are not required to have an attorney to represent their interests as a creditor. However, the law in this area is sufficiently complex that most individuals find it desirable to obtain legal representation.

This booklet has been prepared with the assistance of the Clerk's Office Attorney Advisory Committee and is not designed to instruct the reader on how to handle their individual issues without representation by a qualified bankruptcy attorney. It is recommended that any creditor who wishes to file anything more than a standard claim in a bankruptcy should obtain the advice of a competent bankruptcy attorney. An initial consultation with a competent bankruptcy attorney who specializes in creditor's claims is customarily available for a reasonable charge or for free.

Creditors filing documents with the court without legal representation will be held responsible for knowing the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and the relevant portions of the California statutes and will be given no special consideration by the court. You should be aware that missing a deadline, failing to perform a required task, or failing to respond properly to an action could result in losing property or rights that you might otherwise have been entitled to keep. Please note that the Clerk's Office is prohibited by law from providing legal advice. Only an attorney may provide legal advice.

1) How important are deadlines?

At the outset, it is imperative that creditors be aware of deadlines in the bankruptcy case. The bankruptcy process often moves very quickly, particularly in chapter 7 cases. If a creditor wants to take action, the necessary documents must be filed within the time frame given for that particular action. Once the deadline has expired, the creditor will lose the right to take that action. Although it is generally feasible to request that the court extend most deadlines, virtually all requests must be made before the time has expired. Many of the deadlines are explained in the various sections of this handbook, but creditors filing documents with the court without legal representation will be held responsible for knowing all applicable deadlines and are not given special consideration by the court.

2) What is bankruptcy?

It has often been said that the bankruptcy system was designed to give the honest, but unfortunate debtor a fresh start. Bankruptcy is a way for people and businesses that owe more money than they can pay right now ("debtors") to either work out a plan to repay the money over time in a case under chapter 11, chapter 12, or chapter 13, or to wipe out ("discharge") most of their bills in a chapter 7 case. The filing of a bankruptcy petition immediately stops most actions to collect debts that were due at the time of filing, including lawsuits, repossessions, and foreclosures. Based upon the circumstances, the court may, however, permit some eviction, repossession, and foreclosure actions to continue even after the case is filed.

What chapter the debtor chooses to file under, what debts can be eliminated, how long payments can be stretched out, and other details are controlled by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. This is federal law, which means it applies throughout the United States. The Bankruptcy Code is found in Title 11 of the United States Code. The various sections of the Bankruptcy Code are referred to in this booklet as "11 U.S.C. § ___."

3) What is a debtor and what is a creditor?

A debtor is a person or entity that has filed a bankruptcy petition.

A creditor is anyone that has a right to payment from the debtor (i.e., a claim) that arose before the debtor obtains an order for relief.

4) What is a bankruptcy trustee?

In all chapter 7, 12, 13 cases, and in some chapter 11 cases, a case trustee is assigned. In chapter 7 cases they are called "Panel Trustees." In chapter 12 and 13 cases, they are called "Standing Trustees." The trustee's job is to administer the bankruptcy estate, to make sure creditors get as much money as possible, and to run the first meeting of creditors, (also called the "341 meeting", because 11 U.S.C. § 341 requires that the meeting be held). The trustee either collects and sells non-exempt estate property, as in the case of a chapter 7, or collects and pays out money on a repayment plan, as in the case of a chapter 13. The trustee can require that a debtor provide, under penalty of perjury, information, and documents almost any time prior to the case being closed. Debtors must also bring positive identification and verification of their social security number to the 341 meeting. Debtors are required to cooperate with the trustee, since failure to cooperate with the trustee could be grounds to have the discharge denied. Trustees are not necessarily lawyers, and they are not paid by the court. They are appointed by the United States Trustee. The trustees report to the court, but their fees come out of the bankruptcy filing fees or as a percentage of the money distributed to creditors in the bankruptcy.

5) What is the United States Trustee?

The United States Trustee's Office is part of the U.S. Department of Justice and is separate from the court. The United States Trustee's Office is a watchdog agency, charged with monitoring all bankruptcies, appointing, and supervising all trustees, and identifying fraud in bankruptcy cases.

The United States Trustee's Office cannot give you legal advice, but they can give you information about the status of a case and you can contact them if you are having a problem with a trustee or if you have evidence of any fraudulent activity. In monitoring cases, the United States Trustee reviews all bankruptcy petitions and pleadings that are filed in cases and participates in many proceedings affecting the case, but they do not administer the case themselves. They can take actions in the bankruptcy, such as ones to dismiss the case or to deny the debtor's discharge. The United States Trustee's Office is the agency that certifies credit counseling and debt education providers.

6) <u>What are the different "chapters" in Bankruptcy?</u>

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Chapter 7 cases are commonly referred to as "straight bankruptcy" or "liquidation" cases, and may be filed by an individual, corporation (or other business entity), or a partnership. In a chapter 7 case, a trustee is appointed to collect and sell all property that is not exempt and to use any proceeds to pay creditors who have filed claims in the bankruptcy. In the case of an individual (i.e., natural persons as opposed to business entities), the debtor is allowed to claim certain property exempt (i.e., outside of the reach of creditors). In exchange, the debtor gets a discharge, which means that the debtor does not have to pay certain types of debts. Corporations, partnerships, and other similar entities cannot receive discharges. Consequently, any individuals legally liable for the partnership's or corporation's debts may remain liable. In some instances, the threat of continuing liability may cause the owners of the business entity to file personal bankruptcies, which are separate from the business entities case.

Chapter 9 is only for municipalities and governmental units, such as school districts, water districts, and so on.

Chapter 11 is the reorganization chapter available to entities and individuals who have sufficient assets and/or income to restructure and often repay some portion of their debts. Creditors vote on whether to accept or reject a plan of reorganization, which must be approved by the court.

Creditors' committees often have a large role in chapter 11 cases. In chapter 11 cases, a creditors' committee may be appointed by the U.S. Trustee and often consists of unsecured creditors that hold the seven largest unsecured claims against the debtor. These committees represent all similarly situated creditors (e.g., all creditors with non-priority unsecured claims) and have a number of duties to perform including consulting with the debtor-in-possession, investigating conduct of the debtor and the operation of the business, participating in formulating a chapter 11 plan for reorganization, and requesting appointment of a trustee if the circumstances warrant it.

The creditors' committee must also provide access to information to all creditors who hold claims similar to the kind represented by the committee. The creditors' committee will also solicit and receive information from these similarly situated creditors.

Chapter 12 offers bankruptcy relief to those who qualify as family farmers or family fishermen. There are debt limitations for chapter 12 and a certain portion of the debtor's income must come

from the operation of a farming or fishing business. Family farmers and family fishermen must propose a plan to repay their creditors over a period of time from future income and it must be approved by the court. Plan payments are made through a chapter 12 trustee who also monitors the debtor's farming or fishing operations while the case is pending.

Chapter 13 is the debt repayment chapter for individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. It is not available to corporations, partnerships, or other entities. Chapter 13 generally permits individuals to keep their property by repaying creditors out of their future income. Each chapter 13 debtor proposes a repayment plan that must be approved by the court. The amounts set forth in the plan must be paid to the chapter 13 trustee who distributes the funds for a percentage fee. Many debts that cannot be discharged can still be paid over time in a chapter 13 plan. After completion of payments under the plan, chapter 13 debtors receive a discharge of most debts.

Chapter 15 is a chapter to deal with insolvency cases involving debtors, assets, claimants, and other parties in interest in more than one country. Due to their complexity, these "cross border insolvency cases" will almost always need a lawyer.

7) What is a bankruptcy estate?

A bankruptcy estate includes all legal or equitable interests of the debtor in property at the time of the bankruptcy filing. The estate includes the debtor's interest in all property even if it is owned or held by another person. A bankruptcy trustee administers this estate for the benefit of all creditors. This property is often referred to as property of the estate. Exempt property, if not objected to within the statutory deadline (i.e., 30 days after the first meeting of creditors), will be excluded from the estate. For an explanation of exemptions see the section entitled: The debtor just filed for bankruptcy, why does he/she/it get to keep funds/items that could be used to pay the debt owed to me? (i.e., what are exemptions?)

8) What does it mean for a debtor to obtain a discharge of debts?

The overarching goal of a bankruptcy proceeding is for a debtor to obtain a discharge of their debts. When a debt is discharged, it is no longer enforceable against the debtor. Although a debtor can voluntarily choose to repay a discharged debt, a creditor cannot take any further action to collect the debt from the debtor.

The debts that may be discharged are not only debts that were liquidated as of the filing of the case, but any liability that arises from events before filing so long as the affected creditor, or potential creditor, received notice of the bankruptcy.

The bankruptcy discharge results in a permanent court injunction against certain actions related to debts that existed before the bankruptcy was filed. The discharge injunction replaces the automatic stay that arises immediately upon commencement of a bankruptcy case. The discharge injunction prevents the creditor who is owed the debt from beginning or continuing

any lawsuit to enforce a dischargeable debt against the debtor or the debtor's property. Any judgment as to a debt arising before the bankruptcy was commenced is void after the discharge. It is important to note that only an individual can receive a discharge in a chapter 7 case, as set out in 11 U.S.C. § 727(a)(1). This means that although entities such as corporations or limited liability companies can file for a chapter 7 bankruptcy, the entity cannot obtain a discharge of its debts through a chapter 7 bankruptcy. In other words, the entity will still be legally obligated to pay all creditors, even though it is likely that the entity will not have any remaining assets to pay its debts after the bankruptcy. In many instances, the entity will simply dissolve with the outstanding debts still listed on the books, but, absent unusual circumstances, the creditors will have no means to collect the debts.

For an explanation of nondischargeable debts see the section entitled: What types of debts are generally not dischargeable in a bankruptcy?

9) Are most creditors' claims paid after the debtor files for bankruptcy?

No. Absent unusual circumstances, most unsecured creditors receive little or nothing when a debtor files for bankruptcy under chapter 7 or chapter 13. Virtually every debtor files for bankruptcy because he or she does not have sufficient assets to pay his or her debts. That is the purpose of bankruptcy – to give the honest, but unfortunate debtor a fresh start. Unfortunately for creditors, this means that the vast majority of cases are determined to be no asset cases, which means there is nothing to distribute to creditors. In the Eastern District of California, on average, only 4-5 percent of all bankruptcies are listed as asset cases. For an explanation of no asset cases, see the section entitled: What does it mean when the chapter 7 Trustee lists the case as a "no asset case"?

Even if there are non-exempt assets to liquidate and funds to distribute to creditors, the amount paid is usually a small fraction of the debt that is owed. The first reason for this is that the non-exempt assets that are being liquidated are generally not enough to pay all creditors, which is why the debtor filed for bankruptcy in the first place. The second reason is because after priority claims and administrative claims are paid, anything left over is distributed to all unsecured creditors on a pro rata basis. For an explanation of pro rata distributions, see the section entitled: What does it mean for unsecured creditors to receive a *pro rata* share?

10) Can I continue trying to collect money after the debtor has filed for bankruptcy?

No. After a debtor has filed for bankruptcy a creditor cannot take any further action to collect a debt from a debtor, unless the creditor first obtains court approval. Additionally, there may be severe consequences for a creditor who violates this prohibition.

11 U.S.C. § 362 provides that as soon as a debtor files for bankruptcy a stay is automatically in place (the "automatic stay"). The automatic stay prohibits a creditor from beginning or continuing lawsuits, repossessing property, garnishing wages, enforcing liens and other actions, judicial or otherwise, that are attempts to enforce or collect prepetition claims. It also stays a wide range of actions that would affect or interfere with property of the estate, property of the debtor, or property in the custody of the estate.

The automatic stay remains in effect until the court approves a creditor's request to lift the stay (otherwise known as a request for relief from the automatic stay), or until the debtor receives a discharge, or the particular item of property on which a claim is based is no longer property of the estate.

In certain circumstances, the bankruptcy court has the power to punish a creditor who violates the automatic stay. Additionally, a debtor has the ability to obtain damages from a creditor if the debtor has been injured by violation of the stay.

For an explanation of how to obtain court approval to continue collecting money from a debtor after the debtor files for bankruptcy see the section entitled: How do I obtain court approval to continue collecting money after the debtor filed for bankruptcy (i.e., requesting relief from the automatic stay)?

Once the debtor receives a discharge of the debt, the creditor is permanently barred from taking any further action to collect on the debt. Once the property is no longer property of the estate, the creditor can begin taking steps to repossess the property if they had a valid security interest in it before the bankruptcy was filed.

11) I have started a garnishment on the debtor, can I keep garnishing? Can I keep the money that I have already received through the garnishment?

Creditors must immediately stop garnishing wages as soon as the creditor receives notice of the debtor' bankruptcy and they have a duty to notify anyone who is collecting money on their behalf to stop. However, there may be an exception for on-going child support that was previously ordered by another court.

Money received within ninety days (or in some instances, one year) prior to the filing of a bankruptcy petition may have to be returned to the estate. For an explanation of money that must be returned to the estate see the section entitled: Do I have to return money that I received (or assets that I repossessed) from the debtor before the bankruptcy petition was filed? What about after the bankruptcy petition was filed?

12) I have already filed a lawsuit against the debtor, what can I still do?

The automatic stay prevents any further action to be taken in the previously filed lawsuit. Typically, the debtor will notify the court in which the lawsuit is pending that a bankruptcy petition has been filed. However, if this does not occur, and you have received notice that the bankruptcy petition has been filed, you must inform the court in which your lawsuit is pending so the proceeding will be stayed. This is to prevent the lawsuit from being dismissed for lack of prosecution.

It may be possible to continue litigating the case even after the automatic stay is in place. However, a creditor will have to receive permission from the bankruptcy court to continue the litigation. This procedure is referred to as seeking relief from the automatic stay. For an

explanation of how to request permission from the court see the section entitled: How do I obtain court approval to continue collecting money after the debtor filed for bankruptcy (i.e., requesting relief from the automatic stay)?

13) **Do I have to return money that I received (or assets that I repossessed) from the debtor before the bankruptcy petition was filed? What about after the bankruptcy petition was filed?**

The question of whether a creditor can keep the money is often complicated and must be analyzed on a case-by-case basis. The Bankruptcy Code allows a bankruptcy trustee (or the debtor-in-possession in a chapter 11 case) to recover (i.e., avoid) certain types of payments made by a bankruptcy debtor within ninety days prior to the filing of the bankruptcy or within one year prior to the filing of the bankruptcy if the payment was to an insider (e.g., a relative of the debtor).

A trustee (or debtor-in-possession) can require disgorgement (i.e., repayment) of a payment to a creditor that was made on account of a pre-existing debt, if the debtor was insolvent at the time of the payment and if the payment allows the creditor to recover more than the creditor would have obtained if the debtor had filed a chapter 7 on the date of the particular transfer. Such payments are known as preferential transfers because they allow a creditor to receive a "preference" over other creditors who were not fortunate enough to receive payment during the ninety-day (or one year if the payment was made to an "insider") window prior to the bankruptcy filing.

Similarly, a trustee (or debtor-in-possession) can require disgorgement of a transfer of property of the estate to a creditor that occurs after the commencement of the case. Such payments are known as postpetition transfers. Although a debtor can voluntarily choose to pay a creditor at any time (even after obtaining a discharge of the debt) the debtor cannot use property of the estate to make this payment.

However, even if the payment to the creditor falls within these parameters, a creditor is not obligated to voluntarily return the money. Typically, a trustee or debtor-in-possession will first make a demand for the money. If the money is not returned, then the trustee or debtor-in-possession may file a lawsuit in the bankruptcy court to obtain a judgment requiring the creditor to disgorge the funds or return the property (or the value of such property).

If your claim falls into the category described above, it is likely that you will receive a stern demand letter from a trustee or an attorney representing the trustee or debtor-in-possession. If a creditor receives a demand letter, it is recommended that the creditor contact a competent bankruptcy attorney, preferably one with a solid understanding of preferential payments and the litigation that may ensue. Litigation of this nature can seem counter-intuitive, but an experienced attorney should be able to provide you with appropriate recommendations.

14) How do I obtain court approval to continue collecting money after the debtor filed for bankruptcy (i.e., requesting relief from the automatic stay)?

11 U.S.C. §§ 362(d)-(g) provides creditors with the grounds and methods for obtaining relief from the automatic stay. A creditor must file a motion to request relief from the automatic stay. The motion must follow the parameters provided within 11 U.S.C. §§ 362(d)-(g) and Rule 4001 of the Federal Rules of Bankruptcy Procedure. If the court is convinced that sufficient grounds exist, it will either grant the motion in its entirety, or provide an order that will modify the stay so the creditor can proceed in a limited fashion.

For example, if a creditor seeks relief from the automatic stay to continuing litigating a matter outside of the bankruptcy court, a judge may grant relief from the automatic stay to allow the creditor to continue litigating and obtain a judgment, but not allow the judgment to be collected until the bankruptcy court determines that the judgment amount is nondischargeable.

Motions seeking relief from the automatic stay can be very complicated. It is recommended that anyone seeking such relief should seek advice from competent legal counsel.

15) If I have a lien on property owned by the debtor, what happens to my lien?

Liens in the bankruptcy setting can be very simple or very complex depending on the nature of the property, the nature of the lien, the value of the property, the amount of the lien, and the number, position, and amounts of other liens on the property held by other creditors. It is strongly encouraged that you contact competent legal counsel with any questions you may have regarding your lien.

The short answer is that many liens remain, despite the bankruptcy. However, a creditor cannot enforce the lien until after the debtor receives his or her discharge (thus terminating the automatic stay) or after the creditor successfully petitions the court for permission to enforce the lien (i.e., obtains relief from the automatic stay). For an explanation of how to request permission from the court see the section entitled: How do I obtain court approval to continue collecting money after the debtor filed for bankruptcy (i.e., requesting relief from the automatic stay)?

16) If my ex-spouse files for bankruptcy does he or she need to continue making child and/or spousal support payments? What about past due payments?

Spousal and child support payments are not dischargeable through bankruptcy and the debtor will need to continue making future payments. In most cases, these support payments come from money earned by the debtor each month. In a chapter 7 case, money that is earned after the debtor files for bankruptcy is not considered property of the estate and therefore the debtor will not be permitted to stop making payments.

Additionally, the debtor cannot discharge past debts owed for spousal or child support and as of 2005, past due payments for child support and alimony must be paid before any other creditor is paid. However, you may need to file a lawsuit in the bankruptcy court to ensure your debt will

be paid. For an explanation of how to ensure this debt will not be discharged see the section entitled: What can I do if I think a debtor is attempting to discharge a nondischargeable debt owed to me?

Of course, income is a factor that is taken into account when a court orders a spouse to make child support or spousal support payments. It is possible for a debtor to go back to the court that issued the support order and ask for hardship relief from making full payments. The court will usually conduct a hearing to determine whether hardship relief is appropriate.

17) The debtor just filed for bankruptcy, why does he/she/it get to keep funds/items that could be used to pay the debt owed to me? (i.e., what are exemptions?)

11 U.S.C. § 522(b) allows an individual debtor to exempt real, personal, or intangible property from the property of the estate. In California, exempt assets are protected by state law from distribution to creditors. Typically, exempt assets include personal goods, some jewelry, vehicles up to a certain dollar amount, the equity in the debtor's home up to a certain amount, and tools of the trade. Additionally, many forms of retirement funds and certain pension plans are not considered property of the estate and cannot be liquidated by a trustee.

Under bankruptcy law, the debtor is entitled to list the assets set forth in section 703 or section 704 of the California Code of Civil Procedure as exempt. Exemptions are claimed on Schedule C of the bankruptcy schedules (often filed with the bankruptcy petition). As with all schedules, it is important that the debtor fully provide all the information requested. If the trustee does not object to the exemptions the debtor has listed within the time frame specified by the bankruptcy court, these assets will not be a part of the debtor's bankruptcy estate and will not be liquidated to pay creditors through the bankruptcy case.

18) What is a claim and how do I file a claim in the bankruptcy court?

In its most simple terms, a claim is a right to payment from the debtor. A creditor must file a document with the court (called a proof of claim) to register a right to any assets administered in the bankruptcy estate. The proof of claim will set out the amount that is owed to the creditor as of the date the bankruptcy is filed. It is important that creditors provide copies of documents that support the claim (i.e., court judgments, invoices, liens, contracts). However, a creditor should only submit copies of these documents and retain the original documents.

There is no cost to file a proof of claim. Creditors who have a CM/ECF log in and password, may use CM/ECF to file Proofs of claim in PDF format. For creditors who do not have a CM/ECF log in and password, they may use the Electronic Proofs of Claim program available at www.caeb.uscourts.gov or print the Proof of Claim form (Official Form 410) at www.caeb.uscourts.gov to file in person or by mail.

Proof of claims should be filed as soon as possible. In chapter 7, and 13 cases, claims must be filed within ninety days after the first date set for the meeting of creditors. In chapter 9 cases, claims must be filed within 180 days after the court grants order for relief.

Claims filed after the bar date are either given a lower priority in a chapter 7 case or are discharged in chapter 11 and 13 cases. However, in some instances (such as inadvertence, mistake, or carelessness) a creditor may seek leave from the court for an extension of time to file a late proof of claim. Furthermore, a creditor may file a motion with the court to extend the deadline to file a claim.

19) Who reviews (and potentially objects to) claims filed by creditors?

If a proof of claim is properly filed, it is deemed allows unless a party in interest objects to the claim.

Any party in interest (i.e., anyone who has any interest in the allowance of the claim) may object to the proof of claim. In a chapter 7 or a chapter 13 case, the trustee will review all the claims filed by the creditors, including the information to support the claim provided by the creditor. If the trustee or the debtor questions the evidence either the trustee or the debtor may file an objection to the claim. In a chapter 11 case, the debtor-in-possession has the right to review, and if necessary, object to claims filed by a creditor.

When an objection is filed with the court, the objecting party must state the reasons for the objection and provide notice to the creditor. The objecting party carries the initial burden of proof to show that the claim is invalid. However, once the objecting party submits sufficient evidence to show that entitlement to the claim is at issue, the creditor generally has the burden of establishing, by a preponderance of the evidence, that the claim is valid.

Once an objection is filed with the court, a creditor will have an opportunity to respond to the objection and, if necessary, present evidence to the court for a final determination. The manner in which the response should be provided will be set out in the notice provided to the creditor.

20) How do I know if I have a secured debt, priority debt, or unsecured debt?

A secured debt is a debt that is backed by property. A creditor whose debt is secured has a right to take property to satisfy a secured debt. For example, most homes are burdened by a secured debt. This means that the lender has the right to take the home if the borrower fails to make payments on the loan. As another example, most people who buy new cars give the lender a security interest in the car. This means that the debt is a secured debt, and that the lender can take the car if the borrower fails to make payments on the car loan.

A debt is unsecured if one has simply promised to pay someone a sum of money at a particular time and that person has not pledged any real or personal property to collateralize that debt.

A priority debt is a debt entitled to priority in payment in a bankruptcy case (i.e., it is paid ahead of most other debts). A listing of priority debts is given, in general terms, in 11 U.S.C. § 507. Examples of priority debts are some taxes, wage claims of employees, debts related to goods and services provided to a debtor's estate during the pendency of a bankruptcy case, and alimony, maintenance or support of a spouse, former spouse, or child. Questions to determine if a claim is entitled to priority status should be directed to competent legal counsel.

An administrative debt is also a priority debt and is created when someone provides goods or services to your bankruptcy estate. A good example of an administrative debt is the fee generated by an attorney or other authorized professional in representing the bankruptcy estate.

Consumer debt is either secured or unsecured debt incurred by an individual primarily for a personal, family or household purpose. The mortgage on a personal residence is considered consumer debt, but income taxes are not. Debts which are incurred in pursuit of a business would also not be consumer debts.

21) What is the meeting of creditors? Can I attend?

A meeting of creditors (also referred to as a 341 exam) is the hearing all debtors must attend in any bankruptcy case. It is held outside the presence of the judge and usually occurs between twenty (20) and forty (40) days from the date the original petition is filed with the court. In chapter 7, chapter 12, and chapter 13 cases, the trustee assigned to the case conducts the meeting on behalf of the United States Trustee. In chapter 11 cases where the debtor is in possession and no trustee is assigned, a representative of the United States Trustee's office conducts the meeting.

Before the meeting occurs, each individual debtor is required to provide the trustee with a copy or transcript of his/her most recently filed income tax return and copies of pay advices covering the sixty days prior to filing. These documents, plus any others requested by the trustee, should be provided at least 7 days before the date of the creditor's meeting. Failure to do so can result in a motion to dismiss the case or a continued meeting date. The meeting permits the trustee or representative of the United States Trustee's Office to review the debtor's petition and schedules with the debtor. The debtor is required to answer questions under penalty of perjury concerning the debtor's acts, conduct, property, liabilities, financial condition and any matter that may affect administration of the estate or the debtor's right to discharge. This information enables the trustee or representative of the United States Trustee's Office to understand the debtor's circumstances and facilitates efficient administration of the case. Additionally, the trustee or representative of the United States Trustee's Office will ask questions to ensure that the debtor understands the positive and negative aspects of filing for bankruptcy. Finally, individual debtors must provide government-issued photo identification and proof of Social Security number to the trustee or representative of the United States Trustee's Office at the meeting.

The meeting is referred to as the meeting of creditors because creditors are notified that they may attend and question the debtor about the location and disposition of assets and any other matter relevant to the administration of the case. However, creditors rarely attend these meetings and, in general, are not considered to have waived any of their rights by failing to appear. The meeting often lasts only a few minutes and may be continued if the trustee or representative of the United States Trustee's Office is not satisfied with the information provided by the debtor. If the debtor fails to appear and provide the information requested at the meeting, the trustee or representative of the United States Trustee's Office may request that the bankruptcy case be dismissed or that the debtor be ordered by the court to cooperate or be held in contempt of court for willful failure to cooperate.

It is important to note that certain deadlines for creditors to file motions and complaints are tied to the date of the first meeting of creditors and the decisions made by the Trustee. Therefore, it is imperative for a creditor to keep track of the date of the **first** meeting of creditors. This information should be provided soon after the bankruptcy petition is filed. The information can also be obtained on the U.S. Bankruptcy Court for the Eastern District of California's Internet web site, located at **www.caeb.uscourts.gov**, via a system called PACER. One can also obtain a PACER login and password, by visiting the PACER Service Center web site at http://pacer.uscourts.gov.

22) What does it mean when the chapter 7 Trustee lists the case as a "no asset case"?

In the Eastern District of California, on average, between 94-95 percent of all bankruptcies are listed as "no asset cases". When a trustee certifies that a case is a "no asset case" it means that the trustee has neither received any property nor paid any money on account of this estate. The trustee is further certifying that he or she has made a diligent inquiry into the financial affairs of the debtor as well as the location of the property belonging to the estate and he or she has determined that there is no property available for distribution from the estate over and above that exempted by law. The trustee is also certifying that the debtor's estate has been fully administered. The trustee will also list the amount of debtor's assets that are exempt, the claims that have been asserted, and the claims that are scheduled to be discharged without payments.

By making this certification the trustee is requesting that he or she be discharged from any further duties as trustee.

Even though a trustee has made such a determination, a creditor may still file motions for relief from the automatic stay, lawsuits seeking denial of discharge or determinations of non-dischargeability, or various other actions in the case. The main types of actions are discussed in more detail in other sections of this handbook.

23) The trustee has hired an individual (e.g., attorney or accountant), what does that mean?

The bankruptcy code permits a trustee to hire professionals to assist the trustee in their duties. Typically, this only occurs in cases where the trustee believes there are potential assets to be administered.

A trustee will hire brokers to help him market and sell property, appraisers to help him determine the value of property, and accountants to help him investigate the books and records of the debtor, or to prepare information necessary for tax purposes. Generally, when a trustee hires an attorney, it is to provide him legal counsel on complicated matters that require legal expertise. If the attorney is hired as special counsel, it is usually to recover assets for the estate, whereas, if the attorney is hired as general counsel, it is usually to provide various forms of legal advice to help the trustee perform his or her duties.

When the services of the professional are complete, the trustee will submit an application for approval of fees to be paid to the professional. The application will list the services provided by

the professional, as well as any compensation the professional is asking to receive. The fees will then be paid out of the estate before any creditors' claims are paid. Notice of the application will be served on all creditors and any party in interest has the right to file documents or appear at the hearing and lodge their support or objection to the fee payment.

24) <u>If there are assets to distribute to creditors, when can I expect to be paid?</u>

It should be understood that the vast majority of chapter 7 cases do not result in distributions to any unsecured creditors. But, in the rare instances where there are assets to distribute, the timing of payments to creditors varies from case to case. The chapter the case is filed under also impacts the timing of payments.

In a chapter 7 case, the trustee must investigate completely all aspects of the case, acquire (usually through motions or lawsuits) property that was improperly transferred by the debtor, liquidate any and all assets (after obtaining court approval for the sale of any assets), review all claims for potential objections, and then make distributions to creditors. Any of these steps can take months or years, depending on the complexity of the issues. Creditors should be patient with the trustee who has a duty to expeditiously administer the case and a duty to ensure each creditor receives a pro rata distribution of any liquidated assets that remain after administrative expenses are paid.

In a chapter 11 case, the plan for reorganization will include a payment schedule to creditors and the debtor will be obligated to make payments according to this schedule.

In a chapter 13 case, a debtor proposes a payment plan to provide for payments to creditors. The payment plan is mailed to every creditor at the outset of the case. The plan must provide enough money to pay priority claims, but not necessarily unsecured creditors. Payments will be made over time according to the payment plan. By law, the plan must be completed within five years.

25) <u>What does it mean for unsecured creditors to receive a *pro rata* share?</u>

Pro rata means that each unsecured creditor (as opposed to a secured creditor or a creditor with a priority claim) gets the share that represents the proportionate share its total claim has to all claims. This means that the largest claim gets the biggest portion of the money. The exact amount is determined by figuring out a ratio of the claim to the total of the claims in a particular class. The creditor then receives an amount that corresponds to that percentage when the trustee makes a final distribution.

By way of example, for simplicity's sake, assume that in a hypothetical chapter 7, there are no priority claims and there are only three unsecured creditors – A, B, and C. Creditor A is owed $50,000, Creditor B is owed $20,000 and Creditor C is owed $30,000 and the total general unsecured debt is $100,000. Assume that after administrative claims and professional fees are paid, there is $50,000 to be paid to creditors. Creditor A will receive $25,000 (i.e., 50% of $50,000 since its $50,000 claim is 50% of the $100,000 in total general unsecured debt). Creditor B will receive $10,000 (i.e., 20% of $50,000 since its $20,000 claim is 20% of the

$100,000 in total unsecured debt). Creditor C will receive $15,000 (i.e., 30% of $50,000 since its $30,000 claim is 30% of the $100,000 in total unsecured debt).

If the debtor files a chapter 13 plan, and the creditors A, B, and C have priority claims, then each of the creditors would be entitled to receive a portion of the monthly payment made by the debtor. So, if the monthly payment is $10,000, Creditor A will receive $5,000 per month, Creditor B will receive $2,000 per month, and Creditor C will receive $3,000 per month.

26) <u>What does it mean when the debtor receives a discharge?</u>

The discharge order is issued by the court and permanently prohibits creditors from taking action to collect dischargeable debts against the debtor personally. This does not prevent secured creditors from seizing collateral if payments are not kept up, or other creditors from pursuing property of the estate. Some debts are not dischargeable, and others may be found to be nondischargeable depending on particular circumstances.

In a chapter 7 case, the bankruptcy court will order that the debtor be discharged of all dischargeable debts once the time for filing complaints objecting to discharge has expired unless:

The debtor is not an individual; ***or***
A complaint objecting to the debtor's discharge has been filed; ***or***
A motion to extend the time for filing a complaint objecting to the debtor's discharge is pending; ***or***
The debtor has filed a waiver of discharge; ***or***
A motion to dismiss the case for substantial abuse is pending; ***or***
A motion to extend the time for filing a motion to dismiss the case for substantial abuse, is pending; ***or***
The debtor has not paid in full the court fees connected with the filing of the case; ***or***
The debtor has not filed Official Form 23, *Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management*.

In chapter 11 cases, generally the completion of a confirmed plan of reorganization discharges the debtor from dischargeable debts that arose before the date of the order of relief unless:

The plan or order confirming plan provides otherwise; ***or***
The debtor does not engage in business after consummation of the plan; ***or***
The plan is a liquidating plan, and the debtor would be denied a discharge in a chapter 7 case under 11 U.S.C. § 727.

In chapter 12 cases, the court will order that the debtor is discharged of dischargeable debts after the debtor has completed all payments under the plan, or prior to plan completion, after notice and hearing, if the requirements of 11 U.S.C. § 1228(b) have been met. In chapter 13 cases, the debtor will be granted a discharge of dischargeable debts after completing all payments under the plan, or prior to plan completion, after notice and hearing, if the requirements of 11 U.S.C.

§ 1328(b) have been met and the debtor has filed Official Form 23, *Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management*.

The granting of a discharge does not automatically result in the closing of a case. All contested matters, adversary proceedings, and appeals must be resolved, and the appointed trustee or debtor-in-possession must file a final report and account and request entry of a final decree before the Clerk's Office will close the case.

27) What types of debts are generally not dischargeable in a bankruptcy?

11 U.S.C. § 523(a) provides a list of debts that are not dischargeable in a bankruptcy. Typically, a debtor cannot discharge certain taxes or customs duties, certain spousal or child support obligations, or fines, penalties, or forfeitures to a governmental unit. In addition, debts incurred through a violation of securities laws, debts resulting from personal injury caused by debtor while intoxicated, certain student loans, and debts that the debtor previously could not discharge in a prior bankruptcy (either by denial or waiver) may be nondischargeable.

Typically, the most common nondischargeable debts are debts that are owed to a creditor based upon the debtor committing fraud or theft. Additionally, willful and malicious injury by the debtor to another person/entity, or the property of another person/entity cannot be discharged.

In many instances, a creditor who believes a particular debt falls within one of the categories described in 11 U.S.C. § 523(a) must timely file a lawsuit in the bankruptcy court in order to obtain a determination that the particular debt is nondischargeable. Failure to file the lawsuit within the timeframe mandated by the Bankruptcy Code will cause a waiver of any and all rights the creditor may have had.

For an explanation of how to obtain a determination of nondischargeability see the section entitled: What can I do if I think a debtor is attempting to discharge a nondischargeable debt owed to me?

28) What can I do if I think a debtor is attempting to discharge a nondischargeable debt owed to me?

As described above, certain debts, listed in 11 U.S.C. § 523(a), are nondischargeable.

A creditor may file a lawsuit in the bankruptcy court (referred to as an adversary proceeding) to object to the discharge of a specific debt. If the creditor prevails in the lawsuit, the debt is declared to be nondischargeable by the bankruptcy court. Additionally, the creditor may attempt to recover the debt under applicable state laws.

However, there are strict constraints on the time period with which to file an adversary proceeding to determine the dischargeability of certain debts. In a chapter 7, 11, 12 or 13 case, such a complaint must be filed not later than sixty (60) days following the first date set for the meeting of creditors. It is very important to note that the statute requires that the deadline be calculated from the first date set and not from any continued hearing date. The court must give

all creditors not less than thirty days notice of the time. Any party can file a motion to extend the deadline to file a complaint, but the motion must be made before the deadline has expired. After a hearing, noticed to all parties in interest, the court may determine that cause exists to extend the time to file a complaint.

It should be noted that in a chapter 7 case only an individual can discharge debts. Therefore, if an entity (i.e., a corporation, partnership, limited liability company), other than a sole proprietorship (i.e., a dba), files for bankruptcy under chapter 7, it will not be necessary for a creditor to file an action for non-dischargeability because the debt to the creditor cannot be discharged through bankruptcy.

Actions for determination of non-dischargeability are often complex. 11 U.S.C. § 523(a) is strictly construed against the objecting creditor and liberally in favor of the debtor. If a creditor believes a debt should not be discharged, the creditor should consult competent legal counsel upon receiving any information of the filing of the debtor's bankruptcy.

29) Can I object to a debtor's entire discharge?

Debtors in chapter 7 do not have an automatic right to receive a discharge. A court may deny a chapter 7 discharge for any of the reasons provided in 11 U.S.C. § 727(a). Among other things, these reasons include perjury and other fraudulent acts, destruction or concealment of books or records, failure to account for a loss of assets, or transfer or concealment of property with intent to hinder, delay, or defraud creditors.

The trustee, the U.S. Trustee, or a creditor may file objections to the discharge. To object to the discharge, a creditor must file a complaint in the bankruptcy court within sixty (60) days of the first date set for the meeting of creditors.

Notice of the deadline is provided to creditors soon after the case is filed. If a creditor believes a denial of discharge is appropriate the creditor should consult competent legal counsel upon receiving any information of the filing of the debtor's bankruptcy.

Debtors in chapter 12 and 13 cases are usually entitled to a discharge upon completion of all payments pursuant to the plan. However, a debtor may not obtain a discharge for debts incurred by many of the same means discussed above. The time to assert nondischargeable debt is before the plan is confirmed by the court.

One important distinction to note between actions for denial of discharge and determinations of non-dischargeability lies in the settlement process. As a rule, most cases do not go to trial because the parties settle outside of court. When seeking a determination of non- dischargeability, a creditor can agree to drop the lawsuit in exchange for payments from the debtor. However, when seeking a denial of discharge, the trustee, the U.S. Trustee, and potentially any other creditor can object to the settlement agreement and ask the judge for the ability to continue the lawsuit against the debtor on behalf of all other creditors. This is because the creditor who seeks a denial of discharge is essentially representing all creditors when the creditor files its lawsuit. So, the settling creditor may be removed as plaintiff, but the lawsuit

may continue against the debtor, destroying any incentive for the debtor to agree to a settlement with any one particular creditor. A creditor contemplating filing a complaint for denial of discharge is recommended to contact competent legal counsel before filing such a complaint.

30) Can a debtor's discharge ever be revoked?

Under certain circumstances, a debtor's discharge may be revoked. These circumstances usually involve fraud, non-cooperation, or material non-disclosure. A trustee, the U.S. Trustee, or a creditor may request that the debtor's discharge be revoked if the debtor obtained the discharge fraudulently, failed to disclose property acquired or became entitled to acquire property that would be property of the estate, or disobeyed a lawful order of the court. After notice and a hearing or trial, the court will determine whether grounds exist to revoke the discharge. In most instances, a request to revoke a discharge must be filed within one year after the discharge was granted.

31) What does it mean when a case is dismissed?

In almost every instance, a dismissal order ends the case. Upon dismissal, the "automatic stay" ends and creditors may start to collect debts, unless a discharge is entered before the dismissal. An order of dismissal itself will not free the debtor from any debt. Often, a case is dismissed when the debtor fails to do something he or she must do (such as show up for the meeting of creditors, answer the trustee's questions honestly, produce books and records the trustee requests), or if it is in the best interests of the creditors. Unless the debtor appeals the order or seeks reconsideration of the order within fourteen (14) days after entry of the order, the Clerk will automatically close the case.

In some instances, a case may be dismissed before the debtor is granted a discharge. Typically, this will happen if the debtor fails to appear at the meeting of creditors, fails to complete appropriate documents, or fails to pay the filing fee. Creditors who do not want the case to be dismissed should file documents with the court asking that the case not be dismissed and explain the reasons why (i.e., the debtor has assets which can be liquidated to pay debts).

32) Can I cause a case to be converted from a chapter 11 or 13 to a chapter 7?

Under certain circumstances, a case that is filed under a chapter 11 or 13 may be converted into a chapter 7 if the debtor is eligible to be in a chapter 7. The debtor can voluntarily seek to convert to a different chapter or it can occur involuntarily.

A case may be involuntarily converted by the bankruptcy court upon the request of the trustee, the U.S. Trustee, or a creditor. After notice and a hearing, the court may order a conversion if there is good cause (e.g., if it is in the best interests of the creditors, or the debtor is attempting to abuse the bankruptcy system).

33) <u>The debtor owes money to my legal entity (i.e., corporation, partnership, LLC, etc.) may I still file motions or respond to other matters before the court on behalf of the entity?</u>

No. 28 U.S.C. § 1964 provides that a parties may plead and conduct their own cases personally or by counsel. However, an individual who is not an attorney cannot appear in federal court to represent an entity. Even if the entity is solely owned by one individual, that individual cannot appear in court to represent the entity. The entity is separate and distinct from the individual. By making an appearance in court, the individual is representing the corporation. Only an attorney may represent another individual or entity.

However, this rule does not apply to filing claims. Anyone with the proper authority to do so may file a claim on behalf of the entity. But, any responses to properly filed objections to the claims must be handled by an attorney.

34) <u>What is an Involuntary Bankruptcy Petition?</u>

Creditors who wish to put an individual or entity into bankruptcy may do so by filing an involuntary bankruptcy petition. However, a creditor should be very cautious when deciding whether to file an involuntary bankruptcy because there are severe consequences for improper filings. Before undertaking the filing of an involuntary bankruptcy, a creditor should seek the advice of competent legal counsel.

11 U.S.C. § 303 sets out most of the framework for involuntary bankruptcies. Creditors holding noncontingent claims that are not the subject of a bona fide dispute as to liability or amount may, under certain circumstances, initiate a chapter 7 or 11 case by filing an involuntary bankruptcy petition. If the debtor has more than twelve creditors, the petition must be brought by at least three creditors with noncontingent, undisputed claims that aggregate at least $13,475 (not including the value of any lien securing such claim).

A debtor may file an opposition to the involuntary petition and at the subsequent hearing, the court will have to determine whether the debtor is generally paying debts as the debts become due (unless the debts are subject to a bona fide dispute). If the court dismisses the involuntary petition, it may grant a judgment against the petitioning creditors for the costs and attorney's fees incurred by the debtor as well as compensatory damages caused by the filing. Furthermore, if the involuntary bankruptcy was brought in bad faith, the court may also determine that punitive damages are warranted.

Any creditor that is contemplating bringing an involuntary petition should seek the advice of competent legal counsel and carefully consider the consequences that may ensue.

35) <u>What does the Clerk's Office do?</u>

The Clerk's Office provides a variety of services to the bankruptcy judges, attorneys, and the public. Clerk's Office staff provide clerical and administrative support to the court by filing and maintaining case-related documents, signing ministerial orders, issuing process and writs,

collecting authorized fees, sending notices, entering judgments and orders, and setting hearings. The services provided by the Clerk's Office to attorneys and the public include responding to requests for information and providing copies of documents in bankruptcy case files.

The Clerk's Office is a source for many forms, local rules, and other information you will need to file your bankruptcy petition and related documents. Forms and local rules are also available on the U.S. Bankruptcy Court for the Eastern District of California's Internet web site, located at **www.caeb.uscourts.gov**.

36) Can the Clerk's Office give legal advice?

A bankruptcy case is a legal proceeding affecting the rights of debtors, creditors, and other parties in interest. According to Canon 4(D) of the Code of Conduct for Judicial Employees, Clerk's Office staff should not engage in the practice of law. Additionally, 28 U.S.C. § 955 prohibits Clerk's Office staff from giving information which may be characterized as legal advice.

While there is no precise definition of legal advice, at a minimum it includes (1) acting on a person's behalf in presenting a claim or defense to a court, and (2) advising a person on the merits of a claim or defense and the state of the law applicable to it. Clerk's Office staff, therefore, will not provide information relating to:

The application of laws and rules to individual claims or defenses;
Whether jurisdiction is proper in a particular court;
Whether a complaint properly presents a claim;
What the "best" procedures are to accomplish a particular objective; or
The interpretation of case law.

Clerk's Office staff will not offer any opinion as to the probable disposition of any matter by the court. The information provided by Clerk's Office staff is limited to explaining the filing requirements of the court and reading, without comment, the actual text of a bankruptcy rule, local rule, or statute.

37) How do I "file" a document with the Court?

Effective April 3, 2006, attorneys who regularly practice and trustees assigned cases in the Eastern District of California shall file documents in electronic form.

Unrepresented persons may also upload and submit PDF documents through the court's Debtor Drop Box. The Debtor Drop Box is a virtual intake counter, where documents are reviewed and if accepted, processed.

Absent extraordinary circumstances, bankruptcy petitions, pleadings and other documents on paper shall be submitted for filing by mail, Debtor Drop Box located on our website at **www.caeb.uscourts.gov**, or in person at a Clerk's Office public counter between the hours of 9:00 a.m. and 4:00 p.m. on all days except Saturdays, Sundays and legal holidays. When extraordinary, compelling circumstances require delivery of a paper document to the Clerk's Office after hours, an emergency filing can be arranged by contacting the appropriate

divisional Clerk's Office during business hours. The Clerk's Office does not accept documents for filing by facsimile.

38) How can I obtain case information and copies of documents?

Case information may be obtained over the Internet, by telephone, by mail, or by visiting the Clerk's Office. Copies of documents filed in a case are available over the Internet, by mail, or by visiting the Clerk's Office.

Obtaining case information and copies of documents over the internet

Public access to bankruptcy case information and court documents is available over the Internet through the Public Access to Court Electronic Records, or PACER, program. A login and password issued by the PACER Service Center are required. The charge for viewing or downloading documents and reports (including dockets) is $.10 per page. To obtain a PACER login and password, visit the PACER Service Center web site at http://pacer.uscourts.gov.

Obtaining case information by telephone

The Multi-Court Voice Case Information system (McVCIS) provides 24 hour public access to Eastern District of California bankruptcy case information by telephone. Callers may search for case information by case number, debtor or party name, social security number or tax ID number using a touch tone telephone. Summary information for matching cases, including case number, debtor names, last four digits of social security number or tax ID number, case filing date, attorney name and telephone number if one exists, Judge and trustee names, discharge date, case closing date and disposition, is read to the caller by a computer generated, synthesized voice device. McVCIS is provided free of charge and may be accessed by calling (866) 222-8029. Additional information concerning McVCIS is available under Case Information on the Court's Internet web site (www.caeb.uscourts.gov).

If you are unable to obtain the information you need from McVCIS, use the telephone numbers provided on the next page to call the divisional office in which the case is pending for assistance between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Sacramento Division: (916) 930-4400
Modesto Division: (209) 521-5160
Fresno Division: (559) 499-5800

Obtaining case information and copies of documents by mail

A $32.00 fee must be paid for every name or item searched before any information, other than basic case information, will be provided to you by a deputy clerk. Requests for information subject to the fee should be made in writing. You may, however, obtain the information free of charge in most cases by coming to the Clerk's Office and searching for the information yourself.

To obtain case information and copies of documents by mail, send a written request containing the case number, the case name, the information, or document you request, your name, address, a telephone number where you can be reached during business hours and the best time to call, with a self-addressed, stamped envelope. Written requests for information requiring a physical search of the court's records should be accompanied by payment sufficient to cover the $32.00 fee per name or item searched. Requests for copies should be accompanied by payment sufficient to cover the $.50 per page copy charge. If certified copies are requested, payment should include an additional $11.00 per certified document.

Obtaining case information and copies of documents by visiting the clerk's office

As a general rule, court dockets and all documents in the court's case files are public record and available to the public for inspection.

The court docket is a list of brief entries made to record the activity in a case. It contains information concerning the parties involved, filing fees paid, deadlines set, hearings held, and documents filed in the case. For each order and judgment filed, the date the order or judgment was recorded, or entered, on the docket is indicated. Documents are listed on court dockets in chronological order from the top down. The document initiating the case will be the first one listed below the names and addresses on the first page of the docket.

Dockets may be accessed electronically for viewing and printing from computer terminals in the Clerk's Office public counter lobby. There is a $.10 per page charge for printing copies of any record or document accessed electronically at a public terminal in the courthouse. Printed dockets may be picked up at the counter. Payment is due at the time documents are printed and shall be made in the form of cash, money order, cashier's check or attorney's trust account check. The Clerk's Office will not accept personal checks or make change. Cash payments must, therefore, equal the amount due. Partial dockets may be viewed and printed by entering beginning and ending dates when requesting the docket.

Documents filed on or after March 1, 1999 may be viewed and printed from computer terminals located in the public lobbies at all three divisional Clerk's Offices. A fee of $.10 per page will be charged for printing copies of documents accessed electronically at a public terminal in the courthouse. An additional fee of $11.00 per document will be charged for certified copies. Payment is due at the time documents are printed and shall be made in the form of ~~cash,~~ money order, cashier's check, ~~or~~ attorney's trust account check or debit card. No cash accepted. The Clerk's Office will not accept personal checks or make change. Instructions for viewing and printing document images are located at each lobby terminal.

Obtaining copies of paper documents from archived files

Due to limited storage space, closed case files containing paper documents are archived by periodically shipping them to the Federal Records Center in San Bruno, California for storage. Files and dockets stored at the Federal Records Center may be recalled to the Clerk's Office and reviewed in the Clerk's Office file review area. A $64.00 fee will be charged for each record

retrieved from the Federal Records Center by the Clerk's Office. This fee must be paid before the Clerk's Office will recall a record.

You may also request photocopies of archived personal bankruptcy case files directly from the Federal Records Center by U.S. Mail or FAX. Photocopies of the entire contents of an archived case file, a package of common documents, or specific requested documents from the docket sheet may be requested. You must obtain the transfer, box, and location numbers for the file from the Clerk's Office and include them, along with the court location (city and state), debtor name(s), case number, your delivery information, and your payment information in your request to the Federal Records Center.

Alternatively, you may travel to the Federal Records Center in San Bruno to review the archived file or docket. All visits to the Federal Records Center are by appointment only.

39) Where can I get more information concerning bankruptcy and bankruptcy procedure? Is there any place I can get free or low-cost legal advice?

The easiest way to get low or no-cost bankruptcy advice is to make an appointment with a private attorney. Many will provide a free initial consultation during which you can have your questions regarding bankruptcy procedures and their application to your situation answered. In Sacramento, McGeorge Law School operates a community legal services clinic. The Bankruptcy Clinic represents low-income clients on a variety of bankruptcy matters, although the clinic is only able to accept new clients on a limited basis. Services are provided by law students with attorney supervision. The McGeorge Community Legal Services telephone number is (916) 340- 6080. For very low-income people, the Voluntary Legal Services Program ("VLSP") offers a self-help bankruptcy clinic. Experienced bankruptcy attorneys, law students and other volunteers assist low-income people in completing their own bankruptcy papers. They also have an arrangement with providers to deliver both prefiling consumer credit counseling services, and post-filing debtor financial education at no cost. In order to see if you qualify, call (916) 551- 2150.

An Attorney Referral and Information Service provided by the Fresno County Bar Association is available in Fresno. Referral hours are from 8:30 a.m. - noon, and 1:00 p.m. - 4:00 p.m., Monday through Friday. Call (559) 264-0137. In Modesto, The State Bar of California has a Certified Lawyer Referral Service for Stanislaus County on their website at www.calbar.ca.gov. In other areas there may be similar clinics, or your local legal services office may offer bankruptcy assistance.

In Sacramento, the Clerk's Office, in conjunction with the Sacramento County Bar Association Bankruptcy and Commercial Law Section, has made efforts to establish a program known as the Pro Se Bankruptcy Assistance Program. Debtors and creditors who have non-legal bankruptcy related questions may sign up with the Clerk's Office to speak with a volunteered attorney about various matters. Although attorneys are generally the only ones who can provide legal assistance, the attorneys who volunteer in this program **cannot provide legal counsel**. The sole purpose of this program is to guide debtors and creditors to the proper information. If you wish to speak with a volunteer, contact the Sacramento Clerk's Office.

Additionally, there are a variety of sources available in the local law libraries. One source that can provide a basic overview of each section of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure is Collier on Bankruptcy P [000.00] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).