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# Preface

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This book evolved from a need to develop a nuts-and-bolts description of the bankruptcy system written in a manner that could be easily understood by nonlawyers.

Our primary intent has been to design this text as a basic primer for legal assistants or paralegal students to help them grasp the practical aspects of representing debtors or creditors within the bankruptcy system. To meet this challenge, we have explained practice and theory together in as concise a format as possible. We have chosen this approach because practice is almost always dictated by the underlying theory, and it is easier to learn a practice when one has been provided with the basic theory behind the practice.

In subsequent editions, we have listened to the many thoughtful comments of paralegal instructors and students from all over the country, some of whom have gone to exceptional effort to hunt us down, to enhance the practical nature of the text, and to further simplify the subtleties and nuances of the Bankruptcy Code and system. Each new edition updates and revises the text to keep abreast of all statutory, case law, and rule changes that regularly take place.

Along with the now standard Practice Pointers and Practice Exercises features, the Twelfth Edition continues the unique innovations introduced in the last edition, as well as utilizes the most up-to-date revisions to the Official Bankruptcy Forms and the most current dollar amount adjustments. In August, 2019, a new subchapter was added to Chapter 11, the “Small Business Reorganization Act of 2019,” and we have been able to incorporate discussion of these new provisions in the text. The Tenth Edition introduced a new chapter 3, Understanding the Client, where client interview skills were introduced along with the interview process. The student is presented with a detailed fact pattern designed almost like a short story to both develop the interview concept and also to provide reference points for the instruction to come. In conjunction with this “story,” throughout the book you will find “Fact Pattern” references to tie the material on a given page back to the fact pattern in chapter 3. The hope is that this design will help

to facilitate the learning process as you can tie the new material presented in each subsequent chapter back to the underlying fact pattern. This edition includes the most up-to-date statutory adjustment of dollar amounts, as revised triennially, most recently on April 1, 2022, to the exemption amounts and other provisions in the Code. Combined, these innovations and revisions represent the cutting edge in bankruptcy education.

Paralegals are invaluable in the bankruptcy system. Under proper legal supervision, paralegals can efficiently perform various tasks for clients at a substantial savings. Because much of bankruptcy practice is routine, presenting these routines and the reasons for them will help a paralegal be properly prepared to assist in a debtor or creditor bankruptcy practice. The introduction describes the role of paralegals in the bankruptcy system. The student should read the introduction twice, once at the beginning of the course and again at the end. In this way, the material will act as both an introduction and final review of the course.

It has not been our intent to analyze the complex subtleties of the Bankruptcy Code and its attendant case law interpretation, but rather to describe the routine events that occur in all bankruptcy proceedings, events that normally occur without dispute or litigation. These events account for a majority of bankruptcy practice, much of which is not problematic. Thus, law students and nonbankruptcy attorneys may also find this text a useful reference tool for finding the answers to common bankruptcy questions.

For example, by reading chapter 5 of the text and the forms accompanying chapter 5 in the forms materials, any student or practitioner can quickly learn the basic principles of providing notices to creditors or parties in interest in bankruptcy proceedings, and learn about the documents and timing involved, while receiving some guidance as to the applicable local rules in a given district.

Our goal in undertaking this work has been to describe the Bankruptcy Code as a comprehensive system of debtor relief and debt collection, in terms of the organization and practical functioning of this system. We are honored to have been given the opportunity to evolve the original work from the laboratory of time and use.

Upon completing this undertaking, we have reached the inescapable conclusion that the Bankruptcy Code exists first and foremost as a tool of debt collection and not of debtor relief. Conversely, the debtor relief provided by the Bankruptcy Code is among the most liberal relief that has existed in the evolution of bankruptcy laws in Western civilization. Nonetheless, the 2005 BAPCPA legislation has been perceived by many to restrict debtor relief while enhancing the debt collection aspects of the Code, particularly in consumer bankruptcy cases.

This book has also been prepared with the secondary purpose of aiding creditor representatives in understanding how the bankruptcy system may be properly utilized as a debt collection device to increase overall recovery rates.

We are optimistic that having described the Bankruptcy Code in this manner we may aid, however slightly, in enhancing the efficiency of the system.

Finally, please note that the text occasionally refers to forms materials. The forms are available for download. All forms can be accessed at the website that accompanies this text at [www.AspenPublishing.com/Buchbinder-Bankruptcy12](http://www.AspenPublishing.com/Buchbinder-Bankruptcy12).

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# Introduction

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## **Paralegals and the Bankruptcy System**

The use of paralegals to assist counsel engaged in bankruptcy practice has grown commensurate with the growth and acceptance of paralegals within the legal system in general. As in other areas of legal practice, bankruptcy paralegals can provide competent assistance to counsel in the areas of legal research, document preparation, fact investigation, and litigation support.

The Bankruptcy Courts that have examined the use of paralegals in bankruptcy practice overwhelmingly favor the concept. Many basic services can be provided to clients at a substantial cost savings because of the low hourly billing rates of paralegals compared to associate or partner attorneys. The services of paralegals can normally be compensated for under the bankruptcy system's fee application process described in chapter 8 *infra*. The Bankruptcy Courts' view of paralegal activity is best summed up in the following quotation:

*In effect, the goal of the paralegal is to perform a supervised legal function for a client at considerably less expense to the client. The concept is an efficient idea in today's legal market where attorney costs are escalating beyond the approach of clients in need of legal assistance.*<sup>1</sup>

This is not to suggest, however, that a paralegal may operate independently of counsel in providing bankruptcy-related services to clients. The Bankruptcy Courts examining this issue have invariably and correctly found such independent activities to constitute the unauthorized practice of law.<sup>2</sup> In many states, the unauthorized practice of law can be prosecuted as a misdemeanor. The paralegal must always tread cautiously in the face of clients who will invariably seek to pressure the paralegal to provide legal advice.

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1. *In re Bonds Lucky Foods, Inc.*, No. 1, 76 B.R. 664, 671 (Bankr. E.D. Ark. 1986).

2. *In re Caise*, 359 B.R. 152, 155 (Bankr. E.D. Ky. 2006) ("the paralegal must work under the supervision and direction of a licensed lawyer"). See chapters 8 and 10 *infra*.

This text focuses on the theory, practice, and substantive law used by any member of the legal profession engaged in activity within the bankruptcy system, emphasizing the perspective of a paralegal working under the supervision of counsel. This introduction to the Full Edition will clarify the role and most useful functions that paralegals can provide to counsel in consumer bankruptcy practice. The authors suggest that students read this introduction both at the beginning and at the end of the course. The second reading will serve as a concise review of the course.

## **A. ROLE OF THE PARALEGAL**

The role of paralegals in bankruptcy practice is similar to that of paralegals in other areas of legal practice. Research assistance, document preparation, and litigation support comprise the core of activity performed by paralegals in bankruptcy practice.

Paralegals may be required to research specific legal issues. The research activity may be as simple as verifying the existence and amount of a particular exemption, as described in chapter 10 of this text, or the research assignment might involve complex issues of adequate protection in relief from stay motions in chapter 13 of this text. Nonetheless, regardless of the simplicity or complexity of a research assignment, the basic research methodology presented in chapter 32 will allow many issues to be competently researched in minimal time.

In the area of document preparation, paralegals aiding in bankruptcy practice will often provide substantial assistance to counsel in preparing Statements and Schedules and the Statement of Current Monthly Income for a debtor or proofs of claim for a creditor.

In smaller firms, paralegals may also be asked to prepare preliminary drafts of motions for relief from stay (see chapter 13 *infra*), complaints objecting to the dischargeability of a debt or the discharge of a debtor (see chapter 14 *infra*), and motions to sell property (see chapter 19 *infra*).

In the realm of bankruptcy litigation, a paralegal will provide litigation support services similar to those performed in other areas of legal practice.

## **B. COMMON ACTIVITIES**

A more detailed summary of the activities most commonly performed by paralegals in bankruptcy practice will help the student to synthesize many of the materials found later in this text. This summary may also serve as a useful guide to practitioners, particularly those who do not regularly practice bankruptcy law.

When representing debtors, the most common activity performed by a paralegal is assisting counsel in the preparation of the basic documents required to be filed in a bankruptcy proceeding as described in chapters 4 and 8 of this text with regard to Chapter 7 proceedings, or as described in chapter 24 of this text with regard to a Chapter 13 proceeding, respectively. The checklists and forms accompanying these text chapters will serve as useful practice aids for students in class and for practicing paralegals.

The Statements and Schedules and the Statement of Current Monthly Income are very often prepared by paralegals in draft form from data provided by counsel. The tutorials in chapters 30 and 31 have been designed to educate and assist students in the effective preparation and reading of these materials, as well as to explain the reason or reasons for the required data and its organization.

When representing creditors, paralegals will perform a number of basic tasks. Preparing a proof of claim, as described in chapter 22 *infra*, is by far the most common. Providing support to counsel in the preparation and prosecution of a motion for relief from the automatic stay, as described in chapter 13 *infra*, is another common activity performed by paralegals for creditor clients.

Obtaining a copy and providing a preliminary report to counsel concerning the information contained in a debtor's Statements and Schedules is a task that is also regularly performed by paralegals for creditor clients. The analysis provided in chapter 30 has been designed to assist paralegals in performing this preliminary review. Because this analysis will help a creditor's counsel or a trustee to determine the initial likelihood of a recovery for the creditors, the importance of this review cannot be overemphasized. Any creditor client will need to know this information to determine how much effort to expend in attempting to recover a dividend from a bankruptcy estate.

Regardless of the party represented, a paralegal will always provide invaluable litigation support. This support may involve the performing of services in connection with any of the various motions or adversary proceedings described throughout this text. Other than legal issues involving specific application of the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, the types of activity conducted will not vary from those in any other litigation: Facts and documents have to be investigated and organized, discovery may take place, depositions will have to be digested, briefs and motions may have to be written, and finally, the matter may have to be prepared for trial and actually tried. The value of paralegals to counsel in assisting with these services is well proven.