

**Do You Want to Enter the Dark Side?
What Does It Take to Be a Bankruptcy Attorney?**

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A CCCBA presentation by

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I. What it takes to become a bankruptcy attorney

A. REQUIREMENTS:

1. Admission by the California Bar Exam and the local Federal District Court in good standing. <https://www.cand.uscourts.gov/attorneys/admission-to-practice/>
2. Electronic case filing “ECF” account. <https://www.pacer.gov/>
3. Bankruptcy case software so you can input and file cases. Common one are BestCase and Next Chapter. <https://www.bestcase.com/>; <https://nextchapterbk.com/>
4. Be familiar with the Bankruptcy Code (11 U.S.C. et seq.), Federal Rules of Bankruptcy Procedure (overlay with Federal Rules of Civil Procedure), local bankruptcy rules, local guidelines and district procedures, and the written/unwritten particular judge rules. Northern District and Eastern District California bankruptcy courts cover certain counties. Within those districts, the bankruptcy courts are broken down into divisions - Oakland division, San Jose division, etc.
<https://www.canb.uscourts.gov/procedures/local-rules>
<https://www.canb.uscourts.gov/sites/default/files/judge/procedures/Rights-and-Responsibilities-of-Chapter-13-Jan-2019-update-2.pdf>;
<https://www.canb.uscourts.gov/procedure/guidelines-legal-services-be-provided-debtors-attorney-chapter-7-cases>

B. HIGHLY RECOMMENDED:

1. Get a mentor. You may need someone to look over your first cases and answer all sorts of questions that you will have about the cases you see.
2. Join an association.
 - a. National Association of Consumer Bankruptcy Attorneys (NACBA) is the largest association for consumer bankruptcy attorneys. <https://www.nacba.org/>

- b. American Bankruptcy Institute (ABI) is a national association whose members are consumer and business bankruptcy attorneys. <https://www.abi.org/>
 - c. The Contra Costa Bar Association bankruptcy section which hosts programs like this. <https://www.cccbba.org/>
 - d. Bay Area Bankruptcy Forum has many events, often on more advanced topics of law and business. <https://www.babf.com/>
3. Join a listserv.
- a. Many of the above organizations have listservs that serve as forums for asking relevant questions and that have a repository of thousands of questions and answers. Ask a local practitioner which one they use.
4. Get trained.
- a. Many of the associations listed above have local and online conferences and webinars to introduce you to bankruptcy law. NACBA in particular has new bankruptcy attorney workshops.
 - b. PLI has an all-day program that one of your panelists taught. PLI has offered past years' webcasts free for folks that offer some pro-bono services.
<https://www.pli.edu/programs/bankruptcy-basics-for-low-income-clients>
 - c. NACTT, National Association of Chapter 13 Trustees has a lot of information about chapter 13 bankruptcy for a small access charge.
<https://considerchapter13.org/>
 - d. The Contra Costa Bar Association has lawyers in the library program on bankruptcy law. New volunteers can learn a lot by volunteering to assist the experienced bankruptcy attorneys.
 - e. Some individual attorneys/law firms have bootcamps for beginners.
5. Other resources.
- a. Colliers on Bankruptcy
 - b. Rutter Group California Practice Guide, Bankruptcy

- c. National Consumer Law Center, Consumer Bankruptcy Law and Practice
- d. ABI publications - Bankruptcy Overview
- e. Local bankruptcy court websites which list local bankruptcy rules, procedures, guidelines, forms, and particular judge information.
- f. Review filed cases on Pacer and use them as samples and roadmaps.

II. What it is like to practice bankruptcy law

A. Difference between business & non-business practices

1. There are frequently **teams** in bankruptcy. A common breakdown are those who represent creditors vs debtors. Another is those who represent businesses vs. consumers. The policies, practices and even credibility of a certain section of the bar may be shared resources that change frequently in value.
2. That's not to say you need to specialize. Bankruptcy is already a narrow enough area that you can **practice in many areas** inside bankruptcy and keep it fresh.
3. Others will **specialize** in an area and create economies of scale or economies of experience, because it's a rare bankruptcy case where money isn't the issue.
4. One must also beware of **conflicts of interest**. If you represent large creditors, as well as the debtors who owe them, you may encounter some pretty complicated conflict checks.

B. Rates/Fees

1. Attorneys practicing bankruptcy law may bill at market rates. However,
 - a. Fees paid from a debtor in a reorganization plan (chapters 11 and 13) must be approved by the court. Fees paid in a liquidation case (chapter 7) may be reviewed for reasonableness. Professionals undergo similar review. See 11 USC 326-331
 - b. In many cases the employment of the attorney or professional must be approved by the court. 11 USC 327.

- c. Chapter 7 cases have flat fee retainers that have to be paid in full before the case is filed. Frequently the potential client has limited access to funds, and they CANNOT use a credit card to pay you!
 - d. An initial retainer is common in Chapter 13 cases and the balance of the debtor's attorney fees are paid over time as the Debtor executes on the plan. However, an attorney may not collect all of his or her fees if the case is dismissed or converted. Northern District bankruptcy courts have opt-in guidelines for fees which allow for differing amounts of total fees based on the complexities of the case.
 - e. After entry of representation of a Debtor, an attorney must get court permission to withdraw as counsel. The services included in a Chapter 7 flat fee can be found in the local bankruptcy court [guidelines](#). Similarly, in Chapter 13 cases the [guidelines](#) spell out what the debtor and the attorney are supposed to do before and after the case filing.
2. The industry frequently offers free consultations. Those paired with many other expectations for unbilled work mean that cases typically get a lot of unbilled time.
 3. However, some services on both the creditor and debtor side are offered for flat fees, so efficient work may result in higher than billable compensation.
 4. Litigation in bankruptcy has the same collection risks and issues as in state court, but the venue ensures that things move much faster, and court dates are generally much more available.
- C. Hours
1. Many bankruptcy practices are fairly small, so you may have discretion over your workload.
 2. Many of your clients will be under stress, and they may continue to call with follow-up questions for years after representation ends.

3. Many cases pay a lot upfront, and then the work can really drag on. So there is a sensation of immediate success in a new bankruptcy practice. Be careful, you may not realize the real workload that your cases leave you with until you are a few years into the practice.
- D. Quality of life
1. There is the obvious calculus of hours vs. compensation discussed above. The calculus will be different for each of us.
 2. A few positive benefits of bankruptcy law are very unique
 - a. The practice is generally **pretty predictable**. A vast majority of debtors who file bankruptcy obtain a discharge. So if you represent them, your clients will start the process stressed but end relieved. And if you represent creditors, you are often seeking the best of many bad options, so expectations are limited.
 - b. Many bankruptcy debtors have **never had an attorney** or been to court. The ignorance may cause issues, but the experience can be a very rich one as you solve problems that have real-life effects that are absent from some areas of practice..
 - c. Bankruptcy court has different rules of procedure and unlimited unwritten rules and practices. It makes many folks who are unaccustomed very nervous. But if you learn how to swim, it makes for a wonderful **home-court** advantage.
 - d. Bankruptcy practice is small, and everyone knows each other. The practice tends to be very **civil and amicable**. News of glorious victory and ignominious defeat spreads quickly, and so practitioners can see quite immediate effects of their work.
 - e. With some care, you can control your risk and start slowly. **Focus first on simple chapter 7s** and then over time upgrade to taking on a chapter 13. Business cases, cases involving a lot of prepetition litigation, or parties that have a grudge against the debtor personally can be very complex, difficult and time consuming.

III. Walk-thru of handling a typical/basic bankruptcy case

1. **Initial client call/meeting/ case evaluation** - Generally speaking, most attorneys provide free 30 minute consultations. Some attorneys prefer in-person. Others prefer phone consults. Useful for determining which Chapter to file and the amount of work involved.
 - a. Keeping consults on track.
 - b. Messy Cases (divorce and litigation)
2. **Information gathering and document review** - Most Attorneys have a set of standard information request packages. This allows us to gather info in a more user friendly format but then use this information to build the schedules. Clients also need to fax/scan-email/mail documents. (Tax Returns/Paystubs/Mortgage statements). Usually allow for a couple rounds of follow up to complete all information.
 - a. Tech challenged clients
 - b. Assets must include foreign assets.
 - c. Debts include debts to family and friends.
 - d. Hiding Assets and Debts from Court
3. **Petition, schedules and related documents preparation** - Most Attorneys will have their staff work prepare the petition, schedules and related documents. Attorneys will then review for accuracy and review things with the client for accuracy and completeness. Credit counseling certificates must be obtained prior to filing.
4. **Filing and automatic stay** - There are two ways to file a case. At the court and using ECF. ECF filing is manual and labor intensive. Most bankruptcy software utilizes automation scripts so it will file the case for you. ECF is 24/7. Filing case generates a Notice of Filing which is dated and time stamped. The automatic stay is in effect at that moment. Stops all debt collections.

5. **Meeting of creditors** - About 30 days after filing, client and attorney must attend the MOC or 341. If you don't attend, the case will be dismissed. Trustee can verify identity. Review application for completeness and accuracy. Creditors have an opportunity to attend and ask questions.
 - a. Creditors occasionally attend. Need to be ready.
 - b. In person – getting through security
 - c. Zoom Meetings – technical challenges
6. **Deadlines for objections and review of claims** - Claims Deadline – 70 days after Trustee sends notice of deadline. Sometimes creditor files a barebones claim with amendments later
 - a. Objecting to Claims (Common Occurrences)
 - i. Mortgage Payment Accounting
 - ii. Credit Card - Statutes of Limitation
 - iii. Errors - secured when it should be unsecured
7. **Judicial review, confirmation and dispute resolution** - If all issues are resolved by MOC, recommend confirmation without a hearing. If issues remain unresolved, then the trustee will schedule a hearing with the judge for status updates. Disputed issues can be continued to next hearing dates if progress is being made otherwise, evidentiary hearings and trials.
8. **Discharge** - An order is issued by the court that your client will no longer be personally liable for dischargeable debts. Different timing for Ch7 vs. Ch13. Post Discharge Collection Issues.

Note that the above general guideline for a common case will vary depending on whether it is a chapter 7, 11 or 13 case.

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