



Tip of the Month March 2018

The First Meeting with Your VLN Bankruptcy Client

Submitted by Chris Kramer
Judge Nancy Dreher Bankruptcy Attorney
Volunteer Lawyers Network

One of the concerns that new bankruptcy volunteer attorneys commonly have is what should be on the agenda for the first meeting with their new client. The following agenda is merely a suggestion, and you should feel free to change things to meet your needs.

1. Introductions

When introducing myself to a client, my goal is to establish a good rapport and make the client feel comfortable. Once a good rapport has been established, it is important to explain confidentiality, for clients need to know they can trust you as they go through what is likely a traumatic experience for them. If you get the sense that the client is feeling shame over filing for bankruptcy, then normalize the experience and discuss how the bankruptcy code desires people to have a “fresh start.”

2. Client’s Reasons for Seeking Help

It is important not to assume things. Ask the client why they want to file for bankruptcy. Perhaps they have reasons that cannot be achieved, then this may change whether they proceed or not.

3. Discuss “The Five Main Issues to Consider in Evaluating a Client for Chapter 7 Bankruptcy”

I have found the below format to be an excellent way to briefly assess the client’s situation.

(Source: An Overview of Chapter 7 and Chapter 13 Bankruptcy, and a Review of Ethical Considerations in Regard to the 2005 BAPCPA Amendments, by Ronald J. Lundquist, materials available on www.projusticemn.org).

- a. Qualifying—a careful look at income and expenses (VLN clients won’t have this issue unless their circumstances significantly changed since being approved for help).
- b. Assets—are the client’s assets in jeopardy?
- c. Debts—are the client’s debts dischargeable?
- d. Transactional Issues—preference payments and fraudulent transfers of property (the trustee will likely ask questions on these topics, so don’t find out at the 341 Meeting that you have a problem).
- e. Timing—is there a good reason to delay filing? For example, post-discharge cash flow problems. Another reason: waiting for one year to pass after a preference payment to an “insider” (relatives and close friends).

4. The Bankruptcy Process

As attorneys, we sometimes forget to explain the “easy” things. Clients like to know a timeline, so take the time to explain what the process typically looks like (e.g., filing; approx. 30 days = 341 Meeting; approx. 90 days = Discharge Order, etc.). Also, clients need to really understand that FULL disclosure is their best friend, for you cannot protect their assets if they try to hide them—and the court will crush them if they are caught.

- a. Explain the typical Chapter 7 bankruptcy timeline. Clients are often unsure of how the basic timeline of a Chapter 7 bankruptcy works. For example, we have had clients who thought their debts were discharged when the case was filed.
- b. Some examples of important concepts to discuss:
 - i. The critical need that the client actively participates in his or her case—a lot of documents and other paperwork will be needed to prepare the case.
 - ii. Exemptions—MN vs. Federal (brief discussion)
 - iii. Automatic Stay (collection attempts must stop immediately at filing)
 - iv. Importance of Filing Date (anything after filing date is NOT part of bankruptcy estate).
 - v. 341 Meeting
 - vi. Disclosure (why it is important for client to be honest and complete).

5. Gather Information from Client (questionnaire) & Complete Document Checklist (optional)

I have found that attorneys vary greatly in how they feel about questionnaires and how they use them. Personally, I fill out the questionnaire with my client, for I want it done and it can be a stumbling block. There are many questionnaires out there, but I have been using the one that is found at the end of this *tip of the month* due to how short it is—but as you find questions you think need to be asked, or cut, feel free to do so.

6. Review Attorney and Client Expectations

I would suggest using the VLN Agreement as your guide, for then you are ready to sign the agreement once you finish this discussion.

7. VLN Representation Agreement

Please have the client indicate if they are a U.S. Citizen or not, for that helps with one of our funding sources (note: the client's answer is confidential and is not shared with ICE, etc.). If this is a big concern to the client, then skip the question, for our primary goal is to help the client.

- a. Client receives a copy
- b. VLN copy

8. Official Notices (these are required)

These official notices are required to be given to the client. I used to spend a lot more time on them, but now I mostly hand them out with only brief summaries of what they contain. I inform the client to read them over at home and let me know if they have any questions. The court's rule on scanning documents comes into play with the NOR, for the court only allows signature pages to be scanned. Thus, you have to combo the pieces into a whole (e.g., I use Adobe Acrobat, but there are other free or cheap options out there).

- a. Notice of Responsibilities (Pen-in-hand signature required—and this is part of your Chapter 7 bankruptcy filing)
- b. Notices 527 and 342 (Although these notices are required to be given to your client, they are not part of your bankruptcy filing. Personally, I have my clients sign a receipt for these notices to prove they were given to them, but this is likely unnecessary).

9. Discuss what NOT to do Before a Bankruptcy

The key here is to try and keep your client from making bad decisions that would derail his or her bankruptcy—or at least cause them headaches (e.g., no luxury purchases; no fraudulent transfers of property; no preference payments; what payments to keep making and which to discontinue, etc.).

10. Discuss the Filing Fee with Your Client

The entry point to getting a filing fee waiver is for the client's household to be at or below 150% of the Federal Poverty Guideline (google it to get the current numbers). After that, the judge will consider the debtor's ability to pay. Remember to fill out the filing fee application completely, for I have found that computer software doesn't fill in all the answers, nor will it write out the essay question for you. Sometimes the application is immediately approved. I have once in the past year had a hearing before a judge, and once it was denied without any explanation—and none was given when asked. Therefore, act as if this is your one chance at the apple and make your best case now—don't hope for a hearing as your "plan B."

- a. If client does not qualify for a fee waiver, inform client that he or she will need to have funds available to pay the filing fee (\$335 as of March 9, 2018) in order to file.

11. Explain the Next Steps

Finish strong and talk through next steps. For example, your client likely has no knowledge that they will need to turn in to you a certificate for completing a credit counseling course before you can file their case. After the below questionnaire, I have also added a document checklist that you can use with your clients. Mark off the documents they have done, and ask them to quickly get you the remaining ones. Impress on your client that you want to get their case filed ASAP, for documents will continually grow stale—and this can become a never ending cycle that never gets the case filed.

- a. Client likely needs to provide you with additional information or documents (give a list).
- b. You will work on the Petition, Schedule and Statements, and you will contact your client with any additional questions that arise.
- c. Client must complete a Credit Counseling Course before filing
- d. Upcoming mandatory meetings: 1) Pre-filing review; 2) The 341 Meeting

[BELOW ARE TWO ATTACHMENTS: 1) SAMPLE QUESTIONNAIRE; 2) SAMPLE DOCUMENTS NEEDED LIST]

Sample Questionnaire for First Meeting

1. Confirm client's legal name and contact information.

- a. Any other names used in past:
- b. Social Security Number:

2. Confirm spouse's legal name, if applicable.

- a. Any other names used in past:
- b. Social Security Number:

3. Prior bankruptcy cases, if applicable:

Case Number	Filing Date	Filing Location

4. Length of time client has lived at current address:

5. All addresses where client has lived in past three years:

Address	Dates Client Lived at Address

6. Dependents:

Full Legal Name	Age	Relationship to Debtor

7. Employment:

	Debtor	Spouse; or Debtor's Second Job
Employer Name		
Employer Address		
Employer Phone		
Job Title		
Length of Employment		
Obtain copies of most recent pay stubs or other documentation of income.		

8. Other Income (check all that apply and ask client to see documentation of income, if possible).

√	Income Type	Amount	Frequency (weekly, biweekly, monthly)
	Social Security (SSI/SSDI)		
	Unemployment		
	TANF/welfare		
	Child Support		
	Alimony		
	Retirement / Pension		
	Worker's Compensation		
	Veteran's Benefits (VA)		
	Financial Help from Family or Friends		

9. ___ Review client's List of Property (sent by VLN) and update if needed.

- a. If client owns a car, what is year, make, model, mileage, and condition?
- b. If client owns a home, who is on title, what is the estimated current value, current mortgage balance, equity, etc.?

10. ___ Review client's List of Monthly Expenses (sent by VLN) and update if needed.

11. Does client anticipate any changes in income or expenses? ___ No ___ Yes
(describe)

12. In the past 3 months, has client done any of the following? *Get as much detail as possible.*

	Name and Address of Involved Parties	Dates	Payment Amounts / Property Information and Values / Other Details
Made any payments to creditors?			
Made any payments or gifts to friends or family (insiders)?			
Made any other transfers of property?			
Made any gifts to charities?			
Been involved in any court cases?			

	Name and Address of Involved Parties	Dates	Payment Amounts / Property Information and Values / Other Details
Had any judgments entered against them?			
Had any property repossessed, foreclosed, garnished, attached, seized, or levied?			
Have any property in storage or safe deposit boxes?			
Have any pawned property?			
Had any gambling wins or losses?			
Had any losses due to disaster, theft, or fire, etc.?			
Closed any financial accounts?			

	Name and Address of Involved Parties	Dates	Payment Amounts / Property Information and Values / Other Details
Made any payments related to bankruptcy or for help dealing with creditors?			
Used credit cards or incurred other new debts? (Debt may not be dischargeable)			
Any new creditors or creditors not listed on credit report?			

13. Obtain additional documents from client as needed. Examples of documents you may need in order to complete the Petition:

Most recent federal and state tax returns (remember to claim expected tax refunds as exempt)

Most recent pay stubs

Most recent bank account statements, credit card statements, prepaid card statements, etc.

Most recent mortgage statement and property tax statement for home

Updated credit report

Sample Documents Needed Checklist

CLIENT NAME: _____

JOINT CLIENT NAME: _____

BANKRUPTCY DOCUMENTS

_____ CREDIT REPORTS (Obtain current reports from Equifax, Experian and TransUnion)

_____ List of personal property you own

_____ List of monthly expenses

TAXES

_____ TAXES (Most recent 2 years of Federal & State with W2s)

IF YOU OWN HOUSING and/or OTHER PROPERTY (Land; Cabin, etc.)

_____ MORTGAGE (Original paperwork & current statement)

_____ DEED

_____ PROPERTY TAX STATEMENT (County Tax Assessment)

_____ 2nd MORTGAGES (Current statement)

IF RENTING HOUSING

_____ LEASE

_____ Monthly statement

COURT DOCUMENTS

_____ COURT RECORDS (Judgments, etc.)

_____ COLLECTIONS Efforts Underway Involving Court Action (garnishments)

INCOME & ASSETS

_____ PAY STUBS (6 full months plus current month)

_____ BANK RECORDS (3 months of statements from all accounts)

_____ ALL OTHER SOURCES OF INCOME (6 full months plus current month)

_____ BANK RECORDS FOR THE DAY OF FILING (all accounts)

_____ STOCKS, BONDS & INVESTMENTS (3 months of statements)

_____ RETIREMENT FUNDS & PENSIONS OF ANY TYPE (Current statement)

_____ CASH ON HAND (money at home or in wallet, etc., but not in a bank account)

_____ WHOLE LIFE INSURANCE POLICY (Policy that has a cash value you can cash-out)

_____ COPIES OF TITLES (To any property having a title of ownership)

DEBTS & BILLS

- _____ CURRENT CREDIT CARD STATEMENTS (3 months)
- _____ COLLECTIONS LETTERS (All layers---even if debt has been sold again)
- _____ CAR LOANS (Most recent statement)
- _____ CAR LEASE (Lease & most recent statement)
- _____ ALL OTHER DEBTS (Get current statement for each)

CATCH-ALL CATEGORY

- _____ ANYTHING ELSE that you feel is missing
- _____ CLAIMS OTHERS HAVE AGAINST YOU THAT YOU FEEL ARE FALSE AND MAYBE NOT WORTH MENTIONING (DON'T SKIP THESE!)