

# The bankruptcy paralegal

BY LINDA S. JEVAHIRIAN

Bankruptcy represents an area of paralegal utilization that has some interesting potential in terms of specialization and responsibility. The job varies depending on whether the work is for the debtor filing the bankruptcy, the creditor expecting payment as a result of the bankruptcy, or the trustee, who manages certain aspects of the bankruptcy.

Two basic types of bankruptcy exist: Chapter 7, which is a liquidation, and Chapters 11, 12 and 13, which involve repayment of the debt.

## The revisions

The revision of the Bankruptcy Prevention and Consumer Protection Act in 2005 includes some new rules and responsibilities which impact the role of the paralegal.

Included is the means test, a calculation of income and expenses that when compared to the median income for the debtor's state of residence provides a benchmark for determining whether or not the debtor is eligible for a Chapter 7 bankruptcy.

Paralegals gather the information needed and prepare the test forms and making sure the filing is within the proper limits set by each chapter proceeding.

The revisions also require that the debtor attend credit counseling before filing, and financial education before being discharged. Paralegals see this process through, assisting the debtor in locating agencies, preparing waivers, and making sure the certificates of attendance are filed with the trustee.

## Before the revisions

Even in their most traditional role, bankruptcy paralegals are busy. At the initial meeting with the debtor the paralegal obtains the appropriate client documents and, after processing the

## THE LAWYER'S PARALEGAL

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means test, drafts schedules and files them with the court and the trustee. The paralegal then assists in preparing the client for the creditor and confirmation hearings

Paralegals arrange for UCC filings, real property searches, and appraisals. They also prepare foreclosure notices if needed.

Additionally, paralegals draft proofs of claim, monthly financial statements, attorney fee applications, judgment searches, and amendments to the petitions and schedules. They prepare inventories of assets and liabilities, arrange for valuation of assets, and prepare accountings, as well.

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paralegal position. Keeping track of timetables and deadlines, maintaining logs and tracking trust payments are tools that keep the attorney efficient. Even at hearings, paralegals help facilitate the flow of documents.

Using investigative skills they research and confirm debt, identify secured and unsecured claims of creditors, check UCC filings at the Secretary of State and at the County Clerk, check real property records where the property is located, verify taxes owed, identify tax liens, identify exempt property, obtain information from the local Register of Deeds, and review the court docket and claims register

In a Chapter 11 reorganization, the plan is accompanied by a disclosure statement, for which the paralegal researches prior history, the cause of the filing, assets and liabilities, income and expenses, liquidation analysis, projections of earnings and tax consequences.

## The creditors

Paralegals may be involved with any or all of the process of asset recovery, including attending the first meeting of creditors, obtaining reaffirmation agreements, filing non-dischargeability actions, recovering secured collateral, filing proofs of claim and filing objections to confirmation.

While pre-filing negotiations are largely an attorney function, paralegals assist by gathering documents, going over them with the attorney, and getting a feel for what the debtor's monetary background is.

When cash collateral negotiations take place, paralegals prepare the financing order permitting the continuance of secured lending. Processing and following through on these orders is a big part of the job, especially the drafting. During plan negotiation and confirmation, paralegals are helpful in gathering the documents and keeping them organized.

If there is an avoidance proceeding, the paralegal arranges for the sale of property and disbursement of funds to be paid to the creditors. In similar fashion, when there is an asset sale the paralegal hires and has the realtor appointed, files the motion to approve the sale, works with the title company and the attorney to close the sale, sends the money to the trustee, and helps the trustee review the claims and prepare a report.

Should there be any lender liability claims and litigation, dischargeability litigation, exemption litigation, and/or dismissal and conversion litigation, the cases are processed in accordance with general litigation procedures. Paralegals handle the pleadings, discovery, and overall organization of the case.

If a Chapter 11 is not reorganized properly and there are outstanding questions on whether there should be appointed a trustee or an examiner, the paralegal prepares a motion to request one.

Many of the primary responsibilities of a bankruptcy paralegal involve communicating and meeting with the client. Client handling requires a great deal of patience and people skills. Paralegals who are smart, good-natured and have the ability to work well with people are perfect in this role.

### **The in-house paralegal**

Paralegals who work in-house have a slightly different role, and sometimes a different title. One paralegal, whose title is "bankruptcy portfolio representative," is responsible for assigning new cases to outside counsel and providing ongoing support on those matters. Much of what she did in-house was risk management. She counseled external departments to increase their prospects for collection, made changes to lease documents to reduce adverse court rul-

ings, and created a way to track judgments that increased recovery.

As corporate representative, she provided testimony at trial, deposition, and mediation, negotiated settlements and equipment sales with delinquent customers, and even drafted responses to discovery and proofs of claim. She also established the value of property and directed repossession and liquidation.

### **The trustee**

At an office where there are more than 7,000 cases, the Chapter 13 trustee is highly dependent on paralegals. In this environment, paralegals outnumber attorney more than two-to-one. That's one way to keep the wheel turning.

The trustee is the party who collects the debtor's funds and then disburses them to the creditors. Documents are reviewed for consistency with the schedules and other forms that will be filed. The feasibility of the proposed plan is evaluated using a calculation program.

Prior to the confirmation hearing, the paralegals re-analyze the file for alternate suggestions and resolutions in plan funding, determining any reasons to think there will not be a confirmation. This is all summarized for the staff attorney and conveyed to the debtor attorneys.

When the parties meet at court, the paralegal assists the attorney by locating documents and making recommendations about the documents. Prior to this, he or she participates in the status conferences with the debtors, their attorneys, and the creditor attorneys to see what can get resolved before being heard in court.

Once the plan has been confirmed, the paralegals translate the information into the trustee's computer database. This assures accurate administration of the plan, and the ability to

assess when funds might be beyond the parameters. A diary system is maintained to follow up on orders and any outstanding issues.

Paralegals in the trustee's office work the information up the ladder. When case mail comes in, they evaluate it for response and objections before they send it up to the attorney. Most paralegals are in environments where the work comes from the top. One might describe it as more of a partnership than an assistantship.

The numerous documents and level of precision required to execute a bankruptcy makes the paralegal an invaluable member of the team. Lawyers operating without an assistant might consider cross training a litigation paralegal since they are so similar in function, but should make sure he or she has an aptitude for numbers.

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