



DeMott Bankruptcy Guide:

10 Steps

to rebuilding your financial life

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The Initial Consultation

We're ready to listen.

The first thing we do is the most important thing: We listen. When you schedule your initial consultation with my office, you'll meet with me personally, not a secretary or paralegal. My goal in this first meeting is to listen to your concerns to get an overview of your financial situation. I want to understand the unique circumstances of your case.



By the end of the initial consultation, my goal is to come up with a plan. That may be filing a Chapter 7 bankruptcy, a Chapter 13 bankruptcy, or not filing any bankruptcy. We don't "sell" bankruptcy. Instead, we try to find solutions to your unique needs.

To prepare for this meeting, go to the "Resources" page on this website and download a copy of my initial consult form. You can fill this out by hand, or you can fill in the form on your computer and save the form with your information. You should bring the completed form to me for your initial consultation. *This will help me understand your case.*

Lastly, there is no charge for your initial consultation. I know people with financial problems don't have money to waste. If I can't help you, I won't charge you. It's that simple. If I recommend bankruptcy, and you accept my advice, I'll give you some disclosures required by law, a fee agreement, and a client questionnaire. (The questionnaire and disclosures may be found on the "resources" page of this website.)

The Client Questionnaire

Help me prepare your case.

Having an accurately and completely filled out client questionnaire is an absolute requirement for me to prepare your case.

At the heart of the process is a lengthy client questionnaire. You need to know a few things about the questionnaire. First, this must be filled out completely and accurately.

Second, you should not fill it out all at once. The forms are lengthy and very important. It's easier to do a good job with the forms if you spend a half hour

or so each night until they are completed. I cannot stress this enough: I need to know the answers to the questions on the questionnaire. This is not something I just made up because I thought it would be good to know these things; the information is required by the Bankruptcy Code. Spend the time with the forms necessary to provide me with the information I need. It will save us both time and frustration. We cannot conduct the "intake interview" (see below) until the questionnaire is fully completed. Again, keep the goal in mind: your discharge. Also keep in mind that I did not invent these rules, but we must both play by them in order to reach our goal.



Documents

Mandatory documents for your case.

The new Bankruptcy Law, BAPCPA (“Bankruptcy Abuse Prevention and Consumer Protection Act”) governs cases filed on or after October 17, 2005. It is almost universally regarded as a colossal failure by bankruptcy attorneys, judges, law professors, and other bankruptcy authorities. Early on, some attorneys began referring to the new law as BARF (“Bankruptcy Abuse Reform Fiasco”). The new law imposed numerous nonsensical requirements on debtors and their attorneys. Moreover, the Act has had no statistically significant effect at preventing so-called bankruptcy abuse, nor does it offer anything meaningful to protect consumers. In fact, no consumer rights organization supported the law.

Unfortunately, if I had to sum up the next phase of your case, I’d have to call it “documents.” You’ll be given a list of documents we need to prepare your case for filing. You can find that list of “mandatory documents” on the resource page of this website.

As you take a look at this list, you may wonder why all these documents are needed. Please remember that it was not my idea to make you assemble all these documents. Bankruptcy law has become more complicated over the last few years and much more document-intensive. We need these documents to properly prepare your case. Without them, your case could be dismissed. Having the required documents is so important to the success of your case that we won’t file your case until we have them.

We’ll work with you to help you assemble documents you may be having difficulty obtaining, and we will keep an ongoing list of what we have and what we still need to file your case. When you look at the list of required documents, DON’T PANIC! Many documents may not be applicable to your case. For example, if you do not own a corporation or limited liability company, you obviously don’t need to supply us with business documents. We’ll make this as painless as possible, but this stage in your case is critical to achieving your goal of getting your debts discharged.

Pay Stubs.

You now have a new hobby: collecting pay stubs (or “pay advices” as the Code calls them). Prior to filing bankruptcy, we must calculate your “current monthly income” or (CMI). However, as with many terms used by the government, “current monthly income” is a defined term. That means the definition is not what it sounds like. It doesn’t mean current monthly income. It means virtually any payments received by you, whether taxable or not, during the six months prior to the month in which you file your bankruptcy. This could even mean recurring gifts you receive.

Let’s look at an example. If you file bankruptcy in August, you would need to provide your attorney with all income information--and again, that doesn’t just mean money you’d have to pay tax on--for the months of February, March, April, May, June, and July. Your attorney must then take that information and calculate your “current monthly income” (CMI). To do that, the six months’ payments are annualized (averaged by 6 then divided by 12) to come up with a final CMI figure. The silliness of this is obvious. What you received as income in the six months prior to your bankruptcy filing may be radically different from what your income is at the time you file. The most obvious example is the client who lost a well-paying job before filing bankruptcy. Another example would be a one-time bonus received from the client’s employer during that same period. You get the picture. Fortunately, we must also list your actual current monthly income--what you really earn--at the time of filing, so we can use this number to show the court an accurate financial picture.

If You are Self-Employed. *If you are self-employed, you may not have “pay advices.” Instead, you may take profit distributions or draws from your business. For us to calculate your CMI, we need to look at that same six-month period. However, since you have no pay stubs, we’ll need a profit and loss statement for each of the six months. Note that a year-to-date profit and loss statement will not do. We need profit and loss broken down by each month. I strongly prefer that you have an accountant assemble this information. Also note, we cannot count “soft costs” like depreciation. We need income less actual expenses.*

Pay Stubs - Continued...

Pay Stubs - Continued...

“You already told me about my new hobby,” you say. Yes, I have, but let me tell you some more about it. You must also file with the court all payment advices you have received within the 60 days prior to your bankruptcy filing. You may think, “I already gave you those; they were the last two months of the six months.” Not necessarily. Let me give you another example. Let’s say our debtor in the example above files bankruptcy on August 29. To calculate CMI, we needed pay advices for February through July. We also need to file all the pay advices you received during the 60 days prior to filing, so we’d need the pay stubs provided in July and, *in addition*, pay advices received right up until August 29, the filing date. The bottom line for you is to keep collecting those pay stubs and get them to your attorney.

Shooting Skeet

Calculating CMI is tricky, because the numbers change each month. I tell my clients it’s like shooting at a moving target, like shooting skeet. You must stay out in front of it. If your filing date gets pushed back, you need to provide another month of payment stubs (or another profit and loss statement if you are self-employed). Your filing can be delayed for a variety of reasons. The most common is that you have not provided us with the documents we need to file your case. We may also decide to delay your filing to show a more realistic CMI figure.

Keep Your Goal in Mind



While I’ve told you how bad the new bankruptcy law is, it still works. It works because bankruptcy filings have nothing to do with folks trying to “abuse” the bankruptcy system. Repeated studies show the major causes of bankruptcy are job loss, divorce, and medical bills. I’ve never met a client in my fourteen years of practice who was happy about being in financial trouble, or who had deliberately put himself there. The Bankruptcy Code still works, even though it’s now riddled with hoops for you

to jump through put in place by the credit card lobbyists. Just understand that bankruptcy now is largely about assembling lots and lots of documents. Don’t forget about the goal of the bankruptcy process for you: A Fresh Start.

The “Intake” Interview

Time to meet.

Once you complete the client questionnaire, call us for your “intake” interview. We estimate two hours for this process, and you’ll meet with me personally for the interview. During the “intake” we’ll go over your questionnaire, as well as review the documents you’ve provided as required on the “Mandatory Documents” form you’ll be given. (Note that both the client questionnaire and the list of mandatory documents can be downloaded from the “Resources” page of this website.)

Before bringing me the client questionnaire at the intake interview, please make sure it’s completely filled out. The information requested is necessary for me to file your case. My goal is to make your case go as smoothly as possible. The only way to do this is to have accurate, complete information from you. If you do not provide me with the documents needed to file your case, as well as the information requested on the client questionnaire, I cannot file your case. Filing your case with incomplete or inaccurate information is unwise and, in extreme cases, may even be a crime. PLEASE NOTE: No one from Congress called me for my input on what information should be required in order for you to file bankruptcy. In fact, Congress didn’t even consult the bankruptcy judges prior to passing the new bankruptcy “reform” act in 2005. Instead, our so-called representatives consulted with lobbyists for the credit card industry and political action committees with large sums of money to buy influence in Washington. So understand I’m not asking you all these nitpicky questions because I think it all *should* be required for your bankruptcy; I’m asking you all this because it *is* required whether we like it or not. Put simply, there are some hoops you must jump through to reach your goal. Some seem silly and illogical, but you must still provide the information. If you follow our guidance, your chances of success will be increased.

Case Preparation

Drafting of your initial paperwork.

At this point my staff and I will take the information you've provided and use it to draft your initial bankruptcy paperwork. This process varies from case to case, as well as from Chapter 7 cases ("straight bankruptcy") and Chapter 13 cases ("reorganization bankruptcy"). During this process, we'll contact you if we need more information or clarification regarding the information you've provided. For instance, my paralegal may not understand a deduction on your pay stubs, or may have a question regarding something in your bank statements. We'll contact you for clarification so we're sure we fully understand what's going on with your finances. If you receive an email or phone call from either me or my staff, be sure to respond promptly so we can continue preparing your case.

Once the case is ready, you'll be notified, and we'll schedule a "signing appointment." As I'll discuss below, your signing appointment involves much more than just signing your bankruptcy paperwork.



Credit Counseling / Debtor Education

Pre-filing and Post-filing courses.

Prior to filing your case, you must complete a credit counseling briefing. You may do this in person, online, or by phone. There are several agencies approved by the U.S. Trustee's Office. Most charge \$50 or less for the counseling (or \$50 per married couple if it's a joint filing). Truth be told, credit counseling is a waste of \$50. But it's required. It will not take very long, usually only 20-30 minutes. The counselor will ask you about your debts, your income, and your expenses. The counselor cannot stop you from filing bankruptcy. He's not a gatekeeper. You are simply required to give the information to the counselor and complete the session. When I ask my clients what the credit counselor told them, they almost always report "he told me to file bankruptcy." Keep in mind that while this makes little sense, it's your ticket into the bankruptcy system.



After you file your case, you must do another course. It's called "Debtor Education." This is essentially a budgeting and financial management course. Like the credit counseling course, you may take this course from any agency approved by the U.S. Trustee's office. Many clients say they learned a few things from the debtor education course. So for some clients, it's helpful. For a list of agencies I recommend for both required courses, see my checklist of mandatory documents on the resource page of my website:

<http://www.scbankruptcyattorney.com/resources.htm>

Signing Appointment

But before we sign, let's review your documents.

After we prepare a draft of your bankruptcy paperwork, we'll schedule a signing appointment. You might think that this will be a short appointment where you show up and quickly sign your bankruptcy documents after a brief review. Instead, this is a time for you to thoroughly review a fairly thick stack of documents we've prepared. We'll give you a pen so you can make any necessary corrections to the documents. You and I will then discuss all of the documents, one by one, as well as any necessary modifications needed before we file your case.



My goal is to file your case and have everything perfect. To do this, we'll spend time reviewing the documents and making necessary changes. I'll also completely explain every document you will sign in plain English so you understand the process completely.

Once we get your paperwork in proper form to be filed, we'll do so electronically through the court's ECF ("Electronic Case Filing") system. The court will then issue a case number as well as assign a Trustee and first hearing date to your case, so you'll know when you'll be scheduled for court.

The Bankruptcy Hearing

341 Hearing.

Your bankruptcy hearing is called the “First Meeting of Creditors” or “341 hearing.” It’s called a 341 hearing because section 341 of the Bankruptcy Code requires it. It will be held approximately four to six weeks after we file your case. There will be no judge at the hearing. Your bankruptcy Trustee (both in a Chapter 7 case and a Chapter 13 case) will preside over the hearing. You will be asked to swear or affirm to tell the truth and will testify under penalty of perjury. The meeting will also be recorded.

The Trustee will verify your identity by reviewing your driver’s license or other acceptable forms of identification such as a passport or military identification. The Trustee will also verify your social security number by reviewing your original social security card. **BE SURE TO BRING YOUR PHOTO IDENTIFICATION AND SOCIAL SECURITY CARD TO THE HEARING.** If you do not bring acceptable photo identification and your social security card, the Trustee cannot hold your hearing, and you may have to come back another day.

The Trustee is under a duty to ask certain questions, but he or she will not treat you rudely. All of the Trustees in the Charleston division are professional, courteous, and sympathetic to those in need of debt relief. In fact, most of the Trustees are attorneys who represent debtors in their practices. The Trustee must do his job, but you will be treated with respect. You should always answer questions honestly. To do otherwise is perjury and bankruptcy fraud, which are both felonies.

Questions the Trustee will ask.

1. Did you sign the petition, schedules, statements and related documents and is the signature your own? Did you read the petition, schedules, statements, and related documents before you signed them?

Questions - Continued...

Questions - Continued...

2. Are you personally familiar with the information contained in the petition, schedules, statements and related documents? To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct? Are there any errors or omissions to bring to my attention at this time?
3. Are all of your assets identified on the schedules? Have you listed all of your creditors on the schedules?
4. Have you previously filed bankruptcy? (If so, the trustee must verify the prior case number, which should already be listed on your bankruptcy petition.)
5. What is the address of your current employer?
6. Is the copy of the tax return you provided a true copy of the most recent tax return you filed?
7. Do you have a domestic support obligation? (This means child support or alimony.) To whom? If you do have a support obligation, this should have been listed on your schedules. The Trustee must also obtain the phone number of the domestic support obligation payee (the person who gets the money).
8. Have you read the Bankruptcy Information Sheet provided by the United States Trustee?
9. Have you made any transfers of any property or given gifts of any property worth more than \$5,000 in the last six years? If yes: What did you transfer? To whom was it transferred? What did you receive in exchange? What did you do with the funds you received?



You may also be asked:

1. Do you own or have any interest whatsoever in any real estate?
2. If so, when did you purchase the property? How much did the property cost? What are the mortgages encumbering it? What do you estimate to be the present value of the property? Is that the whole value or just your share? How did you arrive at that value? If renting: Have you ever owned the property in which you live and/or is its owner in any way related to you?
3. Does anyone hold property belonging to you? If yes, who holds the property and what is it? What is its value? There are other questions that may be asked, but any additional questions depend on the individual facts of your case. Don't be nervous. The Trustee won't bite! I recommend that you arrive at your hearing an hour early so you can watch the Trustee ask questions in other cases. Doing this will calm you down and help you prepare for your own hearing.

You can also ask your attorney about questions the Trustee asked another person so you have a better understanding of the information the Trustee may seek from you.

Communicating With My Office

Keep me updated on any changes.

From time to time, we'll need to get in touch with each other. Make sure to update me on any changes of physical address, email address, and phone numbers.

I return all phone calls within one business day, and generally can return any outstanding phone calls prior to going home on the same day I receive the call. If you call, leave a detailed message of why you are calling. If it's something you believe a staff member can assist you with, discuss your question with my staff.

It's critically important that you respond to our questions or requests for information. If you receive something from our office, don't ignore it!



Chapter 13 “Confirmation” Hearing

First hearing scheduled.

If you file a Chapter 13 case, the court will schedule your First Meeting of Creditors as with any other type of case, as well as a hearing called a “confirmation hearing.” You need to be prepared to attend both hearings. However, in many cases, you do not have to attend your confirmation hearing. Usually the only time debtors must appear at their confirmation hearing is if there are problems with the case. We work hard at getting all the issues resolved so that you do not need to attend this hearing.

If you do, the court will need to decide on whether your plan can be confirmed. To do that court will need to find that your plan has been proposed in good faith, that you have proposed to pay all your disposable monthly income to the Trustee for the necessary time period (three to five years, depending on the case), that your plan provides appropriate treatment for secured creditors, that priority debts will be paid in full, that all tax returns due have been filed, as well as many other factors.



60-Day Period After the Hearing

We're nearing the end.

The Bankruptcy Code gives creditors 60 days from your hearing to object to your discharge or to ask the court to deny you the ability to discharge a particular debt. Creditors rarely take such extraordinary steps unless there is fraud involved (for example, if you lied about your income or intentionally ran up your credit cards shortly before filing bankruptcy).

In addition, the United States Trustee's office, a division of the Department of Justice, also has 60 days to file a motion to dismiss your Chapter 7 ("straight bankruptcy") case for "abuse." Usually, this is only done if the United States Trustee believes you have enough income to fund a Chapter 13 Plan with monthly payments, and repay your creditors at least some of what you owe them. If the United States Trustee can show that you have the ability to make Chapter 13 payments, the court may agree to dismiss your case. At that point you would have the option of allowing the case to be dismissed, or converting the case to Chapter 13 and making payments to the Chapter 13 Trustee for three to five years.

All Chapter 7 cases are subject to dismissal for abuse based on the totality of circumstances of your case. My goal as your attorney is to help you select the appropriate Chapter for your case. If you have the means to pay back your creditors, I'll recommend a Chapter 13. If you don't, I'll recommend a Chapter 7. Once this 60-day period runs, you are eligible to receive your discharge (the court order saying you no longer owe your debts) if you filed Chapter 7. If you filed a Chapter 13, you'll still need to complete your plan payments over a three to five year period before you will be eligible to request a bankruptcy discharge.

Congratulations! You are now on the road to rebuilding your financial life!