

1.1 A COMPLICATED FIELD OF LAW

The practice of consumer bankruptcy law used to be one of the simpler fields of law to master. Lawyers typically began by more or less dipping their toes in the bankruptcy water, finding it lukewarm, then diving in. It was relatively hard to make a mistake that couldn't be corrected. For the vast majority of cases, the work consisted mainly of filling out and filing a few forms, then attending a meeting, called the "meeting of creditors" (also called a "341 meeting"<sup>1</sup>). Typically, no creditors ever showed up for the meeting of creditors. After a wait of approximately 60 days after the meeting, the debtor (the client) would receive a notice of final discharge. That was it. In most cases most or all of the work other than providing legal advice could be handled by an office paralegal.

But those days are gone. Because of changes made to the Bankruptcy Code<sup>2</sup> in 2005, with the enactment of the notorious Bankruptcy Abuse Prevention And Consumer Protection Act of 2005 ("BAPCPA") this area of law is now probably the most complicated field of law involving middle-class individuals and families. As one Bankruptcy judge wrote in an opinion:

¶ 1.1

"BAPCPA is a complex and extensive statute that is, at times, unforgiving to debtors and to their counsel. Snares and traps are present throughout BAPCPA for unwary debtors. By the design of Congress, the Court is not in a position to extricate counsel and debtors from these perils."<sup>3</sup>

Consumer bankruptcy practice is more complicated, and has more ways to make a mistake, than family law, tort law, criminal defense, and garden-variety civil litigation. It is so complicated, in fact, that lawyers new to the field quite simply cannot learn it by doing it, "by the seat of one's pants," as it were. Before a lawyer attaches his name to anything involving consumer bankruptcy law he or she had better have studied it in some organized fashion.<sup>4</sup>

1.2 VARIETIES OF BANKRUPTCY

There are half a dozen varieties of bankruptcy provided for in the Bankruptcy Code. These are explained briefly below. For consumer bankruptcy purposes, the two versions of bankruptcy that are most relevant are chapter 7 and chapter 13.

¶ 1.2

Chapter 7

Chapter 7, or liquidation, is the basic bankruptcy.<sup>5</sup> Sometimes called a simple or straight bankruptcy, and sometimes a liquidation bankruptcy, the idea is to liquidate all assets, distribute the proceeds to the creditors, and wipe out all debts on behalf of the debtor, thus providing him or her with a fresh start.

<sup>1</sup> A conference with the bankruptcy trustee, the debtor, and any creditors who wished to cross-examine the debtor, prescribed by the Bankruptcy Code, specifically, 11 U.S.C. § 341.

<sup>2</sup> All references in this book to the "Bankruptcy Code" refer to Title 11, United States Code.

<sup>3</sup> In re Ott, 343 B.R. 264 (Bkrcty.D.Colo. 2006). Sidney B. Brooks, Bankruptcy Judge

<sup>4</sup> The Bankruptcy Academy (BankruptcyAcademy.com) offers a 4-day course for newbies in this field.

<sup>5</sup> 11 U.S.C. § 701 et seq.