

# Bankruptcy Resources Online

By Jennifer J. Schafer

## Introduction

In medieval Italy, when a businessman failed to pay his debts, it was acceptable practice to destroy his trading bench in the market. Thus, from the Italian for “broken bench”—“banca rotta”—comes the term “bankruptcy.”<sup>1</sup> While we have retained the ancient term for bankruptcy, the business and legal communities have significantly updated and automated the process itself, with seemingly endless resources to be found online. Whether you are a creditor, debtor, or attorney with a bankruptcy client, even the most cursory Google<sup>2</sup> search of Michigan bankruptcy resources will reveal in excess of two million results. This article is an attempt to narrow the field and suggest some useful resources for bankruptcy practitioners.

## Overview for the New Practitioner

If you know next to nothing about practicing bankruptcy law (like me, before I started this article), fear not—the Internet is an abundant (and often free) provider. The federal bankruptcy court system itself provides a wealth of information. From the Federal Judiciary U.S. Courts website,<sup>3</sup> you can start with the basics:

Article I, Section 8, of the United States Constitution authorizes Congress to enact “uniform Laws on the subject of Bankruptcies.” Under this grant of authority, Congress enacted the “Bankruptcy Code” in 1978. The Bankruptcy Code, which is codified in title 11 of the United States Code,<sup>4</sup> has been amended several times since its enactment. It is the uniform federal law that governs all bankruptcy cases.<sup>5</sup>

The procedural aspects of the bankruptcy process are governed by the Federal Rules

of Bankruptcy Procedure (often called the “Bankruptcy Rules”)<sup>6</sup> and local rules of each bankruptcy court. The Bankruptcy Rules contain a set of official forms for use in bankruptcy cases. The Bankruptcy Code and Bankruptcy Rules (and local rules) set forth the formal legal procedure for dealing with the debt problems of individuals and businesses.

The U.S. Courts website also provides a detailed discussion of each of the three most common types of bankruptcy proceedings: Chapter 7, liquidation; Chapter 13, individual debt adjustment; and Chapter 11, reorganization. The website also provides a bankruptcy glossary and discusses the lesser-known bankruptcy chapters for family farmers and fishermen (Chapter 12), municipalities (Chapter 9), and ancillary and cross-border cases (Chapter 15), as well as the Servicemembers Civil Relief Act<sup>7</sup> for debtors in active military service. The same website has links to official bankruptcy forms with instructions and recent updates, the executive office for the United States bankruptcy trustees,<sup>8</sup> credit counseling agencies and debtor education providers, and “means testing” resources, now required under the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (discussed below).<sup>9</sup>

Once you’ve mastered the “bankruptcy basics,” you might be interested in associating with like-minded practitioners in bankruptcy law. To get you started networking, the American Bankruptcy Institute is purportedly “The Essential Resource for Today’s Busy Insolvency Practitioner.”<sup>10</sup> The Institute’s website provides a one-stop shop for bankruptcy news headlines, legislative updates, bankruptcy blogs and discussion groups, and event notices for various bankruptcy conferences, workshops, and symposia. You might also want to take a run through Findlaw’s Corporate Counsel Cen-

ter for bankruptcy practitioners.<sup>11</sup> And, depending on how much money you want to spend to build your practice, Westlaw<sup>12</sup> has over 50 databases of primary law, treatises, journals, and newsletters.

## The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

No “bankruptcy basics” education would be complete without some understanding of the major overhaul of bankruptcy law that occurred on October 17, 2005, through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the act).<sup>13</sup> The act essentially heightens the requirements necessary to qualify for a bankruptcy filing, but the implications of the act are the subject of heated dispute: “Proponents of the Reform Act assert that its intent is to increase the fiscal responsibility of individuals and business entities. Detractors believe the Reform Act will have an adverse financial effect on individuals who seek relief from debts caused by extenuating circumstances such as illness, divorce, or long-term unemployment.”<sup>14</sup> The Georgetown Law Library provides links to the full text of the act, including redline versions showing line-by-line changes to the Bankruptcy Code; the legislative history of the act; commentary by both Democratic and Republican lawmakers; and numerous reports, treatises, and journals discussing the act.<sup>15</sup>

Some highlights of the act<sup>16</sup> are:

- **Means test for Chapter 7.** A new “means test,” using IRS guidelines to determine what living expenses are “reasonable,” is now used to identify debtors who have the financial ability to repay at least some money to their creditors. Debtors who “fail” the means test

are shifted from Chapter 7 (liquidation) to Chapter 13 (debt adjustment).

- **Mandatory counseling and education.** *Before* filing for bankruptcy, debtors must undergo credit counseling with an approved nonprofit budget and credit counseling agency, and *after* filing, some debtors must also complete a course in personal financial management.
- **Increased attorney liability.** Bankruptcy filings are now subject to audits, and attorneys representing debtors may be held liable for inaccuracies in the debtor's filings.
- **Fewer stays and protections.** Bankruptcy filers may no longer be able to automatically delay evictions, child support proceedings, and driver's license suspensions.
- **Increased Chapter 13 repayment.** Chapter 13 filers now face a higher amount of debt repayment, and they may no longer be able to obtain a discharge of debt just for agreeing to a repayment plan.
- **Increased time between filings.** Chapter 7 filers can't receive another discharge less than eight years after a prior Chapter 7 discharge.

## Offline Resources

If you're tired of staring at your computer screen, there are plenty of old-fashioned print resources. Thomson West publishes a handy one-volume reference, entitled *Bankruptcy Code, Rules, and Forms*. You can purchase the 2008 edition at <http://west.thomson.com/store/prodsvcs.aspx>. West also offers the more comprehensive three-volume *Bankruptcy Practice Handbook*, and the American Bankruptcy Institute<sup>17</sup> has a substantial library of publications on numerous bankruptcy issues. There is also the "invaluable"<sup>18</sup> two-volume set, complete with a CD of forms, entitled *Consumer Bankruptcy Law and Practice* from the National Consumer Law Center.<sup>19</sup> And finally, for Michigan practitioners, Michigan's Institute of Continuing Legal Education publishes the one-volume *Bankruptcy Law & Practice*

*in Michigan*, available at [www.icle.org/store/books.htm](http://www.icle.org/store/books.htm).

## Ready to Go to Court?

There is a bankruptcy court for each federal judicial district in the United States. All bankruptcy courts can be accessed through the portal of [www.uscourts.gov/courtlinks/](http://www.uscourts.gov/courtlinks/); the Michigan courts can be accessed directly at [www.mieb.uscourts.gov/](http://www.mieb.uscourts.gov/) (Eastern District) and [www.miwb.uscourts.gov/](http://www.miwb.uscourts.gov/) (Western District). Both Michigan court websites provide links to local rules and forms, information on filing procedures and fees, debtor education, and access to local bankruptcy opinions through the ECF/PACER system.<sup>20</sup>

## Conclusion

With the federal court system's emphasis on electronic filing and information via the Internet, much of what you need to start and maintain a bankruptcy practice is now available online and for free. Now, if you could only find bankruptcy clients with money to pay you.... ■

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## FOOTNOTES

1. BankruptcyData.com, *A Brief History of Bankruptcy in the U.S.* <[www.bankruptcydata.com/Ch11History.htm](http://www.bankruptcydata.com/Ch11History.htm)>. All websites cited in this article were accessed June 19, 2008.
2. Google Search Engine <[www.google.com](http://www.google.com)>.
3. U.S. Courts, The Federal Judiciary, *Bankruptcy Basics* <[www.uscourts.gov/bankruptcycourts/bankruptcybasics.html](http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html)>.
4. Title 11 can be accessed for free at <[www.law.cornell.edu/uscode/11](http://www.law.cornell.edu/uscode/11)>, as well as at <[www.gpoaccess.gov/uscode/index.html](http://www.gpoaccess.gov/uscode/index.html)>.
5. Michigan practitioners should be aware that Michigan has one statute related to bankruptcy, MCL 600.5451, which addresses certain exemptions from the bankruptcy estate.
6. The FRBP can be accessed at <[www.law.cornell.edu/rules/frbp/](http://www.law.cornell.edu/rules/frbp/)>.
7. 50 App USC 501 *et seq.*
8. The U.S. Trustee program was created by Congress to handle the supervisory and administrative aspects of bankruptcy proceedings.
9. See U.S. Courts, The Federal Judiciary, *Bankruptcy Basics* <[www.uscourts.gov/bankruptcycourts/bankruptcybasics.html](http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html)>; *Bankruptcy Resources* <[www.uscourts.gov/bankruptcycourts/resources.html](http://www.uscourts.gov/bankruptcycourts/resources.html)>; and *Bankruptcy Forms* <[www.uscourts.gov/bkforms/index.html](http://www.uscourts.gov/bkforms/index.html)>.
10. American Bankruptcy Institute <[www.abiworld.org](http://www.abiworld.org)>.
11. FindLaw, Bankruptcy <<http://corporate.findlaw.com/industry/bankrupt/index.html>>.
12. Westlaw <[www.westlaw.com](http://www.westlaw.com)>.
13. PL 109-8, 119 Stat 23, enacted April 20, 2005.
14. Georgetown Law Library, Bankruptcy Reform Act of 2005 Research Guide, <[www.ll.georgetown.edu/guides/bankruptcy\\_act\\_2005.cfm](http://www.ll.georgetown.edu/guides/bankruptcy_act_2005.cfm)>.
15. *Id.*
16. Courtesy of, without vouching for reliability, Wikipedia <[http://en.wikipedia.org/wiki/Bankruptcy\\_Abuse\\_Prevention\\_and\\_Consumer\\_Protection\\_Act](http://en.wikipedia.org/wiki/Bankruptcy_Abuse_Prevention_and_Consumer_Protection_Act)>.
17. See n 10, *supra*.
18. Thanks to E. Douglas Basel, Jr., of the Basel Law Firm in Petoskey.
19. National Consumer Law Center <<https://shop.consumerlaw.org/>>. You can view the table of contents at <<https://shsop.consumerlaw.org/pdf/bank-cont.pdf>>.
20. Users can sign up for the ECF/PACER system on the court websites.