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## The "Pro Se" Bankruptcy Filing Problem in Detroit

**The Detroit bankruptcy court in recent years has been inundated with a large number of "pro se" bankruptcy filings. In many of these cases, the debtors have been helped with the preparation of their petition and schedules by individuals whom the court has prohibited from assisting people for failure to abide by the rules that bankruptcy petition preparers must follow.**



The "pro se" bankruptcy filing problem in Detroit.

In addition to being busy with the city of Detroit's own bankruptcy filing, the Detroit bankruptcy court for the past few years has been dealing with a particularly prevalent problem involving large numbers of consumer cases being filed "pro se" which is Latin for "for oneself or on one's own behalf" or more simply, filing without a lawyer. Many of these cases are not true "pro se" bankruptcy cases but rather

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are individuals and married couples who have "hired" a con artist, as most of these individuals are basically practicing law without a license.

Many of these individuals advertise themselves as paralegals or as bankruptcy petition preparers (BPPs), but in fact are neither and are actually causing more harm than good. Similar to scam artist, they are taking advantage of their victims and causing misery in the end. A legitimate bankruptcy petition preparer or paralegal will only type the petition and will not give legal advice because they are prohibited to do so by law.

Pursuant to administrative order, a true BPP will only charge \$100 as it is the maximum allowed by the United States Bankruptcy Court in the Eastern District of Michigan. Additionally, the bankruptcy petition preparer will abide by the law and fill out the mandatory disclosures and sign his or her name to the petition that was typed on the debtor's behalf.

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More harm than good.

Unfortunately these underground preparers pressure scared debtors to perjure themselves to the bankruptcy court via blatantly inaccurate schedules. These unsuspecting debtors are also told to lie if they are questioned by a United States attorney from the Department of Justice or even if questioned by their bankruptcy judge. They are instructed to tell them that "no one helped me prepare these forms". These con artists convince their victims that the bankruptcy court or the United States Department of Justice will not let their case go through if they inform them that they were helped by anyone.

This problem has run rampant throughout the metro Detroit area despite the efforts by the United States trustee's office as well as the Eastern District of Michigan judges to address the problem. The Court's website maintains an ever growing list with nearly 100 individuals who the court has prohibited from assisting others with bankruptcy matters due to the fact that they are not following the courts administrative orders.

Under the guise of helping the poor debtors out there save money by not hiring a licensed attorney, these individuals are actually costing them much more in terms of lost days of work due to multiple court hearings because of inadequately prepared schedules. These debtors also often suffer the consequences of seizure of assets by Chapter 7 trustees due to these assets not being properly scheduled nor exempted.

Additionally, many of these same cases face motions to dismiss commenced by the United States Department of Justice and the debtors are then ultimately forced to hire competent counsel at even higher legal fee due to the fact that more work is involved at this point. Just like a cake that has been put into the oven but is lacking major ingredients such as butter, eggs, or baking soda, a bankruptcy petition that has been thrown together and simply filed without putting the necessary pre-filing work into the case is often more difficult to salvage.

Attorneys who are faced with this mess often wish to simply start from scratch. That, however, is not always feasible or practical, as further credit damage could occur to the debtor due to multiple bankruptcy cases being on their credit report and therefore every effort should be made to rehabilitate the existing case.

Why the increase in "pro se" cases?

The reason for the increase in pro se cases and the corresponding rise in the number of unscrupulous individuals who prey off of them can be attributed to money and the perceived cost of hiring competent legal counsel. The problem began or increased significantly after the enactment of BAPCPA, the last major amendment to the bankruptcy code, in October 2005. Many attorneys, due to the increased volume of work required in the typical bankruptcy case as well as the increase in the filing fee and other costs

associated with the mandatory credit counseling and debtor education, charged nearly double what they were charging prior to the enactment of the new law.

Typically, when an individual or married couple believes they need to file a bankruptcy, they may grab the phone book or go online and try to find an attorney. Often, the debtor's main concern when looking for someone to help them with their filing is cost. By far, the number one question and usually one of the first questions attorneys are asked when they take a new call is "How much does it cost to file for bankruptcy"? A Chapter 7 filing consists of attorney fees, costs for a credit report if needed, mandatory credit counseling and debtor education, and the court filing fee. When added up these costs will range from a minimum of \$1000 on up. These numbers can be a shock to many poor people in the metro Detroit area and the system is making the last resort of bankruptcy relief often unattainable.

As a result, they seek out what they perceive are cheaper alternatives. To the unwary debtor, it seems like a less expensive substitute when they are quoted \$400, \$500 or \$600 that these "paralegals" charge. What the BPP is her not telling them is that it doesn't include their credit counseling or debtor education and that it doesn't include the filing fee, which only after being paid, they inform them that they must obtain these on their own.

Another factor that can be attributed to the increase in pro se filings is the debtor's ability to file an application or motion to have the \$306.00 Chapter 7 filing fee waived by their bankruptcy judge. The unscrupulous petition preparers tell them is that the filing fee will be waived in their case. BAPCPA allowed the debtors whose income was below 150% of the poverty level for a household of similar size to file a motion to have the filing fee waived. Although good intentions were behind this fee waiver change, it was nonetheless abused by debtors and particularly by those who were helped by the unscrupulous BPPs.

These preparers would promise the debtors that they would help them get their filing fees waived and prepared a fee waiver on their behalf in virtually every case they prepared without taking into consideration the proper household size or to closely examine the income and other assets that come into factoring the equation as to whether an application to waive the filing fee is warranted. Many of these motions filed were blatantly erroneous and listed very large family sizes and dependents that were sometimes not living in the household, sometimes merely distant cousins that should not be factored into the equation.

After the enactment of the new law, especially in years 2006 and 2007 these fee waivers were generally readily granted primarily because the judges thought that the motions were filed accurately and honestly. Despite many of these motions no longer being granted due to the fact that the judges are more aware of the errors when the case is a pro se filing, the initial problem persists, in that when a client calls an attorney who is going to tell them that they are most likely not going to get a fee waiver and most likely will have to pay the \$306 filing fee and give them an honest answer, they turn away because the unscrupulous petition preparer will assure them that they can get the filing fee waved. So for them the choice is simple, they will go to the person who promises them that the filing fee can be waived if they merely pay them \$500.

Efforts initiated to combat the problem.

In the Eastern District of Michigan, United States Bankruptcy Judge Marcy McIvor, in an effort to combat

the problem of the high number of pro se debtors filing time-consuming cases for the bench and trustees, started the Access to Bankruptcy Court program. It is a nonprofit program primarily funded through donations from attorneys and the surrounding bankruptcy community, and donations to the Michigan Bar Association. Eligible individuals or married couples who meet the low income criteria are provided representation by highly competent bankruptcy attorneys without having to pay legal fees, only nominal costs associated with filing. To date, the program has been very successful.

The United States Department of Justice has also intervened and has obtained orders against those particularly egregious offenders who blatantly disregard the orders of bankruptcy and federal judges enjoining them from the unauthorized practice of law. Recently, one of the worst transgressors was sentenced to serve 46 months in prison after being found guilty of five counts of criminal contempt for continually violating bankruptcy court orders regarding not complying with bankruptcy rules. The efforts of the Justice Department and United States Trustee's Office are ongoing and should result in lowering the number of individuals who seek to prey on the poor in metro Detroit.

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