

Bankruptcy law – 1

Law



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One of the responsibilities as a paralegal is to conduct research. There is a list of basic and useful resources for practitioners and law students to utilize in researching a bankruptcy. The primary sources are Statutes, Rules and Cases. The secondary Sources are Bankruptcy Treatises, Internet Sources and Research Databases also known as Bankruptcy Reporter Systems. All these resources are relevant to explain the process in which each is needed to research bankruptcy issues.

A statute is a codification of a law passed by legislature enactment and approved and signed into law by the executive branch of the government. These statutes serve as source for answering all bankruptcy questions in the Bankruptcy Code itself by plainly finding the right Code section. The Bankruptcy Code defines the rules that collect and distribute the assets to creditors in a bankruptcy proceeding. The Code is well indexed, to start researching any bankruptcy issue. Careful reading, analysis and interpretation are the most important instruments to carry out an effective research.

At the end of each code section, there is " Historical and Revision Notes" that are helpful in explaining the meaning of a particular provision and also a valuable secondary source to locate answers to bankruptcy questions. The two primary sources in the law library for the U. S. Code in print are United States Code Annotated (USCA) which was published by Thomson West and United States Code Services (USCS) which was published by LexisNexis. Both the USCA and USCS provide and include annotations of cases and articles. The online Statutes widely used are in the Cornell University Law School, LII/Legal Information Institute.

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Rules of the court are rules created by the highest court that govern court proceedings. Cornell University Law School, LII provides a link to information about the Interim Rules and Official Forms for the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. These Rules of Practice and Procedure in bankruptcy commonly known as the Federal Rules of Bankruptcy (Civil) Procedure and Federal Rules of Evidence clarify the collective rules which are regulating the collection and distribution of assets to creditors in a bankruptcy proceeding.

For example, instructions on what form is required, how and when a motion is filed, how and when a claim is filed, and the “ how to” questions and so forth. USCA and USCS found in the law core collection have bankruptcy rules in volumes following the Title 11. Attached to the Federal Rules of Bankruptcy Procedures are forms called “ Official and Procedural Bankruptcy Forms. ” These forms present direction as to the content and appearance of the documents. In addition each Bankruptcy court makes its own local rules and local forms as long as they are not inconsistent with the Code or the Bankruptcy Rules.

Local rules vary from district to district and can sometimes be the source of answering a practice or procedure question therefore; each federal District Court has its own Local Rules of Court, including United States Trustee Guidelines. Both The Federal Rules of Civil Procedure and the Federal Rules of Evidence apply in bankruptcy proceedings but not all these rules apply to a bankruptcy case. Another primary source for paralegals to perform research is case law which is the law established by the outcome of former cases.

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There are several reporter systems that publish only bankruptcy cases. We can find cases online in LexisNexisAcademic and Westlaw Patron Access. Collier also publishes a reporter system called Collier Bankruptcy Cases (Law Core KF1524. C62 1979). The largest reporter system is called West's Bankruptcy Reporter (Law Core KF1510. A2 W47) and there's also West's Bankruptcy Digest (Law Core KF1510. 3 W47). All these reporter systems hold cases decided by Bankruptcy Courts, district courts, courts of appeal, and the Supreme Court that relate to bankruptcy issues.

Another system which is acceptable to cite is called Bankruptcy Court Decisions (BCD). In addition, the bankruptcy system uses its own separate treatises. A treatise is a written extensive essay of facts and principles and conclusions. The most common resource used is Collier on Bankruptcy and they follow up with practice forms and guides entitled the Collier Bankruptcy Practice Guide. They consist of sample pleading forms and additional practice tools. These primary sources of researching bankruptcy issues start from codes and follow all the way to reporter systems and online.

The internet by far has simplified the time of research in its entirety. Most questions can be answered successfully, proficiently, and quickly if you input the correct Code section or Rule that is related to the subject of the inquiry and then narrow it down to a word or phrase in the code section. The American Bankruptcy Institute (www.abiworld.org) is the most recognized website that gives daily news and report imperative case and legislative developments. The Federal Judiciary Home Page (www.uscourts.gov) can help you access your local court.

Moreover, the virtual system in the courts has gradually been incorporating the ability to receive notices of pleadings. Furthermore, courts use the internet to remain current with the official state medianfamilyincome and various IRS expense standards that must be applied to compute the formula. The internet also provides rapid access to debtor's current credit report easing the process of waiting to receive it by mail and it also displays a list of management courses required to obtain to discharge individual bankruptcy cases.

All in all, with respect to bankruptcy paralegal research, there are plenty of ways of managing a thorough a concise research based on the abundant supply of tools and resources available. It is only a matter of getting the knowledge and experience to accurately apply all the resources like code, statues, bankruptcy report systems combined with the internet to have the best outcome. References: 1. Basic Bankruptcy Law for Paralegals, Custom Edition Published by Pearson Learning Solutions By David L. Buchbinder 2. www.law.asu.edu