



# THE THIRD BRANCH

[Home](#) > [News](#) > [The Third Branch](#) > [December 2008](#) > Warning! Read This Before Filing Bankruptcy Pro Se

email updates RSS

DECEMBER 2008

print share faqs

## Warning! Read This Before Filing Bankruptcy Pro Se

Many of the bankruptcies filed immediately before the October 2005 effective date for several provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 were filed pro se—literally “for oneself,” without the assistance of legal representation. Since then, the number of pro se bankruptcy filings has continued to grow. The Administrative Office’s Bankruptcy Judges Advisory Group (BJAG), has produced a helpful guide especially for bankruptcy courts, Assisting Pro Se Parties in Bankruptcy Cases.

“Pro se filings are growing around the country and it is very difficult for a pro se filer to understand and successfully traverse the system,” said Chief Bankruptcy Judge Judith Wizmur (D. NJ). The report was developed while she chaired the BJAG, a group of bankruptcy judge representatives from all of the circuits who advise the Director of the AO on all matters pertaining to the administration of the bankruptcy courts. “We wanted to offer to the bankruptcy courts some perspective on what assistance could be offered to pro se filers,” she said. “Some bankruptcy courts are extremely sophisticated in the help they provide filers and we felt others might benefit from their experience. The more we can spell out for debtors, the more we can help them.” She is proud of the result and credits the extensive efforts of Bankruptcy Judge S. Martin Teel Jr. of the Bankruptcy Court for the District of Columbia, assisted by Chief Bankruptcy Judges Charles M. Caldwell (S.D. Ohio) and William S. Stocks (W.D. N.C.).

“Some courts do a good job of assisting pro se filers, and some do not,” said Teel. “But they shouldn’t have to reinvent the wheel. BJAG published this report to highlight some of the things that can be done to educate pro se filers, what information about filing and services may be needed, and where best to make that available.”

Posting information on the court’s website is one way to reach filers. The Judiciary’s own website, [www.uscourts.gov/bankruptcycourts/prose.html](http://www.uscourts.gov/bankruptcycourts/prose.html) hosts a page developed by BJAG to give pro se debtors some guidance on how to proceed in a bankruptcy case. But local courts remain the primary source of guidance for debtors.

“We looked at a number of court websites and thought about what we should be telling pro se filers,” said Teel. “We thought it was a good idea to lay out some of the stumbling blocks in filing and briefly emphasize how difficult it is to file pro se.”

For example, it is recommended that “Stop! If you are a debtor thinking of filing a bankruptcy case, first read the notice to all debtors before filing a case” is the first item a pro se filer reads after clicking on the “Have No Attorney?” link on a court’s home webpage. That notice warns a pro se debtor not to file a case unless the debtor has complied with the statute’s requirement of prepetition credit counseling.

“There are too many cases of filers who fail to have the required credit counseling,” said Teel, “and it will almost always result in dismissal of their cases. In 99 percent of the cases, there is no excuse allowed by the statute for not getting counseling before filing the petition commencing the case. This is our red flag. We want filers to see the warning.”

The report’s sample “Have No Attorney?” webpage includes:

Information repeatedly stressing the complexity of bankruptcy, the desirability of proceeding with an attorney, and the prohibition against the clerk’s office and judge giving legal advice to filers.

A warning to potential filers to evaluate whether pursuing a bankruptcy case is really needed, including the unavailability of a discharge, in certain circumstances, if the debtor filed a prior bankruptcy case, and whether certain

## December 2008

### Inside This Edition

- > [Taking a Personal Commitment to Justice to the World](#)
- > [Warning! Read This Before Filing Bankruptcy Pro Se](#)
- > [JRent: Powerful Tool Helps Courts Monitor Space Costs](#)
- > [Kiosks In Pilot Program Take Over Routine Reports](#)
- > [New Public Law Affects Jury Selection and Service](#)
- > [On-Line eJuror Cuts Costs, Saves Time](#)
- > [Knowing the Rules: Team of Court Managers Builds Training on Space and Facilities](#)
- > [Sentencing Commission Issues Report on Federal Escape Offenses](#)
- > [The Third Branch - December 2008 \(pdf\)](#)

### Judicial Milestones

### Judicial Boxscore

Search the Third Branch:

### Archives

2010 **2009 and older**

- » [October](#)
- » [September](#)
- » [August](#)
- » [July](#)
- » [June](#)
- » [May](#)
- » [April](#)
- » [March](#)
- » [February](#)
- » [January](#)

The Third Branch Newsletter

tax liabilities will remain even if the debtor files.

A discussion of the difficulties a pro se debtor may face, including the papers that must be filed and the danger of dismissal if the papers are not filed; the need to attend and testify at the meeting of the creditors; the requirement to take a financial management court after filing the petition; and filing fee requirements.

The report's "Have No Attorney?" webpage also includes a "Find An Attorney" topic because a pro se party may not know how to find an attorney, and may be unaware of attorney services available for those unable to afford an attorney. Links would direct viewers to the websites of the American Bar Association and the local bar for a discussion of how to find an attorney, as well as links to the pro bono programs that are available.

For the debtor who elects to file pro se despite the dire warnings, the BJAG paper recommends various types of assistance. Official and local forms can be posted in editable PDF formats. Most of the official forms are already in this format and available on the Judiciary's website at [www.uscourts.gov](http://www.uscourts.gov).

A court's website also may post a clearly labeled link to informational materials on bankruptcy, which can include, for example, links to the Bankruptcy Code and Bankruptcy Rules.

Much of the information posted to the court's website on bankruptcy could be made available in paper form in the clerk's office—including a very prominent notice regarding the dangers of filing without prepetition credit counseling. Because some individuals may not have Internet access, the BJAG report recommends that bankruptcy courts provide access to their website and other selected websites on their public area computer terminals, or post a notice directing visitors to public libraries that provide computer access.

Once an individual debtor decides to proceed pro se, BJAG recommends that the court have in place a standard set of notices that the clerk of court issues to alert the party to any deficiencies in the party's filings. These same notices also could be used for parties proceeding with the assistance of an attorney.

BJAG also recommends that courts post information on their website and at the clerk's office to assist pro se creditors, including information regarding what a corporation can pursue pro se (for example, the filing of a proof of claim), and links to information pertinent to pro se creditors.

A secondary purpose of the report was to explore briefly what pro bono programs can be developed to assist pro se filers. "We really just scratched the surface in identifying existing pro bono programs," Teel admits. Some courts may have a pro se law clerk who will be able to assist, some bar associations and public interest groups have programs for providing an attorney to assist qualified indigent debtors in filing a case, some bar associations provide self-help at the clerk's office at appointed hours, and other bar associations have programs to assist indigent parties in litigated matters in a bankruptcy case. The BJAG lists several resources on establishing pro bono programs in bankruptcy courts and how to make the existence of the programs known.

The guide, *Assisting Pro Se Parties in Bankruptcy Cases*, is posted on the Bankruptcy Judges site on the Judiciary's intranet. Bankruptcy information is available on the Judiciary's website at [www.uscourts.gov/bankruptcycourts/bankruptcybasics.html](http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html). A video at [www.uscourts.gov/video/bankruptcybasics/bankruptcyBasics.cfm](http://www.uscourts.gov/video/bankruptcybasics/bankruptcyBasics.cfm) explains the basics of bankruptcy for potential filers.

is published monthly by the Administrative Office of the U.S. Courts Office of Public Affairs  
One Columbus Circle N.E.  
Washington, D.C. 20544  
(202) 502-2600



[Contact Us](#) | [Careers](#) | [Privacy & Security Policy](#) | [Judicial Conduct & Disability](#) | [Glossary of Legal Terms](#)  
[Widgets](#) | [Translate](#) | [BrowseAloud](#)

This site is maintained by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary.

The purpose of this site is to provide information from and about the Judicial Branch of the U.S. Government.

