

UNIVERSITY OF TEXAS SCHOOL OF LAW

15th ANNUAL CONSUMER BANKRUPTCY PRACTICE

July 25, 2019

Data Mining:
Uses and Abuses

PAPER BY:

MICHAEL BAUMER
7600 Burnet Rd., Suite 530
Austin, TX 78757
512-476-8707
michael@baumerlaw.com
baumerlaw.com

There are really two distinct parts to preparing a bankruptcy case for filing: document preparation and document review. You can't do an adequate job of document preparation without substantial document review. Don't assume that your client will provide complete and/or accurate information. Perhaps 10% of my clients do, another 40% or 50% do a fairly good job, and another 30% to 40% do a decent job, but with some significant errors or omissions, and the last 10% to 15% are simply hopeless. I truly believe that the vast majority of my clients are doing their best, but some are simply emotionally or psychologically overwhelmed and some are not very organized and are overwhelmed by the volume of material required. A small number are intentionally providing false or incomplete information in an effort to protect non-exempt assets or avoid failing the means test. If we catch a client doing this, we fire them. It is not worth your time or reputation to try to help clients who refuse to follow the rules and are happy to drag you down with them.

Prior to filing, someone at my firm actually looks at the last two tax returns to make sure that all income is disclosed on SOFA #1 and #2 and that the sources of all income are disclosed appropriately. (i.e., oil and gas royalty interests on Schedule A.) Someone goes through their bank statements for the last six months looking for preferences and other sources of income. Someone goes through their credit reports to make sure all of their creditors and any collection agencies are listed. (Our software lets us merge a credit report into the schedules, but we find that the credit reports are incomplete, i.e., a collection agency is listed, but not the actual creditor, or that secured debt gets listed as unsecured, etc.) We almost never file amended schedules, but that is because we do a very thorough job of document review prior to filing the case.

At my firm, we will not file an "emergency case", i.e., one without all of the required documents: petition, schedules, SOFA, means test, plan, *unless* we have all of the information needed to complete all of the documents. Clients facing foreclosure always want to "get that to you later", but my experience is that once the stay kicks in, their motivation level decreases significantly. The cases where we agreed to "go ahead and file" inevitably turned out to be the cases where we later discovered non-exempt assets or debts which would make the debtor ineligible for Chapter 13, or.....

Explain to the client what the significance of inaccurate information can be. This can mean 727 litigation, or avoidance actions, or sale of undisclosed assets, or a motion to dismiss or denial of plan confirmation in a Chapter 13. You cannot over-emphasize the significance of these concerns.

Read the case law. In Section 727 litigation, the courts have adopted a "reckless disregard for the truth standard." Even if the individual omissions are insignificant, the cumulative effect of multiple insignificant omissions may be sufficient to deny a discharge.

Assets which are not listed cannot be claimed as exempt and are not administered by the trustee. The result is those assets remain property of the estate even after the case is closed. In about 2015 I was hired in a re-opened 1991 case where the debtors owned some mineral interests which were not disclosed. There had never been any leases or

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Data Mining: Uses and Abuses

Also available as part of the eCourse

[Practice Tips and Challenges for the Consumer Bankruptcy Practitioner](#)

First appeared as part of the conference materials for the
15th Annual Consumer Bankruptcy Practice session

"Data Mining: Uses and Abuses in Bankruptcy Cases"