



**12th Annual
Frank W. Koger
Bankruptcy Symposium**

“The ABI Commission on Consumer Bankruptcy is charged with researching and recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure.”

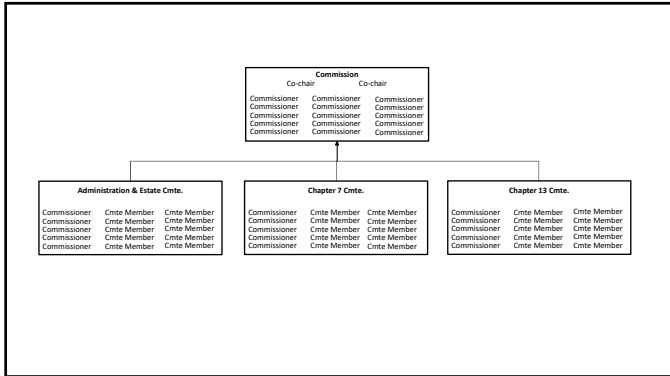
“These changes might include amendments to the Bankruptcy Code, changes to the Federal Rules of Bankruptcy Procedure, administrative rules or actions, recommendations on proper interpretations of existing law other best practices that judges, trustees and lawyers can implement.”

Why Now?

- Over 40 years have passed since the Bankruptcy Code was adopted.
- 14 years since the BAPCPA amendments.
- In that time, there have been major changes in
 - the economy
 - technology
 - law practice
 - the regulatory environment.

Final Report

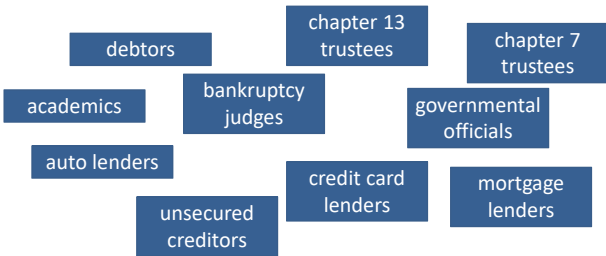
- The Commission’s Final Report has now been issued.
- It sets out recommendations on 48 discrete issues with a discussion of the background and reasoning .
- The Commission’s work was supported by three committees:
 - Committee on Case Administration and the Estate
 - Committee on Chapter 7
 - Committee on Chapter 13.

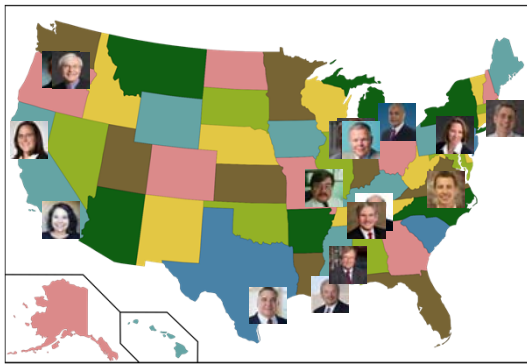


Ideas for Areas of Sources

- The Commission received 131 written submissions that included ideas for areas of study.
- The Commission and its committees held 6 public meetings in conjunction meetings of organizations of bankruptcy professionals.
- The Commission and its committees conducted their own research.

Professional Experience of Commissioners and Committee Members





ABI Commission Final Report

- Foreword
- 1. Effectuating the Fresh Start
- 2. Improving Creditor Certainty
- 3. Facilitating Effective Access
- 4. Making Chapter 13 Work
- 5. Systems Issues
- Appendices

Discussion of Particular Recommendations

- I have picked out only a few brief examples now
- You can find all the recommendations and the rationale for the recommendations in the final report which is available at <https://consumercommission.abi.org/>

Student Loans

- Should be dischargeable if
 - made by a nongovernmental entity,
 - incurred by a person other than the one receiving the education, or
 - first payable more than seven years before the bankruptcy.
- Changes to interpretation of existing law
- Changes to administrative procedures

Racial Justice in Bankruptcy

- Substantial empirical evidence shows that African Americans are both
 - disproportionately more likely to file chapter 13 cases than debtors of other races and
 - disproportionately less likely to obtain a discharge.
- Recommendations for equal access to the bankruptcy system:
 - training programs
 - collection of race and ethnicity data

Chapter 7 Attorney Fees

- Current law creates barriers to payment of chapter 7 fees, reducing access to the bankruptcy system.
- Bankruptcy law should address this problem, possible mechanisms include
 - delay of discharge to allow collection of attorney fees, and
 - an exception from discharge, with judicial oversight.
- The Commission also recommends other steps to reduce the cost of chapter 7.

Attorney Competence & Lawyer Misconduct

- Well-established rules of professional conduct governing bankruptcy cases should be vigorously enforced.
- Local committees should form to investigate and resolve complaints against attorneys.
- Disciplinary orders should be published.
- Attorneys should receive enhanced fees for being board certified or demonstrated skill in the bankruptcy field, 11 U.S.C. § 330(a)(3)(F).

Reserve Fund in Chapter 13s

- Chapter 13 debtors should be allowed and encouraged to maintain a reasonable reserve fund
 - to be held by the trustee
 - for unanticipated expenses of the debtor.
- The reserve fund should be limited to one month of scheduled expenses.
- The debtor would access the reserve fund after notice and an opportunity for interested parties to object.
- The debtor should be allowed to replenish the reserve fund.

Means Test Revisions & Interpretations

- The Commission recommends retaining the means test but with important amendments.
- These amendments are:
 - Reduced documentation below-median income debtors;
 - Exclusion of public assistance, government retirement, and disability benefits from income
 - Removal of the presumption of abuse if the debtor shows special circumstances, even if the circumstances arose voluntarily; and
 - Allowance of certain statutory expense deductions only to the extent actually incurred and necessary for support.

Credit Counseling & Financial Management Course

- Prepetition credit counseling should be eliminated
- The requirement of a financial management course for a chapter 7 discharge should be eliminated.
- The requirement of a financial management course for a chapter 13 discharge should be retained, with further study of its effectiveness.
- The Fair Credit Reporting Act should require the reporting of a debtor's successful completion of a financial management course

Discharge Violation Remedies

- The Commission recommends:
 - creation of a statutory private right of action for violations of the discharge, like the right for violations of the automatic stay, which would provide the full range of sanctions, including costs, attorney fees, and punitive damages; and
 - amendments to the Bankruptcy Rules allowing motions to determine whether particular creditor conduct would violate the discharge.

Protecting Interests in Repossessed Collateral

- To balance the need of the debtor for return of the collateral, often a vehicle, and the need of the creditor for adequate protection, the Commission’s principal recommendation is that § 362(a)(3) be amended to provide expressly that a creditor’s retention of estate property violates the automatic stay, but only if proof of insurance or other security is provided for property subject to loss of value.

Chapter 13 Debt Limits

- To expand the availability of relief under chapter 13 and reduce the need for individuals to file under chapter 11, the Commission recommends:
 - increasing the chapter 13 debt limit to \$ 3 million, eliminating the distinction between secured and unsecured debts, and
 - for married couples, applying the limit separately to each spouse and not aggregating the spousal debt, even in joint cases.

Chapter 7 Trustee Compensation

- The Commission recommends statutory amendments to address trustee undercompensation:
 - increase the trustees' base compensation from \$60 to \$120 dollars in each case, with the increase coming from existing fees rather than an increase in filing fees or a reduction in payments to creditors, and
 - increase in the commission allowed under § 326(a) by increasing the levels of distributions to creditors at which lower percentages of the distributions are paid to the trustee.

Next Steps

- The Report needs to come to the attention of legislators, judges, regulators, and other policymakers.
- Lawyers can support these efforts.
- ABI's Endowment, bankruptcy organizations, and professors can assist in efforts to study issues that the Report has pointed out.
