

Debt Warriors—Wrong Soldiers Fighting the Wrong War

As the economy continues to worsen, businesses offering credit counseling, debt management and other "quick fix" plans continue springing up to offer debt relief services to consumers. A colleague forwarded me a blog article from an organization called Debt Warriors entitled "[7 Facts That The Average Bankruptcy Lawyer Will Not Tell Debtors](#)". Author J. Carlton Ford describes himself as a "former Legal Assistant in a Bankruptcy Prevention Law Firm". He is also a sales associate for Pre-Paid Legal Services, Inc. It is not clear whether or not Mr. Carlton is in fact a licensed attorney. However, it appears he is not.

Debt Warriors purports to offer to teach consumers how to stop creditor harassment and eliminate their debts without filing for bankruptcy. Based on misinformation contained in the article about "average" bankruptcy attorneys, I would seriously question the value as well as the credibility of the services offered by Debt Warriors. As the old saying goes, "if it sounds too good to be true then in most cases it is simply not true."

Mr. Ford is unclear on what he believes is an "average" bankruptcy attorney. Of course, if Ford is not an attorney himself, so it would be difficult for him to evaluate licensed members of the bar. I have been in practice for more than 15 years, representing both creditors and debtors. I have limited myself to representing consumer debtors since 2005 and I am a member of the [National Association of Consumer Bankruptcy Attorneys](#) ("NACBA"). So far this year, I have helped my clients discharge more than \$3.7 million of debt in Chapter 7 bankruptcy cases. I have no idea if Mr. Ford would consider me to be an "average" or "typical" bankruptcy attorney, but I offer the following responses to the "facts" about bankruptcy that "average" attorneys allegedly hide from their clients:

- 1. Ford Claims that Bankruptcy is Not Easy to File.** Bankruptcy has never been "easy" to file. It is complex and difficult in many cases, which is exactly why every consumer needs an experienced bankruptcy attorney. Ford then goes on to make the nonsensical statement that Congress eliminated Chapter 11 from the Bankruptcy Code with the 2005 Amendments. Besides being a completely

untrue statement, Chapter 11 is meant for large businesses to restructure their debts. It is very rare that a consumer debtor would even file a Chapter 11 case. However, some individuals must file for Chapter 11 relief because of the amount of the debt they owe. Chapter 13 is available for the "average American wage-earner" so the debt limits for Chapter 13 relief do not apply to high-income wage earners and individuals with substantial and significant secured and unsecured debts.

2. Ford Asserts that Consumers seeking Bankruptcy Protection have to take a 'Means Test'. The 2005 Reform Act does include a financial means test for consumers who seek to discharge their debts under Chapter 7 or repay their debts under Chapter 13. Of course a bankruptcy attorney would discuss the means test with a potential client. It is the most highly publicized change from the 2005 Reform Laws and the most burdensome change to debtors. However, it is not a "test" like a true-false exam in high school. It is a historical analysis for the consumer's average monthly income for the 6 months before the bankruptcy case is filed, not including the month in which the case is filed. It is somewhat like filing out a tax return. The bankruptcy attorney is the one who completes the form based in the payroll and tax records provided by the consumer and income from other sources. A consumer debtor cannot file for bankruptcy without completing the means test analysis form. But, it is a form, and not a test.

3. Form Claims there is a Presumption of Bankruptcy Abuse By The Debtor. The author seems to be discussing the financial criteria of the means test: "Did you know that if a Consumer has income of over \$100 per month (after deductions) and they seek Bankruptcy Protection, that Consumer may be 'Presumed' guilty of Bankruptcy Abuse? The average Bankruptcy Lawyer will not inform you of this fact."

This statement by the author is utter nonsense. Mr. Ford to be referring to the financial criteria of the means test. If a consumer debtor "fails" the means test, then it might be a presumption of abuse for them to file for Chapter 7 bankruptcy. In such cases, the debtor might need to file for a Chapter 13 repayment plan and pay back a small portion of those debts. Or, the debtor may be able to claim "special circumstances" that would negate the

presumption of abuse and proceed with the Chapter 7 case. The bottom line is that a bankruptcy attorney cannot "hide" the means test from a debtor and in fact completes the form for the debtor.

4. Ford Claims that Consumers Seeking Bankruptcy Protection Must Wait 180 Days (6 Months) Before Filing. This statement is simply false. Prior to filing for bankruptcy, a consumer debtor must take an approved class in credit counseling and file their certificate of completion with the court when filing their bankruptcy petition. The class must be taken within 180 days before the filing date of the debtor's bankruptcy petition. There is no requirement to delay filing for bankruptcy. The only limitation on the credit counseling is that you cannot take the course and then file for bankruptcy the same day you complete the course. But, the 180 Rule as stated by Ford is simply false.

5. Ford then Claims that Bankruptcy Filers Must Seek Accredited Credit Counseling Before Filing. Of course an attorney would mention this to a potential bankruptcy client. If a consumer debtor does not take the class, the court will dismiss their case. Not only do I mention this class to my clients, I arrange for them to take it! The filing of a certification from the counselor and a sworn statement from the debtor is an essential part of the bankruptcy court filing and as noted the case will be dismissed without these mandatory documents. The class is not an embarrassing or burdensome task. In most cases, debtors may take the class in the privacy of their own home via the Internet or over the phone. The classes generally take up to 90 minutes to complete.

6. Ford Claims Bankruptcy Is Now More Difficult and More Costly To File. Yes, bankruptcy is more difficult and expensive to file than before the changes made by the 2005 Reform Law. That fact is certainly no secret to the public. Before I accept money from a client, we discuss the fees and I provide them with a signed fee agreement that contains all of the disclosures required by the Bankruptcy Code.

7. Ford Claims that Pre-Paid Legal Attorneys Are Way Above Average. Maybe Pre-Paid Legal attorneys are above average. I have nothing neither good nor bad to say about them. I do know that customers of Pre-Paid Legal only have

one provider law firm to choose from in the entire state of California. You have very few options if you are unhappy with the provider law firms.

In the final analysis, Mr. Ford's article is nothing more than a biased and inaccurate attempt to promote his Pre-Paid Legal Services Plan and his questionable debt negotiation services while perpetuating blatant and outright false myths about the benefits of bankruptcy. If you are a debtor in need of guidance regarding debt problems, consider using the [attorney search function](#) on NACBA's website to find a qualified local bankruptcy attorney. Members of NACBA are far more qualified to advise debtors regarding their debt relief options than a former paralegal promoting a service of dubious value. The NACBA website is www.nacba.org. The American Bankruptcy Institute (www.abi.org) also includes a substantial amount of material on consumer bankruptcy law under their "Consumer Bankruptcy Center" link. Finally, the National Association of Chapter 13 Trustees has a website for consumers seeking Chapter 13 information (www.nacttacademy.com).

About the Author: [Carl H. Starrett II](#) has been a licensed attorney since 1993 and is a member in good standing with the California State Bar and the San Diego County Bar Association. Mr. Starrett practices in the areas of [bankruptcy](#), [business litigation](#), [construction](#), [corporate planning](#) and [debt collection](#).