

Case Preparation Checklist

Pre-Filing Structure for Predictable Outcomes

Purpose of This Document

This checklist is designed for consumer bankruptcy attorneys evaluating whether to file a private student loan adversary proceeding.

It is not a questionnaire.

It is not a hardship outline.

It is a pre-filing decision and structure tool.

Private student loan adversaries become manageable when structured before filing. Most problems arise from poor screening, weak modeling, or underestimating operational burden.

Use this document sequentially. Do not skip phases.

Phase 1: Need

Gate: Should this adversary exist?

Most cases should stop here.

Bankruptcy is appropriate only when no realistic non-bankruptcy solution resolves the debt.

1.1 Non-Bankruptcy Alternative Screening

Document and confirm:

- Can the borrower refinance at a realistic rate?
- Can the borrower settle outside bankruptcy with available resources?
- Is there a viable forgiveness path?
- Would income-driven repayment meaningfully stabilize the situation?
- Is family funding realistically available?

If a workable external solution exists, do not file.

1.2 Financial Impossibility Analysis

Document with precision (not estimates):

- Current gross and net income
- Realistic earning ceiling (not aspirational projections)
- Household expenses (actual, documented)
- Anticipated payment if litigation fails
- Retirement horizon
- Liquidity access (cash, brokerage, HELOC, etc.)

Decision Question: If no discharge and no settlement occur, can the borrower service this debt long-term?

If yes → adversary likely inappropriate.

If no → proceed to VALUE.

Phase 2: Value

Gate: Is there a realistic resolution zone?

This phase begins once the lender's identity is confirmed.

You are not predicting trial outcomes. You are modeling settlement feasibility.

2.1 Lender Mapping

Identify and record:

- Servicer
- Actual loan owner
- Bank vs trust vs fintech platform
- Qualified vs potentially non-qualified status
- Co-signer exposure
- Known litigation posture (negotiation-oriented vs discovery-heavy)

Do not proceed without clarity on ownership.

2.2 Internal Settlement Modeling

Before filing, write down internally:

- Expected resolution band (range, not a single number)
- Expected movement behavior (early vs late stage)
- Discovery risk tolerance of the lender

If you cannot articulate a plausible resolution band, you are filing blindly.

2.3 Borrower Funding Overlay

Assess realistically:

- Lump sum access
- Installment capacity
- Third-party contribution realism
- Time constraints (residency, disability, age, income shifts)

If the borrower cannot fund even a modeled resolution band, reassess whether LEVERAGE justifies proceeding.

VALUE answers: "Can this end?"

Phase 3: WEIGHT

Gate: Is this operationally survivable?

Many adversaries fail because attorneys underestimate the burden.

3.1 Case Multipliers

Count and document:

- Number of lenders
- Number of adversaries required
- Number of loans
- Co-signer entanglement
- Jurisdiction complexity
- Pro hac vice requirements

Each multiplier increases cost, time, and exposure.

3.2 Discovery Burden Forecast

Anticipate before filing:

- Volume of financial records required
- Medical documentation volume
- Employment history depth
- Likelihood of deposition
- Expert exposure risk

If you are not comfortable managing depositions and extended discovery, do not file.

3.3 Fee Structure Decision

Determine before engagement:

- Flat fee viable?
- Tiered fee required?
- Co-counsel advisable?
- Referral more appropriate?

If your fee cannot survive six months of motion practice, decline.

WEIGHT is a firm-risk decision, not a client preference.

Phase 4: LEVERAGE

Gate: How uncomfortable does this become if litigated?

LEVERAGE does not replace hardship. It amplifies it.

4.1 Undue Hardship Density

Evaluate the concentration of hardship variables:

- Age vs repayment horizon
- Permanent or chronic medical conditions

- Recurring income instability
- Realistic career ceiling
- Failed educational ROI
- Dependent obligations

Single-factor hardship cases are weaker. Stacked hardship variables increase leverage density.

4.2 Structural Vulnerabilities

Identify:

- Cost of Attendance defects
- Non-qualified education loan exposure
- School misconduct indicators
- Origination irregularities

Structural vulnerabilities strengthen negotiation posture but do not substitute for hardship.

4.3 Settlement Posture Calibration

Based on hardship density + structural factors, determine internally:

- Conservative opening posture
- Aggressive opening posture
- Early movement strategy
- Discovery-forward posture

LEVERAGE adjusts tone. It does not eliminate risk.

PHASE 5 — CONTROL

Gate: Are you structuring predictability?

CONTROL begins before filing.

5.1 Complaint Design

Confirm before filing:

- Clear financial narrative
- Structured timeline
- Fact-forward hardship presentation
- No academic over-pleading
- Relief framed as solvable

5.2 Early Evidence Preparation

Have ready before filing:

- Income documentation
- Budget documentation
- Medical records (if applicable)
- Loan history and payment history
- Employment history

5.3 End-State Planning

Before filing, define internally:

- Target settlement band
- Concession sequencing
- Red-line threshold
- Trial readiness comfort level

Do not file without a defined exit strategy.

CONTROL ensures the case behaves.

DO NOT FILE IF:

- A realistic non-bankruptcy solution exists.
- You cannot articulate a plausible resolution band.
- You are unwilling to manage discovery and depositions.
- Your fee structure cannot withstand extended motion practice.
- The case relies on a single, thin hardship factor.

Final Practitioner Note

This structure is sequential and discipline-based.

Most cases should fail at NEED. Many should fail at WEIGHT.

Private student loan adversaries are not chaotic when structured correctly. They become unpredictable when filed without screening, modeling, and operational discipline.