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Six Months After Bankruptcy Reform

Lawyers Squeezed By Time-Consuming Requirements

By [Reni Gertner](#)

The first six months of life after bankruptcy reform are coming to a close - and debtors' lawyers across the country say they now live in a world of more tedious work and time-consuming cases.

Many lawyers have spent most of the past six months trying to get themselves and their documents in sync with the new law's requirements.

"The initial impact was just a pretty steep learning curve," said O. Max Gardner III, a consumer bankruptcy attorney in Shelby, N.C.

The changes in the law have forced debtors' lawyers to rewrite their fee contracts and other pre-filing materials for clients.

Gardner said it took him a while to establish a "process for intaking new clients and processing all the things they have to file."

Overall, "the new law has made [bankruptcy practice] much more arduous, much more document intensive, and there is much more due diligence required," agreed Birmingham, Ala., attorney Brad Botes, executive director of the National Association of Consumer Bankruptcy Attorneys (NACBA).

The increased workload means lawyers don't have time to handle as many clients, which has forced many to charge bigger fees.

For example, Gastonia, N.C. debtors' attorney Wayne Sigmon said he is charging at least 50 percent more per case.

'Busy Work'

Lawyers say the new law adds up to a whole lot of extra work and forms, taking up enormous amounts of time for themselves and their staff.

"I have to spend at least twice as much time with debtors as I did before, and my assistants are spending at least twice as much time as well," said Sigmon. "And it's mainly because of the BS that's required that's really not necessary. The extra work all comes from busy work."

Among the most time-intensive aspects of the process are collecting all of the required documents from clients and filling out the detailed means test forms.

This includes collecting copies of the client's past four tax returns, as well as his or her pay stubs from the prior six months.

"There are a lot more forms to fill out and a lot more document accumulation," Sigmon said.

Gardner agreed.

In addition, he said, "clients have to sign a lot of disclosure forms that, in my opinion, are basically things they were already aware of before we had this law. It takes more time and doesn't accomplish much of anything."

For example, lawyers are required to tell clients that they don't really need an attorney in order to file bankruptcy.

"It's like a brain surgeon telling someone he doesn't need a doctor to do surgery," said Botes.

Because of the new law's requirements, many lawyers have reworked the materials they give to clients, including fee contracts.

"The law forced me to redo my contracts and really be very detailed and careful about how I wrote them, to make sure I covered all the bases," said Sigmon. "What used to be a one-page fee contract is now a five-or six-page contract."

Sigmon's version makes clear that the debtor has to provide his pay stubs and tax returns in order for the attorney to file on his behalf. It states that the attorney doesn't agree to defend the debtor if a creditor objects to his discharge, and spells out the attorney's right to withdraw from the case if he finds the debtor has "misrepresented anything" or

failed to provide documents.

Also, Sigmon provides a separate document that includes a number for warnings based on the new law's language.

It says such things as, "Make sure you've valued your property at reasonable value, and make sure you've told the truth," he noted.

An additional requirement of the law is that all attorneys indicate in advertising that they are "debt relief agencies."

When Sigmon rewrote his Yellow Pages ad to comply, he "tried to take a negative and turn it into a positive. I wrote 'I have represented consumer debtors for almost 30 years, and I am proud to be recognized as a federal debt relief agency.'"

Courts Weigh In

While many specialists have generally gotten up to speed with the new requirements, each week new decisions are released interpreting the details of a law that judges, scholars and debtors' and creditors' attorneys alike agree was poorly drafted.

"It's early," said Philadelphia debtors' lawyer Henry Sommer, current president of the National Association of Consumer Bankruptcy Attorneys (NACBA). "The cases will be picking up and I am sure we will see many decisions in the year to come."

The first decisions have covered a number of issues, largely related to statutory construction.

"It is already evident that courts face a significant challenge in deciding the extent to which the plain words of the statute should be given effect, particularly when the language produces an absurd result or is at odds with the statute's apparent intent," said John Rao, an attorney with the National Consumer Law Center in Boston.

For example, one series of cases has dealt with a provision that is intended to prohibit cramdowns of car loans in Chapter 13.

Previously, a debtor could force the amount he or she must pay down to the asset's current value, plus interest. Under the new law, the debtor seemingly has to pay the entire amount of the loan on cars purchased within 910 days prior to filing. The same language also applies to other consumer goods purchased within one year of filing.

However, the relevant provision seems to be missing the word "period" after "910-day" and the paragraph is unnumbered and hanging, without a reference to the section it relates to.

Another group of cases has considered what qualifies as "exigent circumstances" for debtors who have not fulfilled the pre-filing credit

counseling requirement, said Sommer.

He noted that many open issues haven't shown up in reported cases yet - for example, how abuse motions under Section 707(b) of the Bankruptcy Code should be handled.

The controversy there, said Sommer, is that "the U.S. Trustees maintain that even if you pass the means test they can still say you have the ability to pay, while the debtors' bar maintains that the means test was meant to be an objective test, and they can't say that absent some other indicia of bad faith."

Read The Law

The bankruptcy reform law is Public Law No. 109-8, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005."

It was signed in April 2005. The majority of the provisions went into effect on Oct. 17, 2005.

You can read or print the full text in the "Important Documents" section of Lawyers Weekly USA's website:

<http://www.lawyersweeklyusa.com/subscriber/treas.cfm>

Questions or comments can be directed to the writer at:
reni.gertner@lawyersweekly.com