



Confusion over bankruptcy law leads to fewer filings, lawsuit

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BY ANUSHA SHRIVASTAVA

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WATERBURY -- Consumer bankruptcy filings in the first quarter of 2006 are down to a fourth of what they were for the same period a year ago, according to the National Association of Consumer Bankruptcy Attorneys. New bankruptcy law provisions went into effect in October.

"Four months' worth of cases were probably filed just before the law went into effect," said Henry J. Sommer, president of the Washington-based NACBA.

Aside from a flood of filings just before the Oct. 17, 2005, deadline when changes in bankruptcy laws went into effect, attorneys say the drop in numbers is because the new provisions are confusing for consumers -- and even for lawyers.

The Connecticut Bar Association and the NACBA has gone so far as to file a lawsuit in federal court challenging several key provisions of the new law, which sets new limits on personal bankruptcy filings and requires people to get professional credit counseling before they file petitions.

"We are opposed to parts of the new law that seek to regulate and restrict what a lawyer can say to clients," said Tom Gugliotti, an attorney at Updike Kelly & Spellacy PC.

For instance, Gugliotti said, the law seems to include attorneys in a category of people called debt relief agencies, which could prevent attorneys from carrying out their professional and ethical responsibilities.

"Debt relief agencies cannot allow people to incur debt," Gugliotti said, "but in some situations, it is appropriate for the lawyer to ask a client to refinance their house, which may mean incurring debt."

Another example is when a client misses work because his car breaks down repeatedly and the lawyer tells him get a new car, even if it means getting further into debt.

"The law even says consumers don't need a lawyer to file for bankruptcy," said Eugene Melchionne, a bankruptcy lawyer in Waterbury. "That's asking for consumers to have an incredible amount of expertise."

If the client does indeed go it alone and has a case dismissed in court, he or she could lose the right to file again and could end up losing a house and other assets, he said.

Provisions of the new law prohibit most filers with above-average income from filing Chapter 7 petitions, which allow debts to be wiped out. Instead, if they have a minimum of \$100 left over each month after paying certain debts and expenses, they have to submit a five-year repayment plan under the more

restrictive Chapter 13.

Some of what the attorneys are saying is "posturing," said Robert Manning, professor of finance at the Rochester Institute of Technology, adding there is a "disconnect between how the law was written and its actual implementation."

Even if the law does not impede the client-attorney relationship, Manning said, the attorneys are making a point about how "ridiculous" some of its provisions are.

Far from teaching consumers to be fiscally responsible, the new law does not serve anyone, Melchionne said, because people are too scared and too confused to file for bankruptcy. It has also become more expensive to file for bankruptcy, he said.

The lawsuit seeks a preliminary injunction prohibiting enforcement of its provisions against attorneys. No hearing date has been set.