SEE SECTION B FOR THE CITY OF BUFFALO IN REM LISTINGS — PAGES 1B-39B

Volume 77, No. 82 Buffalo Established 1929 – Published Twice Weekly – Thursday, October 13, 2005 – $1.25 per copy

LAW JOURNAL

New bankruptcy laws have serious implications for all

PERSONAL BANKRUPTCY

JEFFREY FREEDMAN

Those of us who concentrate our practices on bankruptcy anticipate the new Bankruptcy Abuse Prevention and Consumer Prevention Act, which takes effect Oct. 17, will make filing bankruptcy more time-consuming, less efficient and more expensive.

According to Henry Sommer, the president of the National Association of Consumer Bankruptcy Attorneys, the new law is going to increase the amount of work lawyers have to do.

"As part of that, attorneys will be forced to charge higher attorney fees. Fees may increase anywhere from a few hundred dollars up to more than $1,000," Sommer says.

There are several sections of the new law that will impact the attorneys' time and create additional expenses for debtors: requirement for the debtor to undergo a means test to see if he or she is eligible to file a Chapter 7 or a Chapter 13 plan, mandatory credit counseling and financial education, more stringent regulations regarding filing bankruptcy, numerous new paperwork requirements and the attorney's duty to certify information.

If the debtor's income is over the median income (in New York this is $39,463 for a single person, $48,496 for a family of two, $57,430 for three, $67,564 for four and $73,864 for five) the filer must undergo the means test. If, after deducting allowed expenses, the individual or family has $166 in excess income per month, or if the excess income is between $100 and $166 and that amount would allow them to pay 25 percent of their unsecured debts over five years, in all likelihood they will be required to file a Chapter 13 plan.

In some situations special circumstances can be shown and a Chapter 7 could be filed, or if excess income is under $100, Chapter 7 could be available.

For a Chapter 7, lawyers will have to obtain the previous two years of tax returns and 60 days of recent pay stubs from debtors. In a Chapter 13, the previous four years of tax returns are required and 60 days of pay stubs.

Current monthly income (CMI) will be based on the person's income over the past six months, which can be deceptive if the individual has recently become disabled, lost their job or has had to take a lower paying job. In reality, their income could be much lower. If the debtor's income over the past six months is more than the median income, it is likely the debtor will have to be in a five-year plan if they fail the means test. On the other hand, certain types of income, such as Social Security, are excluded from the means test.

Debtors will have to go to an approved credit counseling service within 180 days prior to filing a Chapter 7 or 13 for a briefing, and then will have to attend financial education classes, again given by an approved agency, following filing.

Paul Atkinson, president of Consumer Credit Counseling Services of Buffalo, said that the fees will be $50 for the briefing and $50 for the financial education. Married couples can attend at the same time and each get a certificate, but will still only pay $50 for each section of the counseling.

Under the previous law, attorneys only had to be aware of the exemptions allowed in the states in which they practiced. The new law states, however, that if the debtor lived in any other state than the one in which he or she is filing within two years of filing a petition, the local state exemptions might not apply. The exemptions allowed will be those of the state the debtor lived in during the longest part of the180-day period prior to the two-year period.

This means attorneys have to know, or have access to, all the exemptions allowed by all the states throughout the country, as well as the Federal exemptions. Some attorneys will also consult with attorneys who practice in the state concerned to confirm the appropriate exemptions are being applied to each case.

It's inevitable that attorneys will have to increase their fees to cover this time and work, putting more hardship on a population of people who have already fallen on hard times.

Part II, next Thursday, will address the issues of increased documentation requirements and priorities for repayment of debts.

Jeffrey Freedman *is senior partner at Jeffrey Freedman Attorneys at Law, a Buffalo-based firm that concentrates in bankruptcy, Social Security disability and personal-injury cases.*