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Bankruptcy Courts' Work Per Case Increases Significantly

The far-reaching changes in federal bankruptcy law that took effect in October 2005 yielded a sharp decline in filings in 2006, but preliminary information suggests that the work per case has increased significantly for bankruptcy courts.

That increase, perhaps the least publicized impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), is being felt in bankruptcy court clerks' offices across the nation.

"Although filings have started to rebound, no consensus exists among bankruptcy courts as to when, or if, filings will return to pre-BAPCPA levels," Judge Julia Gibbons (6th Cir.), chair of the Judicial Conference's Committee on the Budget, told congressional appropriations committees in March. "The number of filings alone, however, should not be viewed as the sole indicator of overall workload. BAPCPA created new docketing, noticing, and hearing requirements that make addressing the petitions more complex and time-consuming," she said.

Bankruptcy court officials agree. "Our staff is finding that the amount of work per case has increased substantially," said Susan Thurston, the bankruptcy court clerk in Rhode Island.

George Prentice, clerk of court for the Western District of Texas Bankruptcy Court, added: "The nature of our work shifted; it did not go away."

Survey information from 10 bankruptcy courts indicates that user-entered docket entries per case have risen substantially since the new law took effect. Likewise, the number of motions filed and the number of judges' orders show similar increases in those courts.

"More documents are filed in each case, reflecting the fact that the new law carries more requirements, such as each petitioner must certify that he or she has been through credit counseling. No such document existed before BAPCPA," Prentice said.

"The number of externally filed documents has increased," he said. "We quality control almost every document filed in a case, particularly if it is user-entered. That has to be a daily function of automated courts, because once something is filed it is instantly public and transparent. It is incumbent on the clerk's office to ensure the docket offers an accurate picture of what is happening in a case."

In Rhode Island, Thurston said, "Our workload is almost as demanding and time-consuming for our small office as in past years." Why? The numbers from the District of Rhode Island Bankruptcy Court show:

- an 87 percent increase since BAPCPA in the ratio of motions to filings.
- a 104 percent increase in the ratio of orders to filings.
- a 68 percent increase in the ratio of docketed events to filings.

"There's been a dramatic increase in the amount of work per case, including the fact that we have many more pro se (filed without a lawyer's help) cases being filed. This increase directly impacts our telephone workload, intake workload, and case-management workload," Thurston said.

The experience is not isolated. "More areas of the law are unsettled. More hearings are required to determine the proper way to interpret the new law," Prentice explained. "And the law has resulted in an increase in the percentage of more complicated Chapter 13 filings compared to Chapter 7 cases."

A Chapter 13 case, which involves reorganization and partial repayment to creditors, can be active in a bankruptcy court for up to five years. A Chapter 7 case, which involves liquidation of a debtor's assets, usually remains on a court's docket for three to six months.

Enactment of BAPCPA came at a time when bankruptcy court staffs were undergoing resizing. After reaching a peak of 5,334 on-board employees in fiscal year 2002, employment in FY 2007 is 4,438—a 17 percent reduction.

In this period of transition, Gibbons cited one constant in her congressional testimony. "Of course, the root causes of bankruptcy—job loss, business failure, medical bills, credit problems, and divorce—were not affected by the legislation and are expected to continue to be the primary drivers of filings," she said.

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