



# City Bar Fund

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK FUND, INC.

---

---

## **PRO BONO CONSUMER BANKRUPTCY PROJECT**

---

---

42 WEST 44TH STREET  
NEW YORK, NY 10036-6689  
WWW.ABCNY.ORG

**PRESIDENT**

Bettina B. Plevan

**VICE PRESIDENTS**

Carlos Morales  
Barbara Berger Opatowsky  
Elizabeth S. Stong

**TREASURER**

James L. Lipscomb

**SECRETARY**

Frances Milberg

**EXECUTIVE DIRECTOR**

Maria L. Imperial

**PROJECT DIRECTOR**

John T. McManus  
(212) 382-6698  
FAX: 212-768-1433  
e-mail: jmcmanus@abcny.org

April 12, 2005

Hon. Carolyn McCarthy  
United States House of Representatives  
106 Cannon House Office Building  
Washington, DC 20515

Re: S. 256 The Bankruptcy Abuse Prevention and Consumer Protection Act  
of 2005

Dear Representative McCarthy;

As the President of The Association of the Bar of the City of New York and its *pro bono* affiliate, the City Bar Fund, I write to urge you to vote against the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (S.256). The City Bar Fund's Pro Bono Consumer Bankruptcy Project provides free legal services through volunteer attorneys to low income New Yorkers who need advice and assistance on consumer bankruptcy matters. The attorney liability provisions contained within S.256 will jeopardize our ability to recruit and use volunteer attorneys and will severely harm middle and low income working people who so desperately need the relief afforded under the current law.

This remedy needs protection and not restriction. It is our experience that, contrary to the rhetoric surrounding the proposed legislation, most individuals who file for Chapter 7 or Chapter 13 relief are not "deadbeats" but are people caught up in circumstances beyond their control, which leave them unable to pay their debts. The vast majority of debtors who file for bankruptcy do so as a result of illness, unemployment or divorce. In New York City the events of September 11<sup>th</sup>, 2001 clearly showed how an unexpected crisis can cause the loss of employment, health and property and lead to the filing of bankruptcy by people who never expected to be in such a position.

Most attorneys who do consumer bankruptcy cases in New York City are members of small to mid sized firms, some of whom volunteer time with the City Bar Fund doing *pro bono* work for low income New Yorkers. On a daily basis they work with people trying to deal with overwhelming debt who are faced with the loss of essential income due to garnishment of salary or loss of property due to seizure by creditors. These debtors need legal assistance to present their case to the Bankruptcy Court.

There are a number of sections of S.256 that are aimed at attorneys who represent consumer debtors, both on a paying and a *pro bono* basis, which will only serve to drive them out of the field and thus lessen the ability of debtors to obtain professional advice and assistance. These provisions, which are opposed by the American Bar Association and several other state bars around the country, would require a debtor's attorney to:

1. Certify the accuracy of the factual allegations in the debtor's bankruptcy petitions and schedules, under penalty of harsh court sanctions;
2. Certify the ability of the debtor to make payments under a reaffirmation agreement; and
3. Identify and advertise themselves as "debt relief agencies" subject to a host of new intrusive regulations.

Such requirements would put attorneys practicing consumer bankruptcy law under a higher burden, and threat of sanction, than in any other area of law and undermine the attorney client privilege. In addition, they will discourage most attorneys from handling consumer bankruptcies at all, and will greatly increase the fees and expenses charged to those debtors who are able to secure representation. These requirements will also discourage attorneys from providing even *pro bono* assistance to low-income debtors since they would have to meet the same conditions. Finally it appears that many legal malpractice insurers will decline to provide coverage to attorneys doing consumer bankruptcy work due to the increased liability risk. This will also force many attorneys out of the field. These factors will lead to large numbers of debtors flooding the Bankruptcy Court with *pro se* Chapter 7 filings which will require substantially more work on the part of the Trustees and the Judges and lead to a larger number of dismissed cases. This will pose a serious threat to the efficient operation of the bankruptcy system and deny a "fresh start" to people who file in good faith but without professional advice or assistance.

In order to avoid these drastic results I respectfully request that you support amendments to remove these provisions or vote against the entire Act until more appropriate legislation is submitted.

Thank you for your time and consideration of this important matter.

Very Truly Yours,



Bettina B. Plevan