

Bar Bulletin

The Debtor/Creditor Issue

King County Bar Association "Justice... Professionalism... Service... Since 1886" Volume 24, Issue 4 \$2.00 December 2005

The Bankruptcy Reform Act: What It Means for Lawyers

By Merrilee A. MacLean

The main provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA", aka the Bankruptcy Reform Act) went into effect on October 17. But its impacts were felt earlier.

Anticipating the new law and perceived restrictions on debtors, there was an unprecedented flurry of bankruptcy filings, primarily by consumer debtors, in the weeks leading up to October 17. In the Western District of Washington alone, 10,967 bankruptcy cases were filed between October 1 and October 16. By comparison, 1,103 cases were filed in the same period in 2004. Once the BAPCPA went into effect, only 136 cases were filed between October 17 and November 10.

So, what's the big deal and why were

This month's issue of the Bar Bulletin presents - as space allows - a comprehensive look at the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Additional articles regarding this important piece of legislation and its effects appear at pages 4, 5 and 7.

people so eager to avoid the effects of the new law? While there have been numbers of articles and presentations on the impact of the new bankruptcy law on debtors, there has been less reporting on the impact of the new law on lawyers. For those either representing debtors, particularly consumer debtors, or those who have just a peripheral relationship with bankruptcy, it is crucial to understand that things have changed. It's not "business as usual."

One of the theories underlying the BAPCPA is a new "presumption of abuse" that those seeking bankruptcy protection are not poor-but-honest debtors needing a fresh start, but instead are people seeking to avoid their obligations. There appears also to be a distrust of the attorneys representing those debtors. Thus, the BAPCPA has created a number of new hurdles, potentials for liability and inherent conflicts that make debtor representation much more challenging than in the past.

Consumer Bankruptcy Lawyers as Debt Relief Agencies

The BAPCPA states that those providing advice to "assisted persons"

BANKRUPTCY REFORM
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KCBA Seeks Officer, Award Nominees

The King County Bar Association Nominating Committee begins this month to identify candidates for the Board of Trustees and officers, with three-year terms to begin July 1, 2006.

Open officer positions are second vice president, who will advance to first vice president in 2007 and president in 2008, and secretary/trustee, succeeding J. Mark Weiss. Three other new trustees will be elected to replace outgoing Central District Trustees Joe Bringman, Carolyn Cairns and Gary Strauss.

Regular attendance is expected at semi-monthly board meetings. Other expectations are detailed on the web site, www.kcba.org, at "About KCBA." Information about a prospective nominee and why he or she would be a valuable addition to the KCBA board is appreciated.

For further information, please contact Alice Paine at 206-267-7015 or alicep@kcba.org or Nominating Committee Chair John Cary.

KCBA ALSO IS BECOMING
its annual awards. Nominations must be received by **February 15, 2006**. Submissions should be made in writing to Alice Paine, Executive Director, King County Bar Association, 1200 5th Ave. #600, Seattle, WA 98101.

The awards and criteria are:

OUTSTANDING LAWYER: Recognizing distinguished and meritorious service to the legal profession and public in a profession-related activity.

FRIEND OF THE LEGAL PROFESSION: Presented in honor of distinguished and meritorious service to the legal profession and justice system.

HELEN M. GEISNESS OUTSTANDING LAWYER OR NON-LAWYER: Given for exemplary distinguished service on behalf of the King County Bar Association.

OUTSTANDING JUDGE: Presented to a judge, active or retired, of the Seattle Municipal Court, King County District Court, King County Superior Court, Division I of the Court of Appeals, State Supreme Court, U.S. District Court, Western District, Ninth Circuit Court of Appeals and Bankruptcy Court, for distinguished service to the legal profession, the judiciary and the public in a profession-related activity.

WILLIAM L. DWYER OUTSTANDING JURIST: An award recognizing a lifetime of achievement as a judge in a court with jurisdiction including King County. This award is given in special circumstances, and is not necessarily an annual award. ■

12 Steps to Understanding Garnishment

By Eric B. Martin

Although writs of garnishment are not uncommon, most practitioners do not regularly encounter them. As a result, the steps to enforce, answer or controvert a writ of garnishment can be confusing. However, the procedure need not be mystifying.

Garnishment permits a prevailing party to a lawsuit (the "judgment creditor," usually a successful plaintiff) to reach money or property of the losing party (the "judgment debtor," usually the defendant) held by a third party (the "garnishee defendant"). Most commonly, writs of garnishment are served on banks or employers in an attempt to reach bank accounts and wages. However, a writ may be served upon anyone who holds or controls a debtor's personal property.

While there are strict statutory procedures that must be followed, the overall procedure follows the basic steps described herein. Be sure to check for special requirements in RCW 6.27 before proceeding with your garnishment.

1. The judgment creditor must obtain a judgment. Under limited circumstances, a pre-judgment writ of garnishment may be available. While the

basic procedures for post-judgment garnishments apply to pre-judgment garnishment, additional rules apply. See RCW 6.26.

Under most circumstances, the judgment creditor must first enter a judgment and wait for the expiration of the automatic stay period. A writ of garnishment may only be obtained in the county in which the judgment has been entered; thus, a Pierce County judgment must be entered in King County prior to obtaining a King County writ of garnishment.

2. The judgment creditor must determine where the judgment debtor's property is held. If a judgment creditor seeks to garnish wages, it must first determine who employs the judgment debtor. Similarly, if it seeks to garnish a bank account, it must determine which bank holds the account.

3. The judgment creditor must prepare an affidavit, the writ and the answer forms. The caption will list three names: the judgment creditor, the judgment debtor and the garnishee defendant. The basic language of the writ and the answer are found in the statute. There are, however, some special circumstances that require additional language in the writ and answer:

- A child-support garnishment must state in the caption, "This garnishment is based on a judgment or court order for child support." Earnings exemptions vary for child support garnishments.
- A garnishment to a bank or financial institution must identify whether the garnishment is served upon the financial institution or one of its branches. If a branch is identified, only deposits maintained at that branch will be reached by the writ. In addition, the writ must include information identifying the judgment debtor, including place of residence and/or business and tax identification number or account number.
- A "continuing" garnishment to an employer must be captioned as a "continuing lien on earnings" and describe exemptions and the procedure for answering. The answer also contains additional paragraphs.

The affidavit must state: (1) that the judgment creditor has a current, unsatisfied judgment against the judgment

GARNISHMENT *continued on page 13*

I · N · S · I · D · E

Young Lawyers

KCBA's Young Lawyers Division continues to make its mark.

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Ethics Rules

The Rules of Professional Conduct are getting a facelift.

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Young Lawyers Spreading Their Wings

By Megan McCloskey

When you see "YLD," what do you think of? A really short vanity plate? A text message "sent from my Blackberry?" Some new disorder you should be taking Ritalin or Xanax for?

I have been regularly surprised over the last few years by how rarely "YLD" conjures the King County Bar Association Young Lawyers Division and how little many lawyers know about our organization, including what the YLD has done in the past and what it is doing today.

The YLD was among the first organizations of its kind in the country, founded by the 1948 graduating class from the University of Washington Law School, many of whom were World War II veterans and not all of whom were all that "young." Originally called the Young Lawyers Committee, the group persuaded more senior lawyers to come and teach them basic practice skills at lunch meetings — the first "Bridging the Gap" seminars. In exchange, Committee members volunteered for the then Seattle Bar Association's Speakers Bureau and talked to community groups about legal issues of the moment. The Young Lawyers Committee also formed the backbone of the bar association's Legal Aid Commit-

tee, which offered legal assistance to citizens who could not afford help.

Throughout the succeeding decades, the Committee, re-named as the Young Lawyers Section, played an active role in the bar association and took the leading role in many bar projects. The Section started the Youth and the Law Committee, which connected an attorney with every high school in Seattle; its Contemporary Legal Problems Committee provided legal services for the establishment and operation of minority-owned enterprises and solicited contributions to support minority law students; and its LAMP (Legal Aid to McNeil Prisoners) Committee assisted prisoners with civil and criminal problems.

Section members also were in the forefront of the social issues of their day. Its Board of Trustees resolved not to meet in any private club that discriminated on the basis of race or religion and urged other bar organizations to do the same.

In the 1970s, the Bridging the Gap seminars led to the creation of the Washington Lawyers Practice Manual, a compendium of seminar materials. The year it was published, the manual won an ABA Award of Achievement as the single most outstanding project of a local bar association in the country.

The organization also continued to search for ways to provide legal assistance to those traditionally underserved. In 1975, the first Neighborhood Legal Clinic was opened at Country Doctor on Capitol Hill. The group also printed the first Judges' Book, a guide to trial practice in King County, and created the Judicial Evaluation Survey, currently used to assist in rating judges in King County for re-election. First as the YLS and now as the YLD, King County's young lawyers have also written and published several handbooks, including a handbook for pro se litigants, another for those pursuing small claims and a third for those interested in forming a non-profit.

Today, past officers are some of the most distinguished and well-known attorneys in King County. The Washington Lawyers Practice Manual now consists of eight volumes and has generated more than \$2 million to support the YLD's public service programs. The YLD supports 25 Neighborhood Legal Clinics throughout King County, which in the last year served nearly 7,000 King County residents.

While continuing this work, the YLD board's focus this year is on its constituents and ensuring that we are providing them with the information and services they need to successfully develop a practice in King County. To accomplish this objective, we are returning to our roots.

With the cooperation of the WSBA, the YLD is planning a new, two-day Bridging the Gap CLE to be held on March 3 and 4, 2006, at the Washington State Convention Center in Seattle. The CLE will cover numerous practical topics not typically addressed during law school, such as local rules practice, civility and professionalism in the courtroom and

conference room, basic negotiation strategies and issues specifically relating to the day-to-day practice of law, such as timekeeping, billing, technology and others. Please mark your calendars; we encourage all lawyers in the first five years of practice to attend.

In addition to its traditional activities, the YLD is initiating several new programs. The board is planning the first-ever Winter Social for members, to be held on January 25 at the Founder's Room in Benaroya Hall, at which we will honor outstanding mentors, nominated by YLD members. Please watch your e-mail for announcements about the event and further details on how to submit a nomination.

On December 2, the YLD will host the first in a new quarterly YLD Lunch Series for young lawyers who have been in practice for a few years. The first topic will be "Going and Being In-house" and will feature a panel of in-house lawyers from companies such as Washington Mutual, Microsoft, Amazon.com and Starbucks who will share their experiences and the pros and cons of working as in-house lawyers.

The board is also in the beginning stages of planning a 5k Fun Run to be held in late summer 2006. The run will raise funds for the Neighborhood Legal Clinics and KCBA's other public service programs. It will be open to lawyers and members of the community.

The YLD is continuing the mission of the division's founders, dedicating itself to improving and protecting the profession, ensuring all young lawyers have the skills and support necessary to succeed and actively serving our larger community. Perhaps next time when you see "YLD," you will think of these things and encourage the "young" lawyers you know to get involved, too. ■

Megan McCloskey is the current Chair of the KCBA Young Lawyers Division, and practices at Rafel Manville PLLC.

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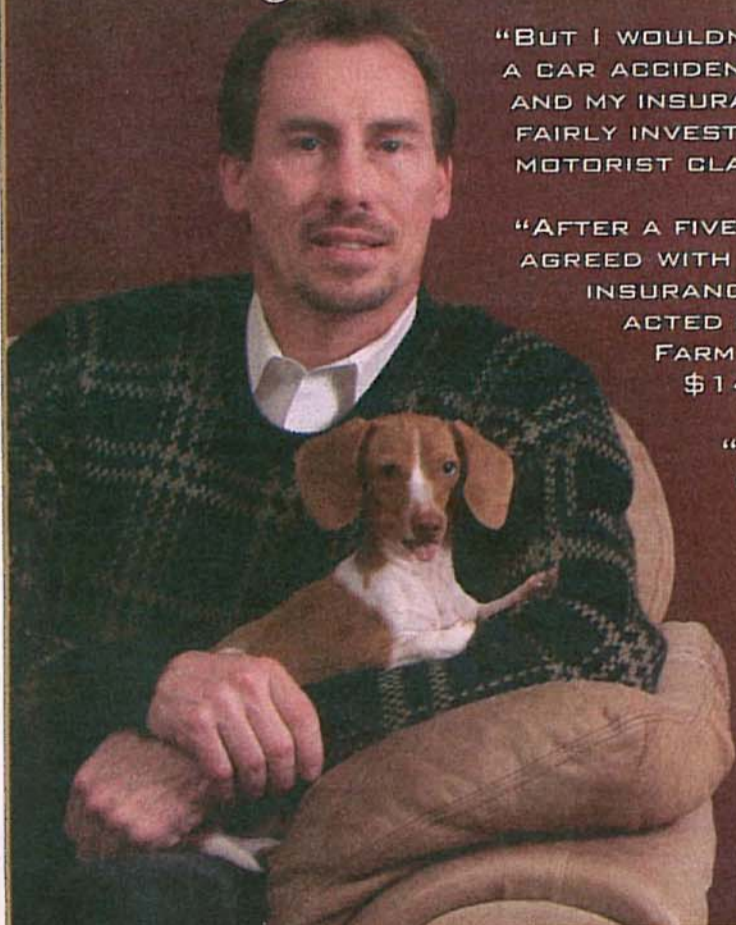


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"Big insurance companies want you to go away."



"BUT I WOULDN'T GIVE UP. I WAS IN A CAR ACCIDENT NINE YEARS AGO AND MY INSURANCE COMPANY DIDN'T FAIRLY INVESTIGATE MY UNINSURED MOTORIST CLAIM.

"AFTER A FIVE-DAY TRIAL, THE JURY AGREED WITH US THAT THE INSURANCE COMPANY HAD ACTED IN BAD FAITH. STATE FARM WAS ORDERED TO PAY \$147,000.

"THAT DECISION PROBABLY SURPRISED STATE FARM—ITS EARLIER SETTLEMENT OFFERS NEVER TOPPED \$15,000. SO OF COURSE, THE COMPANY APPEALED THE RULING.

"THE NIGHT BEFORE WE WERE SCHEDULED FOR ORAL ARGUMENT IN STATE APPEALS COURT, THEY MUST'VE THROWN UP THEIR HANDS AND REALIZED THEY WERE WRONG. THE INSURANCE COMPANY DROPPED ITS APPEAL AND AGREED TO A GOOD SETTLEMENT.

"BRAD AND HIS FIRM HAVE DONE AN EXCELLENT JOB. WE'RE STILL FRIENDS OUTSIDE THE COURTROOM.

"I WAS VERY HAPPY WITH THE EXPERIENCE."

—Ernie Perry, client

ERNEST & KIMBERLY PERRY V.
STATE FARM MUTUAL
AUTOMOBILE INSURANCE CO.
\$147,000 JUDGMENT; \$250,000
SETTLEMENT ON APPEAL

Plaintiffs' trial counsel: BRAD J. MOORE

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