

**GOVERNMENTAL AFFAIRS
OFFICE****DIRECTOR**

Robert D. Evans
(202) 662-1765
rdevans@staff.abanet.org

SENIOR LEGISLATIVE COUNSEL

Denise A. Cardman
(202) 662-1761
cardmand@staff.abanet.org

Kevin J. Driscoll

(202) 662-1766
driscollk@staff.abanet.org

Lillian B. Gaskin

(202) 662-1768
gaskinl@staff.abanet.org

LEGISLATIVE COUNSEL

R. Larson Frisby
(202) 662-1098
frisbyr@staff.abanet.org

Kristi Gaines

(202) 662-1763
gainesk@staff.abanet.org

Mondi Kumbula-Fraser

(202) 662-1789
kumbulam@staff.abanet.org

Ellen McBarnette

(202) 662-1767
mcbarnet@staff.abanet.org

E. Bruce Nicholson

(202) 662-1769
nicholsonb@staff.abanet.org

**DIRECTOR GRASSROOTS
OPERATIONS**

Julie M. Strandlie
(202) 662-1764
strandlij@staff.abanet.org

**INTELLECTUAL PROPERTY
LAW CONSULTANT**

Hayden Gregory
(202) 662-1772
gregoryh@staff.abanet.org

**STAFF DIRECTOR FOR
STATE LEGISLATION**

Kenneth Goldsmith
(202) 662-1780
goldsmithk@staff.abanet.org

**STAFF DIRECTOR FOR
INFORMATION SERVICES**

Sharon Greene
(202) 662-1014
greenes@staff.abanet.org

EDITOR WASHINGTON LETTER

Rhonda J. McMillion
(202) 662-1017
mcmillionr@staff.abanet.org

AMERICAN BAR ASSOCIATION**Governmental Affairs Office**

740 Fifteenth Street, NW
Washington, DC 20005-1022
(202) 662-1760
FAX: (202) 662-1762

November 21, 2003

VIA FACSIMILE

The Honorable Bill Frist
Senate Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Thomas Daschle
Senate Minority Leader
United States Senate
Washington, D.C. 20510

Dear Senators Frist and Daschle:

It is our understanding that one or more senators may attempt to attach the controversial bankruptcy reform legislation recently passed by the House, H.R. 975, or a similar Senate bill, to the omnibus appropriations bill that will soon be considered by the Senate. On behalf of the American Bar Association and its more than 400,000 members throughout the country, I write to express our strong opposition to this proposal.

Although the ABA has not taken a position on H.R. 975 in its entirety, the ABA strongly opposes those provisions in the bill that would require attorneys to: (1) certify the accuracy of the debtor's bankruptcy schedules, under penalty of 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.

Significantly, these provisions are strongly opposed not just by the debtor bankruptcy attorneys in our association but also by the ABA's *creditor* bankruptcy attorneys.

The ABA and its bankruptcy attorneys believe that the three attorney liability provisions outlined above, if enacted, will have disastrous, if unintended, consequences for the entire bankruptcy court system. These provisions will discourage many attorneys from agreeing to represent debtors at all, while dramatically increasing the fees and expenses of individual debtors who are able to obtain legal representation. In addition, because the new liability standards involving certification of schedules apply to all attorneys for individual debtors, whether or not they charge a fee, these provisions would strongly discourage attorneys from providing essential *pro bono* bankruptcy services.

The Honorable Bill Frist
The Honorable Thomas Daschle
November 21, 2003
Page 2

Although these new attorney liability standards and “debt relief agency” regulations may appear to favor creditors on their face, we believe that the practical effect of these provisions will be to harm all parties to the bankruptcy, including creditors and creditors’ attorneys. By dramatically increasing the cost and risk of representing individual debtors in bankruptcy, these provisions are likely to drive many debtor lawyers from the practice altogether, creating a flood of unrepresented *pro se* debtors in the courts. As a result, even simple bankruptcy cases will take much longer to move through the bankruptcy courts, resulting in substantial delays and higher legal expenses for all parties, including creditors.

To avoid these problems, the ABA has proposed alternate amendments that would replace the current attorney liability provisions in H.R. 975 with tough new *non-dischargeable* sanctions against debtors who lie on their bankruptcy schedules and new language urging the bankruptcy courts to vigorously enforce existing Rule 9011 of the Federal Bankruptcy Rules when misconduct by any party is shown. These reforms will reduce bankruptcy fraud and abuse without unfairly harming honest debtors or the overall bankruptcy system. A copy of the ABA’s proposed amendments were previously sent to all members of the Senate Judiciary Committee by letter dated June 17, 2003, and an additional copy is available on our website at the following address: <http://www.abanet.org/poladv/priorities/hr975april.pdf>.

In order to provide a reasonable opportunity for the Senate Judiciary Committee to address these problems with H.R. 975 or any similar Senate bankruptcy reform bill that may be introduced, the American Bar Association urges you to oppose any efforts to attach this legislation to the pending omnibus appropriations bill as an amendment. Alternatively, if the Senate leadership decides to add this bankruptcy legislation to the omnibus spending bill, we urge you to support the ABA’s proposed amendments to the legislation.

Thank you for considering the views of the ABA on these important matters. If you would like more information regarding the ABA’s positions on these issues, please contact our legislative counsel for bankruptcy law issues, Larson Frisby, at (202) 662-1098.

Sincerely,



Robert D. Evans

cc: All members of the Senate Judiciary Committee