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## SPECIAL REPORT: BANKRUPTCY

# Adapting to the overhaul

Lawyers who help consumers swamped with debt struggle to cope with new rules and fewer clients

by Carl Jones

**I**n West Miami just north of Flagler Street, a large billboard featuring a picture of consumer bankruptcy attorney Patrick Cordero overlooks the sun-bleached sidewalk. Cordero's practice targets people who feel over their heads in debt.

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building success on the high volume of people who wanted to start over with a clean financial slate. His clients have been largely working-class and middle-class Hispanics, in their 30s and 40s, who got into money trouble, usually with credit cards.

Before a sweeping federal bankruptcy overhaul law took effect last October, Cordero and

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Over the last 18 years, Cordero established himself as one of the kings of Chapter 7 consumer bankruptcy in Miami. He ran television and print ads,



Bankruptcy lawyer Patrick Cordero concedes his profits have taken a hit but he's seeing a rebound.

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his staff of 30 serviced hundreds of new clients each month. Between President Bush signing the Republican-sponsored bill last April and the October effective date, Cordero and other South Florida bankruptcy attorneys were swamped with Chapter 7 clients rushing to beat the changes.

But after October, the pool of clients ran dry. The 2005 Bankruptcy Abuse Prevention and Consumer Protection Act, spearheaded by the financial services industry, made it much harder for consumers to file for bankruptcy. It is unclear, however, whether the reduction in filings is temporary, due to the glut of people who filed for bankruptcy ahead of the legal changes.

Cordero lost some support staff. When he hired new staff, he had to restructure their duties. Five months after the law took effect, his staff is back to where it was at this time last year. To survive, he said, he's working hard to provide excellent customer service and improve efficiency. "I'm less profitable," Cordero acknowledged in a recent interview.

Like Cordero, South Florida lawyers who focus on consumer bankruptcy are having to run their practices more efficiently, learn the complexities of the new law — including the Chapter 13 provisions which they rarely used before — and educate the public that bankruptcy protection is still available for people who need it.

Before the new law, a relatively small number of South Florida attorneys, perhaps less than 100, focused solely on consumer bankruptcy work. Many solo and small-firm practitioners, however, did some bankruptcy work along with family law, criminal defense work and other rent-paying fare. For those who dabbled in bankruptcy, the new law has made the practice too expensive and risky.

"Out of all the attorneys in Miami that are doing bankruptcy, I would say 60 percent got out right away," Cordero said.

Tina Talarchyk, president of the Bankruptcy Bar for the Southern District of Florida, who represents mostly creditors in Chapter 11 bankruptcies, said fewer filings and increased

liability exposure have "almost eliminated" Chapter 7 practice.

But some consumer bankruptcy specialists like Cordero have vowed to stick it out, and the clients are starting to return. On a recent afternoon, people with grim expressions can be seen filing in and out of Cordero's two-story offices, carrying fistfuls of financial documents.

Even though there is less work for the lawyers who represent ordinary debtors like these, consumer bankruptcy attorneys say that people will always face financial problems due to lost jobs, medical bills, divorce, and other misfortunes — as well as sheer financial incompetence or irresponsibility. Thus, there will always be clients who need their services.

"We're beginning to see that people are still in the same situation," Cordero said. "They still owe money; they're behind, and they have no jobs."

On Coral Way, just north of Coral Gables, Tim Kingcade, another prominent consumer bankruptcy attorney, has a

half-dozen people waiting in his lobby on a recent afternoon. His business also is suffering since the new bankruptcy law took effect. But he, too, is starting to see clients returning.

"For the past six months, the profits are down," Kingcade said. "But in the long run, it will back. I have no doubt about it."

## Most debtors still qualify

Last month, 261 consumer Chapter 7 cases were filed in U.S. Bankruptcy Court for the Southern District of Florida. That's down from 1,205 filings in February of last year. This past January, there were 165 petitions, and in December just 109. Those numbers are consistent with national trends.

Of course, this sharp reduction in the number of people discharging their debts is exactly the outcome devoutly sought by the financial services industry, which pushed hard for the new law.

The new law created an unprecedented means test, disqualifying debtors whose income exceeds the state median — regardless of expenses — from quickly wiping out their

debt under Chapter 7. Instead, those above the median income now have only the option of filing under Chapter 13, which could require them to make onerous payments to their creditors for as long as five years.

Under the new law's means test, the qualifying median income in Florida for a single person currently is \$37,099. For a family of three, the qualifying median income currently is \$51,294. Those with incomes above the median can only file under Chapter 13.

Last month, 97 people in the Southern District of Florida filed for Chapter 13 protection, while 119 filed in January and 74 in December 2005. In February 2005, 380 people filed for Chapter 13. Statistics do not indicate how many Chapter 7 cases were converted to Chapter 13. That is supposed to happen when a judge or trustee suspects a debtor is abusing the right to file for Chapter 7.

Even for clients who still qualify for Chapter 7 under the new law, bankruptcy can be a rough road for both them and their attorneys. Debtors now are required to undergo credit counseling before they can file for bankruptcy, and they must complete a debt management course before they may legally discharge their debt and exit bankruptcy. Debtors also have to file more paperwork disclosing more information about their financial situations.

But Cordero and Kingcade said most of their traditional clients have low enough incomes that they still qualify for Chapter 7 discharges. Said Kingcade: "The biggest struggle we're having is people call-

## South Florida Chapter 7 consumer bankruptcy filings ...

... before bankruptcy overhaul passed

Nov. 2004	1,564
Dec. 2004	1,453
Jan. 2005	1,207
Feb. 2005	1,205

... after bankruptcy overhaul took effect

Nov. 2005	76
Dec. 2005	109
Jan. 2006	165
Feb. 2006	261

Source: U.S. Bankruptcy Court, Southern District of Florida

ing and saying, 'I know you used to do bankruptcy. I have these problems, how can you solve them?' I tell them 'Bankruptcy still exists, you have to come see me.'"

To address this misperception, Cordero and Kingcade are doing public education work. Cordero is running TV commercials, stressing that bankruptcy protection is still available. Kingcade said he went on CNN Español several times to educate viewers about the new law.

## Increased risk and cost

Consumer bankruptcy lawyers, besides having fewer clients coming through the door, face many other challenges posed by the new law.

For the first time, the law requires that attorneys personally attest to the accuracy of Chapter 7 filers' income and expense statements. Attorneys can face a civil fine or be charged attorney fees that resulted from any violation. Those monetary sanctions, as well as nonmonetary penalties, can be issued by the judge. That means attorneys now have to conduct their own checks on clients' financial records, which is time consuming and costly.

Attorneys like Cordero and Kingcade say that extra work requires more hours, more staff and special training for the staff. That has driven up the

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Lawyer Tina Talarchyk says Chapter 7 practice has been 'almost eliminated.'

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price of bankruptcy services. Yet there is limited price elasticity, since bankruptcy clients, by definition, have limited means.

"We're in a position where every case is basically more hours," Cordero said. In all, he estimates the average bankruptcy takes about 20 hours to complete, about double the hours it used to take.

Cordero estimates that the average price for a Chapter 7 in Miami, from soup to nuts, ranges between \$1,200 and \$2,500 including court filing costs, which are due to rise in April. Before the law took effect, the price ranged from \$500 to \$1,000. Kingcade offered similar estimates, saying he used to charge about \$1,000 for the average case, and now charges between \$1,250 and \$1,750.

Part of the increased price is that consumer bankrupt attorneys face higher professional liability premiums since the new law went into effect. Cordero said his rates increased by 50 percent, at least partly because he renewed his policy around the time of the new law.

Given all these factors, some con-

sumer bankruptcy lawyers have abandoned the field.

## Two lawyers who got out

Dunn & Associates in Miami formerly was a thriving consumer bankruptcy practice, with four attorneys besides Dunn and about 11 support employees. The firm advertised in a two-page spread in the Yellow Pages and processed high volumes of cases.

But Robert Dunn shut his practice last summer. The prospect of fewer clients due to the new bankruptcy law, along with unspecified other financial problems, did him in.

"I knew that after October, that was it," Dunn said. "There would be no other way to make a living for us in this kind of practice."

Dunn shifted to collection work, saying Dunn & Associates was an "experiment" that didn't work out. He said he's happier being a solo practitioner with a small staff and fewer clients.

"To tell you the truth, it's a breath of fresh air," Dunn said. "I'm a solo practitioner now, and I don't have the over-

head, I don't have the sleepless nights, and I don't have all the clients to worry about."

In South Miami, consumer bankruptcy was a cornerstone of solo attorney Silvio Amico's business. He also responded to the new law by shifting to other types of work, including family law, probate work, wills and setting up corporations.

Amico said the change actually has worked out well for him. In consumer bankruptcy, he said, "you had to do volume to make decent revenue. So now, I'm taking in more complex work with clients with a deeper pocket. It's been kind of an eye-opener that I can make more money getting away from [bankruptcy]."

Still, he doesn't want to abandon consumer bankruptcy completely because he finds it rewarding to help out people who need a second chance. Chapter 7 filings are on the rise again, he said, "but not to the point where it was a year ago or even six months ago."

Both Kingcade and Cordero said that they have been helped by the departure of some attorneys from the consumer

bankruptcy field who did not want to deal with the challenges posed by the new law.

"I've had a number of attorneys call me and say, 'I don't do bankruptcy anymore. Any clients I had left over or that come to me, I'll send them to you,'" Kingcade said.

"We're not competing with the same numbers of attorneys we used to seven months ago," Cordero said.

Even though the recent statistics on Chapter 7 filings look grim for consumer bankruptcy practitioners, Kingcade said there will always be a need for his services. "I don't think you can legislate away people with credit card problems," he said. "As long as there are credit cards, you're going to have a need for personal bankruptcy. This is all just a bump in the road."

But bankruptcy bar president Tina Talarchyk was skeptical. "It's just not going to be the practice it was in the last two decades in South Florida," she said. ♦

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