

# United States Senate

WASHINGTON, DC 20510

05-BR-033

March 13, 2006

The Honorable Chief Justice John Roberts  
United States Supreme Court Building  
One First Street, NE  
Washington, DC 20543

Dear Chief Justice Roberts:

As you may know, PL 109-8 contains extensive revisions to the Bankruptcy Code designed to substantially reform America's bankruptcy process. We were active in moving this important legislation to passage and therefore have a keen interest in ensuring that the intent of Congress is fully effectuated as the new law is implemented.

The Committee on Practice and Procedure of the Judicial Conference is considering significant and comprehensive changes to the Bankruptcy Rules and Official Forms. Specifically, the Committee has developed forms to assist in calculating a debtor's income and to determine whether the presumption of abuse applies under Section 707(b)(2) of the Code. We wish to address a few of the shortcomings in the forms.

Section 707(b)(2)(C) of the Title 11 mandates that the schedule of current income and expenditures must include a statement of each debtor's income and the calculations that determine whether a legal presumption of abuse arises. Importantly, Form B22A directs the debtor not to provide the needs-based calculations if the debtor's income is below the state median income.

Form B22A should be revised to require all debtors to provide income figures. PL 109-8 does not exempt any debtor from the information filing requirement. Congress specifically chose not to create such an exemption. The Senate Judiciary Committee, on which we serve, specifically rejected such an exemption; the Judicial Conference should not create an exemption already rejected by Congress.

In calculating repayment ability, PL 109-8 permits a debtor to deduct the allowances provided in the applicable IRS local standards for housing. Importantly, PL 109-8 also provides that the debtor's expenses in this category may not include any payment for secured debts, such as mortgage payments. Thus, under PL 109-8, a debtor may deduct only the debt payments for mortgage payments actually paid. However, the forms authorize the debtor to deduct the greater of the debtor's mortgage payment or the IRS-specified amount. This clearly contravenes the plain language of the new law and flouts Congressional intent.

PL 109-8 also allows for creditors to move to dismiss a Chapter 7 proceeding if the court finds that granting relief under Chapter 7 would be an abuse of Chapter 7. This new creditor right is a central feature of the new bankruptcy system. Under the guise of protecting debtors from abusive filings, the Interim Rules now impose unnecessary pleading burdens (the so-called

“specificity” requirement) on creditors who wish to file certain motions, burdens not authorized by statute. Congress deliberately chose to protect debtors from abusive motions practice in other ways. Thus, the “specificity” requirement should be dropped.

Finally, PL 109-8 adds § 707(b)(4)(C) and (D) to Title 11. These provisions provide that a signature of an attorney on a pleading constitute a representation by the attorney that the filing is not frivolous and that the debtor has performed a reasonable investigation to determine that the facts provided are accurate. The Committee should amend the rules and forms to ensure that attorneys comply with this requirement.

Thank you for considering our views on this subject. Given our involvement in this legislation’s passage, we feel a responsibility to ensure that PL 109-8 is implemented according to the intent of Congress. We look forward to continuing dialogue on this important issue.

Sincerely,

Handwritten signatures of Chuck Grassley and Jeff Sessions in cursive ink.

Chuck Grassley  
United States Senator

Jeff Sessions  
United States Senator

cc: Peter McCabe  
Secretary, Committee on Rules of Practice and Procedure  
Thurgood Marshall Federal Judiciary Building  
Washington, DC 20544