

Bankruptcy hammers W. Tenn.



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In the six years I have served as one of four U.S. Bankruptcy Court judges for the Western District of Tennessee, I have tried to understand better who files for bankruptcy in Memphis and why.

The fact that consumer bankruptcy filings are on the rise nationally is no secret. The year I graduated from law school, 1986, there were 449,203 consumer bankruptcy filings in the United States, representing 84.6 percent of all bankruptcy filings. By 2002, consumer bankruptcy filings had more than tripled to 1,539,111, or 97.5 percent of total filings.

In 1986 the Western District of Tennessee recorded 8,754 consumer bankruptcy filings, 91.8 percent of total filings. In 2002, the number rose to 27,805 consumer filings, or 99.5 percent of the district's total filings.

What troubles me most, however, is the sharp rise in the rate of consumer bankruptcy filings in West Tennessee, compared with the rest of the country.

In 1970, two other judicial districts had rates of filing higher than ours. The rate of filing for our district was 253.2 per 100,000 residents, while the national median was 94.7. By 1980, the Western District of Tennessee had the highest rate of consumer bankruptcy filings in the country – 363.4 per 100,000 residents, compared with the national median of 128.7. By 2002, the rate of filing in our district had risen to 1,830. Alabama's Northern District had the next highest rate, at 1,120, while the national median was much lower at 540.

It is not difficult to imagine the high costs to our community that result when so many of our neighbors are in financial distress. Bankruptcy debtors bear the costs of attorneys' fees and filing fees to commence a bankruptcy case, the lost wages from work they miss to attend court hearings, and the long-term negative impact on their credit score, which makes it more difficult and expensive to purchase a home or car.

Employers also experience higher costs when bankruptcy filings are high. These include the cost of lost productivity when employees miss work and the cost of processing wage assignment orders that authorize the deduction of plan payments from an employee's

paycheck. For creditors there are costs associated with completing proofs of claim, hiring counsel and monitoring bankruptcy cases, in addition to the actual loss from discharged debt.

Three causes underlie the vast majority of consumer bankruptcy filings: loss of a job, major illness or accident, and divorce. Bankruptcy does not generally result from over-consumption or gambling, and people who file bankruptcy cases usually are not less capable than others of managing their personal finances.

A large number of those who file bankruptcy in West Tennessee live at or near the poverty level, but the number of middle-class families who seek bankruptcy protection is growing. A recent book, "The Two-Income Trap: Why Middle-Class Mothers and Fathers are Going Broke" by Harvard University Law School professor Elizabeth Warren and her daughter, Amelia Warren Tyagi, is a good resource for those who are interested in this phenomenon.

The high rate of bankruptcy filing is merely a symptom of a more fundamental problem. Some of the forces that drive it are low levels of consumer education and high levels of poverty in West Tennessee, but clearly other, more insidious factors are also at work.

The rise in the availability of consumer credit has brought a corresponding rise in questionable practices and predatory lending. Despite losses from those who default on their loans, the subprime loan market has become the most profitable one for lenders because of the increased fees, interest charges and penalties they can charge.

The dramatic increase in home equity lending has resulted in higher rates of foreclosure and bankruptcy. Nationally, the fastest growing group filing bankruptcy cases is persons over the age of 65 – those who have worked hard all their lives only to see their wealth evaporate, often as the result of unscrupulous lending practices.

Those involved in the MemphisDEBT collaborative realize that we cannot build a strong community on the backs of our most vulnerable citizens. They have undertaken research initiatives to understand better the reasons behind the high rates of foreclosure and bankruptcy in West Tennessee.

I recently challenged attorneys, trustees and other bankruptcy practitioners of West Tennessee to look at ways that we may | unwittingly contribute to the high rate of bankruptcy filings. Some attorneys stepped forward to form an advisory group that will help in the collaborative's work.

As the nation's leader in the rate of consumer bankruptcy filings, Memphis is the natural choice to be its leader in finding solutions.