

The Unmet Need of Debt-Related Legal Aid

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Date: February 28, 2020

Nobody wants to file bankruptcy. The decision is made after months, even years of struggle and agonizing. And although the filing can bring relief and financial betterment, it is often overshadowed by shame. There are two consistent myths you here as a practicing bankruptcy attorney: Those who file bankruptcy did something wrong, and bankruptcy is only for someone with money. The stigma of being in debt, and surrounding the solutions to overcoming it, is a consistent barrier to reaching the families who could most benefit from our help.

“The overwhelming majority of bankrupt families can be fairly described as ‘middle class.’ Though bankrupt debtors earned smaller incomes than the general population, they had roughly comparable levels of occupational prestige, years of education, and homeownership rates.”¹ Yet families with low-income could increasingly benefit from financial education and in some cases, bankruptcy. A 2003 survey of individuals with income less than \$35,000 showed that “fewer than 20% knew their credit score, and fewer than 35% had obtained a copy of their credit report in the previous 2 years.”² Without the understanding of the consequences, these families are increasingly relying on credit cards, overdrafting bank accounts, and high-interest loans to make ends meet.³ The industry increasingly extends credit to low-income families, because although there is a greater risk of default, “low-income families often pay such extraordinary rates of interest that they are among the industry’s most profitable customers.”⁴ Relying on credit cards for a medical bill, to take a cash advance to pay rent, and to put food on the table is a common occurrence, but is usually a short-term Band-Aid that will spiral out of control.⁵

So, if low-income families are often mired in debt, why do many of them choose not to file bankruptcy? First, it is likely many of them are not making a choice at all, but simply are

¹ Richard M. Hynes, “Broke but not Bankrupt: Consumer Debt Collection in State Courts,” *Florida Law Review* 60 no. 1, pg. 17 (January 2008), citing Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, “As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America 91 (Oxford Univ. Press 1989). See also Elizabeth Warren & Deborah Thorne, “A Vulnerable Middle Class: Bankruptcy and Middle Class,” *Broke*, Stanford University Press, 2012. pgs 25-39.

² Julie Birkenmaier & Jami Curley, “Financial Credit: Social Work’s Role in Empowering Low-Income Families,” *Journal of Community Practice*, Vol. 17 No. 3, (2009) 257, citing Consumer Federation of America, CFA opinion survey (2003).

³ *Ibid* at 254, citing United States (U.S.) Government Accountability Office (GAO). (2004). Highlights of a GAO forum: The federal government’s role in improving financial literacy. (GAO-05-93SP) (“While these commodities can provide access to needed financial credit for building assets and accessing needed cash in a crisis, families utilizing these products can experience great difficulty getting out of spiraling debt.”)

⁴ Angela Littwin, “Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers,” *Texas Law Review*, no. 86, 3 (Feb 2008): 453, citing Ronald J. Mann, “Charging Ahead: The Growth and regulation of Payment Card Markets” 201-02 (2006).

⁵ *Ibid* at 478, quoting Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, “The Fragile Middle Class: Americans in Debt” 111 (2000). (Low income individuals are experts on juggling bills to make ends meet, using “elaborate systems for deciding which bills to prioritize and how delinquent a bill must be before a nonpriority bill [is] elevated to the ‘must pay now’ category.” So credit card bills are often the least important bill to pay because the consequence is a late fee, not a utility shutoff, repossession or eviction. However this strategy “is the precise behavior that can cause a family to become mired in debt over time.”)

unaware of the legal options available to them. There are individuals who decide to become informally bankrupt, a term coined by Amanda E. Dawsey and Lawrence M. Ausubel to describe the person who chooses not to repay a debt but does not file bankruptcy, often because they have protected income making them virtually judgment proof.⁶ This is an effective method of approaching creditors when the debtor is equipped with the tools and knowledge of the law. More often however, individuals don't know what judgment proof means, and creditors pressure them into making payments they cannot afford. Additionally, "people file for bankruptcy for other reasons than to protect assets, for instance, to prevent a utility shutoff, to protect a driver's license, to participate in a government program, to prevent garnishment of wages (which is allowed in some states), or to fend off harassing or abusive calls from creditors or collection agencies."⁷ An individual with protected income such as social security may still wish to file bankruptcy, to stop the harassing phone calls and to avoid the possibility of being sued by a creditor. Even though the court would not be permitted to consider social security income when evaluating someone's ability to make payments, the thought of going to court at all is terrifying to many debtors.

The likelihood of being sued by a creditor is increasing, with "the percentage of consumers who experienced a third-party debt collection activity growing steadily in the past decade, doubling from 7 percent in 2000 to 14 percent in 2010."⁸ A national survey conducted by the Consumer Financial Protection Bureau found that 32 percent of all consumers and 52 percent of consumers with income below \$20,000 were contacted by a debt collector in the prior year.⁹ In the city of Boston 28% of residents have a subprime credit score and 19% have an account in collection; in Mattapan specifically 48% have a subprime score, and 35% have an account in collection.¹⁰ A 2014 survey conducted in the Greater Boston area demonstrates the barriers created by debt, showing that debt is a contributing barrier to employment, post-secondary education, and most importantly to the individual's ability "to meet basic needs such as obtaining food, shelter, and medical care."¹¹

Living in the constant anxiety induced by debt strains families and affects children's well-being.¹² From the Consumer Bankruptcy Project's 2007 survey, 70.8 percent of couples "seriously struggled with their debts for one year or more before they filed for bankruptcy, [and] half of all coupled respondents indicated that before they filed for bankruptcy they were very

⁶ Amanda E. Dawsey & Lawrence M. Ausubel, "Informal Bankruptcy," University of Maryland, 2001.

⁷ Stephanie Ben-Ishai; Saul Schwartz, "Bankruptcy for the Poor," *Osgoode Hall Law Journal* 45, no. 3 (2007): 485, quoting Henry J. Sommer, "In Forma Pauperis in Bankruptcy: The Time has Long since Come" 2 *Am. Bankr. Inst. L. Rev.* 93 at 97 (1994).

⁸ Katherine Porter, "Driven By Debt: Bankruptcy and Financial Failure in American Families," *Broke*, pg. 6, Stanford University Press, 2012, citing Federal Reserve Bank of New York, "Quarterly Report on Household Debt and Credit," New York: Federal Reserve Bank, 2010.

⁹ Anmol Chadda, "The Concentration of Financial Disadvantage: Debt Conditions and Credit Reporting Data in Massachusetts Cities and Boston Neighborhoods," Federal Reserve Bank of Boston, 2018-2, pg. 10.

¹⁰ *Ibid* at 17-18.

¹¹ Crittenton Women's Union, "From Opportunity to Burden: Profiles of Low-Income Households Caught in the Credit Trap." Nov. 2014. pg. 3.

¹² Katherine Porter, "The Damage of Debt," 69 *Was. & Lee L. Rev.* 979 (2012)

depressed, just over one-third (36.5 percent) were somewhat depressed.”¹³ For low-income families that are even aware that the law can help, the cost of an attorney is an insurmountable barrier. Roughly 70% of otherwise eligible applicants are turned away by traditional legal aid for debt relief help.¹⁴ Complicating matters more is the intricate nature of bankruptcy. In 2005 the law was substantially changed, now requiring significant documentation, the completion of two courses, and much more time spent by the attorney.¹⁵). These changes require the attorney have a higher level of expertise for the case to succeed, and have caused legal fees to increase to an average of \$1,224 for a Chapter 7.¹⁶

The Massachusetts Debt Relief Foundation is a 501(c)(3) non-profit law firm that serves residents in all Massachusetts counties. MDRF attorneys offer free comprehensive legal advice on debt matters to any Massachusetts resident as well as pro bono legal representation in Chapter 7 Bankruptcy to low-income residents in accordance with their eligibility requirements. MDRF has helped discharge millions of dollars in consumer debt since 2011.

¹³ Deborah Thorne, "Women's Work, Women's Worry? Debt Management in Financially Distressed Families" *Broke*, Stanford University Press, 2012. Pg 139.

¹⁴ Boston Bar Assoc. Statewide Task Force to Expand Civil Legal Aid in Mass. "Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts." Oct. 2014. Pg. 39

¹⁵ Angela Littwin, "Adapting to BAPCPA," 90 *am. Bankr. L.J.* 183 (2016)

¹⁶ Pamela Foohey, Robert Lawless and Katherine Porter, "Life in the Sweatbox," 94 *Notre Dame Law Review* pg. 34 (2018)