

## **Poorest debtors get Chapter 7 bankruptcy filing assistance for free**

Commercial Appeal: By David Flaum  
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Surviving on \$606 a month in Social Security disability payments, Tanya Sims owes thousands of dollars to credit card companies and has three payday loans totaling \$980, all more than two years old, that she can't pay off.

"I have a ticket (from Social Security disability authorities) to work," said Sims, 39, who also supports a disabled son. For three years, she was a part-time inventory taker in stores and warehouses, but no more.

"It's just hard to find a job right now," she said, as she waited for a briefing on the Chapter 7 bankruptcy process at Memphis Area Legal Services last week.

Nine others joined her at the session, part of a MALS-Memphis Bar Association program to provide free bankruptcy legal services for Chapter 7 filings to people who can't afford the lawyers' fees. In some cases, even the \$299 filing fee may be waived. Sims had gone to a lawyer for advice, but decided to apply for the free help because "they charge over \$1,000, and that's really out of my league," she said.

Chapter 7 of the bankruptcy code provides a way for people to have many of their debts wiped out. They have to give up some assets -- expensive cars or pricey furniture, for example -- but can keep a modest auto, clothes, basic furniture and, in some cases, their houses.

"The goal is to allow honest but unfortunate debtors to get a fresh start," said Irwin Magevney, a lawyer with the Law Offices of Gary Green during the briefing.

The process of getting a discharge of debts normally takes four to five months, she said. Debtors who are successful in getting that discharge may not file another Chapter 7 petition for eight years.

Her listeners were steered to the session after they came to a once-monthly Saturday pro bono -- or free -- legal clinic started about two years ago by members of the Memphis Bar Association's Access to Justice Committee and MALS, said Linda Seely, managing attorney and director of private attorney involvement at MALS.

For the most part, lawyers at the clinics handle what Seely called "run-of-the-mill legal issues" -- divorce, auto sales and repair problems, aggressive debt collection, payday loan issues.

"About eight or nine months ago, all of a sudden, employment cases and bankruptcy cases started taking the field," she said. "The circumstances around the recession basically pushed a lot of people underwater."

Some had enough income to file Chapter 13 petitions so-called wage-earner cases to repay creditors through a three- to five-year court-supervised plan. Those who qualify for Chapter 13 programs can afford legal fees by including the installment payments in their plan, so they don't fit the profile for the free program.

For others, clinic volunteers decided to start a screening process to see if those debtors could qualify for Chapter 7 and if they needed free legal help to get there.

About the same time, an offer to help came from another direction. Michael Coury, a lawyer who handles bankruptcy cases for Butler Snow and is a fellow of the American College of Bankruptcy, told Jennie Latta, one of four judges in the U.S. Bankruptcy Court for Western Tennessee in Memphis, about ACB grants for pro bono programs.

"We didn't have enough bankruptcy practitioners who were showing up regularly at the clinics," Latta said.

So she, Seely and a group of others involved in bankruptcy practice got together to see if and how such money could be used.

To help bridge the gap, the group decided to apply for a grant to train law students to do screening work at the Saturday legal clinics and to provide them with laptop computers to help. The bankruptcy college approved a \$10,000 grant for this year.

"We can reapply next year (for additional money)," Coury said. "We need to think long term and build the pro bono program long term."

Through the screening done at the monthly clinics, people like Sims are pointed toward the pro bono program, which starts with briefings like the one last Monday.

They gather information on Chapter 7. Then, if they decide they want a lawyer to look at their cases, they must get pre-filing counseling that is available on the Internet, by phone or in person. The instruction takes 45 minutes to an hour, Magevney said. When that is completed, the debtors get a certificate.

To get their cases referred to a lawyer, they must bring the certificate and a completed application for the program to MALS.

So far the agency has referred 55 cases to lawyers, Seely said. MALS has no figures on how many bankruptcy petitions resulted from those referrals, but not all will.

"Bankruptcy is not the solution for everyone's problem," Latta said.

Holly Schumpert, a Memphis bankruptcy lawyer who gets referrals and speaks at the MALS briefings, agreed.

One of the two cases she received didn't need to file bankruptcy because the debtor was "collection proof," Schumpert said. That is, the debtor had only unsecured debt -- credit cards, payday loans -- and had no assets a creditor could take or wages that could be garnished, that is, taken. The person's only income was from Social Security, which cannot be taken to pay debts unless it is mixed in a bank account with income from other sources.

Sims may fall into that category, although if she finds a job, that would change.

"Every case has to be looked at individually," Schumpert said. "That's the very nature of bankruptcy."

Take someone with an ongoing illness who is working and could have pay garnished (up to 25 percent of his check) or have other funds taken to pay court-ordered judgments. In addition, the stress of collection threats aggravates the debtor's medical condition.

"They don't really have the (financial) ability to file a Chapter 13, but they're getting tax refunds," Schumpert added.

Such a person may qualify both for a Chapter 7 filing and the pro bono program, she said.

But, Schumpert added, "The choice of cases depends on what attorneys see as pro bono. That will range from all of the cases they see to none."