

## How the Culture of the Court Affects Consumer Bankruptcy Filings

Ann A. Berry, Ph.D., The University of Tennessee Extension<sup>1</sup>

Dena Wise, Ph.D., The University of Tennessee Extension<sup>2</sup>

Explanations of the wide variation among states and regions with regards to consumer bankruptcy filings have been attributed to a number of factors. These factors include (1) consumer behaviors of the filer and circumstances experienced by the filer that led to bankruptcy including medical costs, divorce, over-indebtedness and credit card use; (2) legal factors that vary from state to state including whether bankruptcy stops a garnishment or foreclosure and (3) environmental factors such as proximity to gambling establishments and consumer culture.

An aspect of bankruptcy that has not been closely examined in literature is the culture of the bankruptcy court itself. This culture is comprised of factors that vary from court to court that help to explain the number of filings. Although bankruptcy courts are affiliated with the U.S. District Court system, operations of the courts vary widely from district to district. These differences impact the efficiency and ease with which consumers can file as well as the number of cases that can actually be processed by the court each week.

Culture of the Court refers to the environment of logistical, legal and human interactions that shape the experience for the filers and those facilitating the filing, however, we were not able to find prior research on the role of the Court in shaping the bankruptcy experience. Factors include:

- **Philosophy of judges and Chapter 13 Trustees.** Of the filing facilitators, judges are most influential. Their guidance shapes all three components of the court environment—logistical, legal and human.
- **Legal guidelines of the Court and judges' standing orders.** These documents guide attorneys in how to prepare and present the bankruptcy case. Guidelines vary from court to court, standing orders vary from judge to judge.
- **Culture of bankruptcy attorneys practicing in the Court.** This informal factor evolves from the personalities and practices of the attorneys and their legal aids.
- **Number of cases filed.** Courts vary in the number of cases they process. Some courts handle cases with greater efficiency than others.
- **Predominant socioeconomics of filers.** Legal and logistical procedures may be tailored to the types of cases most often encountered.
- **Predominant type of filing.** Whether the Court process primarily Chapter 7, Chapter 13 or Chapter 11 cases may indicate different logistical and legal processes.
- **History of the Court.** A court may have been influenced by a powerful judicial figure that molded it in a distinct fashion.

The authors are members of a research team investigating bankruptcy in two Southern states with very high consumer bankruptcy rates (Tennessee and Mississippi) and one state with a very low rate of consumer bankruptcy (North Carolina). Researchers are using interview, observation and narrative techniques to collect information on the role of legal and cultural factors in bankruptcy filing in hopes that a comparison will shed light on variation in bankruptcy filings among the states. The pilot consisted of 20 case studies and court observation in the Memphis Bankruptcy Court between September 2010 and June 2011. Case study protocol included interviews and surveys with members of households filing Chapter 13 bankruptcy in the Memphis Bankruptcy Court. Quantitative data was obtained from PACER, the public information database containing financial and other records of each case filed with the court during the bankruptcy process. Observation of the Court process included (1) attorney-client meetings, (2) trustee-attorney meetings and (3) judicial hearings.

<sup>1</sup>Associate Professor, Extension Family & Consumer Sciences, 218 Morgan Hall, The University of Tennessee, Knoxville, Tennessee. Phone: (865) 974-8198. Email: aaberry@utk.edu.

<sup>2</sup>Professor, Extension Family & Consumer Sciences, 218 Morgan Hall, The University of Tennessee, Knoxville, Tennessee. Phone: (865) 974-8198. Email: dkwise@utk.edu.

The Promises Broken project team is working from a framework that includes factors shown and thought to be related to the number of bankruptcy filings (Edmonds 2011; Edmiston 2006; VISA 1996; White 2006). These include characteristics of the filer such as behavior, circumstances, intentions, age, number of credit cards and installment-debt-to-income ratio; community characteristics such as unemployment, geography, population density, proximity to casino gambling, consumer culture, advertising, availability of credit, divorce rates and home prices; and state laws regarding filing exemptions, garnishment and foreclosure timelines. The culture of the court is thought to be an intervening factor between the decision to file and the number of actual filings. (See Figure 1.)

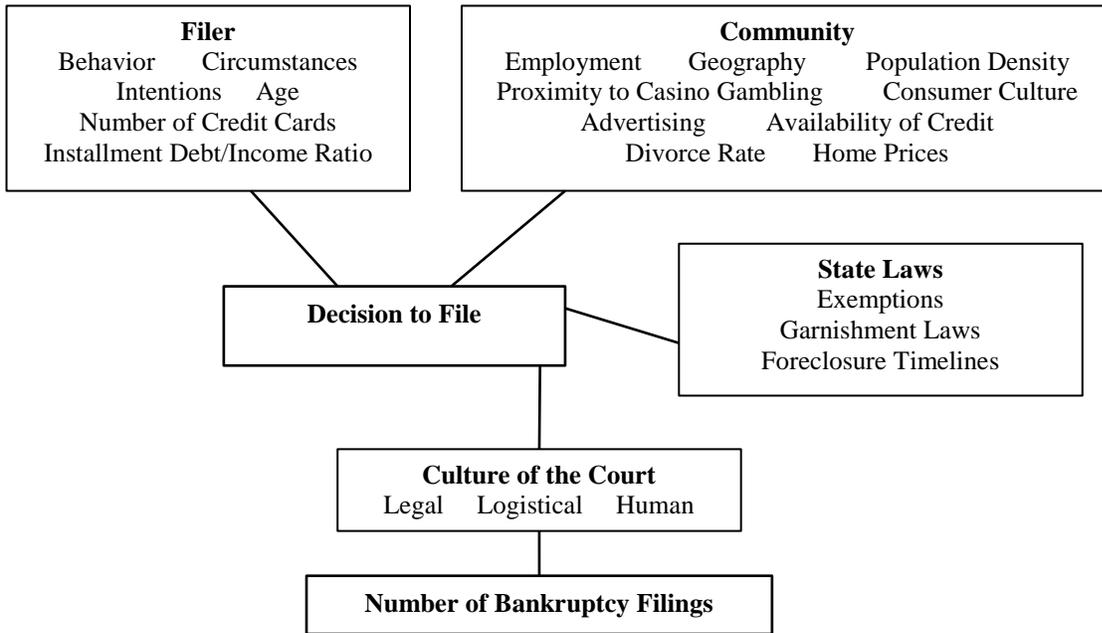


Figure 1. Framework for Factors in the Number of Bankruptcy Filings

**References**

Edmonds, T. N. (2011). Forgive us our debts: The great recession of 2008-09. *Journal of Legal, Ethical and Regulatory Issues*, 14(2).

Edmiston, K. D. (2006). A new perspective on rising nonbusiness bankruptcy filing rates: Analyzing the regional factors. *Economic Review*, Second Quarter. Federal Reserve Bank of Kansas City.

VISA U.S. A. (1996). Consumer bankruptcy: Causes and implications. *VISA Consumer Bankruptcy Reports*.

White, M. J. (2006). Bankruptcy and consumer behavior: Theory and evidence from the U.S. In G. Bertola, R. Disney, & C. Grant (Eds.), *The economics of consumer credit* (pp. 239-274). Cambridge, MA: MIT Press.