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Conversation with EOUST Director Tara Twomey

Hon. Michelle M. Harner

U.S. Bankruptcy Court (D. Md.); Baltimore

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Executive Office for U.S. Trustees; Washington, D.C.

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The Essential Resource for Today's Busy Insolvency Professional

On Our Watch

BY TARA TWOMEY

Questions and Answers with USTP Director Tara Twomey



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Tara Twomey is director of the Executive Office for U.S. Trustees. She was previously executive director of the National Consumer Bankruptcy Rights Center and Of Counsel to the National Consumer Law Center. From 2021-23, she served on the Judicial Conference's Advisory Committee on Bankruptcy Rules, and in 2021, she became a Fellow of the American College of Bankruptcy.

Tara Twomey became director of the Executive Office for U.S. Trustees on Feb. 27, 2023. In this article, she answers some questions for the *ABI Journal* about her career in bankruptcy law and the work of the U.S. Trustee Program (USTP) to safeguard the efficiency and integrity of the bankruptcy system.

Before joining the USTP, you were executive director of the National Consumer Bankruptcy Rights Center and Of Counsel to the National Consumer Law Center. How has that background shaped your perspective now as an advocate not just for consumers, but for all stakeholders in the bankruptcy system?

The bankruptcy system touches all corners of society, from large corporations and mass tort victims to mom-and-pop businesses and individuals who have fallen on hard times. Although I now wear a different hat, I have the same passion about bankruptcy and its promise of relief for financially struggling Americans.

My previous focus was on consumer bankruptcy cases, which constitute just over 98 percent of all cases filed, but I also appreciate the critical role bankruptcy plays for businesses. The Bankruptcy Code's flexibility, while not unbounded, continues to provide avenues for large corporate reorganizations despite increasingly complex business structures.

Subchapter V has provided a new and beneficial path to financial stability for small companies. Considering everything that the Code touches, it undoubtedly has shaped American society and our economy by reinforcing the concepts that the honest-but-unfortunate debtor should be given a fresh start and that failing businesses should have the opportunity to reorganize into successful operations.

For individuals and companies alike, bankruptcy is a powerful engine of economic renewal.

My background also has given me a firm belief that most debtors are honest people who have faced unfortunate challenges and want an opportunity to turn things around. As previously noted, consumer cases make up the vast majority of bankruptcy cases, but we often hear only about the small number of less-than-honest debtors or those who otherwise seek to unfairly manipulate the system. We do not hear as much about the success stories demonstrating that the system works, but there are plenty of those stories to tell.

In addition to debtors, most other stakeholders — including debtors' attorneys, trustees, creditors and judges — are also committed to a well-functioning bankruptcy system. The USTP has a vested interest in ensuring the integrity of the system for all participants, and that is my chief objective now.

The Department of Justice has placed an emphasis on ensuring access to justice — to make certain that all communities have equal access to the civil and criminal protections of the American legal system. What is the USTP doing to remove barriers to the bankruptcy system specifically, and what other measures is it taking to protect consumer debtors?

The USTP has multiple initiatives to ensure that participants in the bankruptcy system receive all of the relief that the law affords them and to ensure they are able to comply with the Bankruptcy Code's requirements. For example, we learned during the COVID-19 pandemic that the statutory obligations of § 341 can be satisfied in most cases without requiring a debtor to take a day off from work, travel long distances or secure childcare to attend an

in-person meeting. After a successful pilot program, we are expanding video § 341 meetings of creditors nationwide for consumer cases, and we expect to complete the expansion this year. The policy is the product of careful and deliberate preparations to ensure that the option for virtual meetings delivers on its promise of added efficiency while preserving the integrity of the bankruptcy system.

More than 50 judicial districts have already made a transition to virtual meetings under the USTP's procedures, which has saved countless hours and realized the promise of reduced burdens. The hard work and cooperation of bankruptcy courts and clerks, trustees and practitioners have been crucial in moving this project forward. The USTP staff has worked to provide robust training to trustees and practitioners to successfully transition to virtual meetings.

To better understand the experience of debtors from underserved communities and their attorneys in virtual meetings, we also partnered with the White House Legal Aid Interagency Roundtable and the Justice Department's Office for Access to Justice to conduct a listening session with legal aid representatives from two states. Our outreach confirmed that video § 341 meetings improve attendance and participation by debtors. We found that creditor participation also improved. The feedback about users' experience will be useful as the USTP works on future improvements. In light of these early successes, the USTP is looking to expand video § 341 meetings to chapter 11 cases in the near future.

Accessibility of information is also essential to fulfilling the promise of a fresh start for consumer debtors and providing equal access to that promise. We have an incredible service offering free telephonic interpretations to help debtors with limited English proficiency participate in their § 341 meetings. We are pleased that these translation services remain in high demand as we transition to offering virtual meetings nationwide. We provided nearly 10,000 free interpretation sessions in fiscal year 2023 alone. On our website (justice.gov/ust), we posted a Bankruptcy Information Sheet, available in 17 languages, to help debtors understand the bankruptcy process. More broadly, we are redesigning the USTP website to make it easier to find meaningful information about bankruptcy, starting with the section tailored toward consumers.

In addition, the USTP has taken several steps to prevent chapter 13 debtors who complete their plan payments from losing out on their discharge for failing to fulfill the debtor-education requirement. These steps include measures intended to reinforce debtors' awareness, such as interviewing stakeholders to discuss the barriers they perceive to debtor education and advising debtor-education providers to provide clear instructions about the requirement.

We are being proactive, but we have also been responsive when we have realized errors. I want to highlight the efforts of our Memphis, Tenn., field office, which identified 27 closed chapter 13 cases in which the debtors did not receive discharges even though they had completed their plans and filed debtor-education certificates. The office filed motions to reopen all 27 cases, and the debtors ultimately received their discharges.

What do you see as other opportunities for the USTP to help improve the system?

The USTP has several projects underway to make the system better. For example, we intend to build on the success of subchapter V by developing solutions for certain practical and operational issues that have arisen since it went into effect in 2020. We are pleased to be participating in ABI's Subchapter V Task Force (subvtaskforce.abi.org), which is developing potential statutory changes to recommend to Congress, as well as best practices based on input from stakeholders such as judges, subchapter V trustees and debtors' attorneys. The USTP is also evaluating ways to strengthen the recruitment and retention of qualified trustees and reinforce trustee performance management. These are just some of the efforts we are making to sustain the momentum and support the development of subchapter V.

Drawing on lessons learned, we also will bolster USTP policies and practices designed to safeguard bankruptcy estate funds held by trustees and debtors in possession in accounts at authorized depository institutions. The USTP's policies and practices worked as intended during the banking turmoil that unfolded last year. All bankruptcy estate funds on deposit at failed banks were protected through the Bankruptcy Code's and the USTP's collateralization requirements, except in cases where a court had waived them.

For background, banks become authorized depositories by executing a uniform depository agreement (UDA) with the U.S. Trustee. Among other requirements, the UDA provides that banks will comply with the Bankruptcy Code and post a bond in favor of the U.S. or alternatively deposit securities with the Federal Reserve to protect deposits above the standard maximum deposit insurance amount covered from a risk of loss by the Federal Deposit Insurance Corp.

To meet these goals, we are modernizing the UDA to create a single form for all authorized depositories. The form was last updated in 2013, and there have been several changes since then to the ways that the USTP, U.S. Department of the Treasury and financial institutions conduct business. The new UDA form will reflect advances in technology used by the USTP, trustees and financial institutions, and it will accommodate such changes as the reorganization of the Treasury, the methods now used for collateralizing deposits and changes in applicable laws and regulations.

A well-functioning bankruptcy system also requires a stable corps of talented private trustees. Ensuring that these trustees — whether serving as trustees in chapter 7, chapter 13 or subchapter V of chapter 11 — are on solid financial footing is key. Although subchapter V cases have been on the rise since 2020, historic lows in other case filings during the COVID-19 pandemic have had an impact on both chapter 7 compensation and chapter 13 trust operations.

As filings increase, we anticipate that the chapter 13 pipeline will gradually improve and bring greater stability to those operations. We also expect that the USTP's statutory fee revenue will recover so that we can resume funding additional payments to chapter 7 trustees under § 330(e). In addition, we continue to explore options within statutory bounds to ensure that subchapter V trustees are paid for their important work.

What first sparked your interest in bankruptcy? What can the bankruptcy community do to draw new attorneys to bankruptcy practice?

Like many in the bankruptcy profession, I would say that bankruptcy found me. I started my legal career doing community economic development and a fair amount of commercial real estate work for community organizations. As the foreclosures began to roll in, I found myself thrust into representing clients in chapter 13. I saw that bankruptcy was a powerful tool that could be used to help debtors right their financial circumstances and seek a fresh start.

Alas, how to draw new attorneys to the practice is a good question. In any profession, it is important to have a strong pipeline. We are seeing a large number of bankruptcy professionals retire, particularly on the consumer side. Generally, we know that most debtors fare better in bankruptcy when they are represented by good counsel.

Like others in the bankruptcy community, it is important for the USTP to take part in building the next generation. We have eight attorneys currently set to join the USTP this fall through the Department of Justice Honors Program, and we are increasing both legal and non-legal internship opportunities across the country. The USTP is also committed to fostering a workforce that reflects America's rich diversity and a range of personal and professional backgrounds, experiences and perspectives. To accomplish this, the USTP partners with multiple affinity groups to advertise attorney and non-attorney jobs and internships. Our outreach efforts also include collaborating with the Bankruptcy Inclusion, Diversity, Equity and Accessibility Consortium, which aims to recruit diverse candidates for the bankruptcy bench and bar by promoting careers in bankruptcy law.

How would you describe your leadership style?

I would probably describe it as a mix of styles depending on what the circumstances warrant, but I generally favor participative leadership. That means seeking input, listening carefully, encouraging diverse perspectives and ideas, and encouraging innovation and creative problem-solving.

What have you learned that you wish you had known before you entered government service?

Acronyms! There are lots of acronyms, and I still find myself looking them up from time to time, but more seriously, I probably undervalued the importance of working across government to solve problems. Government organizations often operate vertically within their subject-matter expertise, but many issues — from budget and personnel to data and cybersecurity — have better outcomes when we work collaboratively across agency lines. **abi**

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Faculty

Hon. Michelle M. Harner is a U.S. Bankruptcy Judge for the District of Maryland in Baltimore, appointed in 2017. Prior to her appointment to the bench, she was the Francis King Carey Professor of Law and the Director of the Business Law Program at the University of Maryland Francis King Carey School of Law, where she taught courses in bankruptcy and creditors' rights, business associations, business planning, corporate finance and the legal profession. Judge Harner lectured frequently during her academic career on various topics involving corporate governance, financially distressed entities, risk management and related legal issues. Her academic scholarship is widely published, with her publications appearing in, among others, the *Vanderbilt Law Review*, *Notre Dame Law Review*, *Washington University Law Review*, *Minnesota Law Review*, *Indiana Law Journal*, *Fordham Law Review* (reprinted in *Corporate Practice Commentator*), *Washington & Lee Law Review*, *William & Mary Law Review*, *University of Illinois Law Review*, *Arizona Law Review* (reprinted in *Corporate Practice Commentator*) and *Florida Law Review*. Judge Harner has served as the Associate Reporter to the Advisory Committee on the Federal Rules of Bankruptcy Procedure, the Reporter to the ABI Commission to Study the Reform of Chapter 11, and most recently chaired the Dodd-Frank Study Working Group for the Administrative Office of the U.S. Courts. She also served as the Robert M. Zinman ABI Resident Scholar for the fall of 2015. She most recently served as the chair of the Dodd-Frank Study Working Group for the Administrative Office of the U.S. Courts. Judge Harner is an elected conferee of the National Bankruptcy Conference, an elected Fellow of the American College of Bankruptcy, and an elected member of the American Law Institute. She previously was in private practice in the business restructuring, insolvency, bankruptcy and related transactional fields, most recently as a partner at the Chicago office of the international law firm Jones Day. Judge Harner received her B.A. *cum laude* from Boston College in 1992 and her J.D. *summa cum laude* from The Ohio State University College of Law in 1995.

Tara Twomey is the director of the Executive Office for U.S. Trustees in Washington, D.C. She previously was executive director of the National Consumer Bankruptcy Rights Center and Of Counsel to the National Consumer Law Center in Carmel, Calif. She previously focused on bankruptcy and consumer credit issues, with an emphasis on home mortgage origination and servicing and, more recently, student loans. She has taught numerous programs in these areas, served as an expert witness, and testified before Congress on mortgage-servicing problems. Ms. Twomey is a contributing author of several books published by the National Consumer Law Center, including *Mortgage Servicing and Loan Modifications* (2019) and *Home Foreclosures* (2019). She is a conferee of the National Bankruptcy Conference, a contributing author to the *Collier Bankruptcy Practice Guide*, and served as a commissioner for the ABI's Commission on Consumer Bankruptcy. Ms. Twomey has been a lecturer in law at Stanford Law School, Harvard Law School and Boston College Law School. In addition, she is a former clinical instructor at the Hale and Dorr Legal Services Center of Harvard Law School, where her practice focused, in part, on sustainable homeownership for low- and moderate-income homeowners. This practice area included foreclosure prevention and chapter 13 bankruptcy. Ms. Twomey received her undergraduate degree from the University of California, San Diego and her J.D. *summa cum laude* from Boston College Law School, after which she clerked for Chief Justice Herbert P. Wilkins of the Massachusetts Supreme Court. Subsequently, Ms. Twomey received a two-year Skadden Fellowship to work at the Legal Services Center.