

**United States Bankruptcy Court
Eastern District of Michigan**

State of the Court

**Steven Rhodes
Chief United States Bankruptcy Judge**

September 16, 2008

Introduction

In my last state of the court address, on October 2, 2007, I expressed the hope that sometime soon, we would get a year of stability in our operations and I could give a really *brief* state of the court address. Not this year, but I am pleased to report that at least this talk will not be any longer than last year.

Remembering Judge George Brody

I want to begin by taking a moment to share with you some thoughts about Judge George Brody. I only knew him after I took the bench in 1985 and we worked together for 3 years until his retirement in 1988. He was on the bench for 28 years, since 1960. He had graduated from the Michigan Law School second in his class and was a career law clerk for District Judge Theodore Levin, himself a brilliant and kind jurist, for whom our federal courthouse is named. Judge Brody also had an LLM degree in tax from NYU Law School and was preparing to begin his tax law practice in California when Judge Levin called him to inquire about his interest in becoming a bankruptcy referee.

Of course the job was very different then. Referees presided at all meetings of creditors; they held discharge hearings in all cases; there was no prohibition against ex parte communications and

so it was a common practice; referees did not wear robes; they signed all of the debtor's disbursement checks in chapter 11 cases; they were paid from the proceeds of the cases; and they held hearing on all motions, whether contested or not.

The Judge Brody that I knew was always kind and patient with me. As a new bankruptcy judge with no bankruptcy experience, I often sought his advice on issues of law and procedure, and he always made time for me and helped me, and I appreciated it.

Others saw a different Judge Brody, a judge who was challenged by his changing role from referee to judge and from administrator to decision-maker. But he was always powerfully motivated by a steadfast and deep commitment to the rule of law and the necessity of equity and fairness to parties above all. While it is true that those challenges sometimes created problems for attorneys, most would agree that he in turn challenged them to become better, and better prepared, lawyers. And I think they would also agree that he taught them much about the law and the practice of law.

A generation ago, there was a brief time of turmoil and scandal. In that moment, Judge Brody's depth of character remained a source of stability and strength for our institution. But more than that, Judge Brody's constancy of character empowered those of us on the bench and in our bar since then to reconstruct and rebuild our institution to the distinguished place it is today. Judge Brody was the bridge that carried us over those muddy waters.

May his memory be for a blessing.

Statistics and New Judgeships

Last year I announced that in the six quarters ended June 30, 2007, the Eastern District of Michigan was the highest filing district in the country. This year, we have been surpassed by the

Central District of California, which had held that high honor for years before we took it from them after BAPCPA.

For the year ended June 30, 2008, we had 39,676 filings. That was a 25% increase over the same period in 2007. Of those filings, 28,716 were chapter 7 cases. That's 72% of our filings.

In this calendar year 2008, our chapter 7 cases are up 36%. Our chapter 11 cases are up 53% and our chapter 13 cases are down 11%.

Here in Detroit, our chapter 13 filings are down 26%. That statistic may seem strange in light of our current foreclosure crisis, but think can be explained by the possibility that many homeowners are walking away from their homes due to plummeting values and their lack of confidence in their own finances or the economy in general. The Treasury Department issued a report last July concluding that because BAPCPA made bankruptcy harder and more expensive, a significant percentage of people are not pursuing saving their homes through chapter 13.

There is one statistic on which we can still claim to be number one. The State of Michigan has the highest chapter 7 filing rate per capita - 3.82 per thousand population. Our chapter 13 filing rate of 1.26 per thousand ranks 12th. Our overall filing rate of 5.10 per thousand ranks 6th.

Despite all this, we have virtually no progress to report in obtain our needed new judgeships. The Administrative Office did draft a bill, which I forwarded to Congressman Conyer's office, and I met with his staff about it in Washington twice about it. He and his staff recognize our need, but the issue is stalled on the question of how to pay for it. I have asked the Administrative Office to work with Congressman Conyer's staff to break through this obstacle. On balance, I am somewhat less optimistic about this than I was last year.

Implementation of New Local Rules

As everyone knows, our new local rules became effective this year on May 5. That was a significant achievement for the Court and the bar, culminating two years of intense effort. Thanks again to the many of you that served on the rules subcommittee and to everyone who submitted comments.

My judgment is that our new rules are doing well in operation. Both the Court and the bar have adapted to the rules and are committed to their uniform application. We have had to make a few adjustments in them and will continue to do so, as experience dictates. Nevertheless, our experience so far has demonstrated that all of the effort that went into them has been justified by the resulting expediency and uniformity of process. The reality of those rules, and I admit it may be an unfortunate reality, is that we could not possibly handle our extraordinary caseload without them. They, and our commitment to them, are what make our processes function as efficiently as they do.

However, we get no rest when it comes to keeping our local rules up to date. Yes, there will be more work to do this year, because the 2009 package of national rules amendments will again be substantial. The focus of those amendments to the national rules will be on changing the numerous time deadlines in the rules, from the very awkward 10, 15, 20 and 25 days, to time deadlines that are multiples of 7 days. So we need to do the same in our local rules to the extent appropriate.

So, I will soon call upon the bar to review our local rules with a view toward proposing such amendments as are necessary in light of next year's amendments to the national rules. In the process, the bar will be free to discuss and propose any other amendments that it concludes the Court should consider. There will be the usual public comment period before final adoption. In any event, it would be good to get these new revisions ready to become effective on December 1, 2009, which

the same time as the new national rules amendments will become effective next year.

New National Rules

As part of its yearly cycle of amendments, the Federal Rules of Bankruptcy Procedure will again be amended as of December 1. The difference this year is that the changes are very significant, perhaps the most significant since the rules were first adopted. Thirty-two of the rules are amended and there are seven new rules. I encourage each of you to budget the time necessary to study them so you don't get caught or surprised. The new rules are available on the Federal Court's website - www.uscourts.gov.

These rules amendments result from BAPCPA. You may recall that back in October of 2005 upon the enactment of BAPCPA, bankruptcy courts were encouraged to adopt as local rules the so called "Interim Rules," which we did. After a period of comment and further study, those interim rules are now part of the new package to be effective in the national rules on December 1. And, as a result of the adoption of the "interim Rules" into the national rules, we will repeal the "Interim Rules" as a part of our local rules as of that same date.

Chapter 13

I have in the past reported to you on our slow but sure downward slide in our rate of discharge in chapter 13 cases. In 2004, it was 31%. In 2005, it dropped to 29%. In 2006, it dropped to 27%. Last year, in 2007, year it dropped again to 26%. This year the slide continues. For calendar year 2008, it has dropped to a disappointing and discouraging 23%.

Last year, our ranking among districts in the country was 84th on this statistic. This year,

the AO has not given us that ranking, so we don't have it.

On the premise that we must always try to do better, we have implemented the initiatives that I mentioned to you last year. First, we have asked, really ordered, the IRS to send debtors' tax refunds directly to the trustees. This should reduce the dismissals resulting from failing to pay those refunds when required.

Second, we have instituted Automated Clearing House payments (ACH) for those debtors for whom wage orders are not feasible and who would otherwise have to remember to write checks every month for their plan payments.

Third, the new rules have an elaborate procedure to institute post-confirmation plan modifications when necessary due to mortgage payment adjustments. In that regard, I note for you that it may be necessary for us to adjust that process a bit to deal with mortgages that adjust monthly because the rule was not designed to implement such frequent changes.

If any of you have any additional ideas on how to improve our dismal chapter 13 discharge rate, please let me know.

Undisclosed Assets

The problem of undisclosed assets in chapter 7 cases remains a significant challenge. I reported to you last year on my study showing that in the first year after BAPCPA became effective, 38% of the assets that trustees administered were not disclosed by the debtors in their initial schedules.

Our new local rules now require the trustees to file a simple report with the court whenever they discover an asset not disclosed at the meeting of creditors when the debtor testifies that the

schedules are accurate. As of yesterday, four months and ten days after this rule took effect, an astonishing 236 such reports have been filed. I commend the trustees for discovering these assets and filing these reports.

At the same time, I must comment that such illegal conduct in failing to disclose assets cannot be condoned or tolerated. If that rate continues, it will mean 700 such reports in the first year. This represent a serious deterioration in this problem; my study from 2005-2006 found only 140 undisclosed assets for the entire year. And 236 is not the number of undisclosed assets so far since May; many of the reports included multiple undisclosed assets.

The point of this requirement in the new local rules was to allow us to continue to monitor the extent of this problem and to determine whether any attorneys are responsible for any patterns of nondisclosure. If so, appropriate process will be commenced and appropriate remedies will be enforced. I implore those of you who represent chapter 7 debtors to take this very seriously. I suggest that the CBA may be well positioned to help its members with this challenge.

New Forms Project

For the several years that I have been studying debtors' responses to the official bankruptcy forms, I have called for a complete revision of them, to make them more user friendly, in plain English, and addressed appropriately to their audience. I am very pleased that the bankruptcy rules committee has now begun that project, although I doubt very much that it was on account of my call. This is a huge project and will take some time and great effort, but the committee seems to be committed to doing it right and is attempting to engage expert help in the effort. However, while this project will help to address issues of nondisclosure, it can never be a substitute for the attorneys'

ethical and legal responsibility to spend the time, effort and skill necessary to get the schedules right.

Continuing Legal Education

Our now annual Veterans Day ABI CBA conference is scheduled for November 11 at the Troy Marriott. Last's year's conference was fabulous and our attendance was well over 400. It will again be an outstanding program. Judge Wedoff will again be here from Chicago to discuss the latest means test issues. Our lunch speaker will be Amy Cutts from Freddie Mac to talk about the future of the home foreclosure crisis, and perhaps, her own employer's. According to the ABI website, one hundred and forty of you have already registered. I look forward to exceeding last year's attendance.

Speaking of the ABI, it recently a completely complete reorganization of its website so that all of its content for consumer professionals can be accessed through a single link on the front page of the site. It is very impressive. I encourage all consumer professionals to go to the site and explore it. There is even a short video there explaining how to access everything.

Mediation

Most years I mention how crucial mediation is to the efficient functioning of our court and certainly this year the panel deserves all the same commendation and appreciation.

This year, I tried a new experiment in mediation. In May of 2007, in the Collins and Aikman case, the debtor filed over 1100 preference cases. I appointed several experienced bankruptcy attorneys in our district to serve as mediators to attempt to resolve them. Some were on our mediation panel and some were not. Due to the skill and work of the mediators, and the attorneys

involved in the cases, all but about 40 have settled. That is an extraordinary accomplishment and speaks volumes about the willingness and ability of the bar to participate as full partners with the bench in carrying out our commitment to prompt and efficient justice. Of course, I also look forward to the last 40 settlements.

Bankruptcy Appellate Panel

As I announced last year, I returned to the Sixth Circuit Bankruptcy Appellate Panel in January. I appreciate the opportunity to discuss, negotiate and decide our appeals with my colleagues from around the circuit. It is a fascinating and rewarding experience.

Shortly after that work began this year, the BAP had another vacancy and Judge McIvor was appointed. So now two of the six BAP judges are from our district. She has been a wonderful addition to the BAP. The BAP performs an important function in our system by offering the parties a choice of forum for resolving their appeals and by promoting the stability of the law, and I want to publicly thank Judge McIvor for her willingness to take on that extra service and responsibility.

Court Historical Project

The court historical project is proceeding very nicely under the leadership of Judge Shapero and a steering committee consisting of Judy Christie, Rita Wallace, who is the Sixth Circuit historian from Cincinnati, Paula Hall, Bill Cohen, Wally Handler, John Mayer and Barbara Rom. The project is under the umbrella of the Historical Society of the Eastern District. Kevin Ball is the principal writer and researcher and he is well into his work. He has conducted several oral histories and more are planned. Fund-raising for the project is also in process. Some money has been raised and some

other principal donors have been contacted with a view to obtaining substantial primary funding from them. After that, the effort will be broadened to include the rest of the bankruptcy community. Judge Shapero reports that our project, together with a few others, appear have spawned other similar efforts around the country.

In other news of consequence, we are not moving. Literally. Our lease of our Detroit facilities is up at the end of the year, but GSA has negotiated another 10 years for us, so we are staying where we are.