

**STATE OF THE COURT ADDRESS
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
PHILLIP J. SHEFFERLY, CHIEF UNITED
STATES BANKRUPTCY JUDGE, OCTOBER 6, 2009**

Introduction

When I became chief judge in April, 2009, Judge Rhodes was kind enough to spend a considerable amount of time with me to describe for me what my new responsibilities would entail. I thought to myself that these responsibilities would be easy enough and would not consume very much of my time or in any way interfere with my handling of my cases day to day. Having now held this position for six months, I am reminded of the wisdom of Woody Allen who once said that “confidence is what you have before you fully understand the problem.”

But, thankfully, Judge Rhodes has been a great resource and an unselfish reservoir of knowledge for me to tap. So I would like to begin today by taking this opportunity, for myself, my five colleagues, and for the entire bar, to express our most sincere and deepest appreciation for the efforts of Judge Rhodes during the past seven years that he served as chief judge of our bankruptcy court. During those seven years, Judge Rhodes presided over our Court:

- Replacing two judges
- Utilizing numerous visiting judges
- Bringing on four new permanent bankruptcy judges
- Converting from an entirely paper court to an entirely electronic court
- Adopting entirely new Local Rules and procedures made necessary by BAPCPA and other changes in the law and practice during this time

During his tenure, Judge Rhodes also served with distinction on the Bankruptcy Appellate Panel, the ABI Board of Directors, and spearheaded numerous continuing legal education programs nationally, regionally, and locally. Judge Rhodes has displayed exceptional leadership and dedication for which we are deeply indebted. Thank you Judge Rhodes for your service.

Statistics and New Judgeships

The number of case filings in our district continues to grow at a very high rate. For the year ended June 30, 2009, 47,803 cases were filed in our district. That is an increase of just over 20% from the year ended June 30, 2008. You may remember from last year’s state of the court address that our case filings for the year ended June 30, 2008 had increased by over 25% from the prior year. We continue to increase each year the number of case filings in our district.

Of our total case filings for the year ended June 30, 2009, they breakdown by chapter as follows: 38,681 were Chapter 7 case filings. That represents 81% of our total filings. That compares with 72% for the prior year. 8,961 were Chapter 13 case filings. That represents 18% of

our total filings. 146 were Chapter 11 filings. That represents 1% of our total filings. Overall, our Chapter 7 filings are up by 40%, our Chapter 13 filings are down by 7% and our Chapter 11 filings are up by 6%.

Those numbers continue a strong trend over the last several years that has seen our Court continuously finish first, second or third in the country in the gross number of cases filed. Throughout this same period, our adversary proceeding numbers are similarly heavy. 2,754 adversary proceedings were filed in the year ended June 30, 2009. That represents an increase of 45% over the prior year. The number of case filings in our district has lead the Judicial Conference of the United States to recommend the adoption of three additional permanent bankruptcy judgeships for our district. In June, 2009, Judge Barbara Lynn, the Chair of the Judicial Conference Committee on the Administration of the Bankruptcy System, testified before the House Judiciary Subcommittee on Commercial and Administrative Law in support of the Judicial Conference recommendations. Judge Lynn described the Eastern District of Michigan's case load as "overwhelming" and "ever increasing" and described our district as having a "substantial need" for these three additional judgeships. I am told that there is legislation now pending that provides for these three judgeships and we are optimistic that these three judgeships may be approved in the coming year.

Pro Se Cases

A separate point needs to be made about the dramatic increase in our pro se filings during this past year. For the calendar year 2007, we had 1,251 pro se cases filed in our district. That represented about 3.5% of our total cases. For the calendar year 2008, we had 1,871 pro se cases filed in our district. That represents about 4.5% of our total cases. For the first 8 months of calendar year 2009, the number of pro se cases has grown to 2,333. That represents almost 9% of our total cases. In Chapter 7, more than 10% of our cases are now pro se. There are multiple explanations for this increase in pro se cases, including the cost of legal representation, the obstacles in consumer cases caused by BAPCPA, the easy access to bankruptcy forms and information on the internet, and perhaps many other reasons that are not readily apparent.

Pro se cases require extra judicial and other resources to process through the system. They pose unique challenges to our system. The Chapter 7 Trustees have raised with the bench a number of difficulties that the processing of these cases pose for them. As a Court, we have provided a great deal of information for pro se debtors on our website with numerous links to other websites and we will continue to explore and develop new and more efficient ways of processing these cases going forward and assisting the pro se debtors in them. To the extent that you as a bar have recommendations for assistance to the Court in this regard, your recommendations are welcome.

Chapter 13

In past state of the court addresses, Judge Rhodes has observed that by virtually every statistical measurement, the cases and adversary proceedings in our district are prosecuted in a timely and efficient manner, well above the national averages, despite our enormous case load. Nonetheless, Judge Rhodes has also observed in the past that the discharge rate in our Chapter 13

cases has ranked for a number of years among the country's very lowest. It continues to remain low. However, over the last couple of years, a number of steps have been taken, both by the bench and by the bar, to rectify this low discharge rate.

1. Beginning in early 2008, the Court began to include a provision in its confirmation orders requiring the IRS to send tax refunds of the debtors directly to the Chapter 13 Trustee. This was done in an effort to increase the performance levels of debtors who are required to pay their tax refunds to the Chapter 13 Trustee as disposable income. It is too early to have any meaningful statistical data to demonstrate the effect of these orders thus far. However, our strong impression is that these orders will greatly reduce the instances in which a debtor's case is dismissed because of failure to pay tax refunds. As some of you may know, the United States of America has filed a complaint in the United States District Court for the Eastern District of Michigan against the Chapter 13 Trustees that seeks to prohibit the Bankruptcy Court from entering any further confirmation orders that contain such provisions and from confirming any more Chapter 13 plans that contain such provisions. That lawsuit is in its infancy. Unless and until our Court is ordered to do otherwise, we intend to continue to include in our confirmation orders a provision requiring the Internal Revenue Service to send the debtors' tax refunds directly to the Chapter 13 Trustee and enforce those confirmation orders.
2. Last year the Court began a program, and approved a local rule to implement the program, for Automated Clearing House (ACH) payments 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 to the Chapter 13 Trustee. Again, it is too early to have any empirical data to show the affect of the ACH orders, but we believe they may make a positive contribution to an increase in our discharge rate going forward.
3. Recently, beginning in September, 2009, David Ruskin, one of the standing Chapter 13 Trustees, began a "debtor orientation" program for Chapter 13 debtors. The presentation is given to debtors immediately following their § 341 meeting in an adjacent conference room. The orientation sets forth in a concise and easy to understand manner: the definition of Chapter 13; who the players are that are involved in Chapter 13; what the plan is made up of; what the automatic stay means; how to deal with creditors; how the case is administered; how debts are paid; the role of the Chapter 13 Trustee and the role of the Court; and, finally, the meaning of a Chapter 13 discharge. I viewed the slide show presentation and found it to be outstanding. It provides the debtor with a lay persons' road map to the rights and responsibilities of a Chapter 13 debtor. Importantly, it emphasizes to the debtor the value of seeking legal advice along the way from the debtor's attorney and getting counsel with respect to each of these issues. I strongly encourage both Chapter 13 debtors, and even their attorneys, to attend it. In my judgment it is a useful educational tool for the debtors that could well contribute in the future to a higher

rate of discharge in our Chapter 13 cases. Mr. Ruskin has conducted a survey of 114 debtors who have participated in the debtor orientation program. The results of the survey have been very positive. Those debtors that have been surveyed have overwhelmingly found the program valuable and informative.

4. There is another recent development that may also contribute to an increase in our Chapter 13 discharge rate. This development is not one that was planned by our Court, but instead is the result of the substantial decline in home values in our district. Although § 1322(b)(2) of the Bankruptcy Code still prohibits the modification of a mortgage secured only by a debtor’s principal residence, the case law in the Sixth Circuit permits a lien to be stripped from a debtor’s principal residence if there is no equity in the residence for such lien. In many cases, debtors have more than one mortgage on their residence. If the value of the residence is less than the amount owed on the first mortgage, debtors in Chapter 13 may strip the second mortgage lien from the residence and have the debt owed on the second mortgage treated and allowed as an unsecured claim. With the decline in property values in our district, lien stripping in Chapter 13’s has become much more common place. The following numbers demonstrate the dramatic increase in these lien stripping proceedings:

<u>Year</u>	<u>No. of lien strip adv. proceedings in total</u>	<u>No. of lien strip adv. proceedings/Ch. 13</u>	<u>% of lien strip adv. proceedings/Ch. 13</u>
2006	118	14	12%
2007	147	40	27%
2008	368	284	77%
2009	1,565	1,472	94%

Obviously, the use of Chapter 13 to file an adversary proceeding or otherwise strip a second lien is greatly increasing. However, to obtain the lien strip, the debtor must complete the Chapter 13 plan. This creates a strong incentive for Chapter 13 debtors to complete all of their plan payments and obtain a discharge. Perhaps this incentive will also contribute to an increase in our Chapter 13 discharge rate.

New Local Rules

On March 26, 2009, the United States Supreme Court adopted amendments to the Federal Rules of Bankruptcy Procedure. Under the amendments, Bankruptcy Rules 2016, 4008, 7052, 9006, 9015, 9021 and 9023 were revised. A new rule 7058 was added to make Federal Rule of Civil Procedure 58 applicable to adversary proceedings. The amendment to Rule 9006(a) clarifies the way time is calculated in the federal courts by adopting a “days are days” approach to counting time, versus the current practice of excluding intervening weekends and holidays from periods of less than

eight days. The amended rules count intermediate weekends and holidays for all time periods, and deadlines of less than 30 days are stated as multiples of seven days so that the expiration of a deadline would typically occur on a weekday. For example, a 5 day deadline becomes 7 days; 10 and 15 day deadlines become 14 days; 20 day deadlines become 21 days; and a 25 day deadline becomes 28 days. These amendments to the Federal Rules of Bankruptcy Procedure all become effective December 1, 2009

After the Supreme Court adopted the amendments to the Federal Rules of Bankruptcy Procedure, the Rules Subcommittee of the Advisory Committee to the Bankruptcy Court for the Eastern District of Michigan reviewed our local bankruptcy rules to recommend any necessary revisions to conform our Local Rules to the amendments to the Federal Rules of Bankruptcy Procedure. The Rules Subcommittee recommended revisions to certain Local Rules which were published for public comment. After the expiration of the public comment period, the Bankruptcy Court has taken steps to adopt the recommended revisions. Those revisions have now been submitted to the District Court for its approval. If approved by the District Court, these local rule amendments will become effective on December 1, 2009, the same date as the Federal Rules of Bankruptcy Procedure become effective. The amendments to the Local Rules were designed to conform our Local Rules to the amendments to the Federal Rules of Bankruptcy Procedure. We fully expect that our new Local Rule amendments will be approved and become effective December 1, 2009.

Once these Local Rules amendments are approved by the District Court, we intend to place on our Court's website a chart that summarizes the changes both to the Federal Rules of Bankruptcy Procedure and to our Local Rules that illustrates the changes to each of them and the adjustments in the counting of days that will take place both under the Federal Rules of Bankruptcy Procedure and the Local Rules as a result. Further, we intend to address these Local Rules changes at the Detroit Consumer Bankruptcy Conference presented by the American Bankruptcy Institute on November 11, 2009. Hopefully, the District Court's approval will come quickly and we will place the chart on our website soon so that you may begin to review these changes. I strongly encourage you to take the time to familiarize yourself with them.

I would like to take this occasion to extend the thanks of the bench and the bar to the Rules Subcommittee of the Advisory Committee of the Bankruptcy Court for the Eastern District of Michigan that did the heavy lifting on this project. In particular, I would like to thank Michael Baum, Wallace Handler, Rosanne Giunta, Joe Mack, Brian Trumbauer, Steven Gross and Judy Calton for their outstanding work in preparing the recommendations for our Court.

Reaffirmation Best Practices

One of the changes brought by BAPCPA pertains to reaffirmation agreements. The responsibilities of debtors' attorneys in connection with reaffirmation agreements was altered greatly. Subsequent to BAPCPA, we adopted a Local Rule to govern practice in our Court regarding those reaffirmation agreements that contain what is described as the presumption of undue hardship under § 524(m) of the Bankruptcy Code. Without addressing each of the issues that has arisen from

time to time concerning reaffirmation agreements, it is worth noting that there has been some divergence in the case law and in the practices among the bankruptcy courts throughout the country since BAPCPA regarding reaffirmation agreements and, in particular, the so called presumption of undue hardship under § 524(m). At the request of the bench, the Consumer Bankruptcy Association was asked to make a recommendation to the Court regarding best practices for a debtor's counsel to follow in Chapter 7 cases regarding reaffirmation agreements. The Consumer Bankruptcy Association provided the bench with a detailed report on recommended best practices. I would like to take this opportunity to give special thanks to Noel Aaron Cimmino and Heather McGivern for leading the preparation of the report on best practices for the Court to consider. Our Court is in the process of reviewing that report. We consider it an important contribution to the practice regarding reaffirmation agreements and we intend to take it into consideration in formulating any guidelines or other recommendations of best practices that we ultimately determine to make. Again, a special thanks to the individuals who worked so hard on this report.

Bankruptcy Court Historical Project

The Bankruptcy Court Historical Project is continuing its work under the leadership of Judge Shapero and a steering committee consisting of Judy Christie, Rita Wallace, Paula Hall, Bill Cohen, Wally Handler, John Mayer, Barbara Rom and Kevin Ball. The Bankruptcy Court Historical Project is underwriting the authorship and publication of a history of the Bankruptcy Court for the Eastern District of Michigan. If you would like to help underwrite this important project, there are flyers that have been made available at your table to provide you with more information regarding contributions for this project. I congratulate Judge Shapero and the committee on undertaking this valuable historical project.

United States Trustee

Recently, I had an opportunity to discuss with the United States Trustee for our region some of the programs to which it is currently devoting attention. In the course of our discussion, the United States Trustee also brought to my attention a service that I was unaware that it provided. I would like to take this opportunity to inform you of it. If you represent a debtor and require language assistance for your client at a § 341 meeting, the United States Trustee provides interpreters. If you know in advance that you need such assistance, it is recommended that you contact the United States Trustee's office ahead of time to request interpreter assistance for the specific language needs of your client. By contacting the United States Trustee in advance and alerting the United States Trustee to the specific language needs of your client, the § 341 meeting will proceed more efficiently and effectively and enable the case to be processed more expeditiously. The person to contact in the United States Trustee's office is Neda Krstic. Ms. Krstic's telephone number is 313-226-6918. This is a valuable service that I was not even aware the United States Trustee provided but I encourage those of you who have a client with special language needs to avail yourselves of this service.

Upcoming Continuing Legal Education Programs

I would like to take a moment to inform you of upcoming legal education opportunities. On Wednesday, November 11, 2009, the ABI Detroit Consumer Bankruptcy Conference will be held at the Hyatt Regency Hotel in Dearborn. The program is outstanding and the panelists include judges, lawyers, trustees and others. I encourage you to invest the day in this outstanding program.

Looking ahead on our calendar, on April 19, 2010, the Consumer Bankruptcy Association and the Institute of Continuing Legal Education are partnering to conduct an annual bankruptcy institute. The joint effort by the CBA and ICLE represents a first. I am confident this will be an outstanding program and ask you to keep it in mind as you begin to save dates in the upcoming year.

One Final Thank You

I have already expressed my appreciation for those who have volunteered their time on continuing legal education efforts, amendments to local rules, recommendations of best practices regarding reaffirmation agreements, and others. But I would be remiss if I did not recognize today the outstanding efforts of the lawyers who serve on the Bankruptcy Court's Mediation Panel and the lawyers who serve on the Bankruptcy Court's Pro Bono Program. The individuals who are on both of these panels are true public servants. I am repeatedly impressed by their efforts both in resolving cases and in providing representation for those who cannot otherwise afford it, all done with little fanfare. I see the results of their efforts daily in my court. Their efforts demonstrate the wisdom of something that Harry Truman once said: "It is amazing what individuals can accomplish when they do not care who gets the credit." Thank you again to those individuals who serve as mediators and pro bono attorneys in our district.

William Shakespeare once said that brevity is the soul of wit. Hopefully I have not deviated too much from the wisdom of that quote, but if I have, I appreciate nonetheless your attention here today. I promise that I will strive to make next year's state of the court address more brief than this year's. Thank you.