

## **STATE OF THE COURT ADDRESS**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
PHILLIP J. SHEFFERLY,  
CHIEF UNITED STATES BANKRUPTCY JUDGE  
MARCH 5, 2014**

### **INTRODUCTION**

For many years, we have had a tradition in our district of having the chief judge for the bankruptcy court give an annual state of the court address at a federal bar luncheon. The state of the court address provided an opportunity to give information to the bar and to the public regarding the administration of our court. It also provided an opportunity to publicly recognize many individuals who contributed throughout the year to the success of our court. Finally, it provided an opportunity to inform the bar and the public about new developments to look forward to over the course of the next year.

About now, you may be thinking, I don't remember that tradition. And there's a good reason for you thinking that. The last time I did a state of the court address was in 2010. We've had a busy run for these last several years, and I simply neglected to set aside time for a state of the court address in these last

several years. So in preparing for it today, I went back to look at what were the big issues that I spoke about at the last state of the court address in 2010.

The first big issue was our skyrocketing case load. Back in 2010, our case load had continued to go up every year since BAPCPA, so I spent some time going through statistics and discussing the status of pending legislation to provide new judges to deal with these skyrocketing filings. The second big issue was how our court was going to deal with the substantial increase in pro se filings in our district. Prior to BAPCPA, we had very few pro se filings in this district, but the numbers went up after BAPCPA, to an alarming rate by 2010. So I discussed some of the programs that the court was considering adopting. A third issue that I spoke about pertained to a new pilot program that had just been developed by the Administrative Office of the United States Courts that would enable courts to provide digital audio recordings of bankruptcy court hearings and make them accessible through PACER. At that time, there was only one district in the country that was using this program. We were just learning about it and were soliciting public comment from you. A fourth issue that I spoke about pertained to a program developed by the Federal Judicial Center that created a judicial performance survey for use by bankruptcy judges. The program called for a voluntary survey administered by the Federal Judicial Center permitting members

of the bar to comment in strict confidence regarding the performance of the bankruptcy judges that they appear in front of. At the time of the last state of the court address, our court was considering whether to implement this performance survey during the coming year.

For those of you who have been wondering how all of these things worked out after the last state of the court address, I can tell you today. On the first issue, the case filings, they've gone down dramatically. I'm going to discuss some of the numbers in more detail in a moment. On the second issue, I'm very pleased to tell you that our court and the bar have greatly expanded the resources available for pro se debtors. More about that too in a few minutes. On the third issue, I'm sure that you all know that we went ahead and made audio digital recordings of every hearing in bankruptcy court available through PACER. The audio recordings have proven to be a very useful tool to the court, to the bar, and to the public. Finally, on the fourth issue, the judicial performance surveys, we did implement them the following year, in 2011. The level of participation by the bar was very high. The results, naturally, remain confidential. But the willingness of the bar to take the time to provide constructive comments proved very useful to all of us.

Now that I've brought you up to date on the last four years since the last state of the court address, let me talk about some current events and information.

### STATISTICS REGARDING CASE FILINGS

In the years immediately leading up to BAPCPA, case filings nationally, and especially here locally, escalated each year. Although the passage of BAPCPA in 2005 significantly reduced case filings for that year, they soon began to escalate again. In 2010, the Judicial Conference of the United States reported that our district had an emergency need for additional judges and additional resources to help us deal with our escalating case load. By 2011, things began to change. Nationally, case filings began to come down. They did here locally as well. In each of the last three years, our case filings have come down from the previous year. Here's the report for the last 12 months ending December 31, 2013.

During calendar year 2013, a total of 31,768 cases were filed in our district. If you're wondering how that compares to 2010, the last year that we had a state of the court address, the case filings that I reported on at that time for the prior 12 months totaled 45,517. In other words, we're down about 1/3 this past year from where we were at the time of the last address. On a year to year basis, comparing the filings from 2012 to 2013, we went from 38,034 cases to 31,768 cases, or a 16% reduction. Obviously, this substantial reduction in cases has had a significant effect upon the bar. But I also want to put these figures in context from the perspective of bankruptcy courts nationally. Even though our

case filings are down, our court remains one of the highest volume courts in the country, with an extraordinary workload.

Our total number of cases filed in 2013 still ranked sixth of all districts in the country. We ranked fourth of all districts in Chapter 7 filings, 16th of all districts of Chapter 11 filings, and 22nd of all districts in Chapter 13 filings.

While there are five other districts in the country that actually have more total case filings than we do, there are no other districts in the country that have as many case filings per authorized judgeship as we have in the Eastern District of Michigan. In 2013, we ranked number one in the country again on case filings per authorized judgeship.

There is one other figure here that's relevant. There is a formula created by the Federal Judicial Center that gives different weights to Chapter 7, Chapter 11, Chapter 13 and adversary proceedings. The purpose of this formula is to create an average weighted case load for each authorized bankruptcy judgeship to assist the Administrative Office and the Judicial Conference of the United States in understanding the case loads of each of the bankruptcy courts around the country, and in determining the need for any additional judgeships. As you can imagine, more weight is given to Chapter 11 cases than to any other cases in this formula. Chapter 13 cases are also given more weight than Chapter 7 cases. The reason for

these assigned weights is based upon the level of judicial involvement ordinarily required. The Federal Judicial Center's average weighted case load per authorized judgeship shows that our district is presently the second highest in the country. The only district in which there is a higher average weighted case load per authorized judgeship is the District of Delaware. Based upon our weighted case load, the Judicial Conference actually recommends that we have three more judges in this district. That's not going to happen.

One final point about workload. As you all know, on July 18, 2013, the City of Detroit filed in our court the largest Chapter 9 bankruptcy case ever filed in the country. The figures I just went through do not include Chapter 9 cases. It is hard for me to evaluate precisely the numerical effect the City of Detroit Chapter 9 case has on this weighted case load, but I can assure you that it is more than a full time job for Judge Rhodes, and that it significantly exacerbates what is already a very heavy case load in our district.

### **REDUCTION IN RESOURCES**

On the other side of the equation, the resources available to our court have been significantly reduced. At the last state of the court address in 2010, our court had 105 employees. Today we have 72 employees. That's a 30% reduction in our workforce. Our court's staffing levels have not been this low since the

mid-1990's. During this same period, Congress has drastically cut funding for the judiciary. Our budget has been cut each of the last three years. From fiscal year 2010 to fiscal year 2014, our court has suffered a 33.5% cut to our overall budget. In sum, each year we are asked to do more work with less resources.

### **CITY OF DETROIT CASE**

In order for any large organization to operate effectively, there must be contributions from many individuals. Our court is no different. The most pleasant aspect of a state of the court address like this is the opportunity that it affords to give some public recognition to the unsung heroes whose valuable contributions have enabled us to continue to process our very heavy workload.

First, I want to speak briefly about the City of Detroit case. When it became apparent that the City of Detroit was going to file Chapter 9, there was a great deal of concern and anxiety over how such a large case could be processed promptly and effectively by a high volume court like ours. To deal with this unprecedented challenge, I'm pleased to tell you that the bankruptcy court and the District Court for the Eastern District of Michigan put their resources together and collaborated in setting up the logistics for the administration of this case. Chief Judge Gerald Rosen and the district court clerk, Dave Weaver, made the resources of the district court available to us without qualification, and volunteered to help our court in

any way that they could. As a result, our two courts worked together to provide for courtrooms, security, media guidelines, handling of case filings, and many other aspects attendant to such a large case. Without the district court's assistance, this would have been a much more difficult task for our court.

The district court's assistance in handling the logistics for the City of Detroit case has been very important to us. But just as important is the extraordinary effort that Chief Judge Rosen and District Judge Victoria Roberts have made in mediating complex and challenging issues in this case. They have put in countless hours, including travel to other cities to meet with the attorneys and the parties affected by the City of Detroit case. I want to publicly thank Chief Judge Rosen, Judge Roberts, and the entire district court, for all of the assistance they have provided to our court in the City of Detroit case. We are fortunate to have a supportive and cooperative relationship with the district court.

I also want to express my appreciation to the many bankruptcy court employees that have gone above and beyond the call of duty to process the City of Detroit case and somehow still process efficiently the rest of our cases. First, Judge Rhodes graciously agreed to defer his planned retirement, despite its alluring promise of extra time for golf, band practice and grandkids, to accept the enormous task of presiding over this unprecedented case. Our entire community owes him a



debt of gratitude for the personal sacrifice he has made and for the scholarly, professional, and tireless work he has performed in this monumental case. Second, all of my colleagues, the other judges of this court, deserve credit for pitching in to handle the other cases on Judge Rhodes' docket, so that he might devote all of his time to the City of Detroit case. Third, our clerk, Katherine Gullo, and our deputy clerk, Todd Stickle, have managed to keep our court running efficiently despite the heavy case load, the reduction in resources and personnel, and the unique challenges posed by the City of Detroit case. They have demonstrated outstanding leadership at every turn.

I also think it is important for me to mention by name those specific bankruptcy court employees who have had direct involvement in the City of Detroit case, assisting Judge Rhodes in handling hearings, processing of filings and orders, and the development of information technology necessary to keep up with this juggernaut of a case. I want to express my thanks to all of the individuals employed in the clerk's office, but especially those individuals working directly on the City of Detroit case: courtroom deputy Chris Sikula, chambers support clerk Letrice Calloway, team leader Kristel Trionfi, case manager Carol Katanski, case manager Jennifer Mahar, and the entire IT department, Charlene Mo, Roberto Garza, Tom Vang, Sam Andaya, Chuck Chessor, Nina Sun, Debby Ronayne, and

Annie Delduca. We are justifiably proud of all of their outstanding work on this case.

### **PRO BONO ATTORNEYS**

While I'm speaking of unsung heroes, I next wish to express our court's appreciation for those attorneys who perform pro bono legal services for individuals in our court. Our court has a pro bono program for the appointment of counsel for debtors in § 523 and § 727 cases, and for creditors in adversary proceedings under § 523(a)(5) and (a)(15) involving domestic support obligations and related matters. In 2013, 54 adversary proceedings were handled by pro bono attorneys appointed through this program.

These pro bono assignments are not easy. The demand of the clients can be significant, as the issues to them are very personal, important and, in many instances, complicated. Many of these cases are settled, but others proceed to disposition by the court either on motion or after trial. The work involved by a pro bono attorney undertaking these assignments can be considerable and time consuming.

I can say without hesitation that in every single one of these cases, the assigned pro bono attorneys provided outstanding representation to individuals most in need of it. We realize that taking these assignments comes with great

personal sacrifice by you. Practicing law is very busy. You have many clients and matters competing for your time. In addition, we realize that there are many economic challenges to practicing law, particularly in these times of declining case filings. On behalf of our court, I want to congratulate you for your service, and express our appreciation for your willingness to set aside your valuable time from your practice to perform a very important public service.

At the end of my remarks, David Lerner and Leslie Berg, on behalf of the Federal Bar Association and on behalf of our court, will be presenting certificates of recognition to each of you who has accepted an assignment of a pro bono case during the last year. I think it is important that you receive some public recognition for the sacrifice you have made and the services you have provided.

### **MEDIATORS**

Next I want to recognize those individuals who serve on our court's mediation panel. In 2002, our court established a process for non-binding mediation of adversary proceedings and other disputes. Local Bankruptcy Rule 7016-2 was promulgated to set forth a procedure for the appointment and conducting of the non-binding mediation. We presently have 34 mediators on our panel of approved mediators. Each of them has gone through a rigorous training

program to obtain approval. Michael Baum and Wallace Handler are our long time co-chairpersons of this panel.

I have always thought the mediation process to be very valuable in adversary proceedings. Over time, I have come to understand that it is useful, not just in adversary proceedings, but in many other disputes, both in consumer cases and commercial cases. I routinely appoint mediators in cases I think appropriate, even where the lawyers sometimes resist. I do so because our mediation process is a very effective one, and our mediators are, without exception, extraordinarily qualified and committed to seeking ways to achieve resolution of matters that would otherwise be expensive, time consuming and perilous to the parties litigating them. I am so impressed by the problem solving approach taken by our mediators and their willingness to expend whatever time is necessary to get the case settled. When I speak to judges from other bankruptcy courts around the country, I find myself bragging about the work that our mediators do. I'm not going to name off every one of our mediators. Their names are available on the website. But I do want to now publicly thank them for the service they provide.

### **PRO SE RESOURCES**

One of the really positive developments in our court in the last several years is the expansion of resources available to pro se debtors. As many of you know,

we have an attorney employed by the court, Alesia Dobbins, who serves as a pro se law clerk, providing information to pro se debtors in our court. In addition, one of our trainers, Cindy Beach, has also filled in to help pro se debtors. Alesia and Cindy do not give legal advice, but instead provide information about the forms that are available, what forms are necessary to be completed, and things of that nature, so as to avoid dismissals of pro se cases for ministerial failures. This program has proved to be very successful in helping pro se debtors prosecute their cases.

In addition, in 2011, a non-profit corporation, Access to Bankruptcy Court, was created. Judge McIvor was instrumental in setting up this non-profit corporation, along with several members of the bankruptcy community, including Judy Calton, Barry Lefkowitz, Jim Plemmons, Alesia Dobbins, Tracy Clark, Lauren Rousseau, Janet Ziulkowski, Karen Evangelista, and Kim Hillary. Access to Bankruptcy Court provides legal services to indigent individuals in need of bankruptcy relief. Attorneys volunteer their time to Access to Bankruptcy Court to represent such individuals for a reduced level of compensation. The majority of the individuals who receive representation through Access to Bankruptcy Court complete their bankruptcy cases successfully, obtain a discharge, and get a fresh

start, all because they are represented by very competent attorneys, screened and appointed by Access to Bankruptcy Court. The program has been very successful.

I congratulate Judge McIvor, the board of Access to Bankruptcy Court, and the many attorneys among you who provide your services to indigent individuals through Access to Bankruptcy Court. But I also want to encourage all of you to contribute to Access to Bankruptcy Court to enable it to continue to provide its very valuable services to pro se debtors. I understand that 35 new cases were just assigned to Access to Bankruptcy Court attorneys, and that there are many more applications by debtors in need of its services. Please consider making a donation to support this important organization.

#### **MORTGAGE LOAN MODIFICATION COMMITTEE**

Another program has recently been developed here locally by the bench and bar working together. The deterioration of residential home values beginning in 2007 greatly affected many homeowners throughout the country. In 2011, the Federal Judicial Center put together a workbook and a presentation designed to educate courts around the country that might be interested in developing their own program to facilitate negotiations between homeowners and mortgage lenders regarding possible mortgage loan modifications in consumer bankruptcy cases. The thinking was that a bankruptcy court supervised program of this nature could

assist many individual homeowners in retaining their homes while at the same time providing mortgage lenders with an orderly and predictable process to obtain the type of information that would be necessary in order for them to engage in meaningful negotiations for a mortgage loan modification.

In our district, an exploratory meeting was held with a representative sampling of consumer debtors' attorneys, mortgage loan creditors' attorneys, Chapter 13 trustees and bankruptcy judges to consider the formation of a committee to review some of the existing programs in place in other bankruptcy courts around the country, and to make recommendations to our court regarding the possibility of adopting a program of this kind. A number of individuals volunteered to serve on the committee, with a very representative cross section of affected parties. Judge Shapero agreed to chair the committee. The committee undertook a review of the various programs around the country, against the backdrop of both the Bankruptcy Code and the applicable state laws in Michigan, for the purpose of making recommendations to our court. Ultimately, in late 2013, the committee reduced its recommendations to writing, and submitted them to the court.

The committee's recommendations establish a procedure for an individual debtor in a Chapter 13 case to file a motion requesting a mortgage modification

review, and a procedure for a creditor to respond to and to conduct the review, with the Court also playing a role. Under the committee's proposed procedure, a form is created for the debtor to file the motion. The creditor is required to supply the debtor with the creditor's required loan modification package within 21 days from filing of the motion. The debtor is then given 35 days in which to submit to the creditor a fully completed loan modification package, with all of the creditor's requested supporting documentation. The creditor is then required to review the loan modification package and provide notification to the debtor of any additional or updated financial records that the creditor would still need.

In addition to creating this framework for the requesting and submission of information, the committee's recommended procedure requires the creditor to designate a point of contact and contact information for all loss mitigation purposes. That may not sound like a revolutionary concept, but in practice, it's an important one. Obtaining a point of contact is essential for any debtor trying to negotiate a possible mortgage loan modification.

The committee's recommended procedure also calls for a mechanism to have the court conduct a hearing on the status of the loan modification review if requested by either the debtor or the creditor.



There are other provisions in the committee's recommendations to the court, all of which are designed to establish a framework for the orderly and timely exchange of the relevant information necessary for a debtor to request and a creditor to process a mortgage loan modification.

At our most recent judges' meeting in February, we decided to accept the committee's recommendations. We will be issuing an administrative order in the next several days adopting the committee's recommendations for use in Chapter 13 cases. Thank you Judge Shapero for spearheading this effort, and a thank you also to all the committee members who worked hard on this project.

### **JUDGES AND JUDGESHIPS**

Here's an update on the status of our judges. Judges McIvor, Opperman, Tucker and I continue to serve in our appointed terms. Judges Shapero and Rhodes, in contrast, are serving as recall judges. Both of them deserve special commendation. Both of them are fully eligible for retirement. Yet they each choose to serve as recall judges, in part because they love their work, but also because of a sense of duty. Both of them perform a valuable public service. We simply could not handle our case load without them. They are great mentors, colleagues and examples to the rest of us.

As I'm sure all of you know, we are also scheduled to have a new judge join us on our bench. The United States District Court Magistrate Judge Mark Randon has been recommended by the merit selection panel to the United States Court of Appeals for the Sixth Circuit to fill this position. I learned yesterday that the process is now complete, and that a public announcement of his appointment will be forthcoming. We expect Judge Randon to join us soon. I think he will be an excellent addition to our bench, and my colleagues and I look forward to working with him.

#### **EDUCATIONAL OPPORTUNITIES IN THE COMING YEAR**

I have a couple of educational opportunities this coming year that I want to alert you to. First, the 21st annual Central States Bankruptcy Workshop takes place June 12 through June 15. This is the first year that the conference is being held outside of Michigan. It is being held in Lake Geneva, Wisconsin. This is a new venue that the ABI is trying out this year. I am told it is a fabulous place. As in past years, many of the judges from our district will be speaking at this conference, and many of the panelists are prominent bankruptcy professionals from southeastern Michigan. I realize that the conference is a little further away this year, but the educational program is fantastic, and everything I've heard about the facility is very positive. I encourage you to attend.

I also want to remind you that the Walter Shapero Symposium each year holds a dinner with a scholarly presentation regarding bankruptcy related issues. This year the dinner will take place on May 22, 2014, and the speaker will be Kara Bruce, the American Bankruptcy Institute resident scholar and professor at the University of Toledo. So that's a "save the date" note for now, and more information will be forthcoming.

**RULES SUBCOMMITTEE OF THE ADVISORY  
COMMITTEE TO THE BANKRUPTCY COURT**

Many years ago, our court established a standing advisory committee consisting of local bankruptcy practitioners. The purpose of the advisory committee is to provide advice and recommendations to the court from time to time regarding practice points as changes in the law are made and as practices nationally and locally evolve. There's also a standing rules subcommittee of the advisory committee. Its specific task has been to review from time to time our local bankruptcy rules and to make recommendations to the court with respect to any local bankruptcy rules that need elimination or revision based upon changes in the law and changes in practice. It has now been over four years since we have convened the rules subcommittee. There have been many changes in practice since that time. During the next 60 days, I intend to invite the members of the rules subcommittee to meet and reconvene for the purpose of conducting a review of our

local bankruptcy rules, guidelines and administrative orders, and make a recommendation to our court of any revisions that need to be made to our local rules, guidelines, and administrative orders. If you have an interest in serving on the rules subcommittee, then I invite you to contact me by email and let me know of your interest, so that you can be included in the invitation to the initial meeting.

### CLOSING

I went back to look at what I said in closing in our last state of the court address in 2010. I said at that time that my speech for the next year would be shorter. I don't think anyone can argue that my state of the court addresses for 2011, 2012 and 2013 met that goal. Unfortunately, I took considerably longer today.

In closing, I'll just say that I think the state of our court is excellent despite the constant budgetary challenges that we must meet. I'm proud of our bankruptcy bench, our clerk's office employees, and the bar and bankruptcy community that works daily with our court to process our cases. I feel honored and privileged to work with all of you, and appreciate very much all of the things that you do for our court. Thank you for coming today, and thank you for listening.