



BEHIND THE BENCH

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Hon. Lewis Killian

Judge Killian was appointed as the U.S. Bankruptcy Judge for the Northern District of Florida on September 22, 1986.

He is a 1969 graduate of West Point Military Academy and graduated from Florida State University Law School with honors in 1976. Judge Killian was a member of the Phi Delta Phi Legal Fraternity.

He served in the U.S. Army from 1969 to 1979 and retired from the Army Reserve at the rank of LTC.

Prior to and up to his appointment to the bench, Judge Killian was a member of the law firm of Ervin, Varn, Jacobs, Odom & Kitchen in Tallahassee.

He is a member of the National Conference of Bankruptcy Judges, Tallahassee Bar Association, Bankruptcy Bar for the Northern District and Rotary International, Inc. He currently serves on the Bankruptcy Judges Advisory Group.

EROSION OF THE CREDIT COUNSELING REQUIREMENT?

By Hon. Lewis M. Killian, Jr., ND/FL

On April 20, 2005, President George W. Bush signed into law the Bankruptcy Abuse Prevention, Consumer Protection Act (BAPCPA). In his remarks upon signing this landmark legislation, the President stated "Yet bankruptcy should always be a last resort in our legal system." In an effort to make bankruptcy a last resort, Congress included in BAPCPA a requirement that before an individual may be debtor in bankruptcy, such individual must receive credit counseling from an approved non-profit agency. This requirement, as set forth in 11 U.S.C. § 109(h)(1) is as follows:

Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180 day period preceding the date of the filing of the petition by such individual, received from an approved non-profit budget and credit counseling agency described in § 111(a) an individual or group briefing (including a briefing conducted by telephone or on the internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

The statute provides only three exceptions to the requirement for the pre-filing credit counseling, those being when the debtor resides in a district in which there are no approved agencies; the debtor is unable to complete the requirements due to incapacity or if active military duty in a combat zone; or, if the debtor certifies to the court that the debtor requested but was unable to obtain counseling services during a five day period and that exigent circumstances merit a waiver of the requirement. In the third situation, the debtor is not excused from obtaining the counseling but must obtain it within thirty (30) days after the petition.

While the requirements of § 109(h) appear to be simple, straightforward, and absolute, the experiences of this court and others have shown it to be none of the above.¹ Based on my observations of the case law applying § 109(h), together with the level of its enforcement by the United States Trustee Program, it appears that the absolute requirement for the pre-petition counseling has eroded since the passage of BAPCPA.

In the early days of BAPCPA, almost all courts, including myself, applied § 109(h) very strictly.² I routinely denied debtor's requests for extension based on exigent circumstances without hearing and without a response from any party in interest when it was clear that the "Certification" by the debtor did not meet the requirements of § 109(h)(3). Typically, these cases involved debtors who could not certify that they had requested the credit counseling but were unable to obtain it within five days of their request. This approach, however, raised the question in my mind as to whether I should be serving as the gatekeeper or whether I should act only upon a motion by a party in interest, i.e. the U.S. Trustee. I concluded that my role as judge was to decide issues raised by parties in interest rather than serve as the "credit counseling policeman" *sua sponte*. This approach was communicated to the U.S. Trustee, who agreed that they would initiate motions to dismiss in appropriate cases. The position of the U.S. Trustee Program on credit counseling has been that when requested by the courts, they would enforce the credit

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President's Message

By Cindy Korbol, WD/WI

Greetings! The first thing I want to do is say welcome to all of our new JA and CBA members, and also to welcome back our renewed and/or restored members. It's exciting to watch our membership grow, and the ABA is very pleased to have all of you on board.

While it was a long (very long!), hard winter here in Wisconsin, I got a chance to escape the cold in February when I had the privilege of attending the Judges' Secretaries Advisory Group (JSAG) Annual Meeting in Washington, D.C. **Hope McDonald**, the President of the Federal Judges' Secretaries Association, and I were invited to attend as guests. There are currently two bankruptcy JAs serving on the JSAG - **Becky Woodrum** as Seventh Circuit Representative, and **Kris Nitzel** as Tenth Circuit Representative. The folks at the AO put together an excellent program for us, and I was very impressed with the whole experience. The JSAG members do an excellent job of representing us.

The JSAG contributes articles to the "Judicial Assistants & Judicial Secretaries Quarterly Bulletin." For a great tip on the Lotus Notes Calendar and Address Book functions, check out the "I Wish I Would Have Known...Helpful Hints From your Colleagues" article in the April bulletin. The JSAG is also working on the 2008 Jumpstart Workshop for Judicial Assistants and Judicial Secretaries sponsored by the Administrative Office. The Workshop will be held in August in Washington, D.C. Hopefully you took advantage of the invitations to apply that were sent by e-mail broadcast to all judicial assistants and secretaries registered in InfoWeb. If you are a new JA or have never attended a Workshop, attendance priority will be given to you, so be sure to look for the invitation in your inbox.

On April 19, the ABA held a mid-year meeting (brainstorming session) of the Executive Board and Committee Chairs. It had been several years since one was held, and we had a very productive meeting. Our membership is growing and we want to encourage new people to work on our committees and take an active role. The work is very rewarding, so please think about taking a leading role next year. One of the decisions that came out of the meeting was that this newsletter will now be distributed to all JAs/secretaries, rather than just members. The newsletter provides valuable information and is a great way for each of us to keep abreast of what is going on in the other Courts. Since the newsletter is distributed via e-mail and there is no postage cost involved, we decided to distribute the newsletter to everyone. If you are not currently a member of the ABA, we hope you will reconsider and take advantage of the other benefits of an ABA membership – the personal contacts, camaraderie, and great educational opportunities at the annual conference.



Speaking of the annual conference, please start making your travel plans now. The Certified Bankruptcy Assistant (CBA) classes will be held on September 23 and 24, with the exam scheduled for the afternoon of the 24th. The opening reception will be Wednesday evening (the 24th), and we will then have two full days of educational programs on September 25 and 26. We'll have some additional training and the business meeting on Saturday morning (the 27th), and the closing dinner will be held on Saturday evening. This year's conference is unique in that we will spend an entire day at the Adrian A. Spears Judicial Training Center in San Antonio. The trainers there are fantastic and they are excited about hosting our group. I promise you won't be disappointed.

Don't forget to utilize the chamber's training funds. All of the courses offered this year fall into the category of administrative, operational, or managerial training and, therefore, should be fully reimbursable. If your Court will exceed its training allowance (as this year's meeting is in the same fiscal year as last year's), the Chief Judge of your Court can write to the Chief Budget Officer explaining the reasons for the requirement and requesting authorization to exceed this amount (see The Guide to Judicial Policies and Procedures, Vol. I, Chapter III, Part F). [*See separate article regarding this topic on pg. 20*].

The Conference and CLE Committees are working very hard to put together another great conference, so I hope to see you there. If you are nervous about attending your first conference alone, there's no need to worry as our mentor program provides you with instant friends. If you have any questions, please don't hesitate to contact me at (715) 839-2985 or e-mail at cindy.korbol@wiwb.uscourts.gov.



Erosion of the Credit Counseling Requirement ... (cont'd. from pg. 1)

counseling requirements however they would exercise a certain level of “prosecutorial discretion” in such enforcement. In exercising such discretion, the U.S. Trustee has not requested dismissal of cases in which the debtor, while not strictly meeting the requirements of § 109(h)(3), has nevertheless obtained the counseling post-petition and within the thirty (30) days permitted under § 109(h)(3). Thus, as a matter of practice, the absolute requirements of § 109(h) have been diminished through the exercise of “prosecutorial discretion” by the United States Trustee.

The reported cases applying § 109(h) have likewise evolved since the early days of BAPCPA. While there have been a number of reported cases in deciding such issues as what constitutes exigent circumstances³ and what satisfies the “Certification” requirement of § 109(h)(3)⁴, the most significant dispute amongst the courts was the issue of the consequences of a debtor’s failure to obtain the credit counseling. The issue on which many courts were split was whether or not the credit counseling requirement was jurisdictional.⁵ Those courts finding the requirement to be jurisdictional disposed of cases filed in violation of § 109(h) by striking the petition as a nullity.⁶ The result of striking the petition would be that no case was commenced, and thus, the automatic stay never arose and the debtor would not have a case which was previously dismissed. The argument for striking a petition filed by a debtor in violation of § 109(h) is that pursuant to 11 U.S.C. § 301, a “voluntary case under Title 11 is commenced by the filing with the bankruptcy court of a petition under such chapter an entity that may be a debtor under such chapter.” Under § 109(h)(1), an individual who fails to obtain pre-petition credit counseling “may not be a debtor under this title.” Therefore, the argument follows that a petition filed by an individual who has failed to obtain pre-petition credit counseling does not “commence a case under Title 11,” meaning that there is no case conferring subject matter jurisdiction on the court.

The majority of the courts agree that § 109(h) is not jurisdictional because it is “not characterized in terms of venue or jurisdiction by the statute itself.” *In re Allison*, 2006 WL 2620480 (Bankr. S.D. Tex. 2006); see also COLLIER ON BANKRUPTCY ¶ 2-109[2] (15th ed. rev. 2008). If the requirements under § 109(h) are not jurisdictional, a bankruptcy case exists until the bankruptcy court determines the debtor’s eligibility, and the case cannot thereafter be deemed a nullity simply by striking the case.⁷ Regardless of whether the courts viewed the requirement as jurisdictional or not, virtually all of the cases decided within the first nine months from the effective date of BAPCPA resulted in either dismissal or striking. The concept of a court having discretion as to whether or not to dismiss the case was not seriously considered. The first reported case in which a court held that it had any discretion not to dismiss a case in which the debtor had failed to obtain the credit counseling and did not qualify for a deferral or exemption was *In re Petit-Louis*, 338 B.R. 132 (Bankr. S.D. Fla. 2006) in which Judge Cristol held that where the debtor only spoke Creole and there was not an approved credit counselor in the Southern District of Florida which provide the services in Creole, the Court granted the waiver because the adequate services were not available to the debtor.

In August 2006, Bankruptcy Court for the District of Vermont challenged the notion that dismissal is mandatory in all cases in which the requirements of § 109(h) have not been complied with. In *In Re Hess*, 347 B.R. 489 (Bankr. D. Vt. 2006) Judge Brown, in two cases combined for hearing determined that when, under the totality of circumstances, enforcing the language of § 109(h) would be both manifestly unjust and inconsistent with settled law interpreting related provisions of the Bankruptcy Code, the court may exercise its discretion, grant an exemption, deny dismissal, and allow the case to proceed. The Court in *Hess*, set forth a six part test for courts to consider in evaluating the totality of circumstances to determine whether or not a debtor’s petition should be dismissed for failure to comply with § 109(h). These factors are: (1) whether the debtor filed the case in good faith; (2) whether the debtor took all reasonable steps to comply with the statutory requirements; (3) whether the debtor’s failure to comply was the result of circumstances that were both extraordinary and beyond the control of the debtor; (4) whether the debtor’s conduct meets the minimum requirements of § 109(h); (5) whether any party would be prejudiced by allowing the case to proceed; and (6) whether there are any unique equitable factors that tip the balance in one direction or the other. A number of courts have followed *Hess* in determining that the court does have discretion not to dismiss the case for failure to comply with § 109(h).⁸

Another line of cases in which courts determined that failure to comply with the credit counseling requirements did not mandate dismissal is illustrated by *In re Lilliefors*, 379 B.R. 608 (Bankr. E.D. Va. 2007). In *Lilliefors*, the Debtor certified in his Petition that he had obtained the required credit counseling however he did not file a Certificate. Shortly before the debtor filed his Chapter 7 Petition, a bank completed a foreclosure sale on his real property which generated a surplus of \$60,000 after payment of all liens on the property. These proceeds would be available for distribution to the unsecured creditors to the estate but would be returned to the debtor if the case were dismissed. Both the Trustee and the United States Trustee moved to prevent the dismissal of the case based on the Debtor’s failure to provide evidence that he had satisfied the credit counseling requirement. The Court found that the Debtor was judicially estopped from benefitting from his non-compliance with § 109(h) by obtaining dismissal of his case. See also *In re Timmerman*, 379 B.R. 838 (Bankr. N.D. Iowa 2007); *In re Winters*, 2008 WL 202774 (Bankr. N.D. Ohio 2008). Thus, another exception to the notion that compliance with § 109(h) is an absolute requirement.

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Erosion of the Credit Counseling Requirement ... (cont'd. from pg. 3)

While the developing case law appears to be expanding the exceptions to the credit counseling requirement, proposed amendments to the Federal Rules of Bankruptcy Procedure which were circulated for public comment in August of 2007 would make it procedurally easier for a debtor to obtain the temporary exemption from the pre-petition credit counseling requirement to § 109(h)(3). The proposed amendment is Rule 1017.1, Exemption from Pre-Petition Credit Counseling Requirement, which provides:

A certification filed by an individual debtor under § 109(h)(3) of the Code shall be deemed satisfactory to the court unless the court, on its own motion or on motion of a party in interest filed no later than fourteen (14) days after the filing of the certification and served on the debtor and the United States Trustee, enters an order finding that the certification is not satisfactory. The order shall be entered no later than twenty-one (21) days after the filing of the certification and shall specify why the certification is not satisfactory.

Thus, absent affirmative action by the court or a party in interest no later than fourteen (14) days after a debtor files a certification, regardless of the merits of such certification, the exemption will be allowed. While this proposed amendment has not yet been adopted, the mere fact that it has been proposed the Rules Committee suggest that the courts are moving away from the very strict and absolute enforcement approach to the credit counseling requirement.

As has been seen with a number of the anti-debtor provisions of BAPCPA, the bite of the credit counseling requirement is not quite as severe as it would first appear. While still being strictly enforced in the majority of cases, through either benevolent neglect in enforcement or the expanding exercise of judicial discretion, more debtors (in large part *pro se*) are escaping the strict application of § 109(h). Finally, courts are not allowing debtors who develop "debtor's remorse" when the administration of their estates goes against their interests to use their failure to obtain credit counseling as a way out of the case.

¹ "Nothing is simple. That proposition is not surprising when applied to, say, quantum thermodynamics; it is more so when applied to § 109(h)(1)." *In re Francisco*, 2008 WL 244172 (Bankr. D. N.M. 2008).

² See, e.g., *In re Hedquist*, 342 B.R. 295 (8th Cir. BAP 2006); *In re Davenport*, 335 B.R. 218 (Bankr.M.D.Fla. 2005); *In re Valdez*, 335 B.R. 801 (Bankr. S.D. Fla. 2005); *In re Carey*, 341 B.R. 798 (Bankr.M.D.Fla. 2006); *In re Wallert*, 332 B.R. 884 (Bankr.D.Minn. 2005); *In re Jones*, 352 B.R. 813 (Bankr.S.D.Tex. 2006).

³ See, e.g., *In re Childs*, 335 B.R. 623 (Bankr. D. Md. 2005); *In re Henderson*, 339 B.R. 34 (Bankr. E.D. N.Y. 2006); *In re Dixon*, 338 B.R. 383 (BAP 8th Cir. 2006); *In re Rodriguez*, 336 B.R. 462 (Bankr. D. Idaho 2005); *In re Romero*, 349 B.R. 616 (Bankr. N.D. Cal. 2006); *In re Curington*, 2005 WL 3752229 (Bankr. E.D. Tenn 2005); *In re LaPorta*, 332 B.R. 879 (Bankr. D. Minn. 2005).

⁴ See, e.g., *In re Elmendorf*, 345 B.R. 486 (Bankr. S.D. N.Y. 2006); *In re Graham*, 336 B.R. 292 (Bankr. W.D. Ky. 2005); *In re Anderson*, 2006 WL 314539 (Bankr. N.D. Iowa 2006); *In re Cobb*, 2006 WL 1407336 (Bankr. E.D. Ark. 2006); *In re Wallert*, 332 B.R. 884 (Bankr. D.Minn. 2005).

⁵ Compare, e.g., *In re Hawkins*, 340 B.R. 642 (Bankr. D. D.C. 2006) with, e.g., *In re Tomco*, 339 B.R. 145 (Bankr. W.D. Pa. 2006).

⁶ See, e.g., *In re Hubbard*, 333 B.R. 377 (Bankr. S.D. Tex. 2005); *In re Rios*, 336 B.R. 177 (Bankr. S.D. N.Y. 2005).

⁷ See, e.g., *In re Seaman*, 340 B.R. 698 (Bankr. E.D. N.Y. 2006); *In re Ross*, 338 B.R. 134 (Bankr. N.D. Ga. 2006).

⁸ See, e.g., *In re Nichols*, 362 B.R. 88 (Bankr. S.D. N.Y. 2007); *In re Enloe*, 373 B.R. 123 (Bankr. D. Colo. 2007); *In re Manalad*, 360 B.R. 288 (Bankr. C.D. Cal. 2007).

Judges' Travel Vouchers: Safeguarding Sensitive, Personal Identifiable Information

By Melanie Ware, Systems Accountant, DCA/AO

How many times have you begun preparing a document with sensitive, personal identifiable information and have walked away from your desk, or left the documents in an unsecured place overnight? A social security number standing alone can generate identify theft. Combinations of information, such as SSN along with an employee's name, address, or telephone number increase the risk.

In the future, please provide only your judge's name, and employee identification number followed by the letter "E" when submitting your judge's travel vouchers for reimbursement. At the February JSAG meeting, I asked that when JAs prepare travel vouchers for their judges, that they use the judge's employee identification number, rather than the social security number, as the unique identifier.

If you need additional information, please contact the Travel and Relocation Staff at 202-502-1290. Thank you

Decrypting Ways to Encrypt Sensitive Information

The Legal Intelligencer

By Dan Giancaterino

For several years now I've been teaching an Internet ethics class at Jenkins Law Library. My theme for the class is adapted from Rule 1.6, Comment 23 of the Pennsylvania Rules of Professional Conduct: Attorneys have a duty to act competently with their clients' information. In class, I've covered the potential pitfalls associated with e-mail, metadata, Web-based services from Google and others, as well as viruses, worms, trojan horses and spyware. But I haven't included an in-depth discussion of encryption, primarily because Pennsylvania attorneys aren't required to use it.

Then I looked at all the files I had stored on the 4 gigabyte USB flash drive I casually toss in my book bag at the end of the day. (If I remember to, that is. Sometimes I leave it plugged into my desktop PC's USB port at Jenkins for a couple of days until I notice that it's missing from my bag.) I found a copy of my daughter's college financial aid form, which featured her date of birth, Social Security number, Pa. driver's license number and income. (My income, too). Another file was a health form with my Social Security number and address. And there was more . . . much more. I was appalled. All of these files were saved as plain text. Anyone finding my flash drive could read them. It was a case of identity theft just waiting to happen.

Does this sound familiar? After all, you spend most of your day lugging around stuff like laptops, USB flash drives, CD ROMs and more. What would happen to the client information on those devices if they are lost or stolen?

Encryption is the answer. But it's complicated, right? That's the message I learned back in the early nineties when I tested a command-line version of Pretty Good Privacy. A lot has changed in the last 10 years. There are quite a few free encryption tools that are easy to use and can make encrypting sensitive information practically painless.

Before I discuss some of these tools, I need to mention a few points:

You're not playing "spy" here. This article isn't a primer on how to beat the CIA at its own game. What we're going to cover is how to make it impossible for a thief to exploit sensitive information contained on a stolen device.

Don't get hung up over the technical issues. Unless you're a mathematician, you're probably not going to be able to discern the advantages of one particular encryption algorithm, hash function or key length over another. Or, to put it another way, have you ever given a thought about the encryption scheme your local bank uses with its ATM?

Select a good passphrase. This is more important than the encryption algorithm. A simple password seriously reduces your security. Your passphrase should include several words with uppercase and lowercase letters, special characters and numbers. Don't use an obvious, popular tagline such as "Beam me up, Scottie."

Store plain text copies and passphrases in a safe and secure location. Encryption programs don't provide a "backdoor." Lose your passphrase and you lose your data.

TrueCrypt (www.truecrypt.org) is one of the most popular free encryption software programs. It features "on-the-fly" encryption - your data stays encrypted on disk and exists in unencrypted form only in your PC's RAM memory. (Under most conditions, RAM memory is flushed within seconds after you shut down or restart your computer.)

You can encrypt an entire hard drive or USB flash drive with TrueCrypt. This is called a partition/device-hosted volume. If you create an encrypted partition or device, all files currently stored there will be deleted. You'll have to back up the contents of your drive before creating the volume. If you've already got lots of files stored there, this is a pain.

An easier alternative is to create a file-hosted volume, which is simply a file that acts as a container for the individual files you wish to encrypt. I created a 50 MB file-hosted volume on my laptop and copied several sensitive documents totaling perhaps a couple of megabytes into it. In Windows Explorer, the file-hosted volume is listed as a single file with a size of 50 MB. I can even copy the file-hosted volume to a USB drive, burn it to a CD or attach it to an e-mail. It can only be mounted and opened using the TrueCrypt software and the passphrase I created to encrypt it.

You can make your file-hosted volume hide in plain sight by giving it an innocuous name like "06539f2a000cd99879" and saving it in a folder buried within your "Documents and Settings" folder. But one drawback to TrueCrypt - indeed, to almost all en-

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Decrypting Ways to (cont'd. from pg. 5)

encryption programs - is that it's obvious to anybody who clicks on the Windows Start button that you've got the software installed on your computer. If you've installed the software, it follows that you've probably encrypted documents somewhere on the hard disk. How can you avoid being forced to decrypt your sensitive data in front of a curious Homeland Security agent? TrueCrypt lets you create a hidden volume within another file-hosted volume. You give the hidden volume a different passphrase. If you're forced to decrypt your data, you enter the passphrase for the outer volume. (You should have previously copied some nonsensitive documents into the outer volume, just so there's something there. Otherwise, it looks suspicious.) The inner, hidden volume is transparent.

TrueCrypt is powerful and flexible, but it can be a bit intimidating to computer novices. A simpler program is Cryptainer LE (www.cypherix.com/cryptainerle/), which also features "on-the-fly" encryption and file-hosted volumes. It's my choice for encrypting my flash drive. I use it practically every day. I simply double-click the program shortcut, enter my passphrase and Cryptainer decrypts my volume.

Unlike TrueCrypt, Cryptainer won't allow you to create partition/device-hosted volumes or hidden volumes, and the maximum size of file-hosted volumes is 25 MB. But I don't need these features to encrypt the dozen or so documents on my USB flash drive that I'm worried about, and the simplicity of the program is a real plus.

Another option is 7-Zip (www.7-zip.org), a free file archiver similar to PKZIP or WINZIP. Use it to create a compressed, password-protected archive of files, which can be burned to a CD or attached to an e-mail. When you encrypt an archive with the program's 7z format, you can also opt to encrypt the individual file names. (Zip-formatted archives do not offer this feature.)

If you need to encrypt selected files in different folders, but you don't want to move them from their locations into a file-hosted volume, try AxCrypt (www.axantum.com/AxCrypt/). The program fully integrates itself into Windows Explorer - right-click on a file to encrypt or decrypt it. AxCrypt automatically re-encrypts the file after you close it.

You can also create a self-decrypting file (.exe), which you can e-mail to others who haven't installed AxCrypt on their PCs. All they need in order to view the document is the passphrase. Obviously, you don't want to include the passphrase and the self-decrypting file in the same e-mail. Send them the passphrase in a different e-mail or give it to them verbally.

AxCrypt also features a "shred" option, which overwrites a file with random data before it is deleted. (A more robust secure deletion tool is Eraser (www.heidi.ie/eraser/), which destroys sensitive data you want to delete from your hard drive by overwriting it several times with carefully selected patterns. Like AxCrypt, Eraser integrates itself into Windows Explorer, so you can right-click on files or folders to securely remove them.)

Let's say you've begun using TrueCrypt and Cryptainer. You've got several passphrases to remember. (You're not recycling the same passphrase over and over, right? That's not smart. If someone guesses your passphrase for one program, they'll also try it for every other program.) How do you deal with this? KeePass Password Safe (keepass.info) is a free, open-source password manager. You can put all your passwords in one database, which is encrypted with one master passphrase. Thus, you only have to remember one passphrase. Using the "auto-type" feature, you can easily create simple scripts that automatically enter passwords for you. (Trust me, it's easy to do.) And KeePass is secure - your passphrases are encrypted even when they are stored in RAM memory. I've installed KeePass on my USB drive to store my passphrases for all the encryption programs mentioned in this article.

Lose a laptop and you're out \$500 to \$600. Lose your client's sensitive information - well, that's a different story. Encryption can keep the story from having a bad ending.

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DAN GIANCATERINO is the Internet librarian at Jenkins Law Library. He teaches 10 hands-on Webbased CLE classes and is a regular contributor to the "Jenkins Blog" (www.jenkinslaw.org/blog/) and a contributing editor to the popular search blog "ResourceShelf" (resourceshelf.com).

NEWS FROM THE ADMINISTRATIVE OFFICE

By Jim Wannamaker, Staff Attorney
Bankruptcy Judges Division



Bankruptcy Filings Continue to Rise



Bankruptcy filings rose 38 percent in 2007, rebounding from a 70 percent drop 2006, according to data released by the Administrative Office of the U.S. Courts. A total of 850,912 bankruptcy petitions were filed in the twelve-month period ending December 31, 2007, up from 617,660 filings in 2006.

Bankruptcy filings dropped sharply in 2006 following the record-setting 2,078,415 filings in 2005. The 2005 surge in filings was prompted in large part by the enactment of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The 2007 filings are 59 percent below the 2005 filings and 47 percent below the more normal level of 1,597,462 filings in 2004. The continuing rise in filings has had a significant impact on the workload of bankruptcy judges, clerks' offices, trustees, and other participants in the bankruptcy system because BAPCPA imposed additional eligibility and filing requirements for debtors, which, in turn, has prompted additional litigation.

Consumer bankruptcy filings totaled 822,590 in 2007, up 38 percent. Business filings totaled 28,322, up 44 percent. Chapter 7 filings were up 44 percent to a total of 519,364. Chapter 11 filings rose 23 percent to 6,353. Chapter 12 filings totaled 376, up 8 percent. Chapter 13 filings rose 29 percent to 324,771.

Chapter 15 filings totaled 42, including 31 chapter 15 filings in the Southern District of New York. In 2006, the first full year after BAPCPA added chapter 15 to the Bankruptcy Code, there were 75 chapter 15 filings, including 53 in the Southern District of New York. There were six chapter 9 municipality filings in 2007, up from five in 2006.



Filings increased in all 90 bankruptcy courts in 2007, but the size of the increases varied. The percentages ranged from small increases – 1.8 percent increase in the District of Montana, 8.9 percent in the Western District of North Carolina, and 11.3 percent in the Middle District of North Carolina – to huge increases – 98.5 percent increase in the District of Nevada, 93.6 percent in the Eastern District of California, and 91.1 percent in the Central District of California. All four California districts were in the top 10 bankruptcy courts for percentage increases, along with Nevada; the Districts of Maine, Rhode Island, and Massachusetts in the Northeast; the Middle District of Florida; and the District of North Dakota.

Chapter 7 filings were up in 89 of the 90 bankruptcy courts in 2007. The exception was the District of Montana, where chapter 7 filings fell 4.7 percent to a total of 1,527. Chapter 13 filings also were up in 89 courts. The exception was the Western District of North Carolina, where chapter 13 filings fell 0.1 percent to 2,542. Chapter 11 filings increased in 62 courts, stayed the same in five courts, and dropped in 23 courts.



Although total filings have not returned to the 2004 level in any of the bankruptcy courts, chapter 13 filings have topped the 2004 level in 12 of the 90 courts. The total of 8,014 chapter 13 filings in the Central District of California in 2007 was 47 percent higher than the total in 2004. In the District of Nevada, the total of 4,106 chapter 13 filings in 2007 was almost 16 percent higher than in 2004.

Additional bankruptcy statistics is available on the Judiciary's website at <http://www.uscourts.gov/news.cfm> under News Releases and Bankruptcy Statistics and on the Judiciary's PACER system, which includes bankruptcies by county, at <http://pacer.psc.uscourts.gov/>.



A Postcard from the Arabian Peninsula

By Hon. Samuel L. Bufford, USBJ, CD/CA
& Hon. Elizabeth S. Stong, USBJ, ED/NY



Judges Stong & Bufford
arriving in Oman

Major changes in commercial law are coming to the Arabian Peninsula countries. We went to Muscat, Oman, during the last week of January to help teach a seminar on commercial law and regulation for judges in the Arabian Peninsula. The trip was formidable – it took some 24 hours to get there, and we had a time change of 9 hours (from New York) or 12 hours (from Los Angeles).

Some sixty judges participated from seven countries in the Arabian peninsula, including the host country of Oman, Yemen, Bahrain, the United Arab Emirates, Kuwait, Qatar, and Saudi Arabia, in addition to ourselves. Also participating were several government officials, officials from self-regulatory entities, and attorneys and academics drawn in equal number from the United States on the one hand, and the Arabian peninsula and

Egypt on the other. David Bowsher, Deputy General Counsel of the U.S. Department of Commerce, and officials from the U.S. Embassy in Muscat also participated as key speakers in the program.

The purpose of the conference was to build the capacity of the judiciary in the participating countries to hear and determine commercial and company law disputes. After a welcome address by Shaikh Eshaq bin Ahmed bin Nasser Albusaidi, the President of the Oman Supreme Court, the program addressed issues relating to the adjudication of commercial law disputes, including insolvency matters and alternative dispute resolution. We made a joint presentation on the principles of reorganization law (drawing on UNCITRAL, World Bank and comparative law materials), and Elizabeth made a presentation on commercial mediation.

This conference format was a series of panel presentations, by regional and United States experts, to the assembled judges. The substantive presentations were followed in every circumstance by an animated and engaged question-and-answer period among the judges and panelists. On the first day of the conference, time was provided for each delegation to discuss hypothetical small-business case studies, and on the second day of the conference, a spokesperson for each national delegation (typically a very senior appellate judge) presented the views of the group as to how the issues raised in the hypothetical would be resolved following the laws of that country. Throughout the conference, discussion breaks were held for approximately 30 minutes between program segments, and the discussion among the attendees was animated and substantive. The judges showed great interest in our views and perspectives as U.S. judges.



Listening to presentation
via simultaneous translation

The participants were an impressive group. Nearly all of the Middle East judges came dressed in white dishdasha and headdress, with distinctive variations from one country to another. The Omani judges arrived the first day wearing their ornate “khanjar” or ceremonial daggers at belt buckle level. We later learned that the daggers were strictly ceremonial, and were less sharp than a table knife. While Elizabeth was the only woman judge in attendance, several woman lawyers came, attired in black silk abayas. There was a scattering of individuals in Western attire, including a professor from Cairo and the team from the United States, and of course, us.

The program was sponsored by the U.S. Department of State Middle East Partnership Initiative and presented by the Oman Ministry of Justice in cooperation with U.S. Department of Commerce Commercial Law Development Program (“CLDP”). James Filpi, Attorney Advisor-International and Sana Akili, Program Specialist, of CLDP took the leading role in planning and implementing the program. Mr. Filpi has worked extensively with CLDP in the Arabian peninsula, and was an excellent resource to the participating judges in planning and preparing for the conference.

We also met informally one evening with all of the participating judges and government officials at a dinner hosted by the Oman Ministry of Justice in honor of the participating members of the judiciary.

Finally, we met informally in the afternoon following the program with a prominent Omani lawyer who spoke at the conference and several attorneys and paraprofessionals from his law firm, which is among the leading firms in Oman and the region. He has had a prominent role in drafting commercial laws for Oman, is active in the bar, and has previously served in Oman’s legislature. Notably, his daughter is also an attorney at his firm, and she and others from the firm joined us at the conference and for this informal meeting.

This conference was a remarkable opportunity to work with sophisticated and knowledgeable judges from many different legal traditions, who shared a deep commitment to considering ways to enhance the effectiveness of the adjudication of commercial law disputes. They were very engaged within their delegations, with other delegations, and as noted above, with the opportunity to have an exchange of views with United States judges. Their questions ranged from the philosophical to the practical. They showed a keen interest in the alternatives available in an insolvency situation, including the alternative of restructuring or reorganization as opposed to liquidation, and in alternative dispute resolution principles, including mediation.

Hon. Elizabeth S. Stong*USBJ, ED/NY*

Judge Elizabeth S. Stong was appointed as a U.S. Bankruptcy Judge for the Eastern District of New York on September 2, 2003.

Before taking the bench, Judge Stong was an associate and partner at Willkie Farr & Gallagher in New York from 1987 and an associate at Cravath, Swaine & Moore in New York from 1983 to 1987, concentrating in complex federal and state civil litigation. She also was a mediator and arbitrator for the NASD, the Eastern District of New York, and New York Supreme Court's Commercial Division.

Judge Stong is Vice President of the Board of the Federal Bar Council and a trustee of the Practising Law Institute. She is an advisor to the U.S. Department of Commerce Commercial Law Development Program to train judges in Algeria, Tunisia, Jordan, and the Arabian peninsula in business reorganization and liquidation issues, business dispute adjudication, and alternative dispute resolution.

Judge Stong previously served as President of the Harvard Law School Association, one of the largest law school alumni associations in the United States, Vice President of the Board of Directors of New York City Bar Fund Inc. and the City Bar Justice Center, and was a member of the board of MFY Legal Services, Inc., one of the largest providers of free civil legal services to low-income residents of New York City.

Judge Stong is a member of the National Conference of Bankruptcy Judges, Chair of its International Judicial Relations Committee, and a member of its Liaison Committee to the American Bar Association, as well as a member of the American Bankruptcy Institute. She is a member of the ABA House of Delegates and Commission on Women in the Profession. She is an officer of the ABA Business Law Section, chaired its Business and Corporate Litigation Committee, co-chairs the ABA's Judicial Division Bench-Bar Bankruptcy Council, and serves on the National Conference of Federal Trial Judges Executive Committee. Judge Stong is a member of the New York City Bar's Committee to Encourage Judicial Service, and chaired the City Bar's Alternative Dispute Resolution Committee. She also served as Vice Chair and a member of the City Bar's Judiciary Committee and a member of its Committee on Bankruptcy and Corporate Reorganization and Public Service and Education Committee. She is a member of the New York State and Brooklyn Bar Associations.

Judge Stong is an adjunct professor of law at St. John's University School of Law and Brooklyn Law School, and an occasional speaker at Harvard Law School. She has authored articles and contributed chapters to several practice manuals and treatises on bankruptcy law, securities law, trial strategy, and alternative dispute resolution. She is a frequent speaker on bankruptcy law and procedure, securities law, settlement strategy and damages assessment, discovery techniques, ADR, and public service. She is a member of the American Law Institute and International Adviser to its joint project with the International Insolvency Institute on Transnational Insolvency, and a fellow of the American and New York Bar Foundations.

Judge Stong graduated from Harvard University *magna cum laude* with an A.B. in History and Science in 1978 and from Harvard Law School in 1982. She was a law clerk to Hon. A. David Mazzone of the U.S. District Court for the District of Massachusetts from 1982 to 1983.

Hon. Samuel L. Bufford*USBJ, CD/CA*

Judge Samuel L. Bufford has served since 1985 as a bankruptcy judge in Los Angeles, in the Central District of California, one of the busiest bankruptcy courts in the United States. During this time he has overseen approximately 100,000 bankruptcy cases, including more than 2500 cases involving the reorganization of business under chapter 11. His most famous case was the Anna Nicole Smith case, in which the United States Supreme Court recently affirmed his decision that the dispute with her husband's rich relatives belonged in a bankruptcy court and did not have to be litigated in a Texas state court.

Judge Bufford is the author of one book, numerous law review articles and more than 80 published opinions. He is presently writing a book on chapter 15 of the U.S. bankruptcy law, which is the U.S. version of the UNCITRAL Model Law on Cross-Border Insolvency. In addition, he is a frequent lecturer throughout the United States and abroad on issues of bankruptcy law and legal ethics. Judge Bufford served as editor in chief of the America Bankruptcy Law Journal from 1990 to 1994.

Judge Bufford has taught some 25 seminars for judges and other professionals abroad since 1991. He has taught and consulted recently in Mexico, Oman, Egypt, Jordan, Tunisia, Albania, Algeria, Ecuador, Romania, Serbia, Montenegro and Morocco. He has also conducted seminars in Los Angeles and consulted with visiting judges and government officials from numerous countries including Russia, Serbia, China, Thailand, Romania and Montenegro.

Judge Bufford was Nomura Lecturer on Law at Harvard Law School for the winter, 2004 term, where he taught a course in international and comparative insolvency law. He also taught this course at Harvard in 2003, and at the University of Southern California in 2006. He has also been a law professor at Ohio State University. He earned his law degree from the University of Michigan, where he was an editor of the Michigan Law Review and of the Journal of Law Reform. In addition, he holds a Ph.D. in philosophy from the University of Texas and was a philosophy professor for nearly ten years.

Judge Bufford is active in numerous bar association activities. He is chair-elect of the American Bar Association's National Conference of Federal Trial Judges, and will become chair of the Conference in August, 2007.

CIRCUIT REPORTS

2nd Circuit

By Theresa Xavier, ED/NY



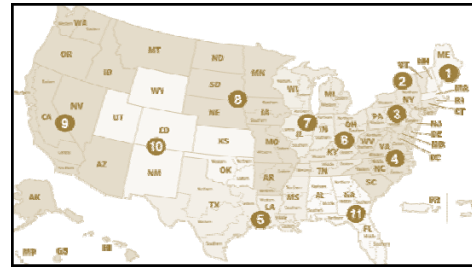
We have two new judges in the Eastern District - **Judges Robert E. Grossman** and **Alan S. Trust**. Both are sitting in Central Islip. Filing in the EDNY has increased by 30% compared to last year at the same time - January through April.

On a personal side, on April 4, I resumed treatment for Multiple Myeloma. I don't know if you recall in April 2006, an email was circulated by **Vivian Greene**, then Circuit Rep for the EDNY, requesting donated leave for me. On May 25, 2006 I had an Autologous Stem Cell Transplant. I have been doing very well, without any medications, until March of this year when my igg started climbing. I fell short of my two year anniversary by two months. My doctor is already pleased with my response. And I continue to work full time, and even come in to chambers after treatment, which is once per week. Thank God. I have my moments, but that's the way it is, so I stay positive by focusing on the Lord, thanking Him for His grace and His mercy with all the support He has provided me.

I had planned on repeating the San Francisco Marathon - Walk - with Team In Training (TNT) in October, but I am unable to do so. Hopefully, next year, God willing.

The following is from **Kathi Dempsey**: **Judge Gerling** has agreed to extend his term and I will not be retiring at the end of May as he had previously planned. At this time he has no set date for his retirement. I on the other hand am retiring on June 27th. I am excited and sad at the same time. Sad because I will be leaving the Judge and all the people I have worked with for the last 17 years. I have never enjoyed a job more than this one. Excited because I am looking forward to a freedom that I have never had. Just to be able to not have everything all planned out will be a wonderful change. To have the time to do all that I want to do and not have to fit it into the weekends and evenings will be incredible. I have signed up for Social Security (unbelievable) and have sent in my papers for my Federal retirement. It's really going to happen. [See separate article from **Kathi** on pg. 12]

Filings have started to increase in the NDNY as they have across the Country. Other than that things are pretty quiet at our end of the District.



3rd Circuit

By Pamela Friend, WD/PA



Now that spring has sprung its blossoms, the drive to get more active is in the air. I hope most of you have signed up to participate in *The President's Challenge*. It has motivated me to log in my activities to see how well I can do against the other participants. From their website: www.presidentschallenge.org you can find out how you are doing. I've already achieved the "bronze level" and am working toward the gold. I can see that Pennsylvania has a lot of registered participants but are not as active as those from Alaska. Get out and get moving!

News from **Pam Friend** (WD/ PA): From the Court front, things seem to be moving along comfortably. During the cold months we worked on updating some procedures and forms. At our Chapter 13 Open Forum in January, Judge Agresti announced to the Bankruptcy Bar that his webpage now has an alpha index of the Local Rules and it includes hyperlinks to the documents. What a great tool. Now it is so easy to look up a rule with the click of a button. Also over the last couple months we have been updating the form Chapter 13 Plan to make it more user friendly. Our website now has the revised Local Form #10 in Word, WordPerfect, PDF and an *editable* PDF format.



Stuttgart, Germany

On April 18, 2008, my fiancé, Charlie, and I departed Erie for Stuttgart, Germany for 8 nights. We went to Germany to celebrate Charlie's 50th birthday and to participate in the PCA Porsche Spring Treffen 2008, a tour arranged by Fast Lane Travel.

We visited the Mercedes Benz Museum; Castle Ludwigsburg; Neuschwanstein Castle; the town Tegernsee (where we went on a dinner cruise); Austria and Bavaria; Rothenburg; the Porsche Factory; and, the Cannstatter Fruhlingsfest.

(cont'd. on pg. 11)

3rd Circuit ... (cont'd. from pg. 10)

On Tuesday we went to Ludwigsburg Porsche to pick up our cars. There were 17 in all, including 3 professional drivers. What a thrill to drive on the Autoban for the first time. The next day I drove through the mountain passes of the Alps, not slowly I might add. On our trip back to Stuttgart, we drove on a less traveled section of the Autoban and reached up to 165 mph. WOW! As I said on the trip, if I had a dollar for every time I said wow I could have paid for the trip. Beautiful scenery and a very well planned tour.



Taking a beverage break

On May 7, 2008, **Cathy Farrell** (Dist. of Delaware) and her husband celebrated 20 years of wedded bliss . To celebrate, they were going to the Harry Packer Mansion in Jim Thorpe, Pa. for a Murder Mystery Weekend!

Cathy will also be attending the upcoming Bankruptcy Court Operational Practices Forum to be held on July 22 - 23, 2008, in Salt Lake City, Utah.



Sara & Cathy

Cathy also had this to report on her recent visit to her niece's 6th Grade Career Day at Northley Middle School:

"When my niece, Sara, asked me to speak at her school's Career Day, I was so flattered. She didn't want my judge to speak, but wanted me to talk about what I do, behind the scenes. So on Friday, May 1, I grabbed my Judge's robe, a group picture of the Delaware Bankruptcy Judges, and a statue of "Lady Justice" and made my way to Northley Middle School in Aston, Pennsylvania.

Twenty-seven people from all walks of life came to share their personal experiences to help the students navigate the world of career exploration. I spoke to approximately 50 students throughout the day in four half-hour sessions, and then all of the speakers were treated to a catered lunch in the school library.

Speakers ranged from a restaurant owner/chef, a police officer, a dance teacher (who also dances for the Philadelphia Soul), Maggie the lab pup who helps children with Autism, and two Subaru car designers (yes, they brought a car). Not to be outdone, the statue of Lady Justice served as my prop as we discussed what the scales, sword and blindfold symbolized.

We talked about what a Judge's Chambers is really like behind the scenes, what Judges do when they leave the bench, and how Judicial Assistants keep everything running smoothly! The students couldn't believe that microphones in the courtrooms allow us to hear everything that goes on during the hearings and that we have sofas as part of our office furniture! The boys loved the fact that our Judges' benches are bullet-proof and have silent alarms, and the girls were impressed that the only female Judge in my Court is the Chief!

I also did some research on the origins of the judicial black robe. I was interested to learn that the decision to wear black robes dates back to colonial times when the U.S. Supreme Court was established. Thomas Jefferson and John Adams, among others, engaged in a heated debate. President Adams wanted our Judges to wear red robes and wigs as in England, and Jefferson thought that was ostentatious and royalist and wanted the justices to wear plain suits. In the end, black robes with red fronts were adopted, however, the red color continued to hold undesirable connotations and was soon abandoned for a simpler, more somber all-black robe (sans wigs)!

It was a rewarding day for both the Northley sixth grade students and Career Day speakers. I truly enjoyed sharing my niece's pride and enthusiasm about my career choice as a Judicial Assistant, even if she still decides to become a pharmacist!

Dana Muccie in Trenton, NJ states that the Trenton Courthouse recently completed a two month art exhibit, "Charles W. Ward - Art for Everyone." The exhibit highlighted the WPA murals already on display in the courthouse and supplemented them with a display of other works by the mural artist. "Art for Everyone" was so well received that an Art Exhibit Committee has been formed to develop a process for insuring that the "Trenton Gallery" continues to display artwork for the benefit of the visiting public and courthouse tenants.



RETIREMENT REFLECTIONS

By Kathi Dempsey, ED/NY

I wanted to make a small speech about retiring at the ABJA conference in Orlando, but I just couldn't get my thoughts together. So I am going to take a stab at it now.

The time is getting near for the beginning of my new life. I prefer not to call it "retirement." The dictionary defines retirement as: "drawing back" "withdrawing into seclusion or retreat" "withdrawal from society or publicity." Can any of you that know me believe I would actually withdraw from society? I don't think so.

The most popular question asked is: "What are you going to do in retirement?" Well, frankly, I don't really know. There are days when I am driving to work and I ask myself that very question. If I weren't working what would I be doing today. I can't answer that question. I tell them I am going to wait until I get there and I'm sure I'll find many interesting things to do to fill up my time. Then again, maybe I won't and I'll just enjoy not having to schedule everything around evenings and weekends.

I have to admit there are moments when I am scared and sad. Scared because you are going into the unknown. I have worked since I was 18 except for 5 years that I took off when I had my children. Sad because I am leaving a job and a Judge that I really love. I have many friends both at Court and in the Clerk's office and even though you pledge to keep in touch and get together for lunch, you can't help but wonder if it will continue. There are also times when I think "you are too young to be retiring." People don't retire at this age. Of course, when I say age, I don't mean chronological age because I am turning 62 this year! I mean mind-set age. I just don't feel old enough to not be working. The flip side of that is that I am young enough to do all the things I want to do such as travel, garden and volunteer work.

My Judge and I were supposed to retire together, but they have asked him to stay on a little longer and he has agreed. That made my decision very difficult. Everyone told me I would know when the time was right and I couldn't imagine how, but it happened and the time is right. I feel good about it. I want to share something personal that happened to me that just strengthened my decision. Last week I had to have a breast biopsy. During the time leading up to it and the four days after it while I was waiting for the results, I had a lot of time to reflect. Thank goodness all turned out well. This was a life changing event for both me and my husband. I am so grateful for all that I have. It does literally bring your life into perspective. I am able to retire in good health and I don't want to take any more chances with that. I know retirement isn't everyone's choice, but for me it is the right one.

Retiring is definitely a journey. Sometimes happy, sometimes sad. It is another phase of your life to be embraced and enjoyed. I'm going to do both.

"Retirement, a time to do what you want to do,
when you want to do it, where you want to do it, and, how you want to do it."

That quote says it all! I will see you all in San Antonio - this time as a retired associate. That sounds good to me! Take care and God Bless!



4th Circuit

Barb Lewis, ED/VA

Hello from the 4th Circuit and Happy Spring.

Seems like I've been busy this spring traveling. My husband and I went on a cruise in March on the Freedom of the Seas (one of Royal Caribbean's newest ships). In April, we went to Indiana for a long weekend and saw one of our granddaughters perform in a school play. In May, we traveled to Vermont to celebrate my mom's 80th birthday and Mother's Day. I'm staying home until our annual summer vacation to the Outer Banks, North Carolina.

The new Newport News U.S. Courthouse opened for business on January 21, 2008 and held its ribbon cutting ceremony on February 7th. It's quite an improvement over the previous facility which housed the District and Bankruptcy Courts' Clerk's Offices as well as providing space for visiting judges in the District, Bankruptcy and Magistrate courts from Norfolk.



(cont'd. on pg. 13)

4th Circuit (cont'd. from pg. 12)

Also, construction continues on the new Richmond U.S. Courthouse and the target completion date remains June 11, 2008.

Pam Barnes, (ED/VA), reports that her judge, and the newest Bankruptcy Judge in the Fourth Circuit, the **Hon. Frank J. Santoro**, was sworn in on February 21, 2008. Pam says that he hit the ground running, is settling in, and Chambers hardly missed a beat! Pam is planning a trip to California this summer to visit her daughter and grandchildren.

Jane Nuttall, (ED/VA) JA to the **Honorable Douglas O. Tice**, is recovering from knee surgery. She reports that she is off crutches and is now using a cane. The surgery was a success and she expects a full recovery.

Have a great summer!

5th Circuit

By Anna Saucier, ND/TX



My fellow Fifth Circuit judicial assistants have remained suspiciously quiet on the news front this time around. **Beth Towery**, (Ft. Worth Division) and **Jan Houchin** (Dallas Division), introduced **Barbara Groves** and myself to *Menopause the Musical* on March 11. We had a great time, and I want to see it again. Also here in the Northern District of Texas, there are plans underway for another Ranch Daze mid-year meeting in June, where we will attempt to solve all of the world's problems.

Beth Towery attended the ABA Mid-Year Board Meeting in Savannah on April 19 and 20. She reports a successful trip as the Nominations Chair. She further reports that she is happily back to fishing. Cases are slowly picking back up in Fort Worth. Beth and **Judge Lynn** are about to wrap up the Breakfast in Chambers program where young lawyers have breakfast with the Judge and a guest speaker to discuss current events in bankruptcy.

Further news here in Dallas— three of our long-time, irreplaceable employees in the Clerk's office took the early buyout on April 30. **Robert Holman**, our walking bankruptcy encyclopedia with over 20 years of experience, **Betty Courtney**, our beloved human resources guru with over 20 years experience, and **Fay Ellyson**, **Judge Hale's** amazing ECRO of many years, all decided they were tired of making the long drive into downtown Dallas every day. We lost the cream of the crop and miss them all terribly.

I am certainly looking forward to the conference in San Antonio in September. The Riverwalk is always so much fun, and I am excited about the day of hands-on computer training at the AO-SDSD Training Center. I'll see ya'll there!



SPOTLIGHT ON GREG ATOR, CBA



I was born and raised in Southern California, and attended college in Texas. I then spent 15 years in the hospitality industry, which involved brutal working hours and excessive travel. At mid life, I had an epiphany: "There's got to be a better way to make a living!" So, I went back to school and got my Paralegal Certificate, and I have worked for the last 15 years in that field. Within a couple of years, I knew two things for certain: that I enjoyed the legal community and the work I was doing, and that I had no interest in going on to law school. Too much stress, too many hours. Been there, done that.

After brief stints with the District Attorney's office and the Attorney General's office, I landed in a consumer bankruptcy firm, and that's what I've been doing ever since. I've done both the debtor and creditor work, and am currently working as Office Manager for a high volume consumer bankruptcy firm with three attorneys and ten staff members. About half of my time is spent on the basic administrative and bookkeeping duties, and the other half is spent drafting documents, seeing clients, and supervising the work product of our paralegals and legal assistants.

I got involved with the CBA program a couple of years ago because it offers the opportunity to interface with other non-attorney professionals who spend their days immersed in the same things that I am. I think there is a real need for this program as our own little niche of the legal community becomes more and more specialized, and has less and less in common with other areas of the law. The various Paralegal associations that I checked out had little interest for me, as they seemed to dwell on debates about certification and competition with other organizations for validity.

The ABA, with its CBA program, offers a fundamental fellowship of professionals who work in my world, and I have thoroughly enjoyed the conferences and friends that I have made. Looking forward to seeing you all in San Antonio.



6th Circuit

By Sherie Hitch, ED/MI

A glimpse of what's happening:

The Bankruptcy Court in Detroit is located at 211 W. Fort Street amongst four floors, as well as one judge's chambers in District Court located across the street. On March 10, 2008, the Detroit intake area was relocated and consolidated with the court operations personnel.

Three of the six bankruptcy judges in the Eastern District of Michigan just celebrated their 5th year anniversary with the Court: **Judge Thomas Tucker, Judge Phillip Shefferly, and Judge Marci McIvor.** Congratulations to you and your staff!

The Bankruptcy Court for the Eastern District of Michigan has 89 local bankruptcy rules. The local rules were recently revised and are effective May 5, 2008. See website for further info:

The Court has arranged for LifeSpan Services, Inc. to bring pre-retirement / mid-career planning seminars to the court the week of September 8, 2008. They will be presenting seminars to those under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) separately.



7th Circuit

By Debra Graff, ED/ WI

Greetings from the 7th Circuit. I have just a couple of items to report.

This past March, my husband and I took a vacation to Sedona, AZ and the Grand Canyon. Even though the weather was cool, the scenery was breathtaking. We toured the hills of Sedona



with the Pink Jeep Tours, and as you can see from the picture, I fell for Sedona. After spending 5 days in Arizona we drove to Palm Springs, CA, to enjoy some warmer weather (80s) and golfing with family.

On April 30, 2008, **Christopher L. Austin** spent his last day in the office as Clerk of the Bankruptcy Court (EDWI-Milwaukee). Chris has accepted a position as a program analyst with the Bankruptcy Court Administration Division at the Administrative Office in Washington, DC. We wish Chris the best. Interviews are currently underway to find his replacement.

And saving the best for last, we have a new ABA member, **Paula Bartels**. She has had intentions of joining the ABA for a long time and she thanks me, for the gentle, yet persuasive reminders about getting her registration form in because now she is proud to make it official.

Paula is looking forward to meeting all of you in San Antonio!



SPOTLIGHT ON PAULA BARTELS

Paula has been working for **Bankruptcy Judge Susan V. Kelley** (E D W I - Milwaukee) since August of 2004.



Prior to coming to the Bankruptcy Court she spent approximately two years as a legal assistant in a law firm in Milwaukee and she was also Business Manager for a small electrical engineering firm.

Paula enjoys spending time in the kitchen which includes a 5-day annual holiday baking marathon, during which she makes over 40 varieties of cookies and candies that she enjoys giving away as gifts. Those that have been lucky enough to sample say they are yummy!



8th Circuit

By Barb Sutton, ED/MO

Happy Spring!!

I can hardly believe its already been seven months since we all met in Orlando! It's been a long winter for a lot of us and dreaming of warm San Antonio in September has helped shake the winter blues. Hope to see you there.

Personally, I have yet another addition to my family.....Ms. Mollie. Her owner has severe Alzheimer's disease and she could no longer take care of her. The rest is history....



Ms. Mollie

While most of the Eighth Circuit remains uneventful, things are buzzing in Arkansas. **Debby Eckl**, Judicial Assistant to **Judge Audrey Evans**, has taken a position with the Clerk's Office, as Financial Specialist. Debby assures me she will remain as an Associate Member of the ABA, as Judge Evans has taken on a second Law Clerk. Congratulations to Debby!!! We will miss her and her contributions to the ABA.

(cont'd. on pg. 15)

8th Circuit (cont'd. from pg. 14)

Here's what Debby writes....

*"Along with the season change in Arkansas, we've had a few changes in our courthouse. Our Operations Supervisor, **Linda Green**, and Financial Specialist, **Kaye Forrest**, both retired after many wonderful years of service to our court. Our new Operations Supervisor is **Cindy Scaife** from our Systems Department, and **Shelly Flint**, Judge Evans Courtroom Deputy, was appointed as her assistant. I was appointed the new Financial Specialist and started in my new position on March 31, 2008. With Shelly and I leaving Judge Evans' Chambers, she decided to hire a second law clerk, **Crystanna Cox**. **Mary Beth Mansfield** was moved from Relief Courtroom Deputy to Courtroom Deputy, and **Annette Robinson**, a Case Administrator, was hired as Relief Courtroom Deputy. So, as you can see, we've been busy moving in our courthouse.*

On a personal note, my daughter will be graduating from the University of Central Arkansas with a degree in Speech Pathology on May 3rd, and will continue her studies in the Audiology Graduate Program at the University of Tennessee in Knoxville in the fall. I will have a "divided" house, as my son is in the Mechanical Engineering Graduate Program at the University of Arkansas. We will definitely have interesting conversations on "game" day as they are both football and basketball fans!

I hope everyone has a wonderful summer!

9th Circuit

By *Connie Ray, CD/CA*

Greetings from the Ninth Circuit!

I doubt I'm alone as a JA when I can't help but think ... "It is SO busy right now!" Here in the Central District of California, our total filings in recent weeks have been up 100% for the same period in 2007. We're averaging approximately 1200 new filings a week combined for our 5 divisions: Los Angeles, Riverside, San Fernando Valley, Santa Ana, and Santa Barbara. The Los Angeles Division usually receives the most filings in our district, but the Riverside Division (where I, fellow ABA member **Christine Rhambo** and **Linda Parnell** are Judicial Assistants) recently had more filings than Los Angeles! The foreclosures of homes and repossessions of vehicles are very evident here with relief from stay hearings for 2 of our 3 judges averaging between 66 and 100 per week! But relief is in sight, as **Judge Robles** of the Los Angeles Division will begin hearing Riverside Division relief from stay motions via video conference starting with hearings in June 2008.



Judge Goldberg &
Martha Young

The Riverside Division recently said farewell to the **Hon. Mitchel R. Goldberg** as he retired from the court on April 1, 2008, after nearly 20 years on the bench. A retirement dinner and party was held for Judge Goldberg on Saturday, March 29, 2008, in the Riverside Division courtyard. The theme for the evening "Come Rock the Night Away" included a live band, life-size statues of Marilyn Monroe, Elvis and the Rat Pack and record albums adorning the walls commemorating the 1950's and 60's. It was a magical musical atmosphere that hundreds of guests enjoyed. Judge Goldberg may be retired, but he is certainly not forgotten. He is currently on a short recall status to finish mediating some complex cases, and will take on the role of Ombuds-person for the Central District of California. When I first transferred to the Riverside Division Clerk's office in 1999, I spent many hours in Judge Goldberg's courtroom as his Court Recorder. In addition to his love of mediating cases, he has performed hundreds of weddings, including my own!

Another Riverside Judge, the **Hon. David N. Naugle**, will retire in September 2008, along with his Judicial Assistant **Linda Parnell**. Currently, there are no plans to replace either Judge Goldberg or Judge Naugle, so the remaining Riverside Judges, **Judge Meredith A. Jury** and **Judge Peter H. Carroll**, are looking at an even larger case load! The remaining Judicial Assistants in the Riverside Division will be Christine Rhambo and myself.

Moving south from the Central District of California, a pipe bomb exploded in the early morning hours of May 4, 2008 outside the federal courthouse in San Diego. No one was hurt in the blast, however the property damage caused the closure of the courthouse the following day. ABA member **Roma London** (SD/CA) reports that the Bankruptcy Court in San Diego is located in a separate building about a block away from where the blast took place. So while they were safe physically, it still impacted their office mentally. Thank goodness nobody was hurt.



10th Circuit

By Thora Searle/ D/UT

Alexia Bible reports from Okmulgee, Oklahoma: On Friday, May 16, 2008 the United States Bankruptcy Court for the Eastern District of Oklahoma held its first Naturalization Ceremony under the direction of the **Hon. Tom R. Cornish and the Hon. Steven P. Shreder**. Local Iraq War Veterans presented the American and Oklahoma Flags. **Fred Burks**, Chief Deputy, opened Court. Twenty-Six individuals from 11 different countries received the Oath of Allegiance to become citizens of The United States of America. **Therese Buthod**, Clerk of Court, administered the Oath. "God Bless the USA" and "The Star Spangled Banner" were sung by Justin Been, son of Wanda Been, our Court's Date Quality Analyst.

Mary Anderson reports from New Mexico: The New Mexico filings are up slightly but we are still below 50% of the 2004 filings. Lots of construction going on in our building. We are getting a new roof. The Judges' offices are on the top (13th) floor, so we are getting the worst of the noise, smells, etc. They should be done in the next couple of weeks. We are also getting all the windows in the building cleaned and re-sealed on the outside. The windows have not been cleaned for about 20 years -- no kidding! Can't wait to get mine clean. We have great views from this floor, but the dirt is hard to see through. We are also getting the HVAC systems moved from across the street to the parking lot. That should take at least another 4 or 5 months. So, getting to work is a bit of a challenge. On a personal note, I celebrated my 30th wedding anniversary on February 11th. Amazing how time flies. Hope to see you all in Texas later this year.

Susan Ray from the Western District of Oklahoma indicated that tornados have been close a couple of times but nothing too bad so far. She reported that one touched down in a tiny town near the Oklahoma/Kansas border almost totally leveling the town. Several deaths resulted from it.

In Utah, we have finally had a chance to enjoy some spring weather (89 deg.) The problem is that it doesn't last long enough for us to get tired of it. Tomorrow it is supposed to drop to 64 degrees or less as a storm passes through. We have had lots of snow falling in the mountains with these storms so there is still some great skiing in the mountains, if you like to ski.

Our bankruptcy filings continue to increase with the total number of Chapter 7 filings in April double those filed in January. Chapter 13's and Chapter 11's have increased as well, although not as significantly as Chapter 7's. The housing slump has finally hit Utah and we are experiencing a large number of foreclosures. Builders are not able to sell their homes and we anticipate a number of them going into bankruptcy as well, within the next six months or so. We have had a number of real estate developers file Chapter 11's. Hopefully it won't be too long until the economy turns around and things start to get better.

As we get closer to building a new courthouse, they are moving a three story building that is sitting on the property the new courthouse will be built on. Because the building is on the historical register, it has been interesting to watch the contractor as they prepare this building to be moved across the street. They are going to lift it up, move it to the west, turn it around 180 degrees, move it back to the east and then north across the street to its new resting place. Everyone is anxiously awaiting the day of the move to see if they can actually do it without the building crumbling. Even the foundation is rock/brick rather than cement. Unfortunately, the day of the big move none of us will be allowed in the Courthouse to watch. Maybe it will have TV coverage and we can watch it.

DON'T FORGET TO MARK YOUR CALENDARS!



2008 ABA Educational Conference & Certification Training

*Westin Riverwalk,
San Antonio, TX*

*C B A Training/Exam -
September 23-24, 2008*

*ABA Educational Conference -
September 25-26, 2008*

11th Circuit

By Victoria Rodriguez, ND/GA



Hello Ladies! How ya'll doing? We are doing well in the 11th Circuit. We've been keeping busy in the Atlanta Division. My judge has been one of several in our circuit assigned to the 2008-2009 Bankruptcy Court Case Weighting Study. The reporting period is from May 26, 2008 through Sunday, August 3, 2008. During these ten weeks, they have to record time spent on work-related activities. Pretesting will begin for us next week. This reminds me of when we did billing at the law firm. If and when it is your turn to participate in this study, please feel free to contact me and I will share what we did in our chambers to keep up with his activities.

As all of you know by now, there will be an Operations Forum in Salt Lake City in July. I will be attending this conference for our division. I am aware of two other Judicial Assistants from our circuit that will also be attending, **Patsy Burkhalter**, Judicial Assistant to the **Hon. Lamar W. Davis, Jr.**, in Savannah, Georgia. and **Faith Hoffman**, Judicial Assistant to **Honorable William S. Shulman** in Mobile, Alabama. I'm sure we'll have some interesting information to share with you when we get back.

Laura Stevenson, Judicial Assistant to the **Hon. Paul M. Glenn**, Chief Bankruptcy Judge in Middle District of Florida, tells us that Judge Glenn will be moving to the Jacksonville Division effective June 1st. She says they have a new Judge coming to Tampa, but the background check isn't finished yet, so it's not "official." She also informs us that she will stay in Tampa and continue to work for **Judge McEwen** as well as for the new Judge.

Cynthia L. Courtney, Judicial Assistant to **Hon. Karen S. Jennemann**, in the Florida Middle Bankruptcy Court, has this news to report:

*"In April, the Orlando Division had to say goodbye to our Deputy-in-Charge, **Mario Toscano**, when he was selected as the Chief Deputy Clerk for the U.S. District Court for the Middle District of Florida. We were all very sorry to have Mario leave us but very happy for him. We still see him from time to time, and he is doing well in his new position."*

Raymond Waguespack has been selected to replace Mario as the Deputy-in-Charge of the Orlando Division. Raymond has 22 years experience in the court system, working in the 5th Circuit Court of Appeals, the 11th Circuit Court of Appeals, the Bankruptcy Court for the Northern District of GA, and the Bankruptcy Court for the Middle District of Florida, Tampa Division. For the past 7 years, he has been the team supervisor for Judge Glenn. Raymond will begin his new position with us in June, and we are all looking forward to working with him.

On a personal note, I, along with my husband Gerard and son Jeff, will be taking a two-week vacation in June, spending a few days in Las Vegas, and then spending the rest of the time in the San Diego area with our daughter, Kelly, to celebrate her 30th birthday. We are all looking forward to the trip and to spending time with Kelly. I cannot believe my baby is going to be 30 years old!"

Marcy Gatell, Judicial Assistant to the **Hon. Robert A. Mark**, of the Florida Southern Bankruptcy Court, tells us that she decided to get her real estate license 2 ½ years ago in preparation for her retirement. She has been working for the Court 18 years so far. She tells us that she works as a real estate agent on the weekends, evenings, and vacation days. Her slogan is, "Judicial Assistant by day/Real Estate Agent by Nights and Weekends." She loves it and is happy to have something to fall back on when she retires. If you have any friends or family, who may be moving to Broward or Dade County, let her know and she'll be happy to find them a nice home.



Last but not least, **Carolina Williams**, a paralegal, who is a CBA, informs us that she did indeed tie the knot and is well and living in Lawrenceville, Georgia. She sent us a pre-engagement picture of her and her fiancé. Congrats to you! We hope you are enjoying being a newlywed and your new home in Georgia!

This is the news for now!

Carolina &
fiancé/husband



Timothy B. McGrath brings a unique perspective of the federal judiciary, having served in legal and administrative posts with the bankruptcy court, district court, court of appeals, and on a national level with the United States Sentencing Commission. Appointed Clerk of Court for the Eastern District of Pennsylvania Bankruptcy Court in June of 2005, he previously served as Staff Director for the United States Sentencing Commission from 1998 to 2005 and as Counsel to the Chair from 1995 through 1998.

McGrath served as Deputy Circuit Executive for the Third Circuit from 1993 to 1995, having served as Assistant Circuit Executive for Space and Finance from 1992 to 1993. He began his career in the federal judiciary in 1987 as a law clerk to the chief judge of the United States District Court in his hometown of Scranton, Pennsylvania.

A 1987 graduate of Temple Law School in Philadelphia and the University of Scranton, magna cum laude, in 1984, McGrath resides in Chevy Chase, Maryland with his wife and two daughters.

Simply Indispensable: The Role of the Judicial Assistant

By Timothy B. McGrath, Clerk, ED/PA

*She's a natural law
And she leaves me in awe
She deserves the applause
I surrender because
She used to look good to me
But now I find her
Simply Irresistible*

~ *Simply Irresistible*

Robert Palmer (1988 Capitol Records)

When I sat down to write this article, I admit I was at a loss. Being relatively new to bankruptcy administration, I simply could not come up with a suitable topic. To make matters worse, at the same time I was struggling to come up with an idea, my brain was playing the familiar refrain to Robert Palmer's 1988 hit "Simply Irresistible" in a continuous loop. Amidst the din going on in my cranium, at some point, my brain substituted "indispensable" for "irresistible" and voila – a bona fide eureka moment. Why, you may ask? Because I had a topic – "The Judicial Assistant: Simply Indispensable."

Change one word (well, change one word in the title and refrain; obviously other changes would also be necessary) and the song is rather easily converted to an anthem celebrating the members of the Association of Bankruptcy Judicial Assistants (ABJA).

Lending credibility to what I had already started rewording as the JA's new and catchy theme song, I realized that during my brief tenure as Clerk, I had, in fact, quickly noticed that the JAs really were indispensable. Though I don't sing as well as the late Mr. Palmer used to, I won't hesitate to sing the praises (in print) of our Judicial Assistants.

Happily humming to myself and armed with the perfect topic, I went off in search of the JA position description on file in our office. Said description was technically accurate (though, in my opinion, blandly worded). We all know that JAs "provide administrative and secretarial support" and that they "interact with judges, law clerks, law students, clerk's office staff, other judicial personnel, and the general public." But this did not begin to describe the true breadth of the JA's job functions. Multiple essential job duties were noticeably absent. Where were the references to the JA's duty to act as gatekeeper, assessor of judicial mood, and trainer of judicial law clerks? Were these vital job duties subsumed under the incredibly non-descriptive "other duties as assigned"? Note to self: revamp position description.

If I personally needed a reminder of the JA's vital role in the Court's internal operations, I got it fairly recently. When the Chief Deputy tracked me down to tell me a mega 7 had arrived, I mistakenly assumed he was referring to a vitamin supplement he had ordered. After all, he is bearing down on the half century milestone. (In the interest of candor, I too am bearing down on said milestone, but he will beat me to it.) I was chagrined to learn that mega cases come in both Chapter 11 and Chapter 7 varieties.

As recently as three years ago, I would never have imagined that I'd be associated with bankruptcy law and procedure as either an attorney or administrator. As a law student, I opted not to take bankruptcy even though I generally liked and did well in code-based courses. Two reasons justified my decision. First, I was indifferent to the subject matter and was therefore convinced a bankruptcy case would never cross my desk. Second, and probably more importantly, I boycotted any class, including bankruptcy, sporting an early morning time slot (class time being responsible for a vastly underreported number of career choices).

(cont'd. on pg. 19)

Simply Indispensable ... (cont'd. from pg. 18)

Said JA rose to the challenge and quickly identified the course material I needed. Then, she made sure I had it. As I stood in her doorway, casting a long, dark shadow across her work space, the JA was busily printing reading assignments downloaded from the J-Net. Her initial selection was germane and on target: "Special Considerations for Handling Mega Cases" from the *Guide to Judiciary Policies and Procedure, Volume 5, Chapter 19*.



Determined to go above and beyond, the JA took it up a notch and even did some online research. She presented me with a copy of Laura Batell's 2007 *Guide to Judicial Management of Bankruptcy Mega-Cases*, a scholarly publication by the Federal Judicial Center discussing the handling of substantive and procedural issues associated with mega cases.

These publications became my go-to reference sources over the ensuing weeks. The JA promptly and correctly supplied these step-by-step manuals setting forth guidelines for handling everything from the initial clerk's organizational meeting with counsel and trustee to the administrative challenge of processing a 42,000 page matrix (listing more than 400,000 creditors) through the Case Management/Electronic Case Filing system.

Armed with materials supplied by the JA, I successfully navigated a deluge of mega 7-related activity, recounted in part below:

- Providing notices to the Administrative Office, Circuit Executive, and District Court alerting them to the filing of the mega case;
- Participating in court hearings to identify administrative challenges and the participants' ability to shoulder the financial burden of these operational costs;
- Determining whether a claims agent should be appointed under 28 U.S.C § 156(c) and, if so, complying with the Judicial Conference's policy on such services;
- Completing time measurement study projecting resources needed to docket Proofs of Claims in CM/ECF;
- Modifying the court's automated telephone attendant to accommodate influx of calls from consumer creditors;
- Updating the court's website to provide public information about the mega 7 case and downloadable forms for filing claims;
- Customizing the Notice of the Meeting of Creditors (341 Notice) to reflect specific needs of the case;
- Running a tailored search of the Financial Conflict Screening software to ward off challenges to judicial impartiality;
- Canvassing other bankruptcy courts to determine best practices for handling mega cases; and
- Streamlining a process to receive and properly respond to a substantially increased volume of correspondence from affected consumer creditors.

My ability to successfully address these issues was, in no small part, directly attributable to the JA who set me on the right course and remained an unfailing source of ongoing support. Her professional and pleasant demeanor set the tone for a cooperative working relationship between the Clerk's office and chambers that continues to this day. The end result: the entire court family has worked and continues to work together to provide the highest level of public service to all affected parties.

On that note, I'll end by touting "Simply Indispensable" as the Judicial Assistants' new and long-overdue theme song. Though not yet complete, I leave you with the first verse:



*It's simply unavoidable
The trend is irreversible
The JA is invincible
They're simply indispensable!*





GRAMMAR GREMLINS

By Don Ferguson, ED/TN

Shifting the Negative

You have used sentences similar to the following many times but probably never paused to consider the lack of logic in them:

“I do not believe I want to go.”

Actually, the user is intending to say, “I believe I do not want to go.”

This change in wording is called shifting the negative. The negative *do not* logically should be placed next to the verb *want*.

This shifting of the negative occurs commonly in expressions involving *think*, *believe*, *seem*, and *suppose*.

Those who object to such constructions say they are illogical, and they are. But they have been with a long time and are here to stay.

There Are

A common error in grammar today is the use of *there's* when it should be *there are*.

There's is a combination of *there* and *is*. You should say, for instance, “*There are* five cars in the show,” not “*there is* five cars in the show.” And this latter clause is what you are really saying when you use *there's*. *Cars* is plural and requires the plural *are*.

It's lazy speech to say *there's* when you should be using *there are*.



Don K. Ferguson, Eastern District of Tennessee, welcomes comments and questions via telephone, 865-545-4234, extension 222, or by e m a i l a t Don_Ferguson@TNEC.uscourts.gov. His office address is U.S. District Court, 800 Market Street, Ste. 130, Knoxville, TN 37902. Don writes a weekly newspaper column titled “Grammar Gremlins” and is the author of a book by the same name, published by Glenbridge Publishing Lt., Aurora, CO.

Court Funding for Annual Conference

By Cindy Korbol, WD/WI

As you may already know, our San Antonio conference falls within the same fiscal year as last year's conference. The amount of money each court can spend on training and training-related travel for all of its judges and chambers staff is based on the number of authorized positions times a \$400 per capita allowance. The \$400 per capita allowance, however, is not a limitation on the amount that can be spent for training and travel for one individual who is authorized to attend training. For example, if you are in a single judge district with a judicial assistant and a law clerk, then your court's allowance is \$1,200; if a court has three judges and each judge has a judicial assistant and a law clerk, then the court's total training allowance would be \$3,600 for the year.

All of the courses offered at this year's conference fall into the category of administrative, operational, or managerial training and, therefore, should be fully reimbursable. If your court will exceed its training funds because you depleted them with last year's conference or through other training, the Chief Judge of your court can write to James Baugher, Chief Budget Officer, explaining the reasons for the requirement and requesting authorization to exceed this amount (see The Guide to Judicial Policies and Procedures, Vol. I, Chapter III, Part F). PLEASE NOTE: If there are several judges and chambers staff in your court, it is very likely that there are still sufficient funds from the 2008 allowance to fund your trip. Please check with your financial manager to find out if funds are still available in your court before writing to request additional funds. Any chambers training funds that are not used are retained by the AO at the end of the fiscal year.

The conference brochure will be e-mailed to you shortly, so be sure to show the agenda to the Chief Judge of your court when you request approval to attend the conference. If the Chief Judge approves your request, he/she will need to certify in writing that the training is consistent with court training goals and Judicial Conference training policies. If you have any questions regarding this procedure, please contact me at cindy_korbol@wiwb.uscourts.gov.

Writing on Writing: File Under 'Writing - Miscellaneous'

By Justice Jim Moseley, Fifth D.C.A., Dallas.

The “Writing on Writing” column that appears in Headnotes traditionally explores ways to improve writing skills. Producing this quarterly column has resulted in an accumulation of quotes and advice that may not merit individual articles, but that are too useful or memorable to ignore. If you agree, file these away under “Writing — Miscellaneous.”

- Take responsibility for the finished product.
- "Talk low, talk slow, and don't talk too much." –John Wayne (Wayne's acting advice also works well for writing.)
- You can always learn to write better. Always.
- If you don't know, the correct answer is “I don't know.”
- Unless your draft is intellectually honest, nothing else much matters.
- “Art is never finished, only abandoned.” – *Leonardo da Vinci* (Leonardo wrote also.)
- Be forewarned: Microsoft hires software engineers, not spell-checkers or copy readers.
- Writing is thinking on paper. If you can't write it clearly, maybe you should rethink it.
- “If you don't have the time to read, you don't have the time or the tools to write.” – *Stephen King*
- It's hard to “unsay” things.
- Don't reinvent the wheel. Find good wheels, copy them, and improve them if you can.
- “I may be the world's worst writer, but I'm the world's best rewriter.” – *James Michener*
- It's hard to write and edit simultaneously. Try not to revise a section until you have finished it.
- “For every human problem there is a solution that is simple, neat and wrong.” – *H.L. Mencken*
- Writers sometimes consider it “safer” to err by including too much information, rather than not enough. The better practice is to not err at all. Include no more information, facts, analyses, or citations than you think necessary to persuade the reader, who will gratefully appreciate your thoughtfulness.
- “Three hours a day will produce as much as a man ought to write.” – *Anthony Trollope*
- Don't marry a phrase. The most dangerous text is the beautiful language you coined early in the writing process, because as you rethink the draft it will be the text the most difficult to delete.
- If you're referring to something you're going to discuss later in the draft, legal readers can deal with your use of “herein.” (Just don't overuse it.) If you're referring to something you wrote earlier in the draft, the better word is “previously.”
- Notes on dispositions: Appellate courts affirm, vacate, or reverse judgments, not cases. If they vacate or reverse, they may render judgments or they may remand cases or causes. They do not, however, remand judgments.
- “Forgo” means to do without. “Forego” means to go before. “Fargo” means a town in North Dakota.
- Events or conditions that happen repeatedly and with some regularity “recur.” Events or conditions that happen a second time (but not with regularity) “reoccur.”
- “I can write better than anybody who's faster, and faster than anybody who's better.” – *A.J. Liebling*
- Use “farther” to refer to degrees of distance or space, and “further” to refer to degrees of everything else.
- “There is no such thing as good writing. There is only good rewriting.” – *Louis Brandeis*
- “Since” is ambiguous, meaning either “after” (in time) or “because.” Use those words instead.
- Unless you have a reason to use passive voice, don't. Such reasons include: (1) to de-emphasize the actor's identity; (2) when the actor's identity is unknown, obvious or unimportant; (3) to emphasize who or what was acted upon; (4) to reduce a narrative's “choppy” nature by keeping one person or party as a paragraph's topic; (5) to frame a narrative from the point of view of one of the actors; and (6) to shift to the end of the sentence new or more complex information being provided to the reader.
- “I believe more in the scissors than I do in the pencil.” – *Truman Capote*
- “Start writing more. It'll get rid of all those moods you're having.” – *Ray Bradbury*
- Nominalizations (words typically ending with “-tion,” “-ment,” or “-ence”) should be hunted down. If you can't kill them all, at least thin the herd.
- “Everything should be made as simple as possible, but not simpler.” – *Albert Einstein*
- “Familiarity breeds content.” When you see the same copy again and again through different stages of production, you will miss new errors. If possible, lay a familiar draft aside for a day or so before proofing, or have another attorney proofread it.

“Writing is not necessarily something to be ashamed of, but do it in private and wash your hands afterwards.” – *Robert Heinlein*

COMMITTEE REPORTS

CONTINUING LEGAL EDUCATION AND CERTIFICATION FOR BANKRUPTCY ASSISTANTS COMMITTEE

By Ann Virgadamo, CLE/CBA Chair



Next year, 2009, is the 10th Anniversary of the Certified Bankruptcy Assistant's Program. Since Minneapolis, we have been to Orlando, FL twice (2000 & 2007); Savannah, GA (2002), San Diego, CA (2002); New Orleans, LA (2003); Charleston, NC (2003); Atlantic City, NJ (2004); Nashville, TN (2004); Las Vegas, NV (2005); and Portland, OR (2006). Yes, I am reminding you a year in advance.

This year, the CBA Seminar and Exam will be held on September 23 and 24, 2008, in San Antonio, Texas. Mark your calendars and plan to join us. The **Honorable Brian Tester** will be the instructor for the U. S. Bankruptcy Code and Rules and the **Honorable Douglas D. Dodd** will be the instructor for Ethics.

WHAT'S NEW IN THE CBA?

The Committee has developed a new Certificate of Attendance Form to help **Sally Hanson** and myself to properly document the CLE and/or CEU credits for each CBA. We will send the form by email to all of the CBAs. So, the next time you send your CLE or CEU credits, this additional form should be submitted. The form will be easy for you to complete and will help us to better track your CLE or CEU credits.

WHERE DO YOU FIND CREDITED COURSES?

For the ABJAs who cannot attend the conference each year, don't forget you can participate in videoconferencing sponsored by the FJC. Check the JNet for that information. Most of the courses are 90 minutes, which would be equivalent to 1.5 hours/CEU credits.

Legal assistants, paralegals, and all other CBAs can get information on the internet for other resources in education.

Another way to receive CEU credits is to find a one-hour seminar at lunchtime sponsored by the bar association or a local organization in your city.

There are many CDs, cassette tapes or video tapes on education that may be used to get CLEs or CEUs. If you find a course that interests you, please contact me, Ann_Virgadamo@laeb.uscourts.gov, give me the information, and I will let you know if it meets the criteria for a credited course.

As we receive information on other educational resources, we will post it in the newsletter or, if possible, on the website.

* * * * *

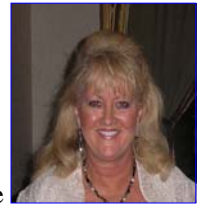
If there are any other tidbits of information that you would like the CLE Committee to report on or any information on education that you would be interested in, please let me know.

We look forward to seeing you at the CBA seminar and the ABJA Annual Conference in September, both will be a great educational experience! So, saddle up and see you in the "Heart of Texas."



Conference Committee

By Marleen Young, D/NJ



Grab your cowboy boots, brush up on your two-step and pack your saddle bags – San Antonio, here we come!

We are staying at the beautifully indulgent Westin Riverwalk nestled beneath cypress and palm trees gracing the famous Riverwalk thoroughfare. The ABA conference rates are \$139 per night (single-double), \$159 triple, \$179 quad, and \$169 junior suites. **Reservations must be made through the Westin by August 18th. Call 888-627-8396 or 210-444-6104** and be sure to say you are attending the ABA conference. Our conference will begin with early registration for the CBA seminar on Monday, September 22nd, and the CBA seminar and test to follow on Tuesday and Wednesday, September 23rd and 24th. These rates are extended three days prior and three days post conference so you can plan an extended vacation. Visit: www.westin.com/riverwalk.

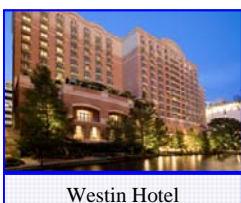
On Wednesday, September 24th, the opening reception will be hosted at the beautiful Westin Riverwalk where you will also be able to check in and register for the conference. Thursday, September 25th is the CLE Advanced Bankruptcy Seminar. On Friday, we will be attending various computer training sessions at the Adrian Spears Judicial Training Center. On Friday evening, come join us at “Howl at the Moon” featuring dueling pianos on a stage with a very lively crowd singing along! There is an extra fee of \$25 (discounted for our group) for this event. The seminar runs through Saturday with our business meeting in the morning and the closing banquet at the Buckhorn Saloon and Museum in the evening.

The Westin Riverwalk combines the grandeur of an elegant mansion with the charm of a historic setting. From the moment you check in, relax and indulge yourself as you walk through the lobby by enjoying the complimentary Venezuelan chocolates, or “La Merienda” (a Latin version of afternoon tea), featuring Mexican hot chocolate, coffee and cookies. There are several restaurants in the hotel as well. The El Cafeto serves breakfast, the Caliza Grille for all day dining on the patio overlooking the river, or enjoy an afternoon cocktail and light fare at the El Rincon de Maria lounge featuring specialty margarita and superior tequila spirits. You can also order food and drinks poolside. Relax with a book on the river-view private grand patios, rejuvenate with a massage at the full service Spa, or take a dip in the outdoor heated pool. You will feel like you stepped back in time as you take in the Spanish and European art which are found both in and around the hotel.

San Antonio is a very walkable city and only steps away from our hotel is the infamous Alamo, the 300-year old Mission which was the site of the famous 1836 battle during the Texas Revolution. Walk through the Alamo and take in the history, people and folklore of this colorful, vibrant city. We also encourage you to take a Rio San Antonio Cruise boat tour to get familiar with the many sights on this three mile secluded pedestrian river walk of hidden gardens, shops, and sidewalk cafes. Many hotels, bars, and restaurants line its banks, and river taxi cruisers float up and down the river with continual service from 9 am to 9 pm with 39 stops along the way. River tours are available seven days a week and the boats can be chartered for groups for those wishing to spend an evening of drinking or dining while floating past the sights. Make sure to stop in one of the many restaurants for a prickly pear margarita! The oldest historic district is the King William District which was built by German merchants in the late 1800's. Your self-guided walking tour will take you through this neighborhood boasting of elegant Victorian and Italianate mansions, art galleries, bed and breakfasts and restaurants. For a real feel of local crafts, visit the *Houston Street Fair & Market*. For a breathtaking view of the city, visit the 750' high Tower of the Americas where you can dine or visit the observatory. If you are planning to be in San Antonio on September 22-23, you can catch the Jazz 'S Alive, a free concert where top jazz entertainers serenade the crowd with their smooth sounds. There are also many missions, museums and beautiful churches throughout the neighborhoods in San Antonio. Perhaps you would be interested in the Alamo City Ghost Tours with tales of how the West was really won.

Our closing banquet is going to be held in the Buckhorn Saloon & Museum, a place you just have to experience. This 120-year old saloon and museum depicts cowboy and old West history, with a unique horn, fin and feather collection. Visit www.buckhornmuseum.com.

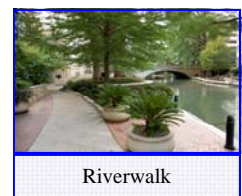
This is a conference you don't want to miss and will ALWAYS REMEMBER!



Westin Hotel



Hotel Lobby



Riverwalk

JSAG Committee

By Becky Woodrum, CD/IL



The Judges' Secretaries Advisory Group met in Washington, D.C., on February 25-26, 2008. I am the representative from the Seventh Circuit, and **Kris Nitzel**, Bankruptcy **Judge Glen E. Clark's** JA, from Utah, is the representative from the Tenth Circuit. **Cindy Korbol** also attended the meeting as your President. You can see our picture on J-Net under the "Federal Court Management Report," "News Briefs," "JSAG Meets in Washington." You will notice that I am hiding my left arm. I broke it on a sight-seeing trip the night before the meeting started and had it in a splint.

We were able to meet AO personnel who advised us on the Court Compensation Study, training fund resources, training opportunities, travel, the new OSCAR version, and resources available to us through the Office of Public Affairs. **Director James B. Duff** informed us of current issues being addressed by the AO. We had an opportunity to ask questions and make suggestions during all of these presentations.

The JSAG members plan and contribute to the Jumpstart Workshops and the "Judicial Assistants & Judicial Secretaries Quarterly Bulletin." I hope that you have sent in your application for the Jumpstart Workshop. If you are not chosen to attend this year, keep applying. It is certainly a worthwhile training opportunity. Besides, this year, I will be a facilitator, and I am looking forward to seeing you there.

President **Cindy Korbol** sent you an e-mail regarding our unique opportunity to attend the Bankruptcy Court Operational Practices Forum. Again, if you did not get to attend this year, do let your Judge know that you are interested and want to go next year. There is a slot for one member of chambers, besides the Judge. This is an opportunity we don't want to miss.

The JSAG members welcome comments, ideas, and articles for the Quarterly Bulletin to enable us to better represent and serve you. You can contact me at 217-431-4817, or through my government e-mail address, Rebecca.Woodrum@ilcb.uscourts.gov.



Membership Committee

By Sherie Hitch, ED/MI

Hello ABJA members! What a great year this has been already, and I know everyone is looking forward to attending the annual ABJA conference in San Antonio! It will be here before we know it so start planning early!!

The 2008 memberships have again been very successful! The membership numbers are as follows:

ABJAs	Renewed	100	CBA's	Renewed	54
	New	9		New	26
	Retired	3		Restored	6
	Restored	4			
	Honorary	7			

Two areas that need improvement are our **new JA memberships**, and our **JAs who are also a CBA**. Currently **only 37 of our 123 JAs are CBAs**. If you would like information on the CBA program, please contact Ann Virgadamo at 504-589-7886.

The ABJA currently has nine JA members who have volunteered to be a mentor at this year's annual conference - thank you very much! I will be in touch with you soon regarding your responsibilities as a mentor. If you are a JA who wants to be mentored, please e-mail me now, sherie_hitch@mieb.uscourts.gov, and we can put you in contact with a mentor well before the conference so you can get to know one another. You do not have to be a new JA to be mentored. The mentors act as a welcoming committee for any reason. Please contact me if you would like more information.

Please note again that we are creating a photo membership directory this year! Since we see each other so seldom, this is a great way to remember "who's who!" To date, I only have nine photos....don't be shy!! Submit those photos to me via e-mail at your earliest opportunity! Your IT department should be happy to help you if needed.

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Last but *definitely* not least, membership in the ABA is the utmost importance regarding the Judicial Assistant salary table. There are many current JAs who have not received a grade level increase in 20+ years. The grade level remains at an 11 and these JAs reached their maximum pay years ago. The ABA is the only association working directly for YOU. Please consider taking an active role by becoming an ABA member. The ABA's Legislation Committee especially, has been working hard for you for years and it's time for you to help yourself as well. To support our efforts and for the ABA to be truly representative of all Judicial Assistants it is important that we maintain a high membership percentage. Even if you don't consider yourself to be a "joiner," or if you don't feel that you have the time to be an active member, your endorsement of the association through your membership is vital.

It's been a pleasure! See you in San Antonio!



Support & Assistance Committee

By: Penny Brellenthin, WD/WI

It has been a very active time for the Support & Assistance Committee, and I want to send out another prayer for those in need.

In our last newsletter we shared that **Claude Lightfoot's** (who has been teaching our CBA Grammar class) wife has been battling liver cancer and is not expected to live much longer. Since then Mrs. Lightfoot has remained stable with both good and bad days. We will continue to keep the Lightfoots in our thoughts.



Other members to receive support and well wishes from the Support & Assistance Committee include:

1. **Becky Woodrum** (7th Circuit, Illinois) who suffered from a broken elbow.
2. **Millie Santago-Amador** (2nd Circuit, New York) who underwent gallbladder surgery and endured a subsequent infection.
1. **Sally Hanson** (8th Circuit, South Dakota) whose husband had a heart attack and underwent a stent procedure.
2. **Thora Searle** (10th Circuit, Utah) after an emergency surgery.
3. **Beth Towery** (5th Circuit, Texas) after an elective surgery.

Please don't hesitate to contact me or one of the following committee members: **Dorothy Clay** (Illinois Northern), **Jan Houchin** (Texas Northern), **Barbara Groves** (Texas Northern) or **Kerry Brown** (Missouri Western) if you know of an ABA member or their family who could use our support and well wishes.



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Happy Summer! Even though summer hasn't officially arrived yet, the temperature here in Tallahassee (and I imagine the rest of the State of Florida) has already been in the mid to high 90's. It certainly makes you wonder about global warming.

As I'm sure you have noticed, this particular issue is somewhat longer than usual thanks to the contributions of so many people. Normally I feel honored and fortunate just to get one judge to agree to write something, but this time we had four in addition to a Clerk and two representatives from the Administrative Office. I also received permission from The Legal Intelligencer to reprint an article that appeared in their publication. I hope all of you find, as I did, all of the information both interesting and useful.

Many thanks to my judge, **The Hon. Lewis M. Killian, Jr.**, as well as **The Honorables Elizabeth S. Stong (ED/NY)** and **Samuel L. Buford (CD/CA)**; **Justice Jim Moseley (5th D.C.A.)**; **Timothy McGrath (Clerk, ED/PA)**; **Jim Wannamaker (AO)**; **Melanie Ware (AO)**; **Don Ferguson (ED/TN)**, Also thank you to **Dan Giancaterino** and **Jeremy Barker** with The Legal Intelligencer for permission to reprint their article. Without your kind contributions, this issue would not be quite as informative and your time is greatly appreciated.

In addition, I would be remiss if I didn't thank and recognize the time and efforts by our Circuit Representatives and Committee Chairs and those of you that sent or suggested articles. Your work behind the scenes to assist me in doing my job does not go unnoticed.

Since our San Antonio conference is earlier than usual this year with it falling in September, the next issue of *Behind the Bench* which would normally go out at the end of that month will probably be sent out after the conference - rather than before. With that being said, I hope to see as many of you as possible in San Antonio and are making plans to join us!

Have a great summer and be safe in your travels.

Martie