

The Cram-Down

Vol. 7 No. 4

Tampa Bay Bankruptcy Bar Newsletter

May, 1997

AN INTERVIEW WITH CARL R. STEWART 'REGARDING THE NEW FEDERAL COURTHOUSE

By Lynn V.H. Ramey, Editor

The following is an interview with Carl R. Stewart, Clerk of the Court for the Middle District of Florida regarding the new Federal Courthouse being built in downtown Tampa.

QUESTION: Mr. Stewart, what is the projected date of completion for the new Federal Courthouse, and realistically when do you believe the Bankruptcy Court will be moving?

ANSWER: The projected date of completion for the new Federal Courthouse is July 3, 1997. However, it appears that a more realistic completion date might be in August or perhaps September. The actual move-in will begin in September of 1997. The U.S. Marshall's office will move first, and then the District Court. It is anticipated that the Bankruptcy Court will not move in until December. It is possible that the Bankruptcy Court will operate out of the current location as well as the new location while the move is taking place so that there is no disruption of the court system.

QUESTION: What will the new Federal Courthouse include?

ANSWER: The new Federal Courthouse will house the District Court and the Bankruptcy Court, Clerk's offices for both courts, the United States Marshall's office, all judges chambers and courtrooms.

QUESTION: Where will the United States Trustee's Office be and where will the 341 Meetings of Creditors be held?

ANSWER: The United States Trustees' Office will be located on the 12th floor of the Timberlake Annex located at 501 E. Polk Street. It is anticipated that the 341 Meeting rooms will be located on the first floor of the Timberlake Annex building.

QUESTION: Will the Bankruptcy Court have its own Clerk's office for filing documents and/or reviewing files?

ANSWER: Yes, the Bankruptcy Court will have its own Clerk's office. The intake and attorney review rooms will be on the 7th floor. Employees of the Clerk's office will be on the 5th floor.

QUESTION: Will there be conference rooms and/or attorney's rooms for use by bankruptcy practitioners?

ANSWER: The Bankruptcy Judges will be located on the 8th, 9th and 10th floors. In addition, there is a spare courtroom

equipped for jury trials. Outside each of the courtrooms there will be two attorney conference rooms similar to those on the 2nd floor and 3rd floor of the current Bankruptcy Courthouse. In addition, the Tampa Bay Bankruptcy Bar Association is working towards specifically outfitting another room for use by members of the association and it will be furnished by the Bankruptcy Bar Association.

QUESTION: What will the hours of the new Federal Courthouse be, and how will it affect the timing of bankruptcy filings?

ANSWER: The hours for the new Federal Courthouse will be the same as they are now, 9:00 A.M. to 4:30 P.M. Due to security reasons, there will not be a drop box for either the District Court or the Bankruptcy Court. Parties with late or unusual filings will need to make arrangements with court personnel in the same manner that such arrangements are made now.

QUESTION: What will the parking situation be like, and do you have any suggestions for bankruptcy practitioners?

ANSWER: Currently there is a two-story parking garage behind the new Federal Courthouse which is reserved for official government vehicles only. The city is looking at building a covered parking garage three blocks north of the new courthouse which could offer monthly parking rates.

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QUESTION: Who should bankruptcy practitioners call to find out more about the parking situation?

ANSWER: The Tampa Downtown Partnership - Parking Inventory. Their telephone number is 221-3686.

QUESTION: Where will Bankruptcy Court personnel park?

ANSWER: We are currently negotiating for a parking lot for Bankruptcy Court personnel. It is too early to tell right now, but if we are successful we also might have a few extra spaces to rent out.

QUESTION: Why is there a two-story parking garage behind the courthouse instead of a 14-story parking garage that could handle all court personnel and practitioners?

ANSWER: The space that is currently being used for the two-story parking garage is really being held in reserve for the possibility that the new Federal Courthouse will have to be expanded in the future. So, although it seems strange that they have not provided more parking, in reality they are planning for the future.

QUESTION: What will happen to the old courthouse?

ANSWER: The old courthouse will be used for pretrial services, and will house Senior District Court Judges, visiting judges and other governmental agencies.

QUESTION: What else can you tell us about the new Federal Courthouse and new technology for the future?

ANSWER: Each Bankruptcy Court floor of the new Federal Courthouse will have touch-screen computers to check the judges' calendars. We are hopeful that the touch screen computers will be implemented here at the current Bankruptcy Courthouse soon. My belief is that technology will make the move downtown more palatable to all. For example, the Court is looking into both video hearings for lawyers and the use of electronic filings to be used in the next five years. Once these are in place, the location of the courthouse will not matter quite so much.

QUESTION: What will security be like in the new Federal Courthouse?

ANSWER: Security will be extremely tight. For building occupants there will be a sky-bridge from the Timberlake building and Timberlake building annex (the old Federal building) to the new Federal Courthouse. This sky-bridge will only be for court personnel. Because the new courthouse sits very close to the curb facing Florida Avenue, traffic flow may need to be altered during business hours. The Judges will have secured parking in the building and of course security will be located in the form of the United States Marshall's office in the building. Upon entering the building, practitioners will have to pass through the same type of magnetometer that is currently used.

For more information regarding the new Federal Courthouse, mark you calendars to hear Carl Stewart in person answering your questions at the June Association Luncheon. More information about the June luncheon will follow.

Year to Year Bankruptcy Filing Comparison March 1997 Percentage of Change				
	Jacksonville	Orlando	Tampa	District
Current Month/ Prior Year	26.93%	17.67%	26.19%	24.19%
Past Three Months/ Prior Year	26.87%	34.33%	25.73%	28.15%
Year-to-Date/ Prior Year	26.87%	34.33%	25.73%	28.15%
Year-to-Date/ Two Years Prior	57.37%	69.11%	65.70%	64.54%
Year-to-Date/ Three Years Prior	72.34%	53.29%	59.14%	60.40%
Year-to-Date/ Four Years Prior	57.47%	61.46%	40.73%	49.96%
Year-to-Date/ Five Years Prior	24.56%	35.31%	15.92%	22.50%

Seminole Tribe May Not Apply to Bankruptcy Courts

by Judge Samuel L. Bufford (Bankr. C.D. Cal.)

A number of recent bankruptcy court decisions (including one that I have authored) have concluded that the Eleventh Amendment to the United States Constitution applies "to bankruptcy courts, and that it can be invoked by state governments and state agencies to avoid bankruptcy court jurisdiction over them." Insofar as I can determine, nobody has yet argued the inapplicability of the Eleventh Amendment in bankruptcy.

The Eleventh Amendment states: "The Judicial power of the United States shall not be construed to extend to any suit . . . commenced or prosecuted against one of the United States by Citizens of another State . . ."

The key to the bankruptcy exemption from this amendment is found in the first seven words, "The Judicial power of the United States." This phrase has a well-established constitutional meaning: it is the same phrase that begins section I of Article II of the Constitution. (The only difference is that "Judicial" is capitalized in the Eleventh Amendment, and "Power" is capitalized in Article III.) Article III, of course, is the Constitutional provision establishing the United States Supreme Court, "and such inferior Courts as the Congress may from time to time ordain and establish." Section I also requires lifetime tenure for such judges and protects their salaries from diminution.

Congress has established federal courts under at least four different articles in the Constitution. Article I (e.g., bankruptcy courts), Article II (e.g., administrative courts) and Article IV (territorial courts). However, the Eleventh Amendment applies only to Article III courts, and pinpoints these courts only for its limitation on federal jurisdiction. This is no historical accident: the Eleventh Amendment was adopted to cure a perceived abuse of power in the Article III courts in the ruling in *Chisolm v. Georgia*, 2 U.S. (2 Dall.) 49 (1793). None of the courts established under the other constitutional articles is subject to the Eleventh Amendment limitation on jurisdiction.

Bankruptcy judges and courts are established under Article I of the Constitution. Bankruptcy judges, it is well known, are appointed for 14-year terms, not for life, and presumably our salaries do not enjoy constitutional protection. Because bankruptcy judges are not appointed under Article III, we do not exercise "the judicial Power of the United States." In consequence, the Eleventh Amendment limitations on the exercise of "the judicial Power of the United States" do not apply to bankruptcy judges.

The chief complication with the foregoing argument is that Congress' primary grant of bankruptcy jurisdiction in 28 U.S.C. Section 1334 goes to the district courts, not the bankruptcy courts. The district courts clearly are subject to the Eleventh Amendment. If a district court exercises bankruptcy jurisdiction itself, and does not refer a case to a bankruptcy judge, it is inhibited by the Eleventh Amendment from taking jurisdiction over a state or state agency (unless there is another basis for jurisdiction, such as waiver, *Ex parte Young* or the Fourteenth Amendment). If the case is referred to a bankruptcy judge, in contrast, the Eleventh Amendment goes away, under this theory.

This argument is not so strange as it may first appear. There is nothing irregular in a district court referring a case to someone else who has greater powers than the district court itself. If someone is given the responsibility of moving a heavy rock, and that person is not particularly strong, is it unusual if that person recruits assistance from someone with larger muscles? How is the reference of a bankruptcy case from a district judge to a bankruptcy judge any different?

Furthermore, there is precedent for a district court referring a case to someone with greater power than the district court possesses. If a case is referred to arbitration pursuant to an arbitration agreement, the arbitrator has certain powers that the district court lacks, such as ignoring the rules of evidence or making a decision that cannot be reversed on the determination of applicable law.

This argument may have consequences for bankruptcy appeals, as well. A state may invoke the Eleventh Amendment to prevent an Article III court from exercising appellate jurisdiction over it, even though the bankruptcy courts' Eleventh Amendment immunity would permit a trial court decision affecting the state. In that case, perhaps appellate jurisdiction could be exercised only by a Bankruptcy Appellate Panel, whose decision would be final. This may increase the importance that all circuits adopt bankruptcy appellate panels (as Congress effectively mandated in 1994), to assure that at least one level of appeal is available in such cases.

This is also an argument to which the **National Bankruptcy Review Commission** should give careful consideration. First, if the argument is good, the Commission should be reluctant to recommend that bankruptcy judges be given Article III status, because this would open up a large hole in bankruptcy court jurisdiction. Second, perhaps Section 1334 should be rethought, in case the original grant of bankruptcy jurisdiction to the district courts imperils the Eleventh Amendment immunity that bankruptcy courts now enjoy.

Third, the Commission should recognize the finality of Bankruptcy Appellate Panel decisions in cases where the Eleventh Amendment is properly invoked (and no exception applies). Fourth, Bankruptcy Appellate Panels should be categorically mandated in all circuits. Fifth, district courts should be especially reluctant to withdraw a case or proceeding from a bankruptcy court if an Eleventh Amendment claim may defeat its jurisdiction.

One caveat. I have not decided whether I agree with the foregoing argument. One of my colleagues has described it as a "bombshell." If someone makes the argument in my court, I presumably will have to decide whether it is legitimate. In the meantime, I invite discussion on its merits.

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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
OFFICE OF THE CLERK
4921 MEMORIAL HIGHWAY, SUITE 110
TAMPA, FLORIDA 33634

**** PUBLIC NOTICE ****

April 8, 1997

The United States Bankruptcy Court for the Middle District of Florida has preliminarily adopted amendments to its Local Rules effective April 15, 1997. The amendments conform to the existing Local Rules to the nationwide uniform numbering system prescribed by the Judicial Conference of the United States and to the model system suggested and approved by the Advisory Committee on Bankruptcy Rules of the Judicial Conference's Committee on Rules of Practice and Procedure. In renumbering the Local Rules to conform to the uniform numbering system, no change in substance has been effected.

The renumbered Local Rules also contain Advisory Committee Notes and cross-reference tables that cross-reference the old Local Rule numbers to the new Local Rule numbers and that cross-reference the new Local Rule numbers to the old Local Rule numbers. Although the old Local Rule numbers have been superseded by the new numbered rules comprising this amendment, the Advisory Committee Notes to the superseded rules may continue to be helpful in interpreting and applying the new rules.

The Court has ordered that the renumbered Local Rules be effective preliminarily on April 15, 1997. Unless substantively changed by subsequent order after receiving comments from the public and the bar, the amendments will be finally effective on June 15, 1997, without further notice or order.

Pursuant to the provisions of F.R.B.P. 9029 and F. R. Civ. P. 83, the Court solicits comments and suggestions from the public and members of The Florida Bar on these amendments. The comments and suggestions should be submitted in writing to Carl R. Stewart, Clerk, United States Bankruptcy Court, Suite 110, 4921 Memorial Highway, Tampa, Florida 33634, no later than June 1, 1997. The Court will consider comments and make appropriate changes, if any are considered necessary, before the final effective date of the amendments.

Interested parties may obtain copies of either or both of the new renumbered rules and the superseded old rules as follows:

a. Parties may download from the Court's home page on the World Wide Web a copy of the renumbered rules, Advisory Committee Notes, and cross-reference tables and a copy of the superseded rules and Advisory Committee Notes. The Court's home page address is: <http://www.cyberspy.com/~mbill/>. There is no charge to download the documents.

b. Parties may download from the court's PACER system a copy of the renumbered rules, Advisory Committee Notes, and cross-reference tables and a copy of the superseded rules and Advisory Committee Notes. There is no charge to download the documents.

c. Parties may obtain a copy of the renumbered rules, Advisory Committee Notes, and cross-reference tables on a disk by presenting a blank formatted 3.5 inch high density micro floppy disk at the Court's three divisions: Jacksonville, Orlando, or Tampa. The document is available in most popular word processing formats and in ASCII text format. Please specify format when ordering. There is no charge for the clerk's services in copying the rules onto a disk provided by the requesting party.

d. Parties may purchase a copy from Pacific Photocopy and Research Services in Jacksonville [(904) 355-1062], Orlando [(407) 425-7234], and Tampa [(813) 885-3854]. The price of the renumbered rules, Advisory Committee Notes, and cross-reference tables is \$25.00 plus applicable sales tax. The price of the superseded rules and Advisory Committee Notes is \$20.00 plus applicable sales tax.

CARL R. STEWART, CLERK



HAPPENINGS

*Stetson Moot Court Team Finishes
in Top "8" at Conrad B. Duberstein
National Moot Court Competition*

The Stetson Moot Court Team, although unable to bring home the gold this year, finished a respectable number 8 in this year's competition March 15-19th in New York City.

Being totally unbiased, I believe they should have won hands down. I say this not because I was their coach, but because I watched a group of three young people without any bankruptcy knowledge blossom into three of the most articulate up and coming bankruptcy practitioners in the area.

Eighteen teams participated in the competition. Each team participated in preliminary rounds with Bankruptcy practitioners as judges. From the preliminary rounds however, the 18 teams were cut to four finalists and there were no semi-final rounds held. Therefore, each team in the preliminary rounds competed only against a few other teams without competing against the entire field. Likewise, each team had a different set of judges so that although the Stetson team fared well against its competition, they never competed against the four teams that ultimately made the finals. My compliments to the team G. William Lazenby, III, Sonya Hammac and Leah Zammit, and my thanks to all of you who gave your time as practice coaches.

by Lynn V.H. Ramey

AMERICAN BANKRUPTCY INSTITUTE'S
SOUTHEAST BANKRUPTCY WORKSHOP

August 7-10, 1997

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Poyner & Spruill, L.L.P.
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Judicial Chair:
Hon. David W. Houston, III
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- Executory Contracts and Unexpired Leases
- Business Reorganizations: Effect on Corporate Governance Before, During and After
- Consumer Bankruptcies: Discharge and Dischargeability
- Pre-petition Agreements: Transaction Documentation and Workout Agreements
- Professional Certification

For more information, contact ABI at (703) 739-0800. Brochures are available in early May.

UPCOMING EVENTS

David Epstein will join us on May 20, 1997 at the Hyatt Regency Westshore, 6200 Courtney Campbell Causeway to speak on "Current Developments in Bankruptcy Law". Registration will be from 9:00 a.m. to 9:30 a.m. The seminar will follow from 9:30 a.m. to 12:00 p.m.; the luncheon will be from 12:15 p.m. to 1:30 p.m. at Armani's. Mr. Epstein will also give a short presentation at the luncheon for those unable to attend the seminar.

Mr. Epstein is a former professor at University of Texas Law School and Dean of Emory University Law School; Partner with the firm of King & Spaulding in Atlanta, Georgia; Author of *Debtors and Creditors* and *Debtor-Creditor Law in a Nutshell*.

For those of you who have not received a reservation form, please contact Russ Blain at 229-0144 for your reservation/form.



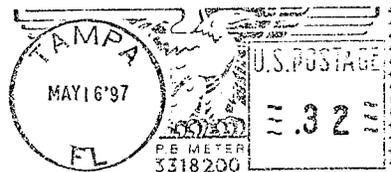
MOVERS AND SHAKERS

Lynn Ramey announces the opening of the Law Offices of Lynn V.H. Ramey. While the completion of the new offices in Ybor City is underway and expected to be completed July 1, 1997, Ms. Ramey's temporary office is located at 4625 E. Bay Drive, Suite 107, Clearwater, Florida 34624, telephone number (813) 524-3955. The address for the new Ybor office is 1901 N. 13th Street, Suite 300, Tampa, Florida 33606, telephone (813) 253-0777.

D. Brett Marks has joined the law office of Dennis J. LeVine, P.A. as an associate. His address is 214 West Verne Street, Suite D, Tampa, FL 33606, telephone (813) 253-0777. He will work in the areas of bankruptcy and collection law.

This article argues that the Eleventh Amendment to the United States Constitution does not apply to bankruptcy courts, and that it poses no impediment to the exercise of bankruptcy jurisdiction over states and state agencies by bankruptcy judges (although it does apply to Article III judges, in their exercise of either original or appellate jurisdiction in bankruptcy cases).

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