



The Cramdown

Tampa Bay Bankruptcy Bar Newsletter

Summer 2002

Editors

Edmund S. Whitson, III

Donald Kirk

Past Presidents

1988-1989

Chairman

Leonard H. Gilbert

President

Don M. Stichter

1989-1990

Douglas P. McClurg

1990-1991

Richard C. Prosser

1991-1992

Robert B. Glenn

1992-1993

Thomas B. Mimms, Jr.

1993-1994

Edward M. Waller, Jr.

1994-1995

Harley E. Riedel

1995-1996

Roberta A. Colton

1996-1997

Jeffrey W. Warren

1997-1998

Michael P. Horan

1998-1999

Dennis J. LeVine

1999-2000

Russell M. Blain

2000-2001

John D. Emmanuel



The President's Message

By Zala L. Forizs

In lieu of my usual column, I submit an excerpt from an ABA publication regarding proposed bankruptcy reform legislation:

The American Bar Association is opposing proposed changes in the federal bankruptcy law (H.R. 333) seeking additional support with its efforts from within the state bar community.

Proposed changes in "The Bankruptcy Abuse Prevention and Consumer Protection Act of 2002" would require a debtor's attorney to certify the accuracy of their clients' schedules of assets, and would hold that attorney personally liable for any inaccuracies in the schedule. If any factual error results in dismissal of a Chapter 7 or converted Chapter 13 matter, lawyers for a petitioner would be subject to mandatory sanctions unless they had conducted a lengthy investigation and appraisal of the client's assets. If this proposal is enacted, many malpractice carriers claim they will exclude such new liability from coverage in their policies. Other proposed changes may be equally troubling to the bar.

The Tampa Bay Bankruptcy Bar Association was advised of these issues back in October 2001, and we provided you, our members, with some information to enable you to comment if you so desired. The debate has heightened, and you still have time to be heard if you favor a legislative position on this issue. The Association has decided not to take a position as an organization, but rather give its members the opportunity to do so.

The following "Fact Sheet" published by the ABA explains the issues. If you wish to advocate the issue by writing your Senator or House member representative, we have attached a sample letter for your information.



Inside This Issue

ABA Fact Sheet	2	Calendar of Events	11
View From the Bench By Judge Corcoran	3	U.S. Trustee Program Launches Bankruptcy	
Clerk's Corner	5	People on the Go	15
Wednesdays with Judge Corcoran	6	Officers and Directors	16
Cramdown Surfs the Net	7	Committee Chairs	17
Case Law Update	10		

The Cramdown can be accessed via the internet at www.flmb.uscourts.gov

ABA FACT SHEET (March 2002)



Congress is considering legislation designed to overhaul the nation's consumer bankruptcy laws. The legislation, known as H. R. 333, contains many proposed changes to existing law, including several provisions that would dramatically increase the liability and administrative burdens of bankruptcy attorneys under the Bankruptcy Code. In particular, the bill would require debtors' attorneys to: (1) certify the accuracy of factual allegations in the debtor's bankruptcy petition and schedules, under penalty of mandatory sanctions; (2) certify the ability of the debtor to make payments under a reaffirmation agreement; and (3) identify and advertise themselves as "debt relief agencies" subject to a host of new intrusive regulations.

The House approved H.R. 333 on March 1, 2001, and the Senate subsequently approved its own version of the bill on July 17, 2001. A conference committee is now attempting to reconcile the two bills.

The ABA strongly opposes the provisions in Section 102 of H.R. 333 that will require the debtor's attorney to certify the accuracy of the debtor's bankruptcy petition and schedules while subjecting the attorney to mandatory sanctions if any factual inaccuracies result in the dismissal of the Chapter 7 petition or its conversion to a Chapter 13. Existing federal rules already require all lawyers-including bankruptcy attorneys to certify that their pleadings are supported by the facts, but the new proposal would create a newer and higher standard for debtors' bankruptcy attorneys that goes well beyond the standards imposed on other lawyers. By holding debtors' attorneys personally liable for the accuracy of their client's petitions and schedules, the provision will force the attorney to independently verify all of the client's factual representations and will require the attorney to conduct a costly investigation and appraisal of all assets listed on the client's schedules.

The ABA also opposes the provisions in Section 203(a) of H.R. 333 that will require attorneys to certify debtor's ability to make payments under a reaffirmation agreement. Under current law, a debtor may choose to reaffirm certain debts-and retain liability for those debts-if the attorney certifies that the decision is voluntary and will not create undue hardship for the debtor. By requiring the attorney to also certify the debtor's ability to pay the reaffirmed debt, Section 203(a) will force attorneys to conduct costly and time-consuming audits of their clients' finances.

The ABA also opposes the provisions in Sections 227-229 of H.R. 333 that will require bankruptcy attorneys to identify and advertise themselves as "debt relief agencies" and then comply with a host of new burdensome regulations. These provisions will interfere with the attorney-client relationship by requiring all debtors' bankruptcy attorneys-and many non-bankruptcy attorneys-to provide their clients with lengthy written disclosure statements containing government-approved legal advice on bankruptcy law while prohibiting the attorneys from giving their clients certain proper pre-bankruptcy planning advice. These provisions will also have a chilling effect on lawyers choosing to represent debtors by requiring all Of their newsletters, seminars and advertising materials to include the awkward and misleading statement that "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code."

Numerous state bars have also voiced their strong opposition to thee provisions, including the state bars of Wisconsin, Arizona, Illinois, Ohio, Missouri and Washington state.

These three attorney liability provisions, taken together, will have a massive negative impact on the availability of quality legal counsel in bankruptcy and will result in thousands of pro se debtors. These provisions will discourage many attorneys from agreeing to represent debtors at all, while dramatically increasing the fees and expenses of clients who are able to obtain legal representation. In addition, these provisions will discourage lawyers from providing pro bono bankruptcy services. Unless they are removed, these provisions pose a serious threat to the efficient operation of the bankruptcy system. ABA

View From The Bench

SOME OBSERVATIONS ABOUT PREPARING PETITIONS, SCHEDULES, AND LISTS

By Honorable C. Timothy Corcoran, III



Bankruptcy lawyers know the importance of complete and accurate petitions, schedules, and lists. What lawyer has not seen a debtor called to task in a later proceeding for not including information or for scheduling an incorrect amount? Most lawyers, therefore, do a good job of emphasizing to their debtor clients the need for thoroughness and accuracy in preparing these key papers. Things do “slip through the cracks,” however, so I thought I would use this issue’s column to point out some of the common slips that I see.

Scenario 1

You are representing a client who is just about to file for bankruptcy. You are helping the client fill out the schedules and lists. What do you do when the client has no information to give in answer to a question in the statement of financial affairs? What do you do when the client has no assets or debts or creditors of all of the kinds contemplated by the schedule form?

Some lawyers simply leave blank the space under the inapplicable question and fill in nothing for the asset, debt, or creditor classes for which there is no information. Leaving the space blank, however, is the incorrect thing to do.

The Introduction and General Instructions to the Official Forms make clear that, if the debtor has no information of the type sought, the debtor should complete the box with an affirmative statement to that effect. For example, the instructions to Form 1, Voluntary Petition, provide that, “[i]f the debtor has no information to provide for a particular box, for example if the debtor has no prior bankruptcies to report, a computer-generated petition should so indicate by stating ‘None.’” Similarly, the instructions to Form 7, the Statement of Financial Affairs, provide that, “[i]f the answer to a question is ‘None,’ or the question is not applicable, an affirmative statement to that effect is required.”

The reason an affirmative statement is required,

of course, is that a blank is no answer at all; it just ignores the question. The rules, however, require that these papers be completed under oath.

Scenario 2

You are preparing a petition for a client. You know the client has not filed a prior bankruptcy case within the last six years. You know the client does not have a spouse, partner, or affiliate who has a *presently* pending bankruptcy case. Nevertheless, you know the client is connected to entities that either are now debtors or have been debtors in bankruptcy cases. What do you do?

After reading this article, most lawyers will hopefully fill in “None” in the applicable boxes on the second page of the voluntary petition form that call for disclosure of prior bankruptcy cases filed by the debtor within the last six years and of pending bankruptcy cases filed by a spouse, partner or affiliate. If that is all counsel does, however, counsel will again have acted incorrectly.

L.B.R. 1073-1(b)(3) provides that:

The Clerk shall assign successive cases filed by or against the same debtor and multiple cases filed by or against related entities or affiliates to the judge assigned the first such case. For purposes of this subsection (b)(3), a successive case includes a case that is later refiled after it is dismissed. *It shall be the duty of counsel or the petitioning party or parties, if not represented by counsel, to bring such matters to the attention of the Clerk by noting full particulars about the previous or related filings on the second page of the Voluntary Petition (Official Form No. 1) or on a separate Notice of Successive or Related Cases. [Emphasis added].*

(Continued on page 4)

(Continued from page 3)

Section 101(15) of the Bankruptcy Code provides that an “‘entity’ includes person, estate, trust, governmental unity, and United States trustee.” Section 101(41) provides that a “‘person’ includes individual, partnership, and corporation” Although the term “related” is not defined, its common meaning includes any recognizable connection. Similarly, Section 101(2) defines “affiliate” very broadly. As counsel, therefore, you will need to quiz your client very carefully. Did your client’s spouse have a previously filed case? Did your client have a business that previously filed? If so, you will need to disclose these prior filings either on the petition or on the notice required by the local rule.

The purpose of this disclosure is to allow the clerk to assign the new case to the same judge who handled the previous related one. Judges do have learning curves, and it is more difficult for a judge to handle a case when the judge does not know the history. You do not want to put a judge in that position by failing to disclose the prior related case. Perhaps more importantly, you do not want to give the appearance of judge-shopping by failing to disclose the prior case. You can be sure the existence of the prior case will come to light during the course of the proceedings in the new case. What is the new judge -- or the first judge -- going to think when it does come to light?

In those circumstances, most judges will confer and make a joint decision on what should happen to the case. In making that decision, judges consider the institutional integrity of proper and correct assignments of cases under the rules. If the case is reassigned to the original judge, the work performed by the new judge in the meantime will be wasted to a large extent. A simple disclosure at the beginning as contemplated by the rules avoids all of this wasted time and effort.

Scenario 3

A spouse comes to you to file a joint petition. He says the other spouse is ill and that he has the ill spouse’s power of attorney. Or, an adult child comes to you to file a petition for an elderly parent and tells you she has the parent’s power of attorney. What do you do?

First, you should obtain the original power of

attorney and review it carefully. The law is settled that a general power of attorney -- even a durable power of attorney -- is insufficient to empower the attorney-in-fact to file a bankruptcy petition on behalf of a debtor. The power of attorney must specifically authorize such action. *See, e.g., In re Curtis*, 262 B.R. 619, 623 (Bankr. D. Vt. 2001) [collecting cases].

Once you determine that the person in your office does have the necessary specific power, you will want to have the attorney-in-fact execute the petition, schedules, and statements under oath on behalf of the ill or elderly debtor and attach a copy of the power of attorney to the petition. If you have only a general power of attorney or if you do not attach a copy of the specific power, the court will be required to question the filer’s authority to file on behalf of the debtor.

If the person in your office cannot produce an original, specific power of attorney, you probably will first need to establish a guardianship so the circuit court can issue an order empowering the guardian to file on the ward’s behalf. You will then want to attach a copy of that order to the petition you file.

Scenario 4

Your client’s Chapter 7 case is closed and over. The client returns to your office, however, and tells you a creditor is trying to collect a prepetition debt. You look at your file, and you see you never scheduled the creditor because the client did not tell you about it. What do you do?

If all you do is reopen the case and amend the schedules to add the omitted creditor, you have not done enough. Unfortunately, you will be required to prosecute an adversary proceeding against the omitted creditor to obtain a determination that the debt is discharged pursuant to Section 523(a)(3) of the Bankruptcy Code. *See, e.g., In re Stone*, 273 B.R. 680 (Bankr. M.D. Fla. 2002).

The necessity of prosecuting an adversary proceeding underscores the importance of scheduling all creditors in the first place. If you do not, it is going to be expensive to remedy the situation later. This expense, however, may even be greater than that associated with prosecuting an adversary

(Continued on page 5)

2002 Pro Bono Award Recipients

The Thirteenth Judicial Circuit's pro bono program, H.A.V.E. A Heart, recognizes the efforts of the following TBBBA members who have made exceptional pro bono contributions:

Outstanding Pro Bono Service

Ronald R. Bidwell	Tim Moran
Thomas H. Greiwe	A.J. "Stan" Musial, Jr.
Vincent A. Leto	Richard T. Petitt

Outstanding Pro Bono Service by a Law Firm

Russell M. Blain, Kurt E. Davis, W. Gregory Golson, Wanda Hagen, Stephen R. Leslie, Richard C. Prosser, and Scott A. Stichter of Stichter, Riedel, Blain & Prosser, P.A.

(Continued from page 4)

proceeding. Although we have not been enforcing it in the Tampa division, the clerk has recently reminded the judges that the Bankruptcy Miscellaneous Fee Schedule requires that the clerk charge a fee for reopening a closed case in most circumstances, including those involving a debtor's request for relief not sought or obtained originally. This reopening fee is equal to the original filing fee!

Conclusion

These scenarios demonstrate the importance of preparing a debtor's petition, schedules, and statements with care. Although most lawyers do a good job of completing these papers accurately and thoroughly, it never hurts to be reminded of the kinds of slips we do see from time to time that can easily be avoided.



The Clerk's Corner

By Charles G. Kilcoyne

The Clerk's office has completed the testing of "AE-Receipts" and is now in a position to offer this service to debtor's counsel.

What is AE-Receipt? Once a new bankruptcy case is entered into the system, the attorney for the debtor will receive instantly, via the internet, a receipt for the filing fee. The AE-Receipt will indicate the date the case was filed, full case number, name of the trustee assigned and the date and time of the Section 341 Meeting.

Those attorneys who wish to receive an AE-Receipt should furnish his/her internet e-mail address to Chuck Kilcoyne, Deputy-in-Charge.

In the future we would hope to make this service available for all receipts, i.e. motions for relief from automatic stay, adversary proceedings, notices of appeal, etc.



COUNTY SEEKS VOLUNTEERS FOR OPEN BOARD POSITIONS

News Report

Hillsborough County commissioners are seeking nominees for a variety of citizen advisory boards and councils. All nominees must be registered voters in Hillsborough County. Appointments are voluntary and members serve without compensation. Appointees may be required to file a financial disclosure.

Boards and councils with openings include: Child Care Facilities Advisory Board, Consumer Protection Board, Cross Connection, Backflow and Back-Siphonage Board, Healthcare Advisory Board, Health Council of West Central Florida Inc., Historic Resources Review Board, Housing Finance Authority, Library Advisory Board, Natural Resources and Landscaping Appeals Board, and Plumbing Board of Adjustment, Appeals and Examiners.

Applications are available on the second floor of County Center, 601 E. Kennedy Boulevard. Or by calling the Boards and Councils Coordinator at 272-5632. Information may also be obtained online at www.hillsboroughcounty.org/bds_coun/home.html.

WEDNESDAYS WITH JUDGE CORCORAN

By Luis Martinez-Monfort and Amanda K. Hill

Though it is not Tuesdays with Morrie, the third Wednesday of each month is as close as you can get to it in Bankruptcy Court...sort of a "Wednesdays with Judge Corcoran." Since January, those young and young at heart bankruptcy attorneys who are in their first five years of practice have been meeting on the fifth floor of the Federal Courthouse with their brown bag lunches in hand. A forum developed and lead by Judge Corcoran and Cheryl Thompson, topics range from how law was practiced before the billable hour was king to recent Middle District bankruptcy filings such as Anchor Glass. So far, average attendance has been well over 20 attorneys per month. At the monthly meetings, comments and questions from the peanut gallery are not only welcomed but strongly encouraged by the forum's moderators. It is a relaxed atmosphere where attorneys can see how approachable those sitting on the bench can be outside of the courtroom.

So if you are having trouble finding your way around the Bankruptcy Code, or even finding your way to the Courthouse (which some say is half the battle) join us for the next "Wednesday with Judge Corcoran."

OSCHER CONSULTING, LLC



Litigation Consulting Services
Forensic Accounting

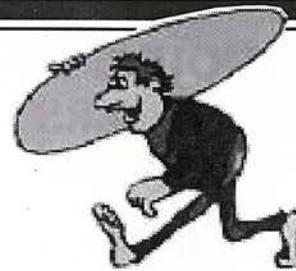
Steven S. Oscher, CPA
Lillian M. Grant, CPA

100 South Ashley Drive • Suite 2060 • Tampa, Florida 33602-3711
(813) 229-5295 • (813) 229-5674 Fax
www.oschersconsulting.com

THE CRAMDOWN SURFS THE 'NET

Websites for Bankruptcy Practitioners

By Jan Donica



Don't Pay Too Much for Office Equipment and Supplies

The acquisition of office equipment and supplies can be an expensive undertaking for a small law firm in terms of the professional time required to research purchases, in addition to the cost of acquisition. We have found the internet to be an invaluable resource in reducing the amount of time and effort required to select equipment, evaluate prices, and locate true bargains.

For computers and electronics we have successfully used www.ubid.com and www.E-bay.com on a repeated basis to obtain equipment at a substantial discount. But before you shop either of those sites, I recommend that you first visit www.mysimon.com or a comparable "shopping engine." It is necessary that you have determined the make and model of equipment you need. With those specifications in hand, you can have your shopping engine search the web and give you a list of nearly every site offering that piece of equipment, the price and frequently the shipping cost.

After you have determined the retail range of prices, you have the ammunition necessary to hit the auction sites. Sites like Ubid and E-bay should be used with caution. On Ubid, you are frequently dealing directly with the manufacturer. Items may be brand new or refurbished; it is always disclosed. Refurbished items usually come with some warranty, but you need to read the fine print. A deep discount may justify the risk of a limited warranty. We have purchased numerous "re-furbs" at great prices. We occasionally have needed to rely on a warranty and have yet to have a problem.

E-bay items are generally used and without warranty, so greater caution is recommended. Sellers are rated and a thorough review of the ratings is recommended before making any significant purchase.

Both E-bay and Ubid are auction formats so it is necessary to be vigilant as to the bidding and set your limits in advance. Ubid frequently auctions off multiples of the same item at one time, so you have the option to bid on just one or several at once. If the price runs up above your limit, drop out and check the site again tomorrow. We have frequently lost out on an item when the price became too high, only to get it the next day at an even better price in a less competitive bidding session.

A fairly new source for business equipment is www.half.com. Originally started as a site to facilitate the consumer to consumer sale of books, videos and CD's, it was recently acquired by E-bay and expanded to provide a forum for the sale of a much wider variety of items, including electronics and office equipment. Unlike E-bay and Ubid, sellers on half.com self-rate their wares from "Like New" to "Acceptable" and set a firm price. The consumer shops the available offerings based on price, described quality and seller rating. There is no need to monitor prices and wait out an auction, but don't expect a warranty. If you don't like what you get, your recourse is limited.

Coupons, Coupons, and More Coupons!

We have also used the internet to save money on office supplies. Office Depot, Staples and Reliable Office Products all offer internet shopping and frequently have internet specials not available on in-store purchases. Shipping is usually extremely prompt. Based on our experience, it appears that competition in this sector is rather fierce at this time, and there are a lot of good deals and coupons floating around. If you are contemplating a purchase from a large vender, either for office supplies or otherwise, and don't have a coupon, search the web for one before you get to checkout. We frequently look at fatwallet.com for a summary of current coupons and specials at numerous web-sites. If you don't see it there, check out www.dailyledeals.com, www.cleavermoms.com, www.a2zrewards.com, www.couponmountain.com, www.ebates.com.

(Continued on page 8)

(Continued from page 7)

com, www.savingyoubig.com or www.247mall.com for similar services. When all else fails, it sometimes pays to run a general web search on the name of your vender and the word "coupon" to flush out a new source for discounts.

All in all, the web offers a vast array of tools to educate you as a consumer and to facilitate the purchase of fungible goods like supplies, computers and electronics, with many bargains just a click away.

* *Editor's Note:* The Cramdown's occasional column on useful internet websites returns in this issue. *
* We welcome your suggestions for topical internet resources that make our practice easier. In fact, our *
* column for this issue was written by an internet sleuth who shares her favorite sites for keeping "the *
* economics" in law office economics. The author, a J.D.-C.P.A., is the partner and wife of Association *
* board member Herb Donica, whose demands, she says, make her feel like "a mix of Martha Stewart, *
* Barbie, and Sandra Day O'Connor." *

JUDGE CORCORAN RECEIVES OUTSTANDING JURIST AWARD

U. S. Bankruptcy Judge C. Timothy Corcoran, III, received the Robert W. Patton Outstanding Jurist Award at the Hillsborough County Bar Association's annual Law Day Luncheon this month. The Young Lawyers Division of the Bar presents the award annually to a judge deemed to have an excellent reputation for sound, judicial decisions; an unblemished record for integrity as a lawyer and judge; a reputation among lawyers as being highly qualified; a history of involvement in bar-related activities open to the judiciary; and demonstrated concern or willingness to assist young lawyers and demonstrated a respect for their abilities.

The lawyers nominating Judge Corcoran for this award pointed to his large number of activities designed to train and mentor younger lawyers, many of which activities have been conducted through our Association, thanks to his volunteer efforts. The nomination highlighted Judge Corcoran's young lawyer mentoring program in particular, a program he conceived and conducts on his own. In this program, he offers mentoring sessions each

month to discuss the basics of lawyering, to answer young lawyers' questions (live and by email), and to work through problems. Young lawyers benefit from this close up opportunity to learn from a senior member of the legal profession to advance their professional and ethical development. "As helpful as this program may be to young lawyers, however, it is Judge Corcoran's investment of time and energy to help mentor young lawyers that is especially worthy of note in connection with this nomination for the Robert W. Patton Outstanding Jurist Award," the nomination stated.

"Tampa has terrific federal and state judges," Judge Corcoran said in accepting the award. "It's humbling to be singled out to receive this honor this year," he added.

The Patton Award is named after deceased Judge Robert W. Patton, a long-time state circuit judge in Tampa, who was a model of judicial excellence. "I had many cases before Judge Patton when I was in the practice," Judge Corcoran remembered. "You always got a correct and fair decision from him. He expected the best from lawyers. It's a true honor to be associated with his memory," he said.

Judge Corcoran, 56, was appointed a United States bankruptcy judge for the Middle District of Florida in 1989. He is the first bankruptcy judge to have received the Patton



ABI Southeast Bankruptcy Workshop August 7-10, 2002

Location: Kiawah Island, SC
Dates: August 7 - 10, 2002

The Program:

Both business and consumer bankruptcy topics will be discussed. Concurrent small discussion groups led by leading Bankruptcy Judges and practitioners, including:

- Professor Ray Warner
- Judge Gene Wedoff
- Professor Jeff Morris

Please look for a conference brochure in a few weeks. Please contact Dennis LeVine (877-222-9529) or ABI (703-739-0800) for more information.



What Do 3,300 Attorneys Have in Common?

THE HILLSBOROUGH COUNTY BAR ASSOCIATION

Do You Need Legal Placement Services?
Call the Hillsborough County Bar Association

Would You Like To Join Our Lawyer Referral Service?
Call the Hillsborough County Bar Association

Do You Need To Fulfill A CLE Requirement?
Call the Hillsborough County Bar Association

**Do You Want To Participate In
A Community Service Program?**
Call the Hillsborough County Bar Association

The Hillsborough County Bar Association
Where Attorneys Get Connected

Contact: Mark James Catledge
Development Director
Hillsborough County Bar Association
101 E. Kennedy Blvd., Suite 2110
Tampa, Florida 33602
(813) 221-7777

OLIVERIA RECEIVES SPECIAL AWARD

David K. Oliveria, bankruptcy clerk of court for the Middle District of Florida, received a Special 2002 Director's Award for his contributions to improved court operations/court administration and his commitment to excellence. "Mr. Oliveria's accomplishments are not restricted to one area and are not limited to personnel, or technology, or fiscal management," wrote Bankruptcy Judge Paul M. Glenn (M.D. Fla.) in nominating Oliveria for the award. "He has inspired the personnel of this court to embrace a new management philosophy dedicated to becoming the standard by which others are measured."

Among the many programs and procedures Oliveria has instituted are a revamped personnel evaluation system, a new employee recognition program, revised budget and procurement processes and inventory system, an improved website, expanded videoconferencing capabilities, and facilitation of the CM/ECF system.

D&D Reporting Service, Inc.

912 Christmas Street
Clearwater, FL 34624

Telephone: (727) 465-3000

(800) 414-2363

Fax: (727) 465-8003

*Leading the Legal Profession for over 40 Years
Serving the First Court of Florida
Founding Members of the Florida Bar & Association, Inc.*

Computerized Transcription
Video Services
E-Discovery Support
ASCH Transcripts • Computerized Printing & Imaging
Process Service
Continuing Service from Tampa Airport Available

Extensive Experience in Civil, Commercial, Medical
Malpractice, Bankruptcy, Insurance, Bankruptcy,
Criminal, Workers' Compensation, Product Liability

Large Staff of Attorneys Available for Consultation

CASE LAW UPDATE

“Fifth Circuit Upholds Sanction for ‘Obnoxious’ Attorney”

By Hon. Michael G. Williamson

The title to the recent National Law Journal article, 24 Nat'l L.J., March 18, 2002 at 28, quoted above aptly describes the conduct resulting in sanctions against Harvey Greenfield, an attorney appearing in the case of *In the Matter of First City Bancorporation of Texas, Inc.*, ___ F.3d ___, 2002 WL 233052 (5th Cir., Mar. 5, 2002).

Greenfield made numerous remarks in the course of discovery, at court hearings, and in direct dealings with the parties and their counsel that were offensive, insulting, and abusive. He also accused them of illegal or unethical behavior without any basis or justification.

Examples of these remarks give a sense of the depth of Greenfield's over-zealous representation of his clients:

He was less than complimentary or courteous to the opposing attorneys in the case when he called them: “stooges,” “puppet,” a “weak pussyfooting ‘deadhead’” who “had been ‘dead’ mentally for ten years,” “various incompetents,” “inept,”

“clunks,” “falling all over themselves, wasting endless hours,” “a bunch of starving slobs,” and an “underling” who graduated from a “29th-tier law school,” and accused them of living “in mortal fear of taking a lie detector test.”

He referred to certain opposing attorneys as having been fired by their former firms and referred to one law firm, Carrington, Coleman, Sloman & Blumenthal, L.L.P., as “stooges” of another, Vinson & Elkins, L. P., who he suggested was using First City as a “private piggybank.”

Covering all of the bases, he referred to the work of these other attorneys as “garbage,” demonstrating “legal incompetence,” and involving “ludicrous additional time and expenses.”

Not wishing to leave the parties out of the action, he called the chairman of First City a “hayseed” and “washed-up has been” and other directors “scoundrels.” At a deposition he characterized one of the director's attorney as a “criminal defense lawyer” (to imply that [the director] was a criminal) and stated that “I am going to have [the director] indicted” alleging fraud, cover-ups, payoffs, and bribes without any factual support.

The Bankruptcy Court attempted to curtail this obnoxious behavior initially through oral and written admonitions and warnings. Unfortunately, Greenfield didn't get the message and continued with his outrageous behavior.

As a result, having exhausted all other means to stop Greenfield's method of operation, the Bankruptcy Court imposed sanctions against him in the amount of \$25,000.

On appeal to the District Court, Greenfield, ever unrepentant in his ways, conceded that he made these numerous rude and insulting comments. In effect, his response was, “So what? What I said was true. And besides, they made me do it.”

The District Court found his argument that the comments “were true” to be “utterly meritless.” That is, Greenfield was never engaged in stating plain facts—he was engaged in “hurling gratuitous and hyperbolic insults.”

The District Court similarly found his other argument to be equally meritless: that the actions of both the court and the opposing attorneys were the cause of his abusive conduct. The District Court disposed of this argument by noting that any error on the part of the court or motive on the part of opposing attorneys in filing the sanction motion did not give Greenfield “carte blanche to launch personal attacks and to defy the court's directive to cease his wholly unprofessional conduct.”

The District Court went on to state that regardless of his anger, he should not have disregarded the directions of the bankruptcy judge and should have controlled his anger. As suggested by the District Court, “If Greenfield is unable to do so,

(Continued on page 11)

Calendar of Events



<u>Date</u>	<u>Event</u>	<u>Time</u>	<u>Location</u>
August 7-10	ABI Southeast Bankruptcy Workshop	[TBA]	Kiawah Island Resorts, Charleston
August 22-25	TBBBA Florida Law Business Law Section Retreat	[TBA]	Ritz Carlton, Naples

(Continued from page 10)

the court strongly suggests that he enroll in an anger management course."

In affirming the Bankruptcy Court's ruling, the District Court also noted that if the bankruptcy judge erred, it was on the side of patience and restraint. "Under similar circumstances, this court might well have imposed sanctions at an earlier stage and in a greater amount." *In the Matter of First City Bancorporation of Texas, Inc.*, 270 B.R. 807, 814 n. 5. (N.D. Tex. 2001).

Not to be deterred, Greenfield appealed the District Court's decision to the Fifth Circuit. In affirming the District Court's affirmance of the Bankruptcy Court, the Fifth Circuit concluded that the Bankruptcy Court appropriately sanctioned Greenfield. "His attitude and remarks toward opposing attorneys, opposing parties, and the Bankruptcy Court were--to understate his conduct--obnoxious."

Fortunately for we who spend our days working in the bankruptcy arena, instances of conduct even remotely resembling that of Greenfield are very rare. Our "house" is simply too small to tolerate such behavior. However, the case does illustrate for us how the cumulative effect of such behavior can appear when reduced to writing and published in a court opinion imposing sanctions. Once published, while the behavior can be modified, the record of a court's sanctions and the behavior that led up to it remains forever.

CLE COMMITTEE NEEDS YOU!

The CLE Committee could use your help with our monthly meetings and CLE programs. We also need to help the annual dinner and its theme. Please call Ed Rice (229-3333) or David Tong (224-9000) today to get involved.





DISCOVERY HANDBOOK NOW AVAILABLE

The district court's newly revised *Handbook on Civil Discovery Practice* is now available. The handbook is an expression of generally acceptable discovery practice in the Middle District of Florida. Lawyers practicing in the Middle District should regard the handbook as highly persuasive in addressing discovery issues.

Originally developed by a group of trial lawyers, the handbook supplements the rules and decisions by capturing accepted custom and practice in this district. The revised handbook also incorporates portions of the American Bar Association's 1999 Civil Discovery Standards applicable to practice in this district. The district court's Advisory Committee on Local Rules and the magistrate and district judges have approved the handbook.

"Although the *Handbook on Civil Discovery Practice* is a project of the district court, it is an enormously helpful guide that is directly applicable to practice in the bankruptcy court," said Judge C. Timothy Corcoran. "We are part of the district court, and we use the same discovery rules. Bankruptcy lawyers facing discovery problems will therefore find the right answers in the handbook. I know it will be the first place I'll look when faced with resolving a discovery dispute," Judge Corcoran added.

The handbook is available in "PDF" format under the Information tab on the bankruptcy court's website, <http://www.flmb.uscourts.gov>. Printed copies are also available at the intake counter in each of the *district court's* divisional clerk's offices.

New Courtroom Deputy for Judge Corcoran

Judge Corcoran and his staff are pleased to report that Dana M. Bugay will be assuming the courtroom deputy position for Judge Corcoran on June 3, 2002. Dana will be transferring from the U.S. District Court in San Francisco, California, where she has been employed as Magistrate Judge Edward M. Chen's courtroom deputy for the past year.

In addition to her courtroom experience, Dana also brings to the position approximately 11 years of varied case management experience. In fact, Dana started her career in the federal courts in the bankruptcy court here in Tampa as an intake clerk.

Dana has family and friends in the area and is excited about returning to Tampa. She is also looking forward to the challenges she will face in her new position. We hope you will join with us in welcoming her.

PPSI Professional
Placement
Services, Inc.

Permanent and
Temporary Placement of

Attorneys

Legal Administrators

Legal Nurse
Consultants

*Affiliated with the Hillsborough County Bar
Association Legal Placement Service, which
specializes in the placement of all legal staff.*

Phone: 813.831.2889

Fax: 813.835.1400

Email: ppsi@ppslaw.com

P.O. Box 130536 • Tampa, FL 33618-0536

Visit our website at
www.ppslaw.com
for job listings



STETSON COLLEGE OF LAW TO HOST INTERNATIONAL BANKRUPTCY PROGRAM IN ITALY

St. Petersburg-Stetson University College of Law will present its Third International Bankruptcy Symposium chaired by the Honorable Alexander L. Paskay, Chief Bankruptcy Judge Emeritus and Stetson Adjunct Professor.

The symposium will be held in Varenna, Italy from June 2-5, 2002. Varenna is a picturesque village located on the shores of Lake Como about one hour northeast of Milan. The conference is designed for U.S. judges and attorneys to meet with their Italian and European counterparts.

The Bankruptcy portion of the program will feature the following topics: Highlights of Chapter 11 Reorganizations in the U.S.; Stay litigation in Chapter 11; The right to use cash collateral; Special voiding powers of a trustee; Chapter 13: repayment plans; Impact of Adoption of UNCITRAL on international commerce; and proposed amendment of Chapter V of the Reform Act of 2002.

Bankruptcy speakers include Judge Alexander Paskay; Judge Michael Williamson; Roberta Colton, Trenam, Kemker, et al., Tampa; Kornelia Nagy-Koppany, Hogan & Hartson L.L.P., Washington, D.C.; Stephen D. Busey, Smith, Hulsey, & Busey, Jacksonville; Robert Lee Young, Carlton Fields, et al, Orlando; Steven M. Berman, Berman & Associates, P.A., Tampa; Louis X. Amato, Louis X. Amato, P.A., Naples; Lucio Ghia, Law Offices of Lucio Ghia, Rome, Italy; Professor Alberto Mazzoni, Catholic University of Milan, Milan, Italy; and Pierpaolo Maio, Saritel (Telecom Italia), Rome, Italy.

TOO BUSY TO HANDLE APPEALS?

**TRENAM, KEMKER'S APPELLATE
PRACTICE GROUP MEMBERS ARE
AVAILABLE TO ASSIST
BANKRUPTCY PRACTITIONERS
WITH APPELLATE MATTERS.**

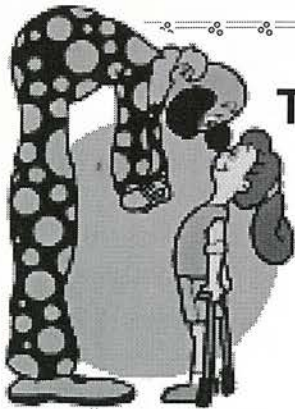
Our members include:

MARIE TOMASSI, Florida Bar Board
Certified Appellate Specialist
and

DAWN A. CARAPPELLA, Former Law Clerk
to Alexander L. Paskay, Chief U.S.
Bankruptcy Judge Emeritus and Thomas E.
Baynes, Jr., Chief U.S. Bankruptcy Judge,
U.S. Bankruptcy Court, M.D. Fla.

See our website at www.trenam.com or
Call Marie Tomassi or Dawn Carapella
At (813) 223-7474





The Lighter Side...

"Education is worth a whole lot. Just think—
with enough education and brains the average
man would make a good lawyer—and so
would the average lawyer." Gracie Allen



Q U A N T U M
CONSULTING GROUP, LLP
CERTIFIED PUBLIC ACCOUNTANTS
CERTIFIED VALUATION ANALYSTS
CERTIFIED FRAUD EXAMINERS

A MEMBER OF THE PWC GROUP

**PROFESSIONAL AND EXPERIENCED INSOLVENCY AND BANKRUPTCY SERVICES
BY A FIRM DEDICATED TO FORENSIC AND INVESTIGATIVE ACCOUNTING**

BILL CLUTHILL, CPA, CFE, LEADS QUANTUM CONSULTING GROUP'S INSOLVENCY AND BANKRUPTCY PRACTICE. WITH 35 YEARS' EXPERIENCE IN ACCOUNTING AND BANKRUPTCY RESTRUCTURING, HE HAS WORKED EXTENSIVELY WITH CREDITORS AND DEBTORS AS ACCOUNTANT, EXPERT WITNESS, FORENSIC ACCOUNTANT, AND CONSULTANT. FEDERAL BANKRUPTCY COURTS HAVE APPOINTED MR. CLUTHILL TO SERVE AS TRUSTEE, EXAMINER, AND ACCOUNTANT AND HE HAS SERVED STATE COURTS AS EXAMINER AND RECTOR.

1031 WEST MOORE BOULEVARD, SUITE 280 • WINTER PARK, FLORIDA 32789
PHONE: 407-629-4685 • FAX: 407-644-2789
WWW.QUANTUM-CONSULTING.NET
BCLUTHILL@QUANTUM-CONSULTING.NET



Lara Fernandez, formerly of the law firm of Gray Harris is now Judge Alexander Pasky's law clerk.

Steven M. Berman and Catherine M. Norton Breman are pleased to announce the formation of Berman & Norton Breman, A Professional Association.

James D. Dati, partner with Bond, Schoeneck & King, P.A., has joined the firm's Bonita Springs office.



Please contact Amanda Hill with any news concerning TBBBA members at (813) 223-7000 (phone), (813) 229-4133 (fax) or ahill@carltonfields.com.

Do you have a comment,
idea or suggestion that you
would like to share about
The Cramdown?

Do you have an article that
would be of interest to our
members?

If so, please contact Ed
Whitson or Donald Kirk.

To make sure you
receive upcoming
editions of
The Cramdown and
to have your
correct
information in the
directory, please
call

Julia Sullivan
Waters
at 813/224-3604.

Reminder!



Please make sure that you have paid
your membership dues for this term.

Contact Julia Sullivan Waters at
813/224-3604

if you have any questions.

Julia can also
furnish you with
an application for
renewal of your
TBBBA
membership.

THE OFFICERS AND DIRECTORS OF THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION 2002-2003

Officers

Chair: John D. Emmanuel
Fowler, White, et al.
501 E. Kennedy Blvd., Suite 1700
Tampa, FL 33602
Phone: (813) 228-7411
Fax: (813) 229-8813

President: Zala L. Forizs
Forizs & Dogali, P.L.
4301 Anchor Plaza Parkway, Suite 300
Tampa, FL 33634
Phone: (813) 289-0700
Fax: (813) 289-9435

Vice-President: Catherine Peek McEwen
Catherine Peek McEwen, P.A.
P.O. Box 3355
Tampa, FL 33601-3355
Phone: (813) 248-5852
Fax: (813) 248-3061

Secretary: John J. Lamoureux
Carlton Fields, P.A.
One Harbour Place
P.O. Box 3239
Tampa, FL 33601-3239
Phone: (813) 223-7000
Fax: (813) 229-4133

Treasurer: John K. Olson
Stearns, Weaver, et al.
P.O. Box 3299
Tampa, FL 33601
Phone: (813) 222-5048
Fax: (813) 222-5089

Directors

Cynthia P. Burnette
Office of the United States Trustee
Timberlake Annex
501 E. Polk St.
Tampa, FL 33602
Phone: (813) 228-2000
Fax: (813) 228-2303

Julia Sullivan-Waters
Bank of America
400 N. Ashley Drive, Floor 15
Tampa, FL 33602-4300
Phone: (813) 224-3604
Fax: (813) 224-5075

Keith Fendrick
Foley & Lardner
100 North Tampa Street, Suite 2700
Tampa, FL 33602
Phone: (813) 229-2300
Fax: (813) 221-4210

Herb Donica
Herbert R. Donica, P.A.
320 W. Kennedy Boulevard, Suite 520
Tampa, FL 33606-3931
Phone: (813) 259-9900
Fax: (813) 259-9895

Ed Rice
Glenn, Rasmussen & Fogarty
P.O. Box 3333
Tampa, FL 33601-3333
Phone: (813) 229-3333
Fax: (813) 229-5946

William Knight Zewadski
101 E. Kennedy Boulevard, Suite 2700
Tampa, FL 33601-1102
Phone: (813) 223-7474
Fax: (813) 229-6553

Scott A. Stichter
Stichter, Riedel, Blain & Prosser, P.A.
110 Madison Street, Suite 200
Tampa, FL 33602
Phone: (813) 229-0144
Fax: (813) 229-1811

David J. Tong
Salem, Saxon & Nielson, P.A.
P.O. Box 3399
Tampa, FL 33601
Phone: (813) 224-9000
Fax: (813) 221-8811

The Tampa Bay Bankruptcy Bar Association Committee Chairs For 2001-2002

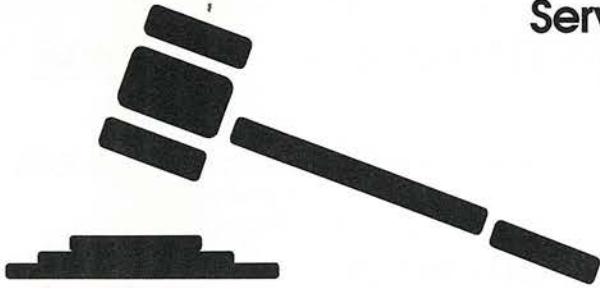
The Association is looking for volunteers to assist us this coming 2001-2002 year. If you are interested in getting more involved with the Association or one of the Standing Committees, please contact any one of the Association officers or the Chairperson(s) listed below.

<u>COMMITTEE</u>	<u>CHAIRS</u>	<u>TELEPHONE</u>	<u>FACSIMILE</u>
Membership and Election	Julia Sullivan-Waters	(813) 224-3604	(813) 224-5075
Meetings, Programs and Continuing Legal Education	Ed Rice David J. Tong	(813) 229-3333 (813) 224-9000	(813) 229-5946 (813) 221-8811
Publications and Newsletters	Edmund S. Whitson, III Donald Kirk Keith Fendrick	(813) 223-7000 (813) 222-2022 (813) 229-2300	(813) 229-4133 (813) 229-8313 (813) 221-4210
Court, United States Trustee, and Clerk Liaisons	Cindy Burnette Bill Zewadski	(813) 229-2300 (813) 228-2000 (813) 223-7474	(813) 228-2303 (813) 229-6553
Long-Range Planning	John Emmanuel	(813) 228-7411	(813) 229-8813
Computer Access/Technology	Herb Donica	(813) 259-9900	(813) 259-9895
Community Service	Scott Stichter	(813) 229-0144	(813) 229-1811



**THE ASSOCIATION'S OFFICERS
AND DIRECTORS WISH ALL
TBBA MEMBERS A SAFE AND
ENJOYABLE SUMMER!**

JOHNSON TRANSCRIPTION SERVICE



Serving the Bankruptcy Court since 1985

- Scheduling of 2004 Exams
- § 341 Transcripts
- Depositions
- Arbitrations or Mediations

Call upon our professional and friendly staff for all of your reporting needs.

(813) 920-1466

(813) 920-0800 - Fax

Email: kgjjts@aol.com

**7702 LAKE CYPRESS DRIVE
ODESSA, FLORIDA 33556**

The Cramdown
P.O. Box 2405
Tampa, FL 33601-2405

Catherine Peek McEwen
CATHERINE PEEK McEWEN, P.A.
P. O. Box 3355
Tampa, FL 33601-3355

