



The Cramdown

*The Newsletter of the Tampa Bay
Bankruptcy Bar Association*

Editor-in-chief,
Angelina Lim, Johnson, Pope, Bokor, Ruppel & Burns, LLP



PRESIDENT'S MESSAGE

*by Barbara Hart
Stichter, Riedel, Blain &
Postler, P.A.*

Annual Installation and Awards Dinner Recap

It's true—absence really does make the heart grow fonder. After our 3-year Covid hiatus, it was especially nice to see everyone that was able to attend the Annual Installation and Awards Dinner held on June 8th at our usual venue, Palma Ceia Golf and Country Club. The evening did not disappoint. I counted no less than 3 standing ovations during the hour-long program. Let me hit the highlights for you:

In his signature style, President **Noel Boeke** moderated the evening with good humor, charm and military efficiency.

Chief Judge Delano kicked off the evening with a warm welcome – a poignant reminder of the wonderful community that we share in the Tampa Bay Bankruptcy Bar.

Chief Judge Delano and **Lynn Sherman** presented the **Judge Alexander L. Paskay Scholarship** to **Quentin Poteralski**. The Scholarship was established by the TBBBA in 1994 to honor **Judge Alexander L. Paskay**, who was then the Chief Bankruptcy Judge for the Middle District of Florida. Judge Paskay passed away in 2012 and, with a 48-year tenure on the bench, remains the longest serving bankruptcy judge in this country's history. Quentin expects to graduate from the Stetson University College of Law in 2023 and is currently a federal judicial intern with the Bankruptcy Court. We will follow Quentin's career with interest.

Noel also recognized **Leonard H. Gilbert**, a founding member of the TBBBA and its first Chair, for his lifetime of service to the legal profession and more recent appointment to the ABA Board of Governors. Mr. Gilbert received the first standing ovation of the evening.

Harley E. Riedel and **Joan Boles** of Bay Area Legal Service (BALS) presented the **Don Stichter Award for Outstanding Service** to **Scott Stichter**. Previously named the Pro Bono Service Award, it was first awarded to Michael Barnett in 2016, and renamed in 2019 to honor **Don Stichter** after his passing. The award is a fitting tribute to Don, who volunteered to handle a multitude of pro bono cases over the course of his career, resurrected the old common law doctrine of cy pres to direct unclaimed funds in chapter 11 cases to BALS, served on BALS development council, and, in his eighties, took a course so that he could also assist veterans with their legal issues. Under Don's leadership, his law firm, Stichter, Riedel, Blain & Postler, P.A., was awarded the Florida Supreme Court's 2014 Law Firm Commendation Award for its "significant contributions in the delivery of legal services to individuals or groups on a pro bono basis." When Don passed away, BALS, together with Don's colleagues and family, established at the Community Foundation of Tampa Bay and funded an endowment in his memory. The endowment supports the "Don M. Stichter Fellow" – a highly qualified lawyer specializing in cases of financial distress and who works to preserve homeownership for low-income seniors.

To quote Joan Boles, "giving back is not only at the core of Scott's identity, it is also part of his DNA...He treats our clients with the utmost dignity and respect. When asked to help a client, he never says no – no questions asked. He is there for the client 1000%...." To date, Scott has volunteered to handle 57 pro bono cases through BALS. Scott is also an active volunteer and instrumental participant with the TBBBA Pro Se/Pro

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The *Cramdown* can be accessed via the Internet at www.flmb.uscourts.gov and www.TBBBA.com

President's Message

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Bono Assistance Clinic. His firm has filled more volunteer slots at the clinic than any other firm – with Scott gently and consistently reminding his firm colleagues of any upcoming vacancies. When a clinic vacancy falls before or after a holiday – Christmas, Thanksgiving, Fourth of July, for example – Scott has been known to quietly fill those openings himself. He has also represented charities and individuals over the course of his career outside of formal referral networks. Scott received the second standing ovation of the evening.

With great delight and enthusiasm, **Judge Colton** presented the **Douglas P. McClurg Professionalism Award** to **Lynn W. Sherman**. The “McClurg” is the TBBBA’s highest honor and is presented periodically to a member of the TBBBA that has demonstrated over a period of years the traits of professionalism exemplified by **Douglas P. McClurg** during his lifetime: outstanding effectiveness in the presentation of matters to the Bankruptcy Court; a reputation for thorough

preparation; civility and courtesy to opposing counsel; appropriate courtroom demeanor; ethical conduct and professionalism at the highest level; and long-term service to the bankruptcy bar.

Judge Colton remarked that in law practice, Lynn is “a force to be reckoned with. She is smart, diligent, professional and an absolute joy to work with and against. Her clients are always well-represented, she has provided outstanding pro bono work, and she is a well-respected mediator. Her service to the bar is known far and wide, including chairing the ABI/Paskay seminar for the past few very difficult years.” Lynn was surprised, a little speechless, and deservedly received the third standing ovation of the evening.

Gifts of appreciation were presented to **Kathleen DiSanto** as the TBBBA’s outgoing Chair, and to **Noel Boeke** as the TBBBA’s outgoing President. Special recognition was also given to each of our “Pandemic Presidents” – **Kathleen DiSanto**, **Noel Boeke**, and

continued on p. 5



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continued from p. 4

Jake Blanchard – in the form of TBBBA Challenge Coins. **Chief Judge Delano** was also recognized by the TBBBA for her exceptional leadership of the Bankruptcy Court through the many challenges presented by the Covid pandemic.

The TBBBA's 2022-2023 Officers and Directors

It is also my honor to present the TBBBA's 2022-2023 Officers and Directors. Each officer and member of the all-volunteer Board is smart, diligent, and talented. I am excited to work with each of them.

Our officers are **Megan W. Murray**, Vice-President, **Nicole Mariani Noel**, Secretary, **Ryan C. Reinert**, Treasurer, and **Noel R. Boeke**, Chair.

The members of our new Board of Directors are:

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Honoring Don Stichter's Legacy of Service.

In preparing for the Annual Dinner and for the year ahead, I found myself often thinking of my former boss, mentor, and friend, Don Stichter. In 1988, he served as the first president of the TBBBA. Much of the camaraderie, professionalism, and integrity that we enjoy in the TBBBA community is a direct reflection of his early leadership and influence. Mr. Stichter would be humbled and delighted that the TBBBA remembers his legacy with the Outstanding Service Award. Perhaps most of all, he would be proud beyond measure that his son, Scott, has distinguished himself as a deserving recipient. Of the 35 attorneys that have served as president of this amazing organization, I am proud to be the 8th from Mr. Stichter's firm, Stichter, Riedel, Blain, and Postler, P.A. Mr. Stichter left us such a wonderful legacy in the TBBBA and I am very grateful to belong to this community.

To honor Mr. Stichter's legacy, the TBBBA will work on improving service to pro se parties and to our community. Under the direction of Michael Barnett, we will re-open the in-person Pro Bono Clinic as of June 22nd. The Clinic will be open on Wednesdays from 2-4 pm in Room 964 (the Attorney Resource Room) on the 9th Floor of the Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida. We will also work on making it easier for you to find pro bono case opportunities. We will continue our virtual pro bono consultation option (accessed via tbbaprobonoclinic@gmail.com), and we will work with Judge Brown and Judge Burgess as they spearhead an effort to establish District-wide virtual pro bono assistance. Please consider taking at least one pro bono case this year or donating just one hour a month in the Pro Bono Clinic. The TBBBA will regularly recognize and reward our pro bono volunteers. We Love Our Pro Bono Volunteers!





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Bankruptcy Appeals: 3 Tips for Preserving Error on Appeal

By Alyssa Cory
Shutts & Bowen LLP

Foreword by:

Ryan C. Reinert of Shutts & Bowen LLP

Despite best efforts, the members of the Tampa Bay Bankruptcy Bar Association may find themselves in a situation where their client wholeheartedly believes that a ruling was procedurally, factually or legally incorrect. I know it is hard to believe, but with this eventuality in mind, I asked my appellate colleague Alyssa Cory, Esq. to detail her tips for preserving error on appeal.

(1) Appellate courts address errors actually ruled on by the lower tribunal.

Failing to raise an issue in bankruptcy court will amount to waiver of the argument on appeal. Remember, appellate courts are reactive with the goal of correcting judicial error. *In re Lett*, 632 F.3d 1216, 1227 (11th Cir. 2011). This preservation principle is of extra importance in bankruptcy because “bankruptcy cases are to be tried in bankruptcy court.” *In re Air Conditioning, Inc. of Stuart*, 845 F.2d 3, 298 (11th Cir. 1988).

In order to be preserved for further review by a higher court, the legal issue must be actually presented to the bankruptcy court. *In re Freedman*, 427 Fed. Appx. 813, 817 (11th Cir. 2011) (“An issue is not preserved for appeal if it is not properly presented to the bankruptcy court.”). And presentation of the issue in a cursory manner will be insufficient to preserve the issue for appeal. *See In re Espino*, 806 F.2d 1001, 1002 (11th Cir. 1986). The best practice is to ensure the issue is sufficiently presented to the court and to have a transcript of the proceeding. A transcript of the proceeding confirms to the reviewing court that the lower tribunal examined the issue resulting in the alleged error. *See Sayles v Nationstar Mortgage, LLC*, 268 So. 3d 723, 726 (highlighting importance

of hearing transcript when objection necessary for preservation of issue on appeal).

(2) Evidentiary objections must be timely and state the specific ground of the object.

In order to preserve an argument as to improper admission of evidence, the evidentiary objection must be both timely and specific. *See Wilson v. Attaway*, 757 F.2d 1227, 1242 (11th Cir. 1985) (“[O]bjections to the admission of evidence, are preserved only if they are timely and state ‘the specific ground of objection, if the specific ground was not apparent from the context.’ ” quoting Fed.R.Evid. 103(a)(1)). Be sure that in reviewing summary judgment evidence or when objecting to testimony, you identify any objections you may have to the admission of that evidence, and articulate the basis—whether that be hearsay, relevance, or impermissible legal conclusions.

(3) Don’t inadvertently limit your issues on appeal.

Because you often encounter two tiers of review in bankruptcy appeals, framing the issues before the trial level judge sitting in their appellate capacity is crucial. “An issue that is not listed pursuant to [the bankruptcy appeal requirements] and is not inferable from the issues that are listed is deemed waived and will not be considered on appeal.” *Snap-On Tools, Inc. v. Freeman (In re Freeman)*, 956 F.2d 252, 255 (11th Cir. 1992). To avoid limiting the scope of the issues available on appeal, be sure to identify the issues you want to present in the statement of issues on appeal to the district court.

At the end of the day, the preservation requirement serves to give the judge the opportunity to correct errors, and the potential to avoid an appeal altogether.

The Doppelganger Debtor: An Interesting Exception to Reverse Veil-Piercing

By Taylor Petrie¹

Stetson University College of Law

Recently in *In re Nilhan Financial, LLC*, here in the Middle District, the Court held that Florida would recognize a “familial relationship” exception to the general rule that reverse veil-piercing is available only to controlling members of an LLC.² In this case, a creditor of an individual judgment debtor was not barred from pursuing a reverse veil-piercing claim against the bankruptcy estate of an LLC, in which the judgment debtor himself never had a controlling interest. Rather, his sons were controlling members because they treated the LLC as a family company.³

Generally, reverse veil-piercing is a method used by creditors to use a corporation’s assets to satisfy the debts of its shareholder(s). Reverse veil-piercing is historically available under Florida law only as to controlling members of an LLC.⁴ Although in this case it was undisputed that the debtor was not and never had been a controlling member of the LLC, the creditor argued that the Eleventh Circuit in *Molinos*⁵ recognized a familial exception to this general rule.⁶ The plaintiff in *Molinos* used a 5th DCA decision, *Walton v. Tomax Corp.*,⁷ to support this “familial exception,” in which the court permitted veil-piercing against a non-shareholder based on his wife being a shareholder, therefore, implicating this so-called “familial exception.”

The underlying premise of this familial exception to reverse veil-piercing seems to be ownership, and in turn, economic benefit.⁸ The court in *Molinos*, distinguishing between *Walton*, illustrates how a wife’s ownership is almost analogous to a husband’s (or in this case, debtor’s) ownership because the economic proceeds are likely to

benefit the entire family unit.⁹ This concept of ownership encompasses the theory of alter ego, which is essentially when the corporate entity is mere “doppelganger” of the debtor to the point where the corporation’s independent existence is non-existent, and it is the basis for exercising veil-piercing.¹⁰ In *Trujillo*, the Court mentioned that the familial-relationship exception from *Molinos* should be construed broadly and the familial aspect was not limited to just spouses,¹¹ hence where the court in *Nilhan* derived their basis.

Because the Florida Supreme Court had not yet addressed the familial-relationship exception, the Court in *Nilhan* had to predict how they would rule.¹² Using data from the Florida District Courts of Appeal and the above-mentioned case law, the Court agreed with Judge Isicoff’s reading of *Molinos* in *Trujillo* based on the 5th DCA’s reading of *Walton*, concluding that the creditor in *Nilhan* was not precluded from veil-piercing because the individual judgment debtor never had a “controlling interest” but rather had a familial relationship to shareholders of the debtor LLC.¹³

However, case law remains murky on how far this familial-relationship exception extends. Will creditors start stretching out this broad interpretation of having a “familial relationship?” Does this include spouses who aren’t married? What about business partners who do not necessarily have familial ties but share economic proceeds and operate as a “family unit?” If the “family unit” is not limited to husband and wife, are the possibilities endless? Equitable ownership seems like it could be a “one size fits all” theory when it comes to proving a presumed economic benefit. The Court in *Trujillo* found that “ownership” is defined through any other relationship with the corporation under any theory that would warrant holding someone liable for the debts of a corporation.¹⁴ It will be interesting to see where the Courts lie on this issue in future cases and if they decide to draw the line in the sand somewhere on when this exception is available.

¹ Taylor Petrie is a J.D. 2023 Candidate at Stetson University College of Law.

² *In re Nilhan Fin., LLC*, 627 B.R. 529 (Bankr. M.D. Fla. 2021).

³ *Id.* at 529.

⁴ *Id.*

⁵ *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330 (11th Cir. 2011).

⁶ *Nilhan*, 627 B.R. at 532.

⁷ *Walton v. Tomax Corp.*, 632 So. 2d 178 (Fla. 5th DCA 1994).

⁸ *Molinos*, 633 F.3d at 1350.

⁹ *Id.*

¹⁰ *In re Trujillo*, 607 B.R. 734, 739–40 (Bankr. S.D. Fla. 2019).

¹¹ *Id.* at 740.

¹² *Nilhan*, 627 B.R. at 533.

¹³ *Id.*

¹⁴ *Trujillo*, 607 B.R. at 740.

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Volunteers are needed! To volunteer, please email Michael Barnett at mbarnett29@gmail.com. The TBBBA will track all pro bono service through the clinic. Each attorney providing an hour of pro bono service in the clinic will be entered into the raffle. Each hour of pro-se clinic service (in-person or virtual) equals a new entry into the raffle. The more you volunteer, the better your chances are to win! Raffle drawings will be quarterly at TBBBA CLE events. The first prizes will be presented at our September CLE events.



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Why You Should Care About C.A.R.E

*By Daniel Etlinger
Jennis Morse Etlinger*

What's better than even the best reaction to a financial problem? Preventing it altogether of course. That philosophy is what has fueled the creation of the Credit Abuse Resistance Education (or C.A.R.E. for short), a national, nonprofit financial literacy organization. Created by John C. Ninfo, II, retired bankruptcy judge from Rochester, New York (my hometown!), the program has been running since 2002 and blossomed to roughly 55 chapters nationwide. These include Florida chapters in Gainesville, Jacksonville, Miami, Orlando, Pensacola, Sarasota, Tallahassee and Tampa.

At its core, C.A.R.E. provides an opportunity for volunteers to address middle school, high school and college kids about the best practices and pitfalls regarding their credit in an attempt to start them off on the right path. Each C.A.R.E. presentation conforms to the National Standards in K-12 Personal Finance Education developed by the National Jump\$tart Coalition for Personal Financial Literacy. In addition, the C.A.R.E. website – www.care4yourfuture.org – provides a wealth of resources at no additional charge including PowerPoint presentations, outlines, videos, Q&As, games and other materials that can be tailored to specific audiences.

The Tampa chapter in particular launched 15 years ago in 2007. It was originally spearheaded by Judge Rodney May (now retired) who has passed the torch to Judges Catherine McEwen and Michael Hooi, and supported by contact points Elena Ketchum, Barbara Hart, Brad deBeaubien and others over the years. Reinvigorated by the recent Dorothy L. Hukill Financial Literacy Act which passed in 2022, the Tampa Bay Bankruptcy Bar Association has added a specific board position to act as the C.A.R.E. liaison for the community. The position, among other things, will help quarterback

those organizations desirous of hosting a presentation and volunteers who want present.

This is where you can step in to make a difference. If you have a connection with a school – middle school, high school, college or trade school – or a youth organization – such as the scouts, church or synagogue, mentoring programs, or sports and rec leagues – we would love an introduction. Or, if you are interested in being one of our presenters we are happy to discuss further. Anyone who has a passion for helping others is welcomed and in the past has included bankruptcy judges and attorneys, trustees, CPAs and others in the financial space. We will start you off with the materials and tools necessary to make your own. In either case, please contact the TBBBA's C.A.R.E. member Daniel Etlinger at 813-229-2800 or detlinger@jennislaw.com.



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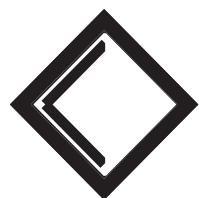
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Student Loan Sidebar

by: Christie Arkovich
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Noting historical failures in the administration of federal student loans, on April 19, 2022, the U.S. Secretary of Education, Miguel Cardona, announced major revisions of forbearance policies. While this wasn't given much fanfare by the media and doesn't have a snazzy name, the changes will result in significant student loan relief.

Forbearance Problems Finally Addressed for Federal Loans

Q. What forbearances will now count toward forgiveness?

A. Federal Student Aid ("FSA") will conduct a one-time account adjustment that will count forbearances of more than 12 months consecutive and more than 36 months cumulative toward forgiveness. Borrowers who were steered into shorter-term forbearances will be able to seek account review by filing a complaint with the FSA Ombudsman at [StudentAid.gov/feedback](https://studentaid.gov/feedback).

Q. What do you need to do to ensure that past time spent in forbearance now counts toward forgiveness?

A. You must consolidate your or your client's federal student loans to Direct prior to January 1, 2023.

Q. When will you start to see credit for applicable forbearance time periods?

A. FSA will begin making the changes immediately, but many borrowers will not likely see the effect in their accounts until the last quarter of 2022.

Q. Is there a tracking mechanism for eligible payments for those in Income Driven Plans?

A. Not yet, but this is reportedly in the works and eligible IDR payments will begin to show in 2023 on [StudentAid.gov](https://studentaid.gov). This way people can track their progress toward forgiveness.

One of the key goals of the Middle District of Florida's Student Loan Management Program ("SLMP") is to help avoid the automatic Department of Education's policy for a 3-5 year forbearance while a debtor is in a Chapter 13 Plan. Similarly, these new forbearance policies have a stated goal to end "forbearance steering" finding it to be a short-term option with financial consequences that can be avoided via a long term solution such as an Income Driven Plan.

FSA also announced that it will restrict servicers' ability to enroll borrowers in forbearance by text or email, and will conduct an external review of patterns of forbearance use and servicers' practices to identify and put an end to forbearance steering.

This will build upon the FSA's earlier clarification of its position on federal preemption of state oversight of loan servicing. Basically, it is seeking to hold its servicers accountable.

One other change is that FSA will conduct a one-time revision of IDR payments to address past inaccuracies. This includes those who made IDR payments prior to a consolidation. Normally, those would not count, but now they will count.

FSA will continue to revise the terms of IDR through rulemaking to further simplify payment counting by allowing more loan statuses to count toward IDR forgiveness,

"Student loans were never meant to be a life sentence, but it's certainly felt that way for borrowers locked out of debt relief they're eligible for."

U.S. Secretary of Education Miguel Cardona

Student Loan Sidebar continued

including certain types of deferments and forbearances.

Bankruptcy Forbearances

The Department of Education has indicated that bankruptcy forbearances will NOT count toward IDR.

Right now any type of deferment besides in school deferment counts provided it was before 2013. Economic hardship deferment counts in 2013 and after. Specific military-related deferments count. Grace periods longer than six months may count.

In light of the clarification provided by ED, it is important for debtors in the Middle District of Florida to utilize the SLMP to avoid long term forbearance.

Universal Debt Cancellation

Reportedly, the White House is planning to cancel \$10,000 in student loan debt per borrower. It's possible that this may be means tested and only apply to borrowers who earned less than \$150,000 in the previous year, or less than \$300,000 for married couples. It is anticipated that this would settle the balances for roughly a third of borrowers.

This may apply only to undergrad loan balances.

Cancellation of \$10,000 will not lower IDR payments, but it would drop balances of those who are paying off their loans. If you or your client has a private loan now which was refinanced when interest rates were in the 2% range are still likely better off than remaining in the federal system with an average 6.8% interest rate even with a \$10,000 reduction (it will depend upon how quickly the \$10,000 is applied).

Payment Re-start Date

Presently, federal student loans are set to re-start after August 31, 2022. This may be postponed again if any legal challenges are raised to the universal debt relief that may be proposed and also due to inflationary concerns and/or mid-term elections. We are expecting the true re-start date to be moved to mid 2023.

Reminder of Limited PSLF Waiver

Please tell everyone you know who has or is working public service that the deadline for consolidation of federal FFEL loans for public service loan forgiveness is October 31, 2022. I still run into borrowers who do not realize the importance of the need to consolidate to obtain this much needed relief.

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