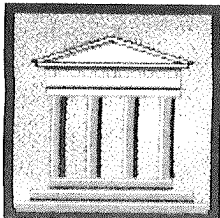


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# BANKRUPTCY LAW NEWSLETTER

Published by the Federal Bar Association  
Western District of Michigan Chapter

September, 1998

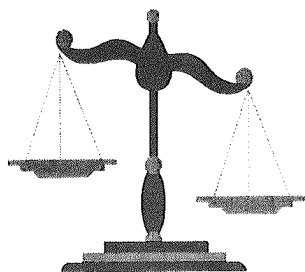


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**Clerk of Court says Aloha [Goodbye] & Mahalo [Thank you]**  
*By: Mark Van Allsburg*

I have recently accepted the position of Clerk of the U.S. Bankruptcy Court for the District of Hawaii. Therefore, I will be leaving the court at the end of December. Esther and I are flying to Honolulu on January 1. In 1982, I began working for the court as the Estate Administrator [at a time when chapter 11 cases were actually plentiful], then migrated to the Office of the U.S. Trustee for a year, and then found my way back to the court in 1989. I have greatly enjoyed working with the judges, the staff of the court and with the bankruptcy bar during these years. It is with mixed feelings that I leave the court. I have always believed that this court has an unusually strong and harmonious relationship with the bankruptcy bar and it has been a pleasure to be part of this professional community.

Enclosed with this issue of the Bankruptcy Law Newsletter is a job vacancy notice for the position of clerk of the bankruptcy court. I highly recommend this position to persons who are interested in pursuing a career in judicial administration. You will work with highly respected and supportive judges as well as with a competent and friendly staff. If you have questions about the position or about practical aspects of working for the U.S. Courts, please give me a call.



## CASE NOTES

### DISCHARGEABILITY OF STATE COURT AWARD OF ATTORNEYS FEES, §523(a)(17)

Prior to filing their Chapter 7 bankruptcy petition, the Debtors commenced a personal injury action against certain individuals and their insurance company. Prior to the trial, the defendants made an offer of judgment in accordance with MCR 2.405. The offer was rejected, and the state court jury found against the Debtors. The state court then ordered judgment against the Debtors in the amount of \$26,301.

A chapter 7 bankruptcy filing was commenced, and plaintiffs in this adversary proceeding, the defendants in the personal injury action, filed a nondischargeability action contending that the judgment debt was non-dischargeable pursuant to §523(a)(17) of the Bankruptcy Code. That section provides, in part, that a discharge does not discharge an individual debtor from any debt

*"for a fee imposed by a court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under §1915(b) or (f) of Title 28, or the debtor's status as a prisoner as defined in §1915(h) of Title 28;*

Judge James D. Gregg reviewed the applicable standards for construing statutes, including the language, and the object and policy behind the statute. Judge Gregg noted that the section of the Bankruptcy Code at issue was part of the Prison Litigation Reform Act of 1995. That Act required prisoners to pay the full amount of court filing fees, notwithstanding other statutory language that authorizes a federal court to allow the commencement, prosecution or appeal of an action without prepayment of fees. Part of that act allows prisoners to pay those fees in installment payments. Judge Gregg found the policy goal of §523(a)(17) was to exempt from discharge a prisoner-litigant's obligation to make installment payments. Judge Gregg found that this exception to discharge for costs and fees relating to the prisoner installment obligations should be construed narrowly, and refused to extend it to include costs and fees awarded as part of an offer of judgment penalty. The court stated that to rule in favor of the plaintiffs would make nondischargeable "the entire universe of litigation-related expenses – filing fees, attorneys fees, sanctions, costs, among others. When congress enacted 11 U.S.C §523(a)(17), it did not clearly indicate in the text of the statute its intent to make such sweeping changes."

In re Harris L. Tuttle and Phillis M Tuttle. Case No. GK 97-06610; Opinion dated September 8, 1998.

### NONDISCHARGEABILITY, FRAUD - KICKBACKS - CONVERSION, §523(a)(2)(A) §523(a)(4) & §523(a)(6).

Usually bankruptcy cases are rather dry mundane matters that would never

make it on prime-time television. Such is not the case with a recent decision rendered by Judge Jo Ann C. Stevenson in Clark & Gregory, Inc. v. John R. Hanson. In this case, the Debtor, John Hanson, was hired as a general manager for a corporation which was engaged in selling high-end golf apparel including wool and cotton sweaters and golf shirts. The opinion describes Hanson's history with Clark & Gregory and details Hanson's scheme to obtain kickbacks from vendors producing the sweaters, the ordering of excess inventory to increase the amount of the available kickbacks, and conversion. Also involved in the litigation was the Debtor's use of the Fifth Amendment privilege during discovery and the attempts to waive the Fifth Amendment privilege at trial.

Judge Stevenson found the various debts to be nondischargeable, and the opinion contains a good review of the various Sixth Circuit cases dealing with nondischargeability. The Plaintiffs also attempted to recover their litigation costs and attorneys fees as additional damages incurred as a consequence of the Debtor's fraud. The Court denied this portion of the Complaint. The Court found that the fees and costs were spent not to rectify the problems caused by the Debtor, but were rather to exact damages for the wrongful behavior. The Court refused to broaden the exceptions to the discharge to cover the fees and costs incurred by the plaintiffs. In re John R. Hanson, Case No. SG 97-04715; Clark & Gregory, Inc. v. John R. Hanson, Adversary Proceeding No. 97-88371; Opinion dated September 17, 1998.

FORECLOSURE SALE - AUTOMATIC STAY - GOOD FAITH PURCHASER, §362(a)(3), §549(c).

The Debtor defaulted on the mortgage on her home, and the creditor, Mellon Mortgage, commenced a foreclosure action. Prior to the sale, the Debtor filed her first Chapter 13 proceeding. The foreclosure sale was adjourned. After dismissal of the Chapter 13 case, Mellon Mortgage proceeded with the foreclosure and a new sale was scheduled. Prior to the sale, the Debtor filed a second Chapter 13 petition. In her Schedules, she listed a mortgage to Mellon Bank, not Mellon Mortgage. Further, she did not notify the attorneys for the creditor of her second Chapter 13 case. Unaware of the new bankruptcy filing, Mellon Mortgage conducted the foreclosure sale. At the sale, Leon London, was the successful bidder. London paid Mellon Mortgage. Four months later, the Debtor notified the attorneys for Mellon Mortgage that she had filed a second petition prior to the foreclosure sale, and requested the sale be set aside. The Debtor thereafter filed this Adversary Proceeding to set aside the foreclosure sale, which she alleges violated the automatic stay and therefore was void. London contended that he was a good faith purchaser protected under §549(c) and also filed a cross-complaint against Mellon Mortgage arguing that if the court sets aside the foreclosure sale, Mellon Mortgage should be liable to him for the costs.

Bankruptcy Judge Steven W. Rhodes of the Eastern District of Michigan found that the foreclosure sale was a certain violation of the automatic stay,

§362(a)(3). The fact that Mellon Mortgage did not have notice of the bankruptcy filing was irrelevant in determining whether the stay was violated. The court cited the Sixth Circuit decision in Easley v. Pettibone Michigan Corp., 990 F.2d 905, (6<sup>th</sup> Cir. 1993), for the proposition that "actions taken in violation of the automatic stay are invalid and voidable, and shall be voided absent limited equitable circumstances". The Court went on to review and analyze the facts in this case, and found that the Debtor did not intentionally or unreasonably withhold notice of her second bankruptcy petition, and found no other basis to deny her the protection of the automatic stay. Accordingly, the Court found that the foreclosure sale was void.

The purchaser, London, asserted that he was entitled to protection under §549(c), as a good faith purchaser of real property. The Court found that §549(c) was inapplicable in this situation. The situation here did not involve an avoidance action under §549(a), rather it was an action to set aside the foreclosure sale because it violated the automatic stay. Since §549(a) was never implicated, the exception to §549(a) was not applicable. The Court reviewed the various cases interpreting §362 and the interplay with §549. The Court found that §549(c) is intended to protect against a fraudulent Debtor selling real property to an innocent purchaser. Since that was not the case here, the protection of §549(c) was unavailable to the purchaser London. The Debtor's action to set aside the foreclosure sale was granted and a further hearing was scheduled on the purchaser's alleged entitlement to

damages.

In re Michelle Smith, Case No. 97-55607-R; Michelle Smith v. Leon London d/b/a Authorized Financial Consultants, Mellon Mortgage Corp., and County of Wayne; Adversary Proceeding No. 98-4214-R. Bankruptcy Court, Eastern District of Michigan; Opinion dated September 1, 1998.

#### CHAPTER 11 DEBTOR'S RETENTION OF COUNSEL AFTER APPOINTMENT OF TRUSTEE, §327

The Debtor, The Apollo Group, filed a Chapter 11 petition on March 16, 1998. Counsel for the Debtor was approved by the Court. Thereafter, a hearing was held on the Debtor's motion to assume an unexpired real estate lease, and the Court at that hearing found that there was cause to appoint a Trustee. On June 1, 1998, the Court entered an Order approving the appointment of a Chapter 11 Trustee. Thereafter, the Debtor's attorney filed a motion to withdraw as counsel. On June 18, 1998, Apollo filed an application to retain new counsel.

The Court found that because a Chapter 11 Trustee had been appointed, the Debtor was no longer required to obtain Court approval pursuant to §327 to employ an attorney. The Court found that there was no provision in the Code to require Court approval for the employment of an attorney for a debtor not in possession. Accordingly, the Debtor's application to retain counsel was denied. The Court went on to note, however, that to the extent the efforts of the Debtor's counsel are for the benefit of the estate, the estate may well be obligated to pay those fees and

expenses under §503(b)(1)(A).

In re The Apollo Group; Case No. 98-44951-R, Bankruptcy Court for the Eastern District of Michigan, Honorable Steven W. Rhodes. Opinion dated September 1, 1998.

#### MOTIONS FOR RECONSIDERATION, BANKRUPTCY RULE 9023

In the case of No-Am Corporation, the Court had previously signed an Order requiring the turnover of certain tax refunds. Those tax refunds had been due to the corporate Debtor and were payable to the Debtor, but the Debtor's president had deposited the check into his individual bank account. After entry of the turnover, the Debtor's president filed a Motion for Reconsideration. Bankruptcy Court Judge James D. Gregg treated this motion as a motion under Bankruptcy Rule 9023, which makes Federal Rule of Civil Procedure 59 applicable in bankruptcy matters. Under Rule 59(e), there are three grounds to justify relief: 1. an intervening change in the law; 2. the availability of new evidence not previously available, and 3. the need to correct a clear error or prevent manifest injustice. The Debtor's principal argued that since the date of the first hearing, his counsel had reviewed §542(b) and the law of subrogation, and argued for the first time that the Debtor's principal was subrogated to the rights of the IRS, and therefore was entitled to keep and set off the refund.

The Court noted that the Debtor's principal was not asserting any intervening change in law, or the discovery of any new facts. Rather, he was advancing a new legal theory,

based upon law and facts that were available at the original hearing. The Court cited the Sixth Circuit for the proposition that a rule under 59(e) is not an opportunity to re-argue a case, and further cited the First Circuit for the proposition that Rule 59(e) motions are aimed at re-consideration, not initial consideration. Accordingly, the Court denied the Motion for Reconsideration.

In re No-Am Corporation, Chapter 7 Case No. GG 93-86073. Opinion dated August 4, 1998.

#### LIEN AVOIDANCE - PRESERVATION FOR THE BENEFIT OF THE ESTATE. §544

The Debtors owed the secured creditor \$12,000 secured by real property on which is situated a mobile home. The secured creditor had a duly recorded mortgage on the real estate, but had failed to place a lien on the Certificate of Title for the mobile home. The value of the land, irrespective of the value of the mobile home, was greater than the amount of the secured claim. The Trustee brought this action to set aside the creditor's lien in the mobile home and preserve that lien for the benefit of the bankruptcy estate.

The Court found that the secured creditor's lien in the mobile home was not perfected, and that the Trustee, pursuant to §544(a), has priority over the secured creditor. The Court, however, went on to determine the extent of the lien that was being preserved. Since the lien cannot exist apart from the obligation or debt that it secures, and since the secured creditor would be fully satisfied from the real estate collateral, the Court found the

avoided lien was valueless because it was not supported by any remaining debt. Therefore, while the security interest was avoided and the avoided lien preserved, since that lien had no value, the Debtors could amend their exemptions and claim the value of the property.

In re Victor and Linda Spaniak, Chapter 7 Case No. GT 96-83472; James W. Boyd v. Old Kent Bank - Petosky and Victor and Linda Spaniak, Adversary Proceeding No. 97-88206.

SALE OF PROPERTY - CREDIT BIDS,  
SALE CONFIRMATION STANDARDS,  
§363(k).

In the matter of TMC Liquidating, Inc., Judge Harry C. Dees, Jr., for the United States Bankruptcy Court for the Northern District of Indiana discusses the ability of a creditor to make a credit bid pursuant to §363(k), and the standards to approve a sale of assets.

In TMC Liquidating, Inc., the Debtor had arranged for an auction sale of its personal property as well as the real property. At the time of the auction on the real estate, one bid for the entire real estate parcel was received in the amount of \$600,000. The Debtor then filed a Report of Sale recommending that the Court not approve the sale since it was not in the best interest of the estate or its creditors. The secured creditor, and its subsequent assignee of the secured claim, also filed objections to the sale of the real estate. Those parties asserted that they were entitled to a credit bid against the real estate under §363(k) of the Bankruptcy Code, and they were therefore entitled to purchase the property.

The simple issue before the Court was whether or not it should approve the sale of the Debtor's real estate. In reaching this decision, the Court denied the secured creditor, and/or its assignee, the right to credit bid at the sale confirmation hearing. The Court held that the creditor's right to credit bid exists only at the time of the sale, and that the time of the sale was when the auction took place. The Court went on to note that the secured creditors had two mechanisms to protect against an unacceptably low bid. The first is to use a credit bid under §363(k), and the second is the setting of a minimum bid price. In this case, the secured creditor had elected none of these protections.

The Court then focused on whether to confirm the sale of property and specifically reviewed the apparent inadequacy of the price and analyzed the best interest of the estate standard. The Court noted that Bankruptcy Courts have broad discretion to approve a sale, but the primary concern of the Court is the maximization of the value of the assets sold. The Court found that the price bid at the auction appeared to be "grossly inadequate" since there was a substantial disparity between the bid received and the alleged fair market value of the property. Additionally, the Court found a substantial reasonable degree of probability that a better price could be obtained through resale. The Court accordingly denied approval of the sale and directed that the down payment be returned.

In re TMC Liquidating, Inc., Chapter 11 Case No. 97-32500-HCD; Northern District of Indiana

## NONDISCHARGEABILITY

In another decision by the Honorable Harry C. Dees, Jr., from the Northern District of Indiana, the Court reviewed the standards of dischargeability set forth in §523(a)(15). In this case, the Debtor filed a Chapter 7 bankruptcy case listing various debts arising out of the Debtor's divorce, including obligations for maintenance, child support, college expenses, counseling bills, and debts to certain creditors. The Debtor at the time of the hearing agreed that his debts for child support, life insurance premiums, and college expenses of his daughter were excepted from discharge under §523(a)(5).

The Court was required to review the question of whether or not the remaining Debtor's obligation to his former spouse were dischargeable under §523(a)(15). That subsection of the Bankruptcy Code provides, generally, that a discharge does not discharge an individual Debtor from an obligation that is incurred by the Debtor in the course of a divorce or separation unless (A) the Debtor does not have the ability to pay such debt from income or property of the Debtor not reasonably necessary to be expended for the maintenance or support of the Debtor, or (B) discharging such debt would result in a benefit to the Debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the Debtor. The parties agreed that the debts constituted part of a property settlement award, and the Court found that the burden then shifted to the Debtor to prove that one of the exceptions to the

nondischargeability contained in either subsections (A) or (B) applied.

With regard to the ability to pay standard, the Court noted that the inquiry is similar to the disposable income test set forth in §1325(b)(2) of the Code. The Court found that the Debtor had failed to show that he lacked the ability to pay the obligation to the plaintiff, and specifically noted that the Debtor made voluntary payments into a 401(K) and also maintained a small savings account. In determining the balance of the hardship under §523(a)(15)(B), the Court noted that it was required to "make a value judgment in deciding which party suffers the most", and that the Court must look at the totality of circumstances. The factors the Court is required to look at are the income and expenses of both parties, the number of dependents, the nature of the debts, the reaffirmation of any debts, and the non-Debtor's spouse's ability to pay. The Court found that, based upon the totality of the evidence, to discharge the Debtor's obligations to the plaintiff would be extremely detrimental and that the Debtor had failed to show that discharging his debt to the plaintiff would result in a benefit to him that would outweigh the detrimental consequences to his former spouse. Accordingly, the Court found these debts not subject to the discharge.

In re Frederick Wendell Chmielewski, Chapter 7 Case No. 96-31712-HCD; Christine M. Chmielewski v. Frederick Wendell Chmielewski, Adversary Proceeding No. 96-3101; Northern District of Indiana



## United States Bankruptcy Court for the Western District of Michigan

### Position Vacancy Announcement

#### Clerk of the Court

**Location:**

Grand Rapids, Michigan

**Grade and Salary Range:**

JSP 17, \$102,983 to 116,700

**Closing Date for Applications:**

November 6, 1998

**Starting Date of Position:**

January 4, 1999 or as soon thereafter as may be mutually agreed.

#### Position Overview

The United States Bankruptcy Court for the Western District of Michigan is accepting applications for the position of clerk of the court. The clerk is a high level management position that functions under the direction of the chief judge of the United States Bankruptcy Court. The clerk will be appointed by the judges of the court. The clerk is responsible for managing the administrative activities of the clerk's office and overseeing the performance of the statutory duties of the office. Included among the responsibilities are policy implementation and monitoring, long-range planning, budgeting, financial management, automation and human resources management, property and procurement and public relations. The duty station for this position is Grand Rapids, Michigan which is also the location of the three bankruptcy judges. The court has a divisional office in Marquette, Michigan and hearings are held in courtrooms located in Kalamazoo, Traverse City and Lansing, Michigan. The clerk presently supervises a staff of 40 deputy clerks.

#### Qualifications

A minimum of ten years of progressively responsible administrative experience in court administration, public service or business which has provided a thorough understanding of organizational, procedural and human aspects of managing an organization. At least three of the ten years experience must have been in a position of substantial management responsibility. Applicants must also have an understanding of automated systems, have excellent administrative abilities and possess strong leadership and interpersonal skills. Applicants must have at least an



undergraduate degree. Preference will be given to applicants with substantial bankruptcy experience and/or knowledge, and a strong preference will be given to candidates who also possess a law degree. Attorneys who are engaged in active practice may substitute this practice on a year-for-year basis for the general management or administrative experience requirement.

### **Procedures for Selection**

The court will screen all applications and identify the best qualified applicants. Personal interviews will be limited to those applicants who are judged to be the most highly qualified based on a review of their applications, resumes and associated documents. The court may wish to call references or conduct a background investigation prior to selection of the applicant.

### **Information for Applicants**

Although not included in the federal government's Civil Service classification, employees of the United States Courts are entitled to benefits similar to other federal employees, including the following:

- 13 days of paid vacation per year for the first three years of employment and up to 26 days thereafter
- 10 paid federal holidays
- Medical coverage from a wide variety of plans [requires an employee contribution]
- Group Life Insurance [requires employee contribution]
- Participation in the Federal Employees Retirement System which includes a Thrift Savings Component with salary matching up to 5% of income

This position is subject to mandatory electronic fund transfer for payment of net pay. No funding is currently available to pay for the travel of interviewees or for the relocation expenses of the successful applicant. The person chosen for this position is subject to a background check. *The U.S. Courts is an equal opportunity employer.* Persons wishing for more detailed information about the court or about this position may contact Mark Van Allsburg at (616) 456-2693.

### **Application Procedure**

Qualified persons are invited to submit an application letter and a resume of educational and employment history to the address listed below. All applications must be received by 5:00 p.m. on November 6, 1998. The position will remain open until filled.

Send Application Letters and Resumes to:

**Search Committee  
United States Bankruptcy Court  
PO Box 3310  
Grand Rapids, MI 49503**

## ANNOUNCEMENTS

### FROM THE COURT:

**Legal Assistant Seminars:** The Bankruptcy Court is offering a one-day seminar to legal assistants who are interested in learning more about bankruptcy procedure. The seminar features a tour of the court, a discussion of the automated systems available to the bar and public for retrieval of case information, intake procedures, a review of the local court rules and "hot topics" in bankruptcy practice. The seminar is conducted by the staff of the bankruptcy court. The seminar will be presented on September 9, 16, and 22, and all sessions are presently full. However, additional sessions will be scheduled in October for those people who may still be interested. Call Debe Perrien at 456-2779 for information and a seminar registration form.

**General Order Concerning Attorney Admissions:** On September 3 the Bankruptcy Court issued a new general order which deals with attorneys admissions. This order amends Local Rule 2091 which prohibits *pro hac vice* admissions to practice before the court. The amended rule permits such admissions in unusual circumstances and at the discretion of the court. A copy of the general order is printed in this edition of the Bankruptcy Law Newsletter.

**In Re Madaj:** The Sixth Circuit recently released a case dealing with the procedure for adding omitted creditors to a closed chapter 7 no-asset case.

*Zirnhelt v. Madaj (In re Madaj) 1998 WL 394006 (6<sup>th</sup> Cir. Mich.), July 16, 1998.*

This case states that it is not necessary to reopen a closed case for the purpose of amending the schedules to add omitted creditors, since the debts - whether properly listed or not - are discharged. Therefore, cases need to be reopened only if an omitted creditor wishes to file an adversary proceeding to determine the dischargeability of a debt subsequent to notification of the bankruptcy proceeding. In response to this ruling, the judges are responding to motions to reopen chapter 7 cases to add creditors by issuing an *ex parte* order which conditionally reopens the case only upon the subsequent filing of an adversary proceeding by an omitted creditor.

### THE STEERING COMMITTEE WANTS YOU!

The Bankruptcy Steering Committee was formed ten years ago with eight members selected by the Federal Bar Association for the Western District of Michigan. In 1990, another member was added and the Committee decided that the terms of the members would be for three years, with terms expiring on a staggered basis, so that only three terms would expire each year. By 1993, the Committee had expanded to its present count of 15 members. On the whole, the Committee has attempted to accommodate anyone who wished to become a member. Moreover, meetings and other activities (specifically including seminar planning)

have always been open to anyone who wanted to participate. However, the Committee has always selected its members.

There has been some discussion whether the Committee should be selected in another fashion, including an election by all of the members of the FBA Bankruptcy Section. If you have an opinion on this subject, please write to me or another member of the Committee and let us know what you think (names and telephone numbers are listed elsewhere in this Newsletter). Your input is important in helping us move forward.

Also, if anyone would like to serve on the Steering Committee, please let me know. Whatever the method for choosing the Committee members, we need to know who is interested in becoming an active member of the Committee.

## FROM THE OFFICE OF THE UNITED STATES TRUSTEE

The United States Trustee's Office announces the appointment of Thomas C. Richardson as a Chapter 7 panel trustee in Kalamazoo, Michigan. Mr. Richardson is a 1980 graduate of the University of Michigan Law School and is a Shareholder and the Treasurer of the Kalamazoo law firm of Deming, Hughey, Chapman, Richardson & Bosch, P.C. He is a member of the Senior Justice Section of the State Bar of Michigan Council and has been an Adjunct Professor at Kalamazoo Valley Community College.

Please welcome Tom as our newest Chapter 7 trustee.

## *STEERING COMMITTEE MEMBERS*

Dan Casamatta	616-456-2002
Mary Hamlin	616-345-5156
Tim Hillegonds	616-752-2132
Jeff Hughes	616-336-6000
Pat Mears	616-776-7550
Hal Nelson	616-459-9487
Steve Rayman	616-345-5156
Eric Richards	616-459-3200
Brett Rodgers	616-732-9000
Tom Sarb	616-459-8311
Bob Sawdey	616-774-8121
Tom Schouten	616-538-6380
Peter Teholiz	517-886-7176
Robb Wardrop	616-459-1225
Norman Witte	517-485-0070
Bob Wright	616-454-8656

### STEERING COMMITTEE MINUTES, 9/18/98

Attending: Steve Rayman, Norm Witte, Brett Rodgers, Robb Wardrop, Eric Richards, Peter Teholiz, Dave Andersen, Mike Maggio (for Dan Casamatta), Tom Sarb, Hal Nelson, Tom Schouten, Denny Chamberlain, and Judge Jim Gregg.

- I. On behalf of Judge Walton, Denny Chamberlain gave a seminar report. The seminar appears to have been a success, with a net of approximately \$18,000 to the FBA. A discussion was held regarding whether to keep a portion of the funds to use for initial expenses for next year's seminar. Because of the potential problems with doing this, it was decided to pay for next year's deposit now and to keep a small amount of money for any initial incidental expenses. There was also a discussion regarding whether the section needed to make as much money as it did this year in comparison with keeping down registration costs. Denny volunteered Judy to be on the seminar committee again next year, but Judge Stevenson has indicated her unavailability to serve on the committee for next year.
- II. Peter Teholiz reported on the status of appointments to the Steering Committee. Traditionally, five appointments are made at the seminar, but because of the press of business, such did not occur. Of the five members whose terms are up, three - Tom Sarb, Steve Rayman, and Peter Teholiz - indicated their willingness to serve again. Tim Hillegonds indicated that Steve Grow of his office wanted to serve in his stead, and Pat Mears declined to serve. A discussion was held as to whether to open the process to elections by the entire FBA Bankruptcy Section, but a decision was deferred until notice could be published in the Bankruptcy Law Newsletter to see if there was overwhelming interest to serve on the Committee. Peter also indicated that the post of Chair-Elect was still open.
- III. A short discussion was held regarding the possibility of holding the 2000 seminar in conjunction with the FBA Annual Seminar scheduled in September in Cleveland. A decision was deferred for a month and Judge Gregg indicated that he would inform Marilyn Shea-Stonum, Bankruptcy Judge in Akron and the author of the idea, to make whatever further proposals to the Committee during that time.
- IV. A short discussion was held regarding the status of Judge Howard's retirement party and surrounding events. In addition, Judge Gregg reported on the status of Mark Van Allsburg's leaving to become the clerk of the Bankruptcy Court for the District of Hawaii. Mark will be leaving sometime in December and the Committee decided to hold a holiday reception for Mark. Robb Wardrop volunteered to organize the reception.
- V. The next Steering Committee meeting is scheduled for Friday, October 16, at the Peninsula Club in Grand Rapids at 12:00 noon.

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

GENERAL ORDER # 7

September 3, 1998

*Whereas*, the U.S. Bankruptcy Court has enacted Local Bankruptcy Rule 2091 on August 1, 1996 which prohibits admission to practice before this Court *pro hac vice*; and

*Whereas*, the U.S. District Court has recently enacted Local Rule 83 which permits *pro hac vice* admission under limited circumstances; and

*Whereas*, the judges of this Court believe that both courts should have a consistent standard for admission in this district,

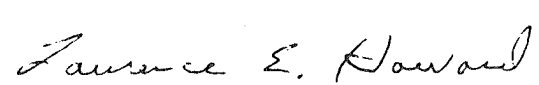
**NOW THEREFORE IT IS ORDERED THAT** Local Bankruptcy Rule 2091 shall be amended, effective on the date of this order, to provide as follows:


(a) *Admission to Practice* — Membership in the bar of the United States District Court for the Western District of Michigan is required for practice before this Court. The procedure for admission to the bar of the District Court is set out in W.D. Mich. LCivR 83. This court disfavors *pro hac vice* admission and prefers that all lawyers appearing before it become full members of the bar of the Court. *Pro hac vice* admission may nevertheless be allowed on a temporary basis pending full admission, or in unusual circumstances.

(b) *Federal Government Attorneys* — Any attorney representing the United States or any agency thereof, may appear and participate in particular cases in the attorney's official capacity without petitioning for admission to the bar of the District Court for this district. If the government representative does not have an office in the Western District of Michigan, the representative shall designate the United States Attorney for this district, or an assistant, for the purpose of receiving service of all notices or papers in said action. Service of notice upon the designated United States Attorney, or assistant, shall constitute service upon such non-resident government attorney. For the purposes of discipline, government attorneys practicing pursuant to this rule shall be treated in the same manner and be subject to the same rules as attorneys admitted to practice in this Court.

  
Hon. James D. Gregg, Chief Judge

At Grand Rapids, Michigan this 3rd day of  
September, 1998

  
Hon. Laurence E. Howard, Judge

  
Hon. Jo Ann C. Stevenson, Judge

## **LOCAL BANKRUPTCY STATISTICS**

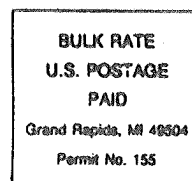
CHAPTER	JUNE 1998	YTD - 1998
Chapter 7	730	4,328
Chapter 11	4	25
Chapter 12	4	12
Chapter 13	276	1,494
TOTALS	1,014	5,859

CHAPTER	JULY 1998	YTD - 1998
Chapter 7	757	5,085
Chapter 11	2	27
Chapter 12	0	12
Chapter 13	240	1,734
TOTALS	999	6,858

CHAPTER	AUGUST 1998	YTD - 1998
Chapter 7	652	5,737
Chapter 11	2	29
Chapter 12	1	13
Chapter 13	254	1,988
TOTALS	909	7,767



Western Michigan Chapter of the  
Federal Bar Association  
250 Monroe Avenue, Suite 800  
Grand Rapids, MI 49503



TO:

PETER A. TEHOLIZ  
5801 W. MICHIGAN AVENUE  
P.O. BOX 80857  
LANSING, MI 48908