

FEDERAL BAR ASSOCIATION

BANKRUPTCY SECTION NEWSLETTER
APRIL, 2002

NEW LOCAL RULES

The Western District of Michigan local bankruptcy rules were revised, effective February 1, 2002. They are available to view, download and print at <http://www.miwb.uscourts.gov/content/rules/rules-fm.htm> or simply go to the court website, www.miwb.uscourts.gov and follow the directions there. You can also order a special edition from the court for a fee. Call the court at 456-2693.

ACCORDING TO DAVID C. ANDERSEN, A PRIME REASON FOR REVISING THE RULES WAS THAT THE COURT ISSUED MANY GENERAL ORDERS SINCE THE PASSAGE OF THE PREVIOUS RULES AND IT WAS DIFFICULT FOR PRACTITIONERS TO KEEP TRACK OF THEM. JUDGE GREGG CHAIRED THE ORGANIZATIONAL COMMITTEE FOR THE REVISIONS, ALTHOUGH ALL OF THE JUDGES AND MANY OTHER PEOPLE TOOK A LEADERSHIP ROLE IN THIS EFFORT. THE COMMITTEES MET, DRAFTED REVISIONS, CIRCULATED THE DRAFTS AND EVENTUALLY A FULL DRAFT PRESENTED FOR COMMENT. AT LAST SUMMER'S SEMINAR, A PANEL REVIEWED AND DISCUSSED THE PROPOSED CHANGES. ALL OF THIS CULMINATED IN THE EFFECTIVE DATE OF THE NEW RULES ON FEBRUARY 1, 2002.

LOOK FOR CHANGES IN CAPTION REQUIREMENTS, CERTAIN CHAPTER 13 ISSUES AND THE REQUIREMENT TO PROVIDE SPOUSE INFORMATION FOR INDIVIDUAL FILERS ON SCHEDULE I. MR. ANDERSEN PROVIDES GOOD ADVICE: "EVERYONE NEEDS TO SIT DOWN AND LOOK THROUGH EACH RULE THAT APPLIES TO WHAT THEY ARE DOING." WHEN WAS THE LAST TIME YOU READ THE LOCAL RULES WHICH GOVERN YOUR PRACTICE?

NOTICE ALSO THE CHANGES IN PRETRIAL PRACTICE IN ADVERSARY PROCEEDINGS. A NEW FORM IS LOCATED ON THE COURT WEBSITE.

CHAPTER 13 ISSUES

A TREMENDOUS AMOUNT OF INFORMATION IS AVAILABLE ON LINE FROM ALL THREE CHAPTER 13 TRUSTEE OFFICES. HERE ARE THE WEBSITES FOR EACH:

RAYMOND B. JOHNSON: www.gr13.com

BRETT N. RODGERS: www.rodgersch13.com

MARY K. VIEGELAHN HAMLIN: www.13network.com/kalhome.htm

GET TO KNOW THESE SITES. EACH HAS A DIRECTORY TO USE TO CONTACT PEOPLE WITH INFORMATION YOU MIGHT NEED. THERE ARE ALSO DIRECTIONS TO CONNECT TO THE FINANCIAL INFORMATION REGARDING PENDING CASES AND PLAN PROGRESS.

RAY'S WEBSITE HAS COMPLETE 341 CALENDARS FOR REVIEW AND PRINTING. BRETT'S SITE HAS SOME GOOD "FAQ"'S WHICH MIGHT BE USEFUL FOR DEBTORS TO READ IF THEY HAVE INTERNET ACCESS. MARY'S SITE OFFERS PARTICULARLY EASY ACCESS FOR DATA INFORMATION, BUT NONE ARE DIFFICULT.

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IMPORTANT DATES:

CONSUMER BANKRUPTCY COALITION MEETINGS:

SECOND FRIDAY OF MAY AND EVERY SECOND MONTH THEREAFTER @ 9:00 A.M. @ FIFTH THIRD BANK, EAST PARIS ROAD, GRAND RAPIDS. CALL JOHN PIGGINS OR JILL @ (616) 447-1800 FOR DETAILS, TO GET ON THE MAILING LIST AND TO VERIFY MEETING.

NATIONAL CONFERENCE OF BANKRUPTCY JUDGES:

THE ANNUAL MEETING THIS YEAR IS IN CHICAGO FROM OCTOBER 2-5. INFORMATION WILL BE POSTED ON THE ORGANIZATION'S WEBSITE IN JUNE. SEE www.ncbj.org.

Something missing?
Let us know about other dates!

SUMMER SEMINAR

This year, the summer seminar will be on Mackinac Island from July 25 - 27. You can make reservations now at the Lake View Hotel at (906) 847-3384.

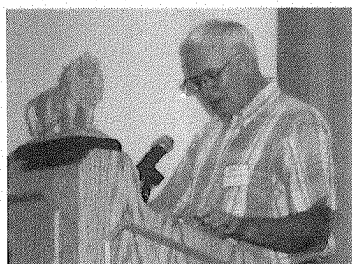
THE SUMMER SEMINAR WILL OFFER A GREAT OPPORTUNITY TO ENJOY ONE OF MICHIGAN'S MOST FAMOUS TOURIST LOCATIONS. IN THE EVENING WHEN MANY TOURISTS LEAVE, WE CAN ENJOY THE ISLAND IN A DIFFERENT WAY, AND, AS WE DO SO, SEE OTHER SEMINAR PARTICIPANTS MORE THAN WE WOULD IN ANOTHER SETTING.

TOPICS IN LAST YEAR'S SEMINAR INCLUDED: CHAPTER 7 AND 13 ISSUES, THE REVISED ARTICLE 9 AND LOCAL BANKRUPTCY RULES, BANKRUPTCY BASICS, THE PC AND YOUR PRACTICE AND OTHER TOPICS. THE AGENDA FOR THIS YEAR IS STILL IN PROCESS, BUT LOOK FOR IT TO BE JUST AS TIMELY. IN ADDITION ITS EDUCATIONAL FEATURES, THE SEMINAR ALLOWS US THE OPPORTUNITY TO GET TO KNOW EACH OTHER BETTER, MEND FENCES IF NECESSARY AND JUST HAVE FUN. HERE ARE SOME PICTURES FROM LAST YEAR'S SEMINAR:

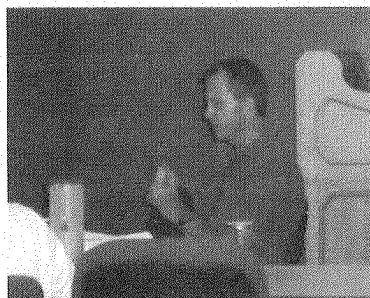


Preparing for a Presentation
with Judge Stevenson

Judges Gregg & Spector



We were honored to have
Judge Howard join us



Judge Hughes discussing computer
issues



Relaxing outside

PEOPLE AND CHANGES

CONGRATULATIONS TO JUDGE STEVENSON, ON HER REAPPOINTMENT FOR ANOTHER TERM AS JUDGE.

CONGRATULATIONS TO JUDGE GREGG, WHO IS SERVING AS PRESIDENT ELECT OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES. HE WILL ASSUME THE POSITION OF PRESIDENT AT THE ANNUAL MEETING OF THAT ORGANIZATION IN CHICAGO IN EARLY OCTOBER 2002. THERE ARE DISCUSSIONS NOW AMONG BAR MEMBERS ABOUT ATTENDING THAT MEETING. LOOK FOR MORE ON THIS IN LATER ISSUES OF THE NEWSLETTER.

LAWRENCE A. FRIEDMAN, RECENTLY ELECTED PRESIDENT OF THE NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES, WAS APPOINTED DIRECTOR OF THE EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES, EFFECTIVE MARCH 4, 2002.

THE JUDGES HAVE REDISTRIBUTED THE LOCATIONS OF COURT SESSIONS AMONG KALAMAZOO, LANSING, TRAVERSE CITY AND MARQUETTE. ATTORNEYS NEED TO CHANGE CAPTIONS IN PENDING CASES TO IDENTIFY THE PROPER JUDGE. OBTAIN INFORMATION FROM RACER/PACER.

Here are outlines of recent bankruptcy cases for our jurisdiction. Official citations are provided above if they were available at the time of printing. Some of the information originated from E Journal of the Michigan State Bar. In the future, we will attempt to obtain outlines of eastern district decisions.

BANKRUPTCY COURT WESTERN DISTRICT OF MICHIGAN.

IN RE COWPER, SEPTEMBER 6, 2001

JUDGE(S): STEVENSON

ISSUES: 11 U.S.C. §1307(b) AND (c); RIGHT TO DISMISS CHAPTER 13.

IN RE: KROSKIE, 258 B.R. 676, 2001 WL 170875

JUDGE(S): STEVENSON

ISSUES: AVOIDANCE OF UNPERFECTED LIEN; MOBILE HOME. OVERRULED BY THE DISTRICT COURT. SEE BELOW.

IN RE QUALITY STORES, INC., E-JOURNAL NUMBER: 13706

JUDGE(S): GREGG

ISSUES: CHAPTER 11; SALE OF PROPERTY.

IN RE FAULHABER, E-JOURNAL NUMBER: 13183

JUDGE(S): HUGHES

ISSUES: CONVERSION FROM CHAPTER 7 CHAPTER 13; IN RE PEARSON

IN RE LEWIS, E-JOURNAL NUMBER: 13245

JUDGE(S): STEVENSON

ISSUES: PREFERENCE; EQUITABLE SUBROGATION; TRUSTEE'S HYPOTHETICAL LIEN UNDER 11 U.S.C. §§544(A)

IN RE: FRANKE, E-JOURNAL NUMBER: 12678

JUDGE(S): STEVENSON

ISSUES: REQUEST BY FIRST LIENHOLDERS TO LIFT THE AUTOMATIC STAY

IN RE TALBERT, E-JOURNAL NUMBER: 12935

JUDGE(S): HUGHES

ISSUES: AVOIDANCE OF VALUELESS MORTGAGE LIEN AGAINST RESIDENCE UNDER 506(D) IN CHAPTER 7; IN RE LASKIN; DUTY OF TRUSTEE

IN RE: DESILETS, E-JOURNAL NUMBER: 12776

JUDGE(S): GREGG

ISSUES: REQUEST FOR RECUSAL OF JUDGE; CLAIM OF BIAS AND PREJUDICE; DEFINITION OF ADVISORY OPINIONS

DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN.

IN RE: KROSKIE, 270 BR 446

JUDGE(S): HILLMAN

ISSUES: AVOIDANCE OF UNPERFECTED LIEN; MOBILE HOME. THIS CASE HAS BEEN APPEALED TO THE CIRCUIT COURT. APPEAL IS PENDING.

TECHNOLOGY TIPS

HAVE YOU CONSIDERED USING E MAIL FOR NON CONFIDENTIAL COMMUNICATIONS SUCH AS SETTING UP MEETINGS OR OTHER APPOINTMENTS, REQUESTING FURTHER DOCUMENTS OR INFORMATION, INFORMAL NOTICING OF HEARINGS (IN ADDITION TO LEGAL SERVICE), OR EXCHANGING DRAFTS OF DOCUMENTS? E MAIL CAN BE AN IMPROVEMENT OVER VOICE MAIL FOR COMMUNICATION BECAUSE IT DOES NOT INTERRUPT THE RECIPIENT AND CAN REDUCE PHONE EXPENSE. IT CAN ALSO PRODUCE AMAZINGLY FAST RESULTS. MESSAGES CAN GET SENT AND RETURNED IN SECONDS, REQUIRING LITTLE TIME FOR EACH PARTY.

HAVE YOU SEEN THE E JOURNAL SERVICE PROVIDED BY THE MICHIGAN STATE BAR? TO SUBSCRIBE TO "E JOURNAL" GO THE MICHIGAN BAR WEBSITE, WWW.MICHBAR.ORG, AND YOU WILL SEE THE ITEM TO CLICK. SIMPLY FOLLOW THE DIRECTIONS. YOU WILL RECEIVE DAILY CASES FROM THE BAR WITHIN DAYS OF THE COURT OPINION. E JOURNAL ALSO HAS ARCHIVES OF THE CASES REPORTED. THEY DO NOT CONTAIN THE PUBLISHED CITATIONS, BUT YOU CAN SEARCH FOR THOSE WITH YOUR SOFTWARE OR OTHER LEGAL RESEARCH TOOL. YOU CAN STORE IMPORTANT DECISIONS ON YOUR COMPUTER BY COPYING AND PASTING INTO FILES WITH DESCRIPTIVE NAMES, JUST AS IN A PAPER STORAGE FILE SYSTEM. (THIS TIP ORIGINATED FROM JUDGE HUGHES' SEMINAR TALK LAST SUMMER.)

WE ARE LOOKING FOR TECHNOLOGY TIPS FOR THE FUTURE. SEND YOUR TIP BY E MAIL.

IN RE UJLAKY, E-JOURNAL NUMBER: 13180

JUDGE(S): QUIST

ISSUES: CONTEMPT; AUTOMATIC STAY; DIVORCE; PROPERTY OF THE ESTATE; CHAPTER 13.

SIXTH CIRCUIT BAP.

IN RE SWALLEN'S, INC., 269 B.R. 634, 38 BANKR.CT.DEC. 182,

E-JOURNAL NUMBER: 12979

JUDGE(S): COOK, BROWN, AND MORGENSTERN-CLARREN

ISSUES: DISTRIBUTION OF ASSETS; CHAPTER 11; DISMISSAL

IN RE FRANCIS, 2002 WL 191564, E-JOURNAL NUMBER:

13871

JUDGE(S): AUG AND BROWN; DISSENT - RHODES

ISSUES: CHAPTER 13; § 1325(A)(3); CALDWELL TOTALITY OF THE CIRCUMSTANCES TEST.

SIXTH CIRCUIT COURT OF APPEALS.

IN RE MILLER, E-JOURNAL NUMBER: 14256

JUDGE(S): NORRIS, KEITH, AND MOORE

ISSUES: POST-PETITION LOT RENT; DISCHARGE INJUNCTION OF 11 U.S.C. § 524(A)

BROWNING V. LEVY, E-JOURNAL NUMBER: 14262

JUDGE(S): GILMAN, MARTIN, AND EDMUNDS

ISSUES: POST-BANKRUPTCY CLAIMS AGAINST ATTORNEYS FOR LEGAL MALPRACTICE, BREACH OF FIDUCIARY DUTIES, AND PROHIBITED TRANSACTIONS UNDER ERISA; RES JUDICATA, JUDICIAL ESTOPPEL; JURISDICTION OVER ERISA CLAIMS

IN RE DOW CORNING CORP., 280 F.3d 648, E-JOURNAL NUMBER:

13748

JUDGE(S): MARTIN, DAUGHTREY, AND MOORE

ISSUES: INJUNCTION; CHAPTER 11; "UNUSUAL CIRCUMSTANCES"; PLAN'S CLASSIFICATION CLAIMANTS

IN RE LANE, E-JOURNAL NUMBER: 13868

JUDGE(S): NELSON, DAUGHTREY, AND MOORE

ISSUES: CHAPTER 13; § 1322(b)(2); NOBELMAN V. AMERICAN SAV. BANK; § 506(A)

IN RE CANNON, 277 F.3d 838, BANKR. L. REP. P 78,572, E-

JOURNAL NUMBER: 13619

JUDGE(S): BATCHELDER, KEITH, AND KENNEDY

ISSUES: TRUSTEE'S AVOIDANCE POWER; INTEREST OF THE DEBTOR IN PROPERTY UNDER §§ 548; TRUSTEE'S STANDING IN NON-CORE PROCEEDING

IN RE GORDON SEL-WAY, INC., 270 F.3d 280, 88 A.F.T.R.2d

2001-6688, 2001-2 USTC ¶ 50,720, 38 BANKR.CT.DEC.

162, BANKR. L. REP. P 78,527, E-JOURNAL NUMBER: 12698

JUDGE(S): JONES, BOGGS, AND SILER

ISSUES: TAX PENALTIES; SETOFF; JURISDICTION; SOVEREIGN IMMUNITY

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NEWSLETTER**

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CLERK'S OFFICE ISSUES

OUR CLERK'S OFFICE, ALREADY ADEPT AT SCANNING IMAGES INTO THE PACER AND RACER WEBSITES FOR INFORMATION ACCESS, IS BUSY WORKING ON INTRODUCING ELECTRONIC FILING FOR OUR DISTRICT. ELECTRONIC FILING WILL ALLOW US TO FILE BANKRUPTCY DOCUMENTS OVER THE INTERNET. SOME DISTRICTS IN THE COUNTRY HAVE ALREADY DONE THIS WITH VARYING REQUIREMENTS AND DEGREES OF SUCCESS. STAFF AT OUR CLERK'S OFFICE BELIEVE THAT WE HAVE AN ADVANTAGE BY WATCHING OTHER DISTRICTS AND LEARNING FROM THEIR SUCCESSES AND MISTAKES.

WE HOPE TO HAVE ELECTRONIC FILING BY THE END OF THIS YEAR. THIS WILL CONSTITUTE A MAJOR CHANGE IN OUR PRACTICE. JUST THINK OF IT! INSTEAD OF MAKING COPIES OF MULTI PAGE SCHEDULES AND SENDING THEM WITH THE POSTAGE TO THE COURT, WAITING DAYS TO GET THEM BACK, YOU WILL BE ABLE TO SEND THE PAPERS TO THE COURT FOR IMMEDIATE FILING. YOU WILL HAVE THE CASE NUMBER THAT FAST. INSTEAD OF TRUSTEES LUGGING 2-3 BOXES OF FILES FOR HEARINGS, THEY WILL BRING CD ROM'S INSTEAD, WITH PERHAPS SOME FILES FOR DOCUMENT COLLECTION. CREDITORS CAN FILE CLAIMS AND COMPLAINTS WITHOUT HAVING TO RUSH TO COURT TO MEET IMPENDING DEADLINES.

OF COURSE, THERE ARE MANY ISSUES WHICH WILL NEED TO BE RESOLVED AS WE GO THROUGH THIS PROCESS. THE CLERK'S OFFICE WILL PROVIDE OPTIONS FOR TRAINING TO USE THIS SYSTEM. BUT HERE IS ONE TIP FOR YOU TO CONSIDER NOW. YOU WILL NEED TO BE HOOKED UP TO PACER/RACER TO PARTICIPATE IN THIS SYSTEM. IT TAKES TIME TO GET YOUR PASSWORD. **DAN LAVILLE URGES ALL BANKRUPTCY ATTORNEYS TO SIGN UP FOR PACER/RACER NOW.**

TO DO SO, GO THE COURT WEBSITE AND FOLLOW THE DIRECTIONS THERE. ONCE YOU ARE SIGNED UP, YOU WILL THEN BE ABLE TO ACCESS MANY COURT FILED DOCUMENTS FROM YOUR OFFICE. **DID YOU KNOW THAT YOU CAN ACCESS THE FILE MATRIX FROM PACER FOR A PROOF OF SERVICE INSTEAD OF CALLING THE COURT AND WAITING FOR IT TO BE SENT?**

STATISTICS

THE COURT WEBSITE PROVIDES STATISTICS ON THE NUMBER OF CASES FILED IN OUR DISTRICT.

2001: CHAPTER 7: 10,596 CHAPTER 13: 3,307 CHAPTER 11: 69 TOTAL: 13,974
JANUARY 2002: 1,211