

STATE OF THE COURT ADDRESS
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
PHILLIP J. SHEFFERLY,
CHIEF UNITED STATES BANKRUPTCY JUDGE
OCTOBER 20, 2010

INTRODUCTION

Over the years we have developed a tradition of having the chief judge of our bankruptcy court give a State of the Court Address at a federal bar luncheon. One purpose of the address is to provide information to the public and the bar regarding the administration of the court. Historically, we have done that by providing various statistical information regarding case filings, case loads, and procedures. But in addition to providing information regarding the administration of the court, I think it is important that our court, much like your law firms and your business organizations, also use the state of the court address as an opportunity to recognize those persons whose accomplishments and service have enabled the court during the past year to operate and serve the public efficiently and effectively. This address also provides an opportunity for our court to share with you some of our plans for the coming year as we aspire to improve on the efficiency and effectiveness of the administration of our court in its service to the public. I will begin by sharing some statistics and other information about our court case filings.

STATISTICS REGARDING CASE FILINGS

Not surprisingly, the number of case filings in our district continues to grow at a very high rate. During the year ending June 30, 2010, 54,105 bankruptcy cases were filed in the Eastern District of Michigan. That is an increase of 10.5% over the year ending June 30, 2009. Last year, I told you at the state of the court address that case filings during the year ending June 30, 2009 had increased by over 20% from the prior year. The upward trend of filings continues, although the percentage of this year's increase is less than last year's increase.

The breakdown of our bankruptcy cases during the 12 month period ending June 30, 2010 is as follows: 45,517 were Chapter 7 filings. That represents over 81% of our total filings. 8,405 were Chapter 13 filings. That represents about 18% of our total filings. 171 cases were Chapter 11 filings. That represents less than 1% of our total filings. Just like last year, our Chapter 7 filings continue to go up, and our Chapter 13 filings continue to go down. Our Chapter 11 filings increased slightly over last year.

How do these figures stack up against the rest of the country? In terms of gross numbers, our district ranks fourth in the country in the number of cases filed. That is the same spot we held last year. The only districts in the country where more cases are filed than the Eastern District of Michigan are the Central District of California, the Northern District of Illinois, and the Middle District of Florida.

I have a few more statistics about the case filings in our district. During the first nine months of 2010, there were 3,748 adversary proceedings filed in our district. That is an

increase of 39% over the same period last year. A large portion of this increase is due to the increased number of lien strip adversary proceedings filed in Chapter 13 cases. During the first eight months of 2009, there were 1,188 lien strip adversary proceedings filed in this district. During the first eight months of 2010, there were 1,975 lien strip adversary proceedings filed in this district. That represents an increase of 40%.

One final statistic that is interesting concerns our pro se filings. Last year I told you that the number of pro se case filings had increased greatly from 2007 to 2009. During the first nine months of 2010, that number has decreased somewhat. During the first eight months of 2010, we had 1,534 pro se bankruptcy cases filed in this district, compared to 2,755 at the same time last year. That is still a substantial amount of pro se filings, and represents about 4-1/2% of all of our filings. I'll discuss later some of the steps the Court is taking to deal with what is still a very large number of pro se cases filed in our district.

CASE LOADS AND NEW JUDGESHIPS

What do all these statistics and increased case filings mean to you and to our court?

At its September, 2010 session, the Judicial Conference for the United States approved the Bankruptcy Case Weighting Study conducted by the Federal Judicial Center during 2008 and 2009. That study required each bankruptcy judge for a period of several months to keep track of their time every day and describe how they spent their time by reference to each case and each task. I am sure you can appreciate that keeping track of time and writing time slips brought back many fond memories for me. The study developed a formula that gives varying weights to different types of cases, such as Chapter 7, Chapter 13

and Chapter 11, and to different types of hearings, and different types of matters, all in an effort to evaluate the case loads of bankruptcy judges so that they can be compared using empirical data for the purpose of making sure that each district has adequate resources to handle its case load. The Federal Judicial Center Bankruptcy Case Weighting Study for 2008-2009 stated that nationwide, the average weighted case load for each authorized bankruptcy judgeship for the year ending June 30, 2010 was 1,711. According to the Judicial Conference policy, if a district has a weighted case load of at least 1,500 per authorized judgeship, it may justify additional judicial resources, in other words, additional authorized judgeships.

Where does our district rank, according to this bankruptcy case weighting study? Although the gross number of bankruptcy case filings in our district ranks fourth nationally of any district, our weighted case load ranks first. By a lot. The bankruptcy case weighted filings per authorized judgeship in our district is 4,377. That is more than 2-1/2 times the national average of 1,711. The second highest weighted case load per authorized judgeship in the country is in the Middle District of Florida. The weighted case load in that district is 3,496. In other words, not only is our weighted case load per judge more than 2-1/2 times the national average, it is more than 25% higher than the second highest weighted case load per judge in any other district in the country. The point is, we have a very heavy case load in our district per authorized judgeship.

Earlier this year, the Bankruptcy Judgeship Act of 2010 was passed by the House of Representatives. That bill provided three new permanent bankruptcy judgeships for our district. Although it was passed by the House of Representatives, it has not yet been

considered by the Senate, and it is uncertain whether it will be considered by the Senate this year.

RECOGNITION OF PAST ACCOMPLISHMENTS

To handle efficiently and effectively such a heavy case load requires the cooperation of the bench, the bar, and the Clerk's office. We are fortunate in this district to have had great cooperation that enables us all to deal with the heavy case load that we have. I congratulate the bar and the Clerk's office, as well as my colleagues on the bench, for together doing the heavy lifting on a daily basis necessary to administer such a heavy work load, but I would also like to take this time to recognize certain individuals whose accomplishments have contributed greatly to our collective ability to handle such a heavy case load.

Court Personnel

During this past year, there are three long time employees of the Clerk's office that have either retired or announced their retirement. Beverly Lomax retired July 1, 2010. Beverly was an operations supervisor for the last several years of her employment, but many of you will remember Beverly working in intake in the Clerk's office for many years. Beverly worked for the bankruptcy court for 28 years. Barbara Young retired September 1, 2010. Barbara was the Chief Deputy Clerk of the Court since 2006. Many of you will also remember Barbara as the courtroom clerk for Judge Graves for many years. Barbara worked for the Court for 30 years. Effective January 1, 2011, Gregg Greschak will retire. Gregg has been an operations supervisor for the last several years. Many of you will also remember

Gregg as Judge Brody's deputy clerk during the late 1970s and through the 1980s. Gregg has worked for the court for 36 years. Each of these three individuals should be congratulated and recognized for their accomplishments. Each of them were dedicated public servants in our court for many years. I personally will miss each of them, and I want to take this moment to publicly acknowledge their valuable contributions to our court for the last 30 years.

Pro Bono Attorneys

I would like to next recognize those attorneys who have taken assignments as pro bono counsel in our court. Our court has a pro bono program for the appointment of counsel for debtors in § 523 and § 727 cases and for creditors in adversary proceedings under § 523(a)(5) and (a)(15) involving domestic support obligations and related matters. Section 523 and § 727 actions are not easy. The demands of the clients in these matters can be significant, and the legal and factual issues can be complicated. Many of these cases are settled, but many proceed to disposition by the court either on motion or after trial. The work involved by a pro bono attorney in these actions can be considerable. However, I can say without hesitation that in each of these cases, the assigned attorneys have provided outstanding representation to individuals most in need of it, and have provided a valuable service to the other parties in the litigation, the court and the Clerk's office. David Lerner and Leslie Berg, on behalf of the Federal Bar Association and our court, will be presenting certificates of recognition to each attorney who has accepted an assignment of a pro bono case during this last year at the end of my remarks. I would like to thank each of you for

your substantial commitment of time to this program and also let you know how valuable we consider your work.

Mediators

I would also like to thank our 32 mediators who have been approved by the court to conduct mediation pursuant to our Local Court Rule 7016-2. In a moment I am going to speak in more detail about new developments with our mediation program, but for now I would just like to thank the 32 mediators who serve on this program for their valuable contribution in helping to achieve resolution in a wide variety of adversary proceedings and contested matters.

Judge Shapero

Many times the appreciation of the work of others only happens when a milestone in one's professional or personal life occurs. Graduations, promotions, weddings and retirement dinners are all occasions for us to express gratitude and celebrate accomplishment. We do so much less often during our day to day routines. I would like today to ask you to join me in recognizing and thanking Judge Shapero for his continued contributions to our court. As most of you know, Judge Shapero's appointed term expired in 2002. Yet Judge Shapero each year volunteers to come back on an annual basis as a recalled sitting bankruptcy judge. We of course jump at the opportunity to have Judge Shapero continue to serve each year. Judge Shapero epitomizes public service, and has been a model of judicial temperament, scholarly thought, compassion and wisdom during his years of service. I felt that way when I was an attorney regularly appearing before him, and I feel that way even

stronger today as his colleague. In addition, I really do not know where we would be without him, given the case load statistics I gave you earlier. Although today is not any special occasion, I just want to take this moment to thank Judge Shapero for his continued service and express my personal desire that he continue to serve for many years to come.

NEW DEVELOPMENTS IN THE COMING YEAR

Chief Deputy Clerk

I have mentioned some statistical information about the current state of our court and have thanked a number of individuals for their contributions to our court's ability to handle its heavy case load. I would now like to spend some time talking about some changes in our court going forward. I mentioned that Barbara Young has now retired. Todd Stickle became the new Chief Deputy Clerk for our court this year. Todd has 15 years of experience in the judiciary, most recently with the bankruptcy court for the Western District of New York. Todd is the number two person in our Clerk's office behind our Clerk, Katherine Gullo, and I am confident that he will make a valuable contribution both to Katherine and our court.

Pro Se Law Clerk

Pro se cases place a substantial burden on the Clerk's office, the trustees, the judges, and on the attorneys and parties who appear in our court. Many pro se cases are dismissed because of the failure to file required documents, failure to attend scheduled hearings, and failure of the pro se debtors to understand the responsibilities imposed upon them by filing bankruptcy.

With the proliferation of pro se cases, we have looked at a variety of ways to absorb the increased work pro se cases cause on a number of different levels. We placed extensive information regarding pro se resources on our court's website. We consulted with a number of other bankruptcy courts around the country regarding the methods they have employed to efficiently handle pro se cases. In January, 2010, Judge McIvor convened a meeting of attorneys, representatives from law schools, legal aid societies, non-profit entities, bar associations, trustees, and judges to explore various ways of assisting individuals in need of representation in bankruptcy cases. As a result of that meeting, Judge McIvor composed various committees to undertake the task of looking at different ways that we can help these individuals obtain representation.

One outgrowth of that meeting was the creation of a position for a pro se law clerk. This is a somewhat unique position that is modeled after a position created in the Southern District of New York. Although this position has now been created in a number of different courts around the country, the Administrative Office for the United States Courts has also developed a pilot program regarding this position that may well become a permanent position throughout the bankruptcy courts in the country.

Alesia Dobbins is an attorney who was hired for this position in August, 2010. Since that time, she has been gathering information from various constituents within our district and has spent time visiting those courts that have created similar positions. It is expected that Alesia will begin conducting office hours at the end of this month at the Clerk's office on the 17th floor. As a pro se law clerk, Alesia will be an employee of the Clerk. She will be responsible to answer questions for pro se debtors about the bankruptcy process and the

filing requirements of a bankruptcy case, and to direct pro se debtors to the resources available to assist them, including bar associations of attorneys, legal aid societies, websites and published information regarding pro se resources. Alesia will provide assistance to pro se debtors so that they can get all of their required documents filed and get their questions answered about the process. For example, many times pro se cases are dismissed because the debtor fails to file a matrix, or fails to file a credit counseling certificate or a statement of financial affairs. By having a pro se law clerk available in the Clerk's office to review the documents brought in by an individual debtor, the individual debtor can be informed before they file their case that they may be missing required documents. Similarly, the individual debtor can be informed by the pro se law clerk of what documents they will need to bring to their Chapter 7 first meeting of creditors. Alesia will not provide any legal advice to such individuals or serve in any way as their attorney. Each individual debtor will be asked to sign an acknowledgement of this fact. Based upon the experience of other courts that have created this position, we are confident that the assistance provided by Alesia to pro se debtors will help them process their cases more smoothly, and will result in a significant reduction in the burden on the Clerk, the court, trustees, attorneys and other parties appearing in our court.

Digital Audio Files of Court Proceedings Available on PACER

In March, 2010, the Judicial Conference of the United States endorsed a proposal from the committee on court administration and case management to allow district, bankruptcy and magistrate judges to use digital audio recording as the official means of

taking the record to provide at their discretion access to digital audio recordings of court proceedings via PACER. This recommendation came at the conclusion of a two year pilot program in several courts to include digital audio recordings of court hearings in CM/ECF case files and to make those recordings available to the public from PACER. The pilot program demonstrated that audio files from digital audio court recordings can be loaded into CM/ECF, and made available through PACER without adversely affecting the performance of those systems. The pilot program also demonstrated that there is a significant level of public interest in accessing these files via PACER, and that this method of obtaining a recording of a court proceeding is a vast improvement over obtaining it through the Clerk's office. The Judicial Conference has endorsed the fee of \$2.40 per download of digital audio files.

Our court has looked at this resource, and has determined to issue a notice for public comment on it. Specifically, we will be asking you to comment on whether you consider this digital audio recording availability to be useful; who would be the likely users of this resource; whether we should consider making all or just some of the recordings of court proceedings available; and what guidelines, if any, should we adopt regarding the availability of this resource. I expect to have the notice for public comment issued within the next few days so that we can have the benefit of your comments as we study the availability of this resource closer.

Mediation

As I mentioned previously, we are deeply indebted to those 32 individuals who serve as mediators on the Court's mediation panel, and to Wallace Handler and Michael Baum, who are the co-chairpersons of our mediation program. For those of you unfamiliar with our mediation program, Local Rule 7016-2 provides for non-binding mediation in cases where the parties have stipulated to the mediation, or the Court has ordered it. That rule sets forth a procedure for implementation of the mediation, and provides for a relatively small fee to be paid to the mediator, consisting of \$200.00 per party payable before or at the commencement of the mediation.

When the mediation program was created in 2002, the mediators on the panel were required to attend a training program approved by the court. Because it has been a number of years since the training program was conducted, Wally and Michael have put together a training session for our mediation panel on November 15 and 16, 2010. It will be conducted at the court by the same organization that conducted the mediation training sessions in the past. We will also use this training session as an opportunity to create a standardized form of order appointing a mediator, whether occurring at the direction of the court or by the parties' agreement, and a standardized mediation certificate to be filed by the mediator after completion of the mediation. Those new forms will be placed on our court's website prior to the mediation training. The use of standardized orders and certificates will allow us to gather empirical data concerning the frequency of mediation, the types of cases that are mediated, and the effectiveness of the mediation. My own sense from the data that has been assembled

thus far is that our mediation program has an extraordinarily high batting average. Our mediators are very skilled in achieving resolution in the cases we send them, whether adversary proceedings or contested matters in bankruptcy cases. I am very enthused about the work that Wally and Michael are doing with their panel and with the work that the mediators themselves are doing. I urge those of you who have adversary proceedings and contested matters in our court to consider the use of mediation as an economic and prompt alternative to resolve disputes. And I want to thank again the mediators who perform this valuable service.

Coming Educational Opportunities

On Thursday, November 11, 2010, the Sixth Annual Detroit Consumer Bankruptcy Conference will be held at the Best Western Sterling Inn in Sterling Heights, Michigan. This is a day long program put together by a partnership of the American Bankruptcy Institute and the Detroit Consumer Bankruptcy Association, and is designed especially for Michigan consumer bankruptcy practitioners. This conference has gotten better and better each year. This year's program is outstanding. There are sessions on review of the recent Supreme Court decisions involving bankruptcy law, Chapter 7 trustee panel issues, mortgage foreclosure and mortgage loan modification issues, lien stripping, means test, and exemption issues, and more. As you know, Judge Rhodes has been a strong proponent of continuing legal education in our bankruptcy community for many years. As the judicial chair for the Detroit Consumer Bankruptcy Conference, Judge Rhodes and the planning committee for the conference have put together an outstanding program that crams into one day an enormous

amount of material with an outstanding faculty. I strongly encourage any of you who do any consumer bankruptcy work to take the time to attend this conference. The conference is held on Veterans' Day, so the courts are closed.

Rules Changes

Last year there were a number of changes to the Federal Rules of Bankruptcy Procedure relating primarily to the calculation of deadlines under the rules. This year, there are five rules of the Federal Rules of Bankruptcy Procedure that are amended effective December 1, 2010. I am not going to go through each of the amendments. However, I do want to mention a couple of them to you.

Rule 1007 is being amended to extend the time for a Chapter 7 debtor to file a statement of completion of course in personal financial management from 45 days after the first meeting of creditors, to 60 days after the first meeting of creditors. I think that's a good amendment. Many times cases are closed because the debtor fails to file the certificate within the 45 day period, and then the debtor has to move to reopen the case and pay a fee to reopen the case. A related amendment is being made to Rule 5009. That rule will be amended to add a provision that requires the Clerk of the Court to provide a notice to an individual debtor that their case may be closed if they fail to file the statement of completion of course in personal financial management. Again, I think this is a good change.

Another change that is worth mentioning is Rule 1019. That rule is being amended to set a new time period to file an objection to a claim of exemption under Bankruptcy Rule 4003(b) when a case is converted to Chapter 7.

Again, there are only five rules that are being amended this year, all of which will become effective on December 1, 2010. I encourage you to spend a few minutes and look at the specific amendments being made to these five rules.

Judicial Performance Evaluations

In 2003, the Judicial Conference requested the Federal Judicial Center to assist in the development of materials to assist bankruptcy judges who want to assess their performance in serving the attorneys and parties who appear before them. The Federal Judicial Center developed a website in response to that request. After several years of study, including consultation with the National Conference of Bankruptcy Judges, the Federal Judicial Center developed an online judicial performance survey for use by bankruptcy judges. This online judicial performance survey is now available for bankruptcy judges to utilize. It is strictly a voluntary survey which is administered entirely by the Federal Judicial Center. The results of this online judicial performance survey are maintained exclusively by the Federal Judicial Center in confidence for the use of the bankruptcy judge who has elected to use it. The results of the survey are not available for consideration in the reappointment process of a bankruptcy judge, nor are the results released to anyone other than the bankruptcy judge being evaluated. If a bankruptcy judge elects to use this online survey, the Federal Judicial Center works with the Clerk of the court for the bankruptcy judge to obtain from its database a list of attorneys who have appeared before that judge within a fixed time frame. The Federal Judicial Center emails to those attorneys a link to the online judicial performance survey and provides a brief period to respond to the survey. The responses go directly to the

Federal Judicial Center, which then compiles a report of the results, including a summary of objective responses, compilation of comments, and a short narrative summarizing the results and pointing out patterns of results that might warrant the judge's closer attention. Instructions accompanying the survey ask attorneys participating in it to not put their names or other identifying information in the comments. To the extent that any of them do put such information in their response, that information is redacted, and not disclosed to the judge that is the subject of the survey.

Our court has looked at this survey and has consulted with other bankruptcy courts that have utilized it. We have determined as a court to implement this survey during the coming year. It is important to stress that the survey is one that we undertake voluntarily, it is administered by the Federal Judicial Center and not by our court, all of the information in it is strictly maintained in confidence and is used for no purpose other than self evaluation by the judges that are subject to the survey. Having the survey administered by the Federal Judicial Center ensures that the names and identification of the responding attorneys are not disclosed to the judges that are the subject of the survey. I have spoken to chief judges from other bankruptcy courts that have had the Federal Judicial Center administer this online evaluation, and they have found it to be valuable to the judges that are the subject of the evaluation. I do not have a precise date when the survey will be implemented in our district, but it will certainly be within this coming year.

PRO SE BANKRUPTCY ASSISTANCE PROJECT

As I noted before, after Judge McIvor convened the meeting in January, 2010 to explore ways of dealing with pro se cases, a group of local attorneys formed a charitable organization for the purpose of raising funds to pay attorneys to represent debtors who cannot afford an attorney in Chapter 7 cases. The official name of this non-profit organization is the “Pro Se Bankruptcy Assistance Project.” I am going to turn the floor over to Jim Plemmons, a member of the board of the Pro Se Bankruptcy Assistance Project, to tell you a little more about the project, and about how you can help its work.

PRO BONO RECIPIENTS’ RECOGNITION

I have already expressed my appreciation, and the bench’s appreciation, for the outstanding work of our pro bono attorneys. David Lerner and Leslie Berg have certificates to present to you on behalf of our court and the Federal Bar Association recognizing your service. I am going to ask David and Leslie to call each of you up here for your certificates.

CLOSING

At last year’s state of the court address, I promised to make this year’s state of the court address more brief. Unfortunately, to paraphrase a famous writer from many years ago, I must now apologize for making this an unusually long speech, because I simply have not had the time to write a short speech. Next year, I promise to set aside in advance sufficient time to write a short speech. Thank you for listening, and thank you for coming here today.