

THE ABSOLUTE PRIORITY

The
Absolute
Priority

New Jersey Bankruptcy Lawyers Advisory Committee

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Hon Kathryn C. Ferguson

Judge Kathryn C. Ferguson Becomes the 6th Chief Bankruptcy Judge for the District of New Jersey

Chief Judge Ferguson is a 1983 graduate of Rutgers University School of Law-Camden, where she served as an associate editor of the Law Journal. Judge Ferguson worked at the New Jersey Office of Administrative Law as a Law Clerk. She clerked for the Honorable Judith H. Wizmur, United States Bankruptcy Judge during the 85-86 term. Judge Ferguson joined the law firm of Markowitz and Zindler and took the bench in 1993. She is one of 4 consecutive women to serve as Chief Judge and will be the featured interview in the next issue of *The Absolute Priority*.

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A Discussion With Judge Andrew B. Altenburg

By: Ross J. Switkes

On May 19, 2014, the Honorable Andrew B. Altenburg, Jr. was appointed to the Bench for the United States Bankruptcy Court for the District of



Hon. Andrew B. Altenburg

New Jersey in the Camden vicinage. Judge Altenburg filled the vacancy created by the retirement of the Honorable Judith H. Wizmur. Judge Altenburg began his career as a law clerk for the Honorable Daniel J. Moore. Following his clerkship, the Judge entered private practice with a concentration in bankruptcy law and debtor/creditor rights. After spending several years associated with a law firm, Judge Altenburg established his own law office where he spent fourteen years as a solo practitioner prior to his appointment to the Bench.

I had the privilege of speaking with Judge Altenburg about his experiences transitioning to the Bench and some of the issues he finds to be critical to the effective practice of bankruptcy law in this District. His responses are insightful and allow practitioners to gain further appreciation for the Judge's perspective on various issues. The Lawyers Advisory Committee sincerely thanks Judge Altenburg for taking the time to participate in this interview.

What were some of the challenges you experienced during the transition from private practice to the Bench?

I faced two primary challenges when transitioning from private practice to the Bench. First, closing my private practice was very challenging. I had a solo practice, and as a result, I had to undertake all the obligations associated with the process of winding down my practice, while at the same time taking on the responsibilities of my new career.

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Second, after spending my career advocating on behalf of my clients in an adversarial context, I needed to learn how to be judicial and objective. I do try to focus parties on the concerns I have or in a particular direction, but I usually let the parties state their case.

What do you miss the most about private practice?

It's a lonely job! I miss the camaraderie. Although I have great colleagues to bounce things off of, I miss the day to day interaction with others discussing hot topics, cases, events, etc.

Have there been any positive surprises about being a Judge that you did not anticipate?

I was pleasantly surprised with how well I was received as a Judge. I expected to be tested quickly and often. For the most part, the Bar and other litigants have been very respectful and receptive.

I understand that you have tried to get the word out about various issues that you have seen in your cases. What are those issues and what would you like attorneys to know?

Service, service, service! Proper and complete service is very important. It surprises me how many parties ignore proper service. For example, ECF service alone is not proper service in most instances. Also, a debtor, even though represented by counsel, must also be served. Service on state court counsel is not always proper service. How do I know they are representing the creditor in the bankruptcy case?

In addition, I often see parties improperly serve corporations, specifically banks. It is all too common for parties to serve a corporation at an improper address and fail to identify an officer or an agent as required by the Rules. This baffles me because in many cases, there is correct information on a proof of claim or other pleading. Likewise, with regard to banks, there is a FDIC depository list on the Court's website that can and should be used as a reference.

Failure to properly serve results in an automatic adjournment, then eventual denial of the motion.

What is the one thing you want practitioners appearing before you to know?

I will order appropriate relief when requested, but practitioners must provide me with a complete basis in order for me to do so. Submissions often do not paint a full picture, and as a result, I have issues with granting the relief sought, even when uncontested. I need to know all the relevant facts, legal support, and analysis that warrants the relief requested. For example, when seeking to set aside a nonconsensual lien under Section 522(f), it is not enough to say there is no equity in the property and the lien impairs my exemptions. A petition is not obvious. Show me value (debtors usually get a valuation before filing),

show me the liens, and show me the exemption is impaired (you would be surprised how many times a debtor claims the exemption is impaired but they never took the exemption). Practitioners may be offended when I deny unopposed motions, but parties' submissions must be detailed and complete.

Also, attorneys are NOT witnesses. Clients should make certifications/affidavits.

There are a number of rumors about the purpose of the clock in your courtroom. What is the real purpose of the clock?

I would love to know what some of those rumors are! It's not aspirations of becoming a Court of Appeals Judge or Supreme Court Justice. In reality, I like to listen to people testify and to the arguments of counsel. Focusing on note taking may distract me. The clock allows me, when listening to arguments or testimony, to note the time when something was said. For example, if counsel satisfies an element of a cause of action at a particular time, I will write down the time in my notes in the event I need to refer back to it while reviewing the record and making a decision. The clock was recommended to me by a Judge at "Baby Judge's School."

What is the impact of the new revised local rules on attorneys who appear before you?

I do not believe that the new local rules present a significant change. Instead, I have found that the new local rules clarify various gaps and issues that were previously unwritten local policies or not consistent with the Federal Rules. The revised rules help with establishing a uniform district wide standard by formalizing the previously unofficial practices and/or to be consistent with the Federal Rules.

What are some of your interests or hobbies outside of being a Judge?

I have three children that keep me busy. Thus, their interests and hobbies are mine. In 10 years, I hope to have my own interests and hobbies. Check back with me then. I am also active in organizations which focus on children with special needs. I find this very rewarding.



Samuel Oliphant

General Samuel Duncan Oliphant

General Oliphant was one of the first referees in bankruptcy appointed in New Jersey in 1898. He entered the army as a captain at the opening of the Civil War, and took part in the defense of Washington, and the battles of Alexandria, Manassas Junction, Beaver Dam, Gaines' Mill and White Oak Swamp, being wounded in the last-named.



An Interview with Sharon Levine of Lowenstein Sandler, LLP by Rachel Gillen of Riker Danzig

Sharon represented the largest union involved in the Detroit Chapter 9 bankruptcy proceeding.

GILLEN: *There have been a number of Chapter 9 bankruptcy filings in recent years, with Detroit being the most prominent. In fact, the town of Hillview, Kentucky filed for bankruptcy on August 20, 2015. However, Hillview was the first city to file for bankruptcy since Detroit, which filed more than two years earlier. Did the prominence of Detroit's restructuring in any way change the landscape for municipalities contemplating bankruptcy? In particular, did it force creditor constituencies to take the prospects of a Chapter 9 bankruptcy more seriously, leading to increased cooperation with struggling municipalities?*

LEVINE: A Chapter 9 bankruptcy is certainly a serious undertaking, and I think the media attention surrounding Detroit's bankruptcy definitely made municipalities and creditor constituencies more aware of the process in general, particularly because Detroit's filing was the largest Chapter 9 bankruptcy ever at that time. From my perspective, Chapter 9 has been misunderstood for some time now. It should be viewed as a last resort, as a specter in the background, due to the cost and time associated with the process. Hopefully the Detroit bankruptcy made people more aware that the Chapter 9 process can be utilized as a tool to encourage negotiation and compromise for an out of court solution.

GILLEN: *There has been speculation that Atlantic City will file for bankruptcy, especially considering that Kevyn Orr, who served as the emergency manager for Detroit, was appointed as a consultant to Atlantic City's emergency manager, Kevin Lavin. Do you expect to see Atlantic City file for bankruptcy?*

LEVINE: Our hope is that bankruptcy would be the last resort for Atlantic City, given the cost and time associated with a Chapter 9 filing. Our understanding is that Atlantic City has already appointed a mediator, so perhaps the City will be able to use the mediation process as an alternative to bankruptcy, in addition to simply negotiating with constituents in order to reach a solution.

GILLEN: *Puerto Rico is \$72 billion in debt, and as of last month began defaulting on that debt. About half of all United States municipal bond mutual funds are exposed to Puerto Rican debt. Do you think Congress*

should amend the Bankruptcy Code to allow a U.S. Commonwealth, such as Puerto Rico, to file Chapter 9 bankruptcy?

LEVINE: Bankruptcy should really be the last resort. The best solution is an out of court solution. As a result, negotiation among the various stakeholders is key and should be attempted before bankruptcy is considered. With that being said, Chapter 9 does not even permit states to file for bankruptcy; only municipalities are permitted to file. Therefore, if Congress were to amend the bankruptcy code in order to address Puerto Rico's current situation, such an amendment would likely need to be a more comprehensive overhaul.

GILLEN: *You have contributed to the Wall Street Journal's "Bankruptcy Beat" column and were featured in a WSJ article discussing the important role female attorneys played in Detroit's Chapter 9 bankruptcy. Has this national exposure created opportunities for you or impacted your practice? What advice would you give a New Jersey bankruptcy professional who is interested in developing a more regional or national practice?*

LEVINE: Ninety percent of success in life is showing up. I've been very fortunate to have had the opportunity to participate in many interesting cases throughout my career, and it's been an honor to serve my clients. As far as advice, I would say that it's important for attorneys to stay active in their bar associations, charities, and their local communities. In addition, interactions and connections you make through your adversaries and other professionals in your day-to-day life are also crucial to developing your practice.

GILLEN: *Speaking of being from New Jersey, have you encountered any adversaries or colleagues from across the country who have expressed any amusing, predictable, surprising New Jersey-based stereotypes?*

LEVINE: Adversaries and colleagues visiting from out of state are always surprised to learn that New Jersey is the "Garden State." We encourage folks to get off of the Turnpike on their way from the airport once in a while to get a true sense of New Jersey.

THE DYNAMIC PRO BONO BANKRUPTCY PROJECTS AT RUTGERS LAW SCHOOL

By Carrie Boyle

Fall is officially here and the Rutgers Law School Bankruptcy Pro Bono Project is in full swing. Earlier this year, the Rutgers Law Schools in Camden and Newark unified. Both schools have very active bankruptcy pro bono projects. In association with the regional legal services in the respective areas, they coordinate law students and practitioners in the assisting of indigent residents of New Jersey filing for Chapter 7 bankruptcy.

The Project first began in Camden during the fall of 1993. The Project was created in response to concerns raised by Judge Judith H. Wizmur and Judge William Gindin of the United States Bankruptcy Court for the District of New Jersey regarding the availability of adequate representation to indigent and other pro se filers. Since its inception, the Project has helped over 2,300 clients in New Jersey.

Judge Wizmur informed TAP that she hopes the Bankruptcy Bar knows that “the primary mission of the Project is to provide bankruptcy services to those who would not otherwise be able to afford such services. A secondary mission, of substantial importance as well, is to provide opportunities for law students to understand and begin to act upon their responsibility as future attorneys to maximize access to legal services, regardless of ability to pay for such services.”

The Honorable Judith H. Wizmur Pro Bono Bankruptcy Project



Over twenty years after Judges Wizmur and Gindin initiated the Project, in February 2014, the Camden Project was renamed the Honorable Judith H. Wizmur Bankruptcy Pro Bono Project to honor Judge Wizmur who co-created the

Project and retired in the Spring of 2013. The Project is supported through its affiliation with South Jersey Legal Services, Inc. (SJLS) in Camden. SJLS screens potential debtor candidates to ensure that all participants qualify for the benefits of the Project. Then, second and third year law students volunteer to undertake training and meet with potential clients under the supervision and guidance of local volunteer practitioners. The union of talented professionals and law students offers a valuable experience to all participants in the program. The students are exposed to real practical experience in representing clients; the practitioners are able to teach and mold young attorneys (and satisfy the attorneys' mandatory

State of New Jersey pro bono requirements); and their joint efforts help local residents experience the benefit of legal representation in matters that will provide them with the invaluable “fresh start.”

Not only was I a student participant in the Project, but for several years, I have been a volunteer attorney with the Project. I cherish the time spent with the law students in discussing relevant bankruptcy issues and teaching skills that I hope they will take with them into their practices upon graduation. Ultimately, the entire experience helping the residents of our area who are in dire need of legal assistance with bankruptcy relief is very rewarding. I urge all practitioners to volunteer for the Project. **To do so in South New Jersey, you may contact Pam Mertsock-Wolf at pmertsoc@camden.rutgers.edu.**

The Honorable Morris Stern Pro Bono Bankruptcy Project



Based on the great success of the Project in association with Rutgers Law in Camden, Rutgers Law in Newark launched its own Project in 2013. The Newark Project was named in honor of the late Judge Morris Stern to

memorialize his contributions to the Project that were instrumental in getting the Project started in Northern New Jersey.

Similar to the Project in Camden, the Newark Project brings together various segments of the legal community, including community legal services, the law school, the Federal Bankruptcy Court, the local bar associations, volunteer students and attorneys. The Project provides not only an important community service, but also helps to increase the interaction between law students and local attorneys while expanding the learning experience for the students and providing expanded pro bono opportunities for the attorneys. It is a great contribution to the continued success of the new Honorable Morris Stern Pro Bono Bankruptcy Project when practitioners volunteer their time to meet with one or two clients and students every year. **To volunteer for the Newark Project, please contact Susan Feathers, Director of Public Interest and Pro Bono, Rutgers Law School, 123 Washington Street, Newark, New Jersey, 07012, 973-353-5555.**

Judge Wizmur Is Very Proud of the Success of the Rutgers Bankruptcy Projects

I discussed the status of the current Projects with Judge Wizmur and she was elated to share that she

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attributed the continuing success of the Project to “the active participation of several segments of our legal community, including regional legal services, the administrators at Rutgers Law School, the many volunteer lawyers who have so generously donated their time year after year to service clients and to mentor law students, the law students themselves, and the Bankruptcy Court.”

Judge Wizmur is “thrilled that the program has migrated to Rutgers Law School in Newark, where the project now bears the name of the Honorable Mickey Stern, who was instrumental in getting it started there.”

In closing, our esteemed former Chief Judge Wizmur “strongly encourages attorneys who are engaged in bankruptcy practice who have not participated in the program to become involved. Not only will the *Madden v. Delran* requirements be fulfilled, but participation promises a great sense of satisfaction and fulfillment in serving those who otherwise would not have access to the legal system, and in mentoring law students, particularly by setting a wonderful example of public service for them.”

TAP offers no words better than those of our former Chief Judge and founder of the Project but to get involved and realize the benefits of volunteering for the Project.

**Meet Ed Gordon****Deputy-In-Charge****Newark Office**

Where were you born? I was born in Charleston,

South Carolina.

Where did you go to school? I attended the public schools of Charleston, SC. After graduating high school, I attended South Carolina State University, formerly South Carolina State College, Orangeburg, SC. In 1975, I received a Masters of Social Work from Rutgers University, New Brunswick, NJ. I earned my law degree from Rutgers, Newark in 1988.

What was your first job? My first job was as a social worker with the Essex County Division of Welfare. I was employed with the Division of Welfare for more than 19 years, as a social worker, social work supervisor, assistant office manager and office manager. I attended law school during the evening while holding this employment.

How did you become interested law as a profession?

Part of my responsibility as the manager of the Essex County Food Stamp Program was to represent the Division of Welfare at administrative hearings. I would defend the Division’s determinations concerning entitlement to benefits. These hearings generated an interest in reading statutes, case law, rules and procedures. I enrolled in the paralegal program at Montclair State University. After courses in legal writing and patent and trademark law, I knew I had to attend law school.

What was your first contact with the Bankruptcy Court?

My initial contact with the United States Bankruptcy Court for the District of New Jersey was in 1987 during my third year of law school. The Clerk of the Court, James Waldron, and I were classmates in a bankruptcy course taught by the late Morris “Mickey” Stern, Judge United States Bankruptcy Court. Jim introduced me to then, Chief United States Bankruptcy Judge, Vincent Commisa. Judge Commisa invited me to intern with him. I had the privilege of this internship for two semesters.

What was it like when you started employment with the Bankruptcy Court?

My employment with the Court started in July 2003, after 14 years as an Assistant Essex County Prosecutor. I arrived at the Court during the first phase of CM/ECF. Court staff and the bankruptcy bar were in the process of learning electronic filing. This allowed me to learn the process as it developed. I was with the Court during the inception of The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). With the exception of a couple of years, we continue to see a decrease in filings as a result of the April 2005 changes in the bankruptcy rules. I work with a great group of employees. I have spent my entire career in public service. It has been very rewarding.

From the Editors

This is our second issue of THE ABSOLUTE PRIORITY. We hope you liked our first issue. We will keep you up to date on the activities and issues that the Lawyers Advisory Committee addresses on your behalf. At our last meeting William Mackin was installed as our new chairperson. Mr. Mackin previously served as vice-chairperson, and succeeded Mark Hall who served as chairperson for the last two years. Mark will continue to serve on the Committee as an ex-officio member. He has been an invaluable leader and participant in all of our subcommittees. We congratulate Bill and know he will continue Mark’s fine tradition of hard work and leadership.

Bankruptcy Bench Finally Full

With the swearing in of Judge Stacey L. Meisel, the court has reached its full complement for the first time in two years. Over that time period, the Bankruptcy Court has replaced 6 of our 9 judges. Our recent additions include Judges Gravelle, Altenburg, Papalia, Sherwood, Poslusny and Meisel.



TAP

Officers: William Mackin (LAC Chairperson); Catherine Youngman (LAC Vice-Chair); Chief Judge Kathryn C. Ferguson, LAC Liaison, Hon. Christine Gravelle,

LAC Members/ Liaisons: David Beslow*, Carrie Boyle**, Ramanjit Chawla, Andrew Finberg, Ginny Fortunato, Martha Hildebrant, Anthony LaBruna, Lou Modugno, Brian Nicholas, Eamonn O'Hagan, Shoshana Schiff*, Robert Schneider and Michael Viscount,

Ex-officio Members: Hon. Rosemary Gambardella, Hon. Michael Kaplan, Hon. Andrew Altenburg, Hon. Vincent Papalia, Hon. John Sherwood, Hon. Jerrold Poslusny, Hon. Stacey Meisel

* The Absolute Priority LAC Subcommittee Member ** The Absolute Priority LAC Subcommittee Chairwoman

Local Rule Changes CLE Seminars

Central/South Jersey Panel

October 29, 2015

8:30 a.m. - 10:00 a.m.

Distinguished Panel Includes:

Honorable Kathryn C. Ferguson

Chief Judge, U.S. Bankruptcy Court District of New Jersey

Christy E. McDonald

U.S. Bankruptcy Court District of New Jersey

Andrea Dobin

Trenk, DiPasquale, Della Fera & Sodono P.C.

William Mackin

Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.

Location & Breakfast Sponsor:

Stark & Stark, 993 Lenox Dr, Building 2,
Lawrenceville, NJ 08648

North Jersey Panel

November 19, 2015

8:30 a.m. - 10:00 a.m.

Distinguished Panel Includes:

Honorable Kathryn C. Ferguson

Chief Judge, U.S. Bankruptcy Court District of New Jersey

Jeanne A. Naughton

U.S. Bankruptcy Court District of New Jersey

Henry M. Karwowski

Trenk, DiPasquale, Della Fera & Sodono P.C.

Meena Untawale

CIT Group Inc.

Location & Breakfast Sponsor:

McCarter & English, LLP, Four Gateway Center,
100 Mulberry Street, Newark, NJ 07102