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Oct. 8, 2020, 12:00-1:30 p.m.

National Conference of Bankruptcy Judges: Now that You're Employed, Here's How to Avoid Stubbing Your Ethical Toe

Eyal Berger; Akerman LLP
Hon. Robert D. Berger; U.S. Bankruptcy Court (D. Kan.)
Veronica D. Brown-Moseley; Boleman Law Firm, PC
Hon. Mildred Caban; U.S. Bankruptcy Court (D. P.R.)
Hon. Bonnie L. Clair; U.S. Bankruptcy Court (E.D. Mo.)
Hon. Magdeline D. Coleman; U.S. Bankruptcy Court (E.D. Pa.)
Michael W. Davis; DTO Law
Sean Davis; Winstead PC
Hon. Catherine J. Furay; U.S. Bankruptcy Court (W.D. Wis.)
Hon. Phyllis M. Jones; U.S. Bankruptcy Court (E.D. Ark.)
Brya M. Keilson; Morris James LLP
Hon. Selene Dunn Maddox; U.S. Bankruptcy Court (N.D. Miss.)
Hon. Julie A. Manning; U.S. Bankruptcy Court (D. Conn.)
Hon. Jessica Price Smith; U.S. Bankruptcy Court (N.D. Ohio)
Hon. Deborah L. Thorne; U.S. Bankruptcy Court (N.D. Ill.)
Hon. Brenda Moody Whinery; U.S. Bankruptcy Court (D. Ariz.)

Educational Materials

94th Annual National Conference of Bankruptcy Judges
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Ethics: Now You're Employed, How to Avoid Stubbing Your Ethical Toe

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Ethical Issues in Employment of Professionals

I. Governing Rules
   a. Section 327 of Bankruptcy Code
   b. Rule 2014 of the Federal Rules of Bankruptcy Procedure
   c. Rules 1.7 – 1.10 of the ABA Model Rules of Professional Conduct

II. Jay Alix Protocols

These protocols were developed in 2001 as part of a settlement between the U.S. Trustee and Jay Alix & Associates concerning applications by debtors in two chapter 11 cases in the District of Delaware to retain one of the law firm's partners as a CRO pursuant to Section 363(b)(1). *In re Hamischfeger Indus. Inc.*, No. 99-2171 (Bankr. D. Del. 1999); *In re Salety-Kleen Corp.*, No. 00-02303 (Bankr. D. Del. 2000).

The key elements of the Jay Alix Protocols include the following:

- The professional may only serve in one capacity (*i.e.*, as a CRO, crisis manager, financial adviser, claims agent or investor) (similar to the requirements under Section 327(a));
- The professional may not be a member of the debtor's board or have served on the board within the two years prior to the- petition date (similar to the requirements under Section 327(a);
- The professional must **disclose its relationships** with all interested parties (disclosures required under Rule 2014); and
- The professional's compensation will be reviewed under a reasonableness standard at the end of the case; however, the professional is not required to file a formal fee application, and any success fees payable to the professional must be approved at the conclusion of the case (similar to the requirements under Section 327(a).

In re Nine West Holdings, Inc., 588 B.R. 678 (Bankr. S.D.N.Y. 2018)

III. Retention

In re Project Orange Assocs., 431 B.R. 363 (Bankr. S.D.N.Y. 2010)
***In re Caesars Entertainment Operating Co.* Inc.**, 561 B.R. 420 (Bankr. N.D. Ill. 2015)
In re Ampal-Am. Israel Corp., 554 B.R. 604 (Bankr. S.D.N.Y. 2016)

In re Relativity Media, LLC, No. 18-11358 (MEW), 2018 WL 3769967 (Bankr. S.D.N.Y. July 6, 2018)
In re Granite Partners, L.P., 219 B.R. 22 (Bankr. S.D.N.Y. 1998)
United States v. Gellene, 182 F.3d 578 (7th Cir. 1999).
In re eToys, Inc., 331 B.R. 176 (Bankr. D. Del. 2005)
In re Parklex Assocs., Inc., 435 B.R. 195, 205, 206-214 (Bankr. S.D.N.Y. 2010)
In re Harris Agency, LLC, 451 B.R. 378 (Bankr. E.D. Pa.)
Matter of Hutch Holdings, Inc., 532 B.R. 866 (Bankr. S.D. Ga. 2015)

II. Compensation

In re Woerner, 783 F.3d 266 (5th Cir. 2015)
In re Midstates Petroleum Company, Inc. et al., Case No. 16-32237, Chapter 11, filed April 30, 2016 in SDTX

III. Denial of compensation/Disgorgement of fees

In re Andre Gaudreau, Case No. 18-18236 in SDFL. Order of Disgorgement of Fees and Disallowance of Fees Sought entered July 20, 2020. This Order was entered even though without Debtor's counsel's efforts the recovery of about $1.6M would not have been possible, Debtor's counsel was not disinterested.

IV. Bifurcated Fee Agreements in Chapter 7 Cases

Debtors in need of protection under chapter 7 of the Bankruptcy Code may lack the financial ability to pay all of the costs associated with legal representation prior to the filing of a bankruptcy case. Agreements entered into by a debtor prior to filing that provide for payment of attorney fees after filing are unenforceable because the attorney's fees contemplated by such agreements are pre-petition debts, which are dischargeable in the bankruptcy case.[1] Debtors' attorneys have attempted to resolve this dilemma via bifurcated attorney fee arrangements in chapter 7 cases.

Under a typical bifurcated attorney fee arrangement, the debtor is required to sign or otherwise enter into more than one representation agreement with his attorney for services related to a bankruptcy case, with the first agreement signed pre-petition, and the second agreement signed post-petition. Often, the pre-petition agreement limits the scope of representation to the filing of a skeletal chapter 7 petition for a minimal cost to the debtor. After the bankruptcy petition is filed, a second agreement is executed that provides for

[1] *Rittenhouse v. Eisen*, 404 F.3d 395, 396 (6th Cir. 2005); *In re Fickling*, 361 F.3d 172 (2d Cir. 2004); *Bethea v. Adams & Assoc.*, 352 F.3d 1125 (7th Cir. 2003); *In re Biggar*, 110 F.3d 685 (9th Cir. 1997).

legal representation throughout the chapter 7 case, along with the terms for payment of post-petition attorney fees and costs.

This practice gives rise to many legal and ethical challenges. Recent bankruptcy court decisions demonstrate that it is possible to overcome such challenges in some instances. These cases also illustrate that the analysis is very fact specific and that outcomes may be dependent upon the local rules and practices of a particular jurisdiction and/or the rules governing professional responsibility of a particular state.

Bifurcated Fee Arrangement Not *Per Se* Improper

The bankruptcy courts in ***In re Milner***, 612 B.R. 415 (Bankr. W.D. Okla. 2019), and in ***In re Hazlett***, 2019 WL 1567751 (Bankr. D. Utah 2019), found that bifurcated attorney fee arrangements are not *per se* improper under the Bankruptcy Code because there is no language in 11 U.S.C. § 329 or the Federal Rule of Bankruptcy Procedure 2016(b) prohibiting the use of such contracts.[2] Pursuant to 11 U.S.C. § 329, an attorney representing a debtor in a bankruptcy case must file with the court a statement disclosing the compensation paid or to be paid and for such compensation to be reasonable.[3] Federal Rule of Bankruptcy Procedure 2016(b) requires debtor's counsel, within 14 days of the order of relief, to file and transmit to the United States Trustee a statement disclosing compensation paid or to be paid in connection with the bankruptcy case, including any agreement to share compensation with any other entity outside of a member or regular associate of the attorney's firm.[4] The bankruptcy courts in *Milner* and *Hazlett* emphasized the importance of the second contract actually being an agreement entered into post-petition and only providing for post-petition services that the attorney had not already agreed to perform.

Guidelines for Determining Propriety of Bifurcated Fee Arrangement

In the *Hazlett* case*,* the U.S. Trustee brought a motion for sanctions related to an attorney and his law firm's use of a bifurcated fee arrangement. The court in *Hazlett* established guidelines to determine when the use of a bifurcated fee agreement is appropriate. The court determined such agreements are appropriate if: (1) it is in the best interests of the client; (2) the attorney provides appropriate disclosures, options, and explanations; (3) the client gives informed consent in writing; and (4) the attorney's fees and costs are reasonable and necessary.[5]

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[2] *In re Milner,* Case No. 19-11539, 2019 Mich. App. LEXIS 5521*(Bankr. W.D. Okla. Sept. 13, 2019); *In re Hazlett,* No. 16-30360, 2019 Bankr. LEXIS 1163 (Bankr. Utah April 10, 2019).
[3] 11 U.S.C. § 329.
[4] Federal Rule of Bankruptcy Procedure 2016(b).
[5] *In re Hazlett,* Case No. 16-30360, 2019 Bankr. LEXIS 1163 (Bankr. Utah April 10, 2019).

The court determined that the bifurcated fee agreements used in the *Hazlett* case met each condition of the guidelines and were appropriate. The court concluded the following: (1) debtor's attorney facilitated the debtor's ability to retain and pay for competent legal counsel through his chapter 7 bankruptcy case and ultimately to obtain a discharge expeditiously; (2) debtor's attorney provided adequate explanations and disclosures of various options, costs, services, and methods of payment; and (3) that the fee of $2,400.00 was reasonable based on the services provided, the debtor's circumstances, and the debtor's receipt of a discharge. A number of factors contributed to the court's conclusions, including: (1) the actual execution of two separate written contracts, one executed pre-petition and one executed post-petition, that clearly and conspicuously explained the scope of services to be provided and the various payment options available; (2) the debtor's need for chapter 7 relief and inability to afford legal representation absent the bifurcated fee agreements; (3) debtor's attorney's billing records evidencing the post-petition services provided; and (4) the lack of complications for the debtor and overall success of the case.

Bifurcated Fee Agreements vs. Unbundling

The *Hazlett* court distinguished the use of a bifurcated fee arrangement from unbundling of legal services. The court explained that unbundling involved an attorney "contractually limiting services to a discrete task, such as filing the bankruptcy petition."[6] The court's primary concern with unbundling legal services is a debtor being left without counsel to complete the legal process after the attorney has provided a limited service. The court determined bifurcated fee agreements to be different because the attorney contracts to provide representation to the debtor throughout the entire case, contingent upon the debtor entering into the post-petition agreement. The court emphasized that the attorney in the *Hazlett* case was agreeable to completing the representation, and it could only be by the debtor's election that the case proceeded *pro se*.

Factoring Legal Fees

Debtor's counsel in the *Hazlett* case assigned the right to collect the post-petition attorney fees and costs to a third party entity ("BK Billing"). In exchange for the assignment of future payment from the debtor, BK Billing provided immediate payment to the debtor's counsel for 75% of the amount billed. In its motion for sanctions, the U.S. Trustee challenged this practice, raising the following deficiencies and concerns: (1) failure to fully disclose the fee-splitting arrangement with the third party entity; (2) clients electing the option with fees factored by BK Billing paying up to 25% more than those who

[6] *Id.*

paid up front; (3) improper shifting of fees to the post-petition fee agreement; and (4) a conflict of interest arising from the bi-furcated agreement and debtor's counsel's relationship with BK Billing. The court noted that the factoring issues expressed by the U.S. Trustee and BK Billing specifically were addressed by the court in the *In re Wright* decision.[7] Further, the court noted that the state of Utah published an ethics opinion regarding factoring attorney's fees in bankruptcy cases, which did not prohibit selling the accounts receivables so long as the client is fully informed, provides consent in writing, and the fees are reasonable. Due to the filing of the bankruptcy case in *Hazlett* predating the *Wright* decision and the publication of the state's ethics opinions, the court did not impose sanctions, but discouraged the use of factoring that is not in strict compliance with the rules and the Bankruptcy Code.

Valid Bifurcated Fee Agreements (*In re Carr*)

In ***In re Carr***, 613 B.R. 427 (Bankr. E.D. Ky. 2020), the bankruptcy court sought information regarding the compensation disclosure filed by an attorney and his law firm in a chapter 7 case.[8] The debtor entered into two contracts with his attorney to represent him in his bankruptcy proceedings. The scope of the first contract, which was executed pre-petition, was limited to the preparation and filing of the debtor's petition and provided for the representation to terminate immediately after the filing of the petition (the "First Contract"). The second contract was entered into post-petition and provided for legal representation for the duration of the case (the "Second Contract"). The court found that the bifurcated agreements complied with the requirements established in *Hazlett*. Additionally, the court held that the use of the bifurcated agreements in this instance complied with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and applicable ethical rules. The court based its ruling on the following considerations:

1) The written agreements complied with the requirement of 11 U.S.C. § 528(a)(1). Section 528(a)(1) requires a debt relief agency to execute a written contract with an assisted person that clearly and conspicuously explains the service to be provided, the associated fees or charges, and the terms of payment no later than 5 days after providing any assistance, and before the filing of the petition.[9] The debtor received a fully-executed copy of the First Contract and the Second Contract. Both contracts were clear and conspicuous, explained the services to be performed, fees to be charged, and the payment terms.

[7] *In re Wright*, 591 B.R. 68 (Bankr. N.D. Okla. 2018).(The court found the post-petition fee agreements to be void, ordered that neither the law firm nor BK Billing could enforce such contracts against the debtors, and ordered disgorgement of all fees collected by BK Billing.)
[8] *In re Carr,* Case No. 19-20873, 2020 WL 373507 (Bankr. E.D. Ky. Jan. 22, 2020).
[9] 11 U.S.C. § 528(a)(1).

2) Debtor's attorney did not advise the debtor to incur debt for the purpose of legal representation or factor the post-petition legal fees. 11 U.S.C. § 526(a)(4) prohibits a debt relief agency from advising an assisted person to incur more debt in contemplation of filing or paying for bankruptcy.[10] Debtor's attorney allowed the debtor to pay post-petition fees directly to him, not to a third-party, in monthly installments.
3) Debtor's attorney did not take payment for post-petition legal fees before full payment of the chapter 7 filing fee. Federal Rule of Bankruptcy Procedure 1006(B)(3) requires chapter 7 court fees to be paid in installments within 120 days of filing and prohibits debtor's counsel from receiving any fee payments prior to full payment of the court fees.[11]
4) Debtor's attorney was not a creditor of the debtor on the date of filing. The First Contract terminated upon the filing of the case and the debtor did not owe any money to his attorney as of the petition date.
5) Debtor's attorney disclosed reasonable compensation agreements with the debtor. However, the court noted that debtor's attorney's compensation disclosure did not provide sufficient details explaining the two contracts and ordered that in the future, the compensation disclosure must be more specific about the bifurcated contracts.
6) The bifurcated agreements complied with the requirements of the state's rules of professional conduct. Kentucky Rules of Professional Conduct permit an attorney to limit the scope of representation so long as the limitation is reasonable and the client provides informed consent.[12]

Invalid Bifurcated Fee Agreements (*In re Milner*)

In *In re Milner,* the bankruptcy court applied the conditions set forth in *Hazlett*, and found that the bifurcated fee agreement did not satisfy such conditions.[13]

1) **Best Interests of the Debtor:** The court determined that it was not in the debtor's best interest to pay a total of $2,700.00 for attorney fees in a chapter 7 case, which was the amount required under the bifurcated fee agreements. The court stated that the debtor lacked the means to pay the post-petition attorney fees given that her income was below-poverty level, she had four young dependents, and her monthly expenses exceeded her net monthly income by $994.24, according to Schedules I and J filed in the case.
2) **Disclosures:** The court determined that the disclosures of compensation were inaccurate and misleading for various reasons, including: (1) failing to accurately disclose the sharing of compensation between debtor's counsel and a third party entity; (2) the inclusion of past tense language in the initial

[10] 11 U.S.C. § 526(a)(4).
[11] Federal Rule of Bankruptcy Procedure 1006(b)(3).
[12] Ky. S.C.R 3.130(1.2).
[13] *In re Milner,* Case No. 19-11539, 2019 Mich. App. LEXIS 5521*(Bankr. W.D. Okla. Sept. 13, 2019).

disclosure suggesting that both the pre-petition contract and the purportedly post-petition contract were executed prior to filing; (3) the debtor's attorney's testimony that it was likely that the debtor did not understand the contracts; and (4) failing to disclose the discrepancy in compensation between debtors who paid for all services pre-petition and those who paid under the bifurcated agreements.

3) **Informed Consent:** The court concluded that, because the disclosures were inadequate, informed consent was not established. Therefore, the court found that the debtor did not provide informed consent in this instance.
4) **Reasonableness:** The court considered the factors set forth in11 U.S.C. § 330(a)(3) in determining the reasonableness of the attorney's fees.[14] The court concluded that the bifurcated attorney's fees were unreasonable due to: (1) inaccuracies in the billing statement; (2) time entries that revealed the attorney's post-petition services performed were exactly the same in cases filed with only one pre-petition representation contract and cases filed under the bifurcated fee arrangement, with the only exception being 0.8 hours billed for the reviewing and signing of the second contract; (3) the attorney's fees charged were $1,300.00 to $1,500.00 higher than the average flat fee rate of other local debtor's counsel; and (4) the compensation charged was between 50% to 80% higher than the customary rate charged by the debtor's counsel in chapter 7 cases he filed not involving a bifurcated fee arrangement.

The bankruptcy court in *Milner* found that the pre-petition and post-petition contracts failed to comply with the material requirements of 11 U.S.C. § 528(a). Therefore, the contracts were void pursuant to 11 U.S.C. § 526(c)(1). Section 526(c)(1) provides that any contract for bankruptcy assistance between an assisted person and a debt relief agency that fails to comply with the material requirements of sections 526, 527, or 528 is void and unenforceable.[15] The court determined that the pre-petition contract and post-petition contracts failed to clearly and conspicuously explain the services to be performed, the fees, and the terms of payment. Factors contributing to the courts determination included: (1) confusing terms in the disclosure of compensation; (2) missing terms such as the start date of installment payments and information regarding whom the debtor should pay installments to; (3) legalese that was not likely to be understood by consumer debtors; and (4) inadequate disclosures regarding the fee options available to the debtor and the incremental cost associated with the bifurcated agreement.

[14] 11 U.S.C. § 330(a)(3) requires " …a court to consider the nature, extent, and value of such services, taking into account all relevant factors, including the time spent on the services, rates charged, whether the services were necessary to the administration of or were beneficial to the case, whether the services were performed in a reasonable amount of time, and the customary compensation of comparably skilled attorneys in other cases." *In re Milner,* Case No. 19-11539, 2019 Mich. App. LEXIS 5521*(Bankr. W.D. Okla. Sept. 13, 2019).
[15] 11 U.S.C. § 526(c)(1).

V. National Consumer Law Firm

Allen et al. v. Fitzgerald, 590 B.R. 352 (W.D.Va. 2018)

In re Williams*,* 2018 WL 832894 (Bankr. W.D. Va. 2018)

Scenario #1

The Blues Brothers Music Company is in the music business, producing new artists and renewing careers of retired singers and bands.

Fourth National Bank of Chicago made loans to The Blues Brothers Music Company for $100,000,000.00 secured by all company assets (recording equipment, instruments, master recordings) except one building. Two years of real estate taxes are owed on the building to Cook County. Some of the recording equipment and instruments are owned and some are leased, and the Music Company is behind in lease payments to the tune of $500,000.00 to Ray's Instruments and $750,000.00 to Aftermath Entertainment Records. The Music Company also owes wages to numerous musicians and union dues too totaling $200,000.00 for these musicians.

The president, Jake Blues and vice-president, Elwood Blues, have come to see attorney Ferris Bueller and his firm Bueller, Frye & Peterson to represent The Blues Brothers Music Company in Chapter 11.

Bueller, Frye & Peterson has a number of offices throughout the United States. One of Ferris' partners in the Hawaii office does ERISA compliance work for Fourth National Bank of Chicago which is not related to The Blues Brothers Music Company. Also, about 3 months ago, a group of disgruntled shareholders accused Jake and Elwood of mismanagement which resulted in an independent board member being chosen by these shareholders to investigate recent leases and other transactions.

Ferris proposes that Estevez, Ringwald & Nelson be employed as conflicts counsel.

The Blues Brothers Music Company also proposes to employ:

Richard Vernon of Vernon & Shermer, LLP as its accountants. Mr. Vernon has done work for the Music Company for the 2 years prior to filing and Jake and Elwood Blues are insistent that Mr. Vernon and his accounting firm are the only accountants they will do business with. Vernon is owed $25,000.00 for pre-petition work.

John Bender of Bender & Sons as its financial advisor. Mr. Bender is a member of the board of directors for a related non-debtor entity, The Blues Brothers Film & Production Company.

Ed Rooney as Chief Restructuring Officer (CRO), who has been working with the Music Company 1 year prior to the petition, running the day-to-day operations. Mr. Rooney has also been working for creditor, Ray's Instruments, helping convert them to a new electronic system to inventory and track the instruments.

Can Ferris be employed at Debtor's counsel?

Can Estevez, Ringwald & Nelson be employed as conflicts counsel to the Debtor? And if yes, who determines what work will be performed by conflicts counsel?

Can the other professionals be employed? What sections of the Bankruptcy Code will apply? What kinds of disclosures need to be made?

The night before the hearing on applications to employ, Ferris finds out that Mr. Vernon has previously done work for Death Row Records, before it became defunct, as well as doing personal accounting work for Dr. Dre, who was an owner of Death Row Records and is current owner of creditor, Aftermath Entertainment Records. What, if anything, does Ferris need to do with this information?

Scenario #2

Somehow Ferris gets everyone employed:

- his firm, Bueller, Frye & Peterson as lead Debtor's counsel;
- Estevez, Ringwald & Nelson as conflicts counsel to Debtor;
- Richard Vernon of Vernon & Shermer, LLP as accountants, after waiving the outstanding pre-petition fees;
- John Bender of Bender & Sons as financial advisor; and
- Ed Rooney as CRO.

The day before the hearing on the Chapter 11 Plan for The Blues Brothers Music Company, the Unsecured Creditors Committee (UCC) files an Emergency Motion for Standing to Prosecute Claims and alleges that the proposed Chapter 11 Plan was based on a scheme to defraud creditors and to conceal illegal activity by The Blues Brothers Music Company. Confirmation is continued to the same date as the UCC's Motion. At the continued confirmation hearing, Ferris announces that a settlement has been reached with the UCC that includes withdrawal of the UCC's Motion, additional recovery for unsecured creditors and an agreement regarding fees for counsel for the UCC.

a) If you were the judge, would you approve this settlement?

Oh, and fee applications are also set for hearing.

The UST filed an objection to Bueller, Frye & Peterson's fee application. Apparently, Ferris failed to mention that 30 days after filing The Blues Brothers Music Company case, he then filed a Chapter 11 for Elwood Blues.

b) Will this result in Ferris' firm having to disgorge all fees or just a portion of the fees? If just a portion, which fees could Ferris' firm retain?

c) Should Ferris be removed as Debtor's counsel?

What if Ferris was responsible for The Blues Brothers Music Company recovering $1,000,000.00 in a settlement that no one thought would ever be recovered; but again Ferris failed to mention that he represented The Blues Brothers Music

Company in some state court litigation and that he also had another law firm, Dewey, Cheetum & Howe, assisting him with legal work in the bankruptcy case.

d) Should Ferris' fees be denied going forward or should there also be disgorgement?

Scenario #3

Again, Ferris has managed to get the Chapter 11 Plan confirmed and to stay in as counsel for The Blues Brother Music Company.

Jake Blues needs to file his own Chapter 7 case. The Blues Brothers also need to put into Chapter 7 another company they own, The Blues Brothers Auto Emporium, that specializes in used police vehicles. Because of local budget cuts, the inventory of used police vehicles has decreased and business has been down for the last 3 years. Of course, Jake and The Blues Brothers Auto Emporium do not have money available to pay attorneys fees up front. Jake suggests that he pay $1,000.00 before filing and then Jake and the Auto Emporium will enter into separate agreements for the remaining fees to be paid after filing.

Fortunately, Ferris has referred these matters to Katy Spady and her firm Spady & Coach.

Can Katy take these cases under the fee arrangement Jake suggested?

If you were the judge, would you approve these fee agreements?

Faculty

Eyal Berger is a partner with Akerman LLP in its Bankruptcy and Reorganization Department in Fort Lauderdale, Fla., where he focuses his practice on small business reorganizations, out-of-court debt restructurings, assignments for the benefit of creditors, corporate dissolutions, Article 9 transactions and the enforcement of creditors' rights. He also protects the interests of financial institutions and lessors as secured and unsecured creditors in myriad insolvency proceedings by assisting them in preserving, liquidating or repossessing their collateral. Previously, Mr. Berger served as judicial clerk extern to Bankruptcy Judge Michael G. Williamson and Chief Bankruptcy Judge Paul M. Glenn in the Middle District of Florida. In addition, he was a member of NCBJ-NextGeneration, for which he served on its Organizing Committee from 2014-19, and is a member of NCBJ's NextGeneration Class of 2012. Mr. Berger is admitted to practice in all bankruptcy and district courts in Florida, as well as the Eleventh Circuit Court of Appeals. He received his B.A. in criminology and his B.S. in psychology, both *cum laude*, in 1999 from the University of Florida, and his J.D. *magna cum laude* in 2004 from the University of Florida Levin College of Law, where he was a member of the Order of the Coif.

Hon. Robert D. Berger was appointed as a U.S. Bankruptcy Judge for the District of Kansas in Kansas City on Oct. 16, 2003. Prior to his appointment, Judge Berger practiced law as a bankruptcy and insolvency specialist representing debtors and creditors, and was among the first group of attorneys in Kansas and Missouri to be certified by the American Board of Certification in both consumer and business bankruptcy law. Judge Berger is a member of ABI and the National Conference of Bankruptcy Judges, and a founding member of the Kansas Chapter of the Federal Bar Association. He has written numerous articles on bankruptcy issues, including chapter 13 tax matters, in *The Washburn Law Journal*, the *ABI Journal* and the *Journal of the Kansas Bar Association*, and is a contributing author to the Kansas Bar Association's *Bankruptcy Handbook* and to *Collier on Bankruptcy.* He is also co-editor of the Kansas Bar Association's *Family Law Handbook* chapter on bankruptcy and has served as a frequent lecturer on bankruptcy, insolvency and related tax issues. Judge Berger received his B.A. from the University of Kansas in 1983 and his J.D. from Washburn University School of Law in 1986.

Veronica D. Brown-Moseley is a shareholder at the Boleman Law Firm, P.C. in Richmond, Va., and represents consumers in chapter 7 and chapter 13 bankruptcy cases in the firms' Richmond, Hampton and Virginia Beach offices. She serves as the president of the Hill-Tucker Bar Association, one of the oldest historically African-American bar associations in Virginia. Ms. Brown-Moseley is a past co-chair of the International Women's Insolvency and Restructuring Confederation's Virginia chapter. She also is a co-founder and serves as vice president of Brighter Tomorrows Begin Today, a nonprofit organization dedicated to assisting individuals in achieving their academic and professional goals. Ms. Brown-Moseley is a frequent writer and speaker on consumer bankruptcy-related issues. She received her B.A. in political science from Virginia Commonwealth University and her J.D. from the University of Richmond T.C. Williams School of Law.

Hon. Mildred Cabán is Chief Bankruptcy Judge for the District of Puerto Rico in San Juan, initially sworn in on March 19, 2010. She sat at the Southwestern Divisional Office in Ponce, P.R., until Aug.

31, 2011, and is currently sitting in Old San Juan. Judge Cabán is chair of NCBJ's Public Outreach Committee and chaired its HNBA Liaison Committee. She is also part of the District Examination Committee for the Federal Bar in Puerto Rico, and she serves as the First Circuit representative for the Bankruptcy Judges Advisory Group and as faculty for the Education Committee for the Federal Judicial Center. Previously, Judge Cabán clerked for Judge Laffitte of the U.S. District Court for the District of Puerto Rico, then practiced bankruptcy law at Brown Newsom & Córdova. She was then a partner for 11 years at Goldman Antonetti & Córdova, P.S.C., where her law practice focused on representing creditors in both commercial and consumer bankruptcy cases. Judge Cabán has spoken on various bankruptcy and consumer law topics for several organizations and has judged trial and moot court competitions. She is a member of ABI and the Judicial Counsel of HNBA, and in 2014 she received the CARE Volunteer of the Year Award in honor of her work with the Credit Abuse Resistance Education organization. Judge Cabán received her B.A. from Barnard College in 1983 and her J.D. from New York University School of Law in 1986.

Hon. Bonnie L. Clair is a Bankruptcy Judge in the U.S. Bankruptcy Court for the Eastern District of Missouri in St. Louis. Prior to her appointment in 2020, she worked for the Attorney General's Honors Program in the U.S. Department of Justice, where she worked for the Office of the U.S. Trustee in St. Louis and Little Rock, Ark. In 1997, she transitioned to Norwest Financial, Inc. (now Wells Fargo Financial), where she piloted the company's field attorney program. Four years later, she joined the firm now known as Summers Compton Wells LLC, where she became a principal in 2004. The Missouri Supreme Court appointed Judge Clair to its Region X Disciplinary Committee in 2018. In addition, she served the Missouri Bar as a member of its Fee Dispute Resolution Committee for almost 20 years before she took the bench. Judge Clair is a frequent writer and presented on bankruptcy issues and appeared in the Lawyers' Association of St. Louis's annual Gridiron Show. She received her undergraduate degree from Duke University in 1990 and her J.D. from Washington University School of Law in 1993, where she was an articles editor for the *Journal of Urban and Contemporary Law* (now the *Journal of Law and Policy*), a national competitor in the New York City Bar Moot Court competition and a law clerk for the Civil Division of the United States Attorney's Office for the Eastern District of Missouri.

Hon. Magdeline D. Coleman is Chief Bankruptcy Judge for the U.S. Bankruptcy Court for the Eastern District of Pennsylvania in Philadelphia, initially appointed on April 12, 2010. She began her career working for a family business as a general counselor, which provided services to college students in the Philadelphia area. She then worked with Atkinson & Archie, P.C. and as a staff attorney for the U.S. Department of Housing and Urban Development, where she began working as a bankruptcy attorney. Judge Coleman later clerked for Hon. David A. Scholl and joined the firm of Sagot, Jennings and Sigmond, where she dealt with national and local Taft Hartley funds in bankruptcy cases. Lastly, she worked with Buchanon Ingersoll & Rooney PC on bankruptcy and related litigation. Judge Coleman received her undergraduate degree from Chestnut Hill College in 1978 and her J.D. from the University of Pennsylvania Law School in 1981.

Michael W. Davis is an attorney with DTO Law in Los Angeles, where he focuses on business, commercial and insolvency law. His transactional work includes secured lending, distressed-debt restructuring, lease financing, and corporate formation and governance. He also provides advice and oversight to clients with regard to insolvency issues, as well as the negotiation and documentation of

business transactions. Mr. Davis has experience in bankruptcy-related litigation, including prosecuting and defending fraudulent-transfer and preference matters, lien-priority disputes, nondischargeability matters and claims-related disputes. He has represented bankruptcy trustees, receivers, creditors and assignees for the benefit of creditors in a variety of matters, including fraud, breach of duty, professional negligence, malpractice and breach of contract. Mr. Davis represents clients in both federal and state courts, and where necessary in appeals cases. Recently, he was part of a trial team representing a bankruptcy trustee in a Ponzi-scheme related fraudulent-transfer adversary proceeding. Mr. Davis's past representations include debtors, secured and unsecured creditors, creditors' committees, and chapter 7 and 11 trustees in both individual and corporate cases, as well as court-appointed receivers. He also has worked on a number of *pro bono* matters. Mr. Davis received his undergraduate degree in business finance from the University of Florida and his J.D. from USC Gould School of Law.

Sean B. Davis is shareholder at Winstead PC and a member of the firm's Business Restructuring/Bankruptcy Practice Group in Houston. His practice has touched on a host of commercial bankruptcy matters in several different industries, including commercial and residential real estate, heavy machinery and equipment financing, construction, maritime shipping, oil and gas, and private condemnation. Mr. Davis's representative experience focuses on a host of issues pertinent to secured and unsecured creditors in chapter 7, 11 and 13 cases, as well as commercial litigation stemming from the bankruptcy context. He was admitted to the State Bar of Texas in 2009 and is admitted to practice in the U.S. Bankruptcy and District Courts for the Northern, Southern, Eastern and Western Districts of Texas and the Southern District of New York, as well as the U.S. Court of Appeals for the Fifth Circuit. Previously, Mr. Davis interned for Hon. Letitia Z. Paul in the U.S. Bankruptcy Court for the Southern District of Texas, and while in law school, he served as a legal intern for Hon. Terry Jennings of the Fourteenth Court of Appeals for the state of Texas, as well as the Attorney General's Office for the state of New Mexico. Mr. Davis has practiced at Winstead PC in Houston since 2009 and is a member of the American Bar Association, ABI, the Turnaround Management Association, the Houston Young Lawyer's Association, the Arthur L. Moller/David B. Foltz, Jr. America Inn of Court, the Bankruptcy Sections of the State Bar of Texas and the Houston Bar Association, and the Houston Association of Young Bankruptcy Lawyers. He received his B.A. from Rice University and his J.D. from Cornell Law School.

Hon. Catherine J. Furay is Chief Bankruptcy Judge for the Western District of Wisconsin in Madison. Prior to her appointment, she practiced bankruptcy, commercial law and business litigation. Judge Furay is a frequent lecturer on bankruptcy, commercial law, ethics, marital property and litigation skills. She served as an adjunct faculty member at the University of Wisconsin Law School teaching lawyering skills for 21 years and guest lectures for its bankruptcy course. Judge Furay is a member of the Bankruptcy Judges Advisory Group of the Administrative Office of the U.S. Courts, the bankruptcy judge member of the Advisory Process Review Working Group, and a member of the Advisory Group for the AO's Bankruptcy Case Weighting Study. In 2020, she became a Fellow of the American College of Bankruptcy. Judge Furay is a contributing author of *Construction Law*, Chapter 16, "Bankruptcy," and is the author of several articles on various bankruptcy, collection, marital property and litigation topics. In 2019, Judge Furay became the editor-in-chief of *Ginsberg & Martin on Bankruptcy*. She is a member of the National Conference of Bankruptcy Judges, for which she serves as a member of its Elections, Finance, and Online Learning Committees. She has also served as the Seventh Circuit representative on the NCBJ Board of Governors and on the NextGen and Technology Committees of NCBJ. Judge Furay is a member of ABI and currently serves on the Education

Advisory Committees for the Central States Bankruptcy Workshop and the Hon. Eugene R. Wedoff Seventh Circuit Consumer Bankruptcy Conference. In addition, she is a member of the Turnaround Management Association, a member of the Board of Trustees, past chairman of the board, and past president of the Certification Oversight Committee. Judge Furay has served on the board of governors and various committees of the State Bar of Wisconsin, including its Executive and Finance Committees. In addition to being co-author of *Wisconsin Business Advisors Series: Collections & Bankruptcy Vol. 4* (Pinnacle Books), she co-authored the *Wisconsin Civil Litigation Forms Manual* (Pinnacle Books). Judge Furay received her J.D. from the University of Wisconsin-Madison Law School.

Hon. Phyllis M. Jones is a Bankruptcy Judge with the U.S. Bankruptcy Court for the Eastern District of Arkansas in Little Rock. Previously, she worked for four years at the Wright, Lindsey and Jennings law firm in Little Rock, practicing commercial litigation, and later became a partner at Lax, Vaughan, Fortson, Rowe & Threet, where she spent 12 years handling commercial litigation, including bankruptcy and debtor/creditor litigation and commercial lending. Judge Jones received both her B.S. in 1992 and her J.D. in 1997 from the University of Arkansas in Little Rock.

Brya M. Keilson is counsel with Morris James LLP in Wilmington, Del., where she counsels clients on commercial bankruptcy, restructuring and insolvency matters. She represents chapter 11 debtors, insurers in all facets of bankruptcy-related issues, creditors' committees, liquidating trustees, trade creditors and financial institutions, purchasers of assets, and both plaintiffs and defendants in numerous avoidance actions, including preference and fraudulent-transfer actions. Outside of bankruptcy, Ms. Keilson represents receivers and assignees in assignments for the benefit of creditors, and she represents corporate clients in asset-purchase deals and banks in front-end lending and workouts. She also has experience in commercial litigation, real estate matters, loan transactions and corporate acquisitions. Prior to joining Morris James, Ms. Keilson worked in private practice at two law firms for the first 13 years of her practice. She then worked as a trial attorney for the Office of the U.S. Trustee, where she represented the U.S. Trustee for Region 3 in chapter 11 and 7 cases pending in Delaware. Ms. Keilson speaks on a broad range of topics concerning commercial bankruptcy law, including serving as a recurring panelist at the Pennsylvania Bankruptcy Institute. She received her B.A. in philosophy in 1999 from Haverford College and her J.D. in 2004 from Villanova University School of Law, where she was a staff writer and managing editor of the *Villanova Law Review* and a Dean's Merit Scholar.

Hon. Selene D. Maddox is a U.S. Bankruptcy Judge for the Northern District of Mississippi in Tupelo, appointed in 2018. Previously, she was a solo practitioner with Maddox Law Office in Tupelo, where her practice focused on debtor bankruptcy. She also served as a chapter 7 bankruptcy panel trustee in the Northern District of Mississippi. Judge Maddox served as vice president of the Lee County Bar Association from 1998-99 and as president from 1999-2000. She was appointed by the Mississippi Supreme Court to serve on the Mississippi Commission on Continuing Legal Education June 30, 1999. She also served on the Mississippi Bar's Ethics Committee from 2005-08, and she served two one-year terms as president of the Mississippi Bankruptcy Conference for 2005 and 2006, and on its Board of Directors from 2003-07. Judge Maddox had assisted with drafting new local rules for the U.S. Bankruptcy Court for the Northern and Southern Districts of Mississippi, and served on the Advisory Committee on Local Rules for the U.S. Bankruptcy Courts for the Northern and Southern Districts of Mississippi. She was inducted as a Mississippi Bar Foundation Fellow in 2007 and

subsequently served as a trustee on the Mississippi Bar Foundation Board of Trustees from 2011-13. Judge Maddox received her B.B.A. from the University of Mississippi in 1983 and her J.D. from the University of Mississippi School of Law in 1987.

Hon. Julie A. Manning is the Chief Bankruptcy Judge for the District of Connecticut in Bridgeport, initially sworn in on Sept. 9, 2013, and named Chief Judge on Sept. 9, 2014. Prior to her appointment, she was in private practice for 25 years, representing corporations, partnerships, financial institutions and insurance companies in bankruptcy and commercial litigation cases throughout the U.S. From 1999 until her judicial appointment, she was a partner with the law firm of Shipman & Goodwin, LLP, where she chaired the firm's Bankruptcy and Creditor Rights Group, co-chaired the firm's Finance and Investment Practice Group, and was a member of the firm's Partnership Review Committee and Compensation Committee. As a practicing attorney, Judge Manning was listed in the Bar Register of Preeminent Women Lawyers, was repeatedly named a *Connecticut Super Lawyer* and *New England Super Lawyer*, and was listed as one of *The Best Lawyers in America* in the area of Bankruptcy and Creditor/Debtor Rights. She is a member of ABI, the Connecticut Bar Association and the National Conference of Bankruptcy Judges, for which she serves on its Public Outreach Committee and Endowment for Education Board. During law school, Judge Manning clerked with the Office of the U.S. Trustee. She received her B.A. from Fairfield University and her J.D. from Suffolk University School of Law.

Hon. Jessica E. Price Smith is a U.S. Bankruptcy Judge for the Northern District of Ohio in Cleveland, appointed on Aug. 22, 2011. She is the first African-American woman to be appointed to the Northern District of Ohio's bankruptcy court. Prior to joining the bench, Judge Price Smith's practice focused on commercial bankruptcy and corporate debt restructurings at Brouse McDowell, where she became the firm's first African American partner. She received her undergraduate degree from Miami University and her J.D. from Ohio Northern University.

Hon. Deborah L. Thorne is a U.S. Bankruptcy Judge for the Northern District of Illinois in Chicago, appointed on Oct. 22, 2015. Prior to joining the bench, she was a partner in the Chicago office of Barnes & Thornburg LLP, where she was a member of its Financial Insolvency and Restructuring Department. Her practice included the representation of creditors and other parties in insolvency proceedings, and she frequently served as a federal equity receiver in commodity fraud cases brought by the Commodity Futures Trading Commission. In addition, she co-chaired the Women's Initiative for the firm. Judge Thorne is past chair of the Chicago Bar Association Bankruptcy and Restructuring Committee and a past member of the Board of Governors and chair of the Bankruptcy Committee for the Seventh Circuit Bar Association. She is a Fellow of the American College of Bankruptcy and previously served as ABI's Vice President-Communications & Information Technology. Judge Thorne is the author of the *Preference Defense Handbook: The Circuits Compared, Third Edition* and a co-author of *Interrupted! Understanding Bankruptcy's Effects on Manufacturing Supply Chains*, both published by ABI. She is listed in *The Best Lawyers in America* in the area of Bankruptcy and Creditor/Debtor Rights Law, is recognized as a Leading Lawyer in Illinois and has been recognized by *Illinois Super Lawyers* every year since 2003. Judge Thorne served as chair for seven years of Women Employed, a Chicago nonprofit policy organization focused on improving the lives of low-wage women through enhancing access to post-secondary education and improving job quality. She remains on the Board of Women Employed and as a member of the Governance Committee, and she

currently is a mentor to an Evanston Scholar. Judge Thorne received her B.A. from Macalester College, her M.A.T. from Duke University and her J.D. with honors from Illinois Institute of Technology Chicago-Kent College of Law.

Hon. Brenda Moody Whinery is a U.S. Bankruptcy Judge for the District of Arizona in Tucson, sworn in on Feb. 1, 2013. Previously, she was with the Phoenix law firm of Ryley, Carlock & Applewhite, where she practiced in the areas of bankruptcy, creditors' rights and real estate, primarily representing institutional clients and unsecured creditors' committees. She also co-chaired the firm's bankruptcy practice group. In 1998, Judge Whinery became the U.S. Trustee for the District of Arizona, and during her tenure also served as the Acting U.S. Trustee for New Mexico, Southern California, Hawaii, Guam and the Northern Mariana Islands. In 2002, she returned to private practice and joined the firm of Mesch, Clark & Rothschild in Tucson. As a shareholder at Mesch, Clark & Rothschild, her practice was concentrated in commercial bankruptcy reorganization matters, representing debtors, creditors' committees and chapter 11 trustees, and she also served as a chapter 11 trustee. In addition, she was also active in the firm's management, serving on the management committee and as president of the corporate entity. Judge Whinery is a Fellow of the American College of Bankruptcy. She is also a member of the National Conference of Bankruptcy Judges and sits on the Endowment for Education Committee and the Ninth Circuit Pro Se Litigation Committee. Judge Whinery is a 1982 graduate of the University of Arizona and received her J.D. from the University of Arizona College of Law in 1985, where she served as a writer and editor on the *Arizona Law Review*.