

THE ABSOLUTE PRIORITY

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New Jersey Bankruptcy Lawyers Advisory Committee

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A Discussion With Chief Judge Ferguson

By: Ross J. Switkes



Honorable Kathryn C. Ferguson

In May 2015, the Honorable Kathryn C. Ferguson became Chief Judge of the United States Bankruptcy Court for the District of New Jersey. I recently had the privilege of sitting down with Chief Judge Ferguson to discuss a wide range of topics, including the challenges of her new role, pointers for practitioners appearing before her, and areas in which compliance with the new Local Rules can be improved. Her responses provide insight into not only her perspective from the Bench, but also fun facts about her personality and interests. The Lawyers Advisory Committee sincerely thanks Chief Judge Ferguson for taking time out from her busy schedule to participate in this interview.

What are the new challenges you face in your role as Chief Judge?

I have role models that served as examples of how a Chief Judge should generally conduct him/herself. My role models, however, served as Chief during times of stability on the Court. It is challenging to continuously learn how to work with so many new Judges, and they are likely similarly challenged learning how to work with me.

You have been on the Bench for many years, do you ever miss private practice?

I miss the camaraderie that comes along with working in a small office. I have great relationships with my colleagues on the Bankruptcy Bench, District Court Judges, and Magistrate Judges, but it is still different from freely popping into colleagues' offices in a law firm. Fortunately, I am very close with my staff

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and that helps tremendously.

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

Practitioners should understand that I have thoroughly reviewed all the submissions; I read everything. I am a visual learner, and as a result, it is easier for me to understand the parties' positions if I have read them in their papers prior to oral argument. For the same reason, lawyers should do everything possible to submit good, quality papers.

Also, lawyers appearing before me do not have to argue what is in their papers because I have read it. If additional facts have arisen since the last submission, lawyers should come to oral argument prepared to address the new information.

What is one thing your staff would want practitioners appearing before you to know?

Please consult the rules and statutes before calling chambers.

How long have you worked with your chambers staff, Dana Muccie (Judicial Assistant), Christy McDonald (Law Clerk), Frances Dykes (Courtroom Deputy), and Geraldine Holley-Mack (Court Reporter)?

Dana and I just had our 25 year anniversary in September. Dana worked at my former firm with me before I took the Bench. Christy and I have worked together for over 20 years. Fran has been part of my chambers since the day I took the Bench, more than 22 years ago. Geraldine joined my staff approximately 10 years ago.

As we all know, you headed the committee that revised the new local rules. What rule do you think practitioners are having the hardest time complying with?

Generally, the service rules. Service has been a particularly important issue for me for a long time. It is critical that lawyers properly and adequately serve submissions. In reviewing

proofs of service, however, often times it seems that either (i) the attorney did not properly consult the rules; and/or (ii) service was performed by a staff member and the attorney did not properly supervise service.

In the near future, the Court will be uploading an instructional video to the Court's website directed at staff. The video will explain what is required for service and why it is important. We will not be able to address how to serve every type of party, but I hope the video will shed light on why the rules are drafted the way they are and how to comply with them.

What are your interests/hobbies outside of being a Judge?

I have many hobbies and interests that keep me busy when I am not performing my duties as Chief Judge.

A few examples are:

Reading: I am an avid reader of fiction and belong to several book groups. My favorite book of all time is probably *The Great Gatsby*. It is short, but I must have read it 15 times, and I went to a performance a few years ago where they read the entire book. The performance lasted for hours, not including the dinner break. Only a book nerd like me could enjoy that! I am currently reading *Circling the Sun*, but I am not loving it. My most recent enjoyable book was *The Mare* by Mary Gaitskill.

Film: I enjoy film and am the former president of the Trenton Film Society. My favorite film of all time is probably *Destry Rides Again*. I don't think you can fully appreciate *Blazing Saddles* (another great film) without at least some knowledge of *Destry*. My favorite film in the last year is probably *Brooklyn*, although I also really liked *Bridge of Spies* and *The Martian*. Notice all of the "probablys"? I have a lot of trouble picking out favorites of almost any kind...

Fitness: I do not love to exercise, but I am regularly at the gym and enjoy spinning and swimming. I was also the third ranked

racewalker in the State of New Jersey in 1998. For those that are not familiar with this sport, racewalking involves races over long distances while walking in a manner in which the racewalker's knee must be straight when their heel strikes the ground. There are judges (non-bankruptcy) situated along the course to ensure compliance. During race season I would racewalk approximately 60 miles per week in training, and I finished the five mile course in just under 55 minutes.

Photography: I am a photography enthusiast. I take pictures anywhere I can. For those that have visited my chambers, I took all the pictures in the shadow box frame in the hall outside.

Cooking: I love to cook. I am an eclectic chef and enjoy cooking recipes from many different cultures. I am currently enjoying preparing all the different foods that Blue Apron recipes offers.

Travel: I am a seasoned traveler. I recently got married in my favorite destination; Italy. Every other year I travel with my "NJ Crew." This group of friends is made up of people I met while working at Great Adventure when we were teenagers. Over time, as our families grew, so has the NJ Crew. Our kids all know each other from birth! On some trips there have been as many as 25 people. We have visited many places including national parks and European countries.

What is the best dish you make?

My most famous dish is vegetarian chili. My vegetarian chili is often requested by my friends and family and I prepare it in large quantities. The most challenging dish I make is Beef Wellington.

What do you like most about the LAC?

I am an original member of the LAC and have a great fondness for the committee. I enjoy hearing about what goes on in the trenches. As a Judge, it is easy to lose sight of the practicalities and to become frustrated with the quality of the practice sometimes. Times have changed since I

left private practice; the practice is always evolving and hearing what lawyers have to say keeps me grounded. I find that it lets me maintain my compassion for the practitioners appearing before me. Listening to the concerns of the members of the LAC regularly reminds me that practicing law is a difficult way to make a living.

Did You Know

...that the original Newark Federal Courthouse was on the lot now occupied by the Prudential Building on Broad Street.

...that Judge Phillip Forman of the New Jersey Federal District Court and the Third Circuit Court of Appeals was the first chair of the Supreme Court Advisory Committee on Bankruptcy Rules.

...that Judge Meisel is the 24th Bankruptcy Judge appointed in the District and succeeded into the position held by Judge Commisa.

...in 1899 there were 11 referees in bankruptcy in NJ.

...that Iowa had 47, Ohio had 66 and New York had 52.

...that Charles Lindbergh was a referee in bankruptcy and member of Congress...he was the father of the famous aviator.

Finally from the 1898 National Bankruptcy News

How Did He Do It?

Stranger: "Beg pardon sir, but you have it in your power to do me a great favor and one I will gladly repay."

Bankrupt (sadly): "I am afraid you have made a mistake. I am of no use to anybody. I have just failed for \$20,000 with no assets....you say I can be of service to you?"

Stranger: "Yes I beg you not to refuse."

Bankrupt: "But what can a miserable bankrupt like me do for anyone?"

Stranger: "I want you to tell me sir how did you get so much credit?"

ATTENTION K MART SHOPPERS!**LOOK UP AND AROUND!**

The Blue Light Special is back! Some may recall hearing this announcement, summoning images of Kmart's roving blue light and shoppers hurriedly pushing carts in hot pursuit of a bargain. This amusing marketing adventure has recently been brought back from the 1970's by Kmart in an effort to boost sales. Bankruptcy practitioners would be well-advised to heed this retailer's advice, and "look up and around" while briskly walking through the halls of our courthouses!

Sinopia Drawings - Camden

The next time you are in Camden passing through the breezeway, take a moment to check out the Sinopia. The plaque there provides a wonderful summary of: The Sinopia; The Roosevelt Mural; The Conservation; The Artist; and the Jersey Homesteads.

The Sinopia drawings of the fresco for Ben Shahn's Jersey Homelands Mural, commissioned by the Resettlement Administration of the New Deal in 1938, are located in the Judge Lipkin Gallery on the Second Floor Skyway at the Mitchell H. Cohen United States Post Office and Courthouse, Camden, New Jersey. *(A sinopia is a rough sketch underlying a fresco, in a dark reddish-brown pigment named after the Turkish city of Sinop.)*

In 1999, the skyway connecting the United States Post Office (1932) and the Court House addition (1994) was created, and designated as the home for the Sinopia.

The Phillip Forman Law Library - Trenton

The United States Post Office and Courthouse in Trenton, New Jersey is home to the Phillip Forman Law Library, one of nine branch libraries of the Third Circuit Court of Appeals.

In 1932, Judge Phillip Forman was sworn in as a Federal Judge and, at age 36, was the youngest man to hold such a position in the nation. He was also the first Jewish man to serve as a federal judge in New Jersey.

These nuggets of information are readily available online, but the real "blue light specials" are the letters and documents adorning the walls and stacks in the library in Trenton. Among the items on display are a letter from Albert Einstein to the Judge accepting the invitation to a naturalization ceremony for soon to be citizens, including the wild-haired genius, and the speech given by Judge Forman at the ceremony in 1938.

During his tenure as District Judge, Judge Forman inducted thousands into U.S. citizenship, including Einstein and two Nobel Prize winners. In one letter on display, he stated that: "It was my pleasure to preside over the court in which most of the foreign scientists who came to the Institute of Advanced Learning at Princeton were naturalized. In this way I met many of the inspirational figures with whom Hitler so inadvertently enriched our country."



Another letter written in 1972 from Judge Forman to Judge Anne Thompson is a true blue light special. Judge Forman's eloquent message to Judge Anne Thompson on her selection as Judge of the Municipal Court of the City of Trenton, is worth reading. Judge Forman not only remarks upon Judge Thompson's

integrity, courage, ability and experience, but offers insight and wisdom regarding the responsibilities of a Judge. He noted that “litigants gain their one and only impression of the administration of justice [in ‘a court of first instance’]. Hence, how important it is that those who preside over them should be selected with care and sensitivity equal to that exercised in choosing judges of the highest courts of the state and nation.”

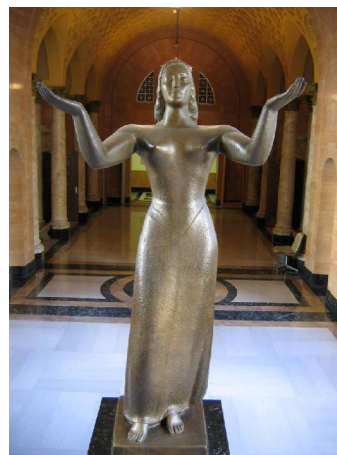
Directly across from that letter is the transcript from the memorial session for Judge Forman in 1978. A London friend noted that Judge Forman “represented the best of America,” that he was “interested and informed about all the major concerns of the turbulent world in which he lived.” The newspaper clippings and words of the jurist displayed in the library are wonderful examples of this dedicated and brilliant mind and spirit. One can’t help but leave the library feeling both awed and inspired.

The Ward Murals - Trenton

These extraordinary works of art were commissioned in the context of President Roosevelt’s New Deal by the Work Progress Administration (“WPA”), which sought to relieve artist unemployment and promote art culture during the Great Depression, and fostered the fusion of art and patriotic values to rally the spirits of the country’s citizens. Artist Charles Ward’s *Progress of Industry*, depicting wire and pottery factories in Trenton, was one of the first WPA post office murals, and hangs prominently over the main door in Trenton. In 1937, two more murals by the artist were added to complete the collection. *The Second Battle of Trenton*, and *Rural Delivery*, can be observed in the lobby of the Post Office.



The Justice Sculpture - Newark



This seven foot high, bronze sculpture, described as reflecting “a new kind of justice, dignified, serene and compassionate”, and first-place winner at the World’s Fair during a national tour, can be observed in the center of the rotunda on the third floor of the courthouse. In 2008, the Historical Society for the United States District Court for the District of New Jersey hosted a presentation on the art in the courthouse, and held a dedication of recreated images of murals.

An explanation of the murals, as well as a wonderfully amusing history of the *Justice* sculpture, is set forth in a press release authored at that time by Susan Travis of the District Court..

(www.history.njd.uscourts.gov/iscFiles/2008_05_NJHISTpressrelease0425.pdf).

Luckily for our bar, these specials are not fleeting, but rather are proudly maintained and preserved in our courthouses. Practitioners are encouraged to take notice of these gems in our halls, and to also visit the website of the Historical Society of the United States District Court for the District of New Jersey for more information on the exhibits in the courthouses and the work of the society. (www.history.njd.uscourts.gov)

Message from the Chair



**William Mackin, Chairperson
Lawyers Advisory Committee
to the
Bankruptcy Court for the
District of
New Jersey**

New Jersey Bankruptcy practitioners have recently experienced a number of seismic practice shifts. The Court's local practice rules have been comprehensively revised. Adversary Proceedings are now presumptively subject to the Court's mediation program. There are new mandatory federal bankruptcy forms, with more to come. And, the Court has migrated to the NextGen software system. The LAC is busy tackling many substantive and procedural questions, raised by both members of the Bench and the Bar, in light of these practice changes.

The Chapter 11 Subcommittee is looking at the possible adoption of a local rule expanding the permitted scope of omnibus claims objections motions. The Chapter 13 Subcommittee is reviewing the continued use of "no look fees", whether lenders/servicers should be required to submit their signed final loan modification papers when they have actively participated in the loss mitigation program, and whether we should employ a standard form of loan modification order. The Local Rules Subcommittee is preparing proposed local rules governing consumer Chapter 7 best practices and proposed changes to the local rules for streamlining mediator fee applications. The Newsletter Subcommittee is always busy preparing the next issue of the LAC's Newsletter, "The Absolute Priority" and welcomes news, input, and ideas from the Bar. The By-Laws Review Subcommittee is working on amendments to the LAC's Bylaws to allow for the addition of two new liaison positions.

As Chief Judge Ferguson has said, "The LAC is only as good as the bankruptcy bar makes it. We all want the bankruptcy practice in New Jersey to be as good as we can make it--the LAC is one of our best tools to make it so." That is why we sincerely welcome input on any of the matters currently on our agenda. The LAC's meeting minutes will identify all current discussion topics and are posted on the Court's website. Take time to review them. Then share your thoughts with us. We also actively encourage attorneys to bring to our attention any matters that we are not currently considering, such as proposed new local rules, suggestions for changes to existing local rules or forms, or any ideas to improve consumer or commercial bankruptcy practice in the District of New Jersey.

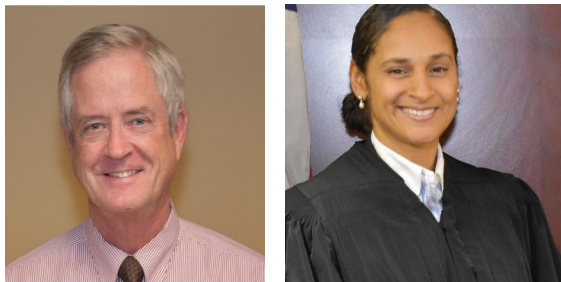
Don't be shy! After all, the LAC is the practitioner's conduit to the Board of Judges and I am proud to say that the attorney members of the LAC are all dedicated to fulfilling that role. We have made it easy to submit your ideas and comments by way of a hyperlink on the Court's website under the "Lawyer's Advisory Committee" tab. You can also present them to any current LAC member, whose names are also on the Court's website.



Congratulations Jim, Mo and Judge Meisel !!!

In October, our Clerk of Court, Jim Waldron, was selected to be inducted as a Fellow of the American College of Bankruptcy in recognition of his professional excellence and exceptional contributions to the bankruptcy and insolvency practice. The College currently has 848 active Fellows.

In December, Judge Stacey L. Meisel received the IWIRC-NJ Woman of the Year Award in recognition of all of her professional accomplishments and community service while in private practice. In December, Mo Wong received the Donald A. Robinson Meritorious Service Award for his dedication and service to the New Jersey Federal Courts.



Jim Waldron

Judge Stacey L. Meisel



Mo Wong, Jim Waldron,
Chief Judge Jerome Simandle

Recent Notable Decisions:**In Re: Trump Entertainment Resorts United Here local 54, 810 F.3d 161 (3d Cir 2016).**

Judge Roth sitting on the Third Circuit Court of Appeals held: (1) On a question of first impression, a debtor may reject an expired Collective Bargaining Agreement (“CBA”) or its continuing obligations as defined by the expired CBA, and (2) The rejection of the debtors’ continuing labor obligations, as defined in the expired CBA, was necessary to permit the debtors’ reorganization.

In Re: Revel AC, Inc., 802 F.3d 558 (3d Cir 2015)

In deciding to grant a tenant operator’s motion to stay the sale of the casino pending a determination of the rights of the casino tenants, Judge Ambro held: (1) The District Court’s decision denying operator’s request for a stay was appealable to the Court of Appeals; (2) the balance-of-harms tilted in favor of granting a stay; (3) public interest tilted slightly in favor of granting a stay; and (4) operator made a strong showing of its likelihood of success on the merits of its challenge to the sale order.

In Re: ICL Holdings, Inc., 802 F.3d 547 (3d Cir 2015).

Judge Ambro sitting on the Third Circuit Court of Appeals held: (1) Payments from secured creditor lender group directly to unsecured creditors from trust funded by lender group did not qualify as estate property; (2) escrowed funds for payment of debtors’ wind-down expenses and professional fees did not qualify as property of the estate; (3) government’s appeal of distributional terms of escrowed funds was not constitutionally moot; (4) statutory mootness provision did not apply to government’s appeal; and (5) the government’s appeal was not equitably moot.

Bullard v. Blue Hills Bank, 135 S. Ct. 1686 (U.S. 2015).

Chief Justice Roberts held that a Bankruptcy Court’s order denying confirmation of a proposed chapter 13 repayment plan with leave to amend is not a “final” order that the debtor can immediately appeal.

From the Office of the Clerk of the United States Bankruptcy Court for the District of New Jersey



Meet Nancy Figueroa

Deputy-In-Charge

Trenton Office

Where were you born?

I was born in Santa Clara, Cuba.

Where did you go to school?

I attended Our Lady of Hungary Roman Catholic School in Perth Amboy, NJ and attended Perth Amboy Public High School. I graduated from The Cittone Institute in 1987.

What was your first job?

I held several part time positions while attending school, but my first full time job was with Investment Technologies, Inc. I held the positions of Office Manager and Assistant to the CEO/President and to the CFO of the investment company.

What was your first contact with the bankruptcy court?

My initial contact with the United States Bankruptcy Court was in 1991. During the summer of 1991, my employer Investment Technologies closed its' doors and while looking for new employment, I applied for a position with the US Bankruptcy Court.

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

My employment with the Court began in December 1991. At this time, the Court used BANCAP to docket pleadings, BANS to generate Court Notices and we receipted filing fees manually. The Court held large file rooms with hundreds of paper files. E-mail, a very different form than used today, was rare. As I experienced working with the Court, it was clear to me that it was very important that I become familiar with each new procedure or program. Things were moving forward quickly and as a previous office manager, I knew this would be key to my professional and personal growth. It was most necessary in order to help those who came to us for bankruptcy guidance. I looked toward the Clerk's Office as a place where I would learn and grow. During the 90's, the Court grew quickly and Bankruptcy filings were on the rise. New electronic programs were made available to streamline notices, docketing, court recordings and receipting of court filing fees. The growth that I've witnessed and am honored to be a part of since 1991, is extraordinary.

The first position I held with the Bankruptcy Court was as a Case Administrator. During 1996, I began working as Courtroom Deputy for Bankruptcy Judge Stephen A. Stripp. In 1999, I applied for and accepted the position of Assistant Deputy in Charge and transferred to our Newark Office. After 3 years, I returned to the Trenton Clerk's Office in the same capacity as Assistant Deputy in Charge and have been Deputy in Charge since 2011.

While I have many wonderful memories with the Court, both personal and professional, I have to admit that helping the public is the most fulfilling. Although circumstances that bring people to our office aren't always the most uplifting, it is important to me that they can leave feeling alleviated of some of the weight they carry. Extending a helping hand and sometimes a shoulder, during a time they may feel lost and scared, it is then when it becomes paramount that we do what we can to ease their fears. This is what fills my heart and motivates me each day. While working with the Court, I am afforded a variety of opportunities to assist the public, but one that I consider a privilege is interpreting the Spanish/English language in Court proceedings for both the

US Bankruptcy Court and the US District Court. We can all agree, appearing before a Federal Judge can be intimidating, but the inability to understand what is said, is truly daunting.

I sincerely cherish my experiences with staff from each of our offices. For many of us, the Bankruptcy Court Clerk's Office isn't just our place of employment, it is where we have grown, held and supported one another through many years of ups and downs and whom we consider family. I am truly blessed to have these folks in my life and I'm certainly a better person because of it.

1898 Petition in Bankruptcy

FORMS IN BANKRUPTCY.

[N. B.—Oaths required by the act, except upon hearings in court, may be administered by referees and by officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken. Bankrupt Act of 1898, c. 4, § 20.]

[FORM NO. 1.]

DEBTOR'S PETITION.

To the Honorable _____,
Judge of the District Court of the United States
for the _____ District of _____:

The petition of _____, of _____, in the county of _____, and district and State of _____, [state occupation], respectfully represents:

That he has had his principal place of business [or has resided, or has had his domicile] for the greater portion of six months next immediately preceding the filing of this petition at _____, within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts:

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts:

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

_____, Attorney.

TAP

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Chief Judge Katherine Ferguson, Hon. Christine Gravelle, LAC Liaison

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

FYI: Questions concerning the Division of Taxation or Department of Labor may be directed to the below employees of the State of New Jersey Department of Treasury

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