

ON THE DOCKET

Volume 1, Issue 3
July, August, September 1999

The Inner Workings of the Court: News and Advice

By: Susan M. Thurston, Clerk of Court

Since our last edition of On The Docket, we have continued our efforts to improve the court's website by revising the search layout for case information to make it more user friendly (also removed the pass-

word requirement until billing is implemented), adding a section on bankruptcy statistics, both locally and nationally, an unclaimed funds search, a creditor matrix option within the case query section, as well as "Frequently Asked Questions (FAQ)". The FAQs respond to a variety of procedural matters which we believe will be helpful to attorneys, as well as to your staff and clients. If you have a matter for inclusion in the FAQ, please

write, fax or e-mail us your question and we will see that it gets answered! Other enhancements to the website currently being worked on include: unclaimed funds; the court calendar and 341 calendar; and an improved opinion retrieval section.

Another new service being offered in Rhode Island is Electronic Bankruptcy Noticing. This service allows creditors to

(Continued on page 4)

Inside this issue:

<i>FEC Names RI Federal</i>	2
<i>Retro Court</i>	2
<i>Bankruptcy in England</i>	3
<i>News and Advice</i>	1,4
<i>Team Coach</i>	1,4
<i>NCBC Annual Confer-</i>	5
<i>Upcoming Office Clos-</i>	5
<i>Intake Input</i>	5
<i>Recent Court Decisions</i>	6,7
<i>What's New on the Web</i>	7



Check out the FAQ section
on the website:
www.rib.uscourts.gov

Team Coach:

By: Lucinda Cory, Courtroom Deputy

This column is devoted to providing helpful hints to the bar on case filing procedures. Since our last issue, we continue to see a frequently occurring oversight by filers: **THE ORIGINAL PLEAD-**

INGS FILED IN CASES 1998 FORWARD SHOULD NOT BE STAPLED (USE A PAPERCLIP). In order to image the document (and this makes it available to you via our web site) we must

separate the pages. This is much more time consuming and difficult when the papers are stapled together.

Now, for this Quarter's helpful hints.

(Continued on page 4)

Federal Executive Council Names RI Federal Employees of the Year

By: Mary Chatel, FEC Chair

Providence — The Federal Executive Council (FEC) of Rhode Island recently held their 28th Federal Employee of the Year Awards ceremony at the Bank Boston Operations Center in East Providence to recognize the accomplishments of public servants working for the Federal government in Rhode Island. Lt. Governor Charles Fogarty was the events keynote speaker. Mary Chatel, FEC Chairperson was master of ceremonies. Individual employees, or groups of employees were recognized in nine categories: Technical, Administra-

tive, Professional, Clerical, Community Service, Secretarial, Trade/Craft/Wage Grade, Government Reinvention Effort, and Leadership.

Recognized this year as Federal Employee of the Year in the Administrative category was **Linda Spaight**, of Johnston, a Chapter 11 Case Administrator with the U.S. Bankruptcy Court in Provi-



Federal Employee of the Year
Administrative Category
Linda Spaight

dence. Ms. Spaight was cited for her outstanding casework administration and her participation as a member of the Case Management Team. She has spearheaded a weekly roundtable discussion program and identifies areas for training. She also helped conduct a survey of over 1000 attorneys and planned the improvements resulting

RETRO COURT

By: Gail Kelleher, Bancap Database Administrator

Twenty years ago, Jimmy Carter was in the White House. Americans passed the time viewing movies like *Kramer vs. Kramer* and *The China Syndrome*, unaware that in a few short months, the insulated feeling of safety felt by most of the country would evaporate. The American hostage crisis in Iran would begin in November.

Over the last two decades, Federal Bankruptcy Court has experienced dramatic changes of its own. In the autumn of 1979, the Court occupied a mere 1500 sq. feet of space on the fourth floor of the Federal Courthouse at Kennedy Plaza. This extreme shortage of office space caused Judge Votolato to sue the General Services Administration for the

additional space to which he was entitled. The Court operated with only five full time staff members:

- Arthur N. Votolato, Bankruptcy Judge,
- James M. Lynch, awaiting his appointment as Clerk of Court,
- Holly M. Searles, Judge's Secretary,
- Cheryl (Porper) Cuzzone, Financial Clerk,
- Gail (Synowiec) Kelleher, Intake Clerk.

In 1979 under the Bankruptcy Act of 1898, Judge Votolato appointed the trustees and conducted the First Meeting of Creditors. Some of the trustees at the time were Joseph T. Little, John Boyajian, Thomas Connors, Leo Covas, Robert McCorry, Jason D. Monzack, Louis A. Geremia and Gary Yesser. These trustees were compensated only \$10 per case. Husbands and wives could not file joint petitions, and automobiles were not exempt. Caseloads and fees were significantly lower. As of

September 30, 1979, 324 bankruptcy petitions were filed. They included 304 Chapter VII, ten Chapter XI and ten Chapter XIII petitions. How much did it cost to file? Bankruptcy was a bargain at \$50 for Chapter VII or XI, and only \$15 for Chapter XIII!

High profile bankruptcy cases of the time included Roberts, Inc., a toy and novelty sales company that declared bankruptcy one month after a suspicious warehouse fire. This bankruptcy fraud scheme generated headlines in 1979 and involved members of the West Warwick Police and Fire Departments, and resulted in a 16 count indictment against the company's president, Eugene Roberts. Notable cases filed in 1979 were Narragansett Tennis Club, Dexter Buick, Polytop Corporation and Eaton Lithograph Company.

Finally, a list of attorneys who were frequent practitioners twenty years ago: Alfred B. Stapleton, Marvin Homonoff, Joseph Capineri, Kathleen Managhan, Michael Silverstein, Edward J. Bertozzi, Allan M. Shine, Christopher K.

*What a bargain,
\$50 for Chapter VII or XI
\$15 for Chapter XIII*

A HISTORICAL PERSPECTIVE ON BANKRUPTCY (1200 – 1870)

By Cindy Cory, Courtroom Deputy

This article is the first of a series of articles to be included in future issues of *On the Docket*.

Bankruptcy in England

In the midst of life we are in debt.

Ethel Mumford (1878 – 1940)

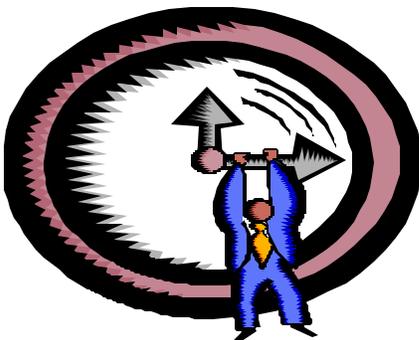
You shake your head over your bills. You are not alone. From man's beginnings, individuals and businesses have faced hard times, often through no fault of their own (often as a direct result of their actions). The term Bankruptcy comes from the Latin *banca rotta* or "broken bench" and hails from medieval days when a sign of insolvency was indicated by a merchant's broken stand in the marketplace.¹

Punishment to Protection

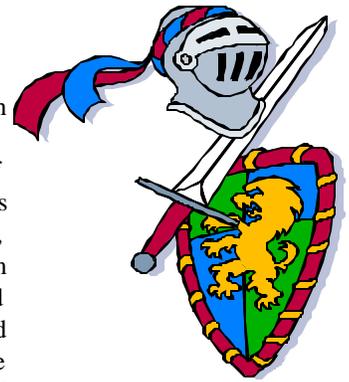
Infamous Newgate Prison was built in 1218 and served to house debtors for the next 560 years. Debtors during the reign of King James I (1603-1625) were treated harshly and could be put to death if fraud were detected in the handling of their finances. Along with being put into prison, whipping, the stocks, penal servitude, perhaps the loss of an ear, were common "punishments" for failing to pay creditors from medieval time through the 19th century.²

The prevailing attitude of the times towards debtors was put succinctly by the English Court

(N)either the plaintiff at whose suit he is arrested, nor the sheriff who took him in is bound to find him meat, drink or clothes; but he must live on his own, or on the charity of others; and if no man will relieve him, let him die in the name of God³



Matters had not much improved in Britain by the 1800's. The Poor Law of 1834, one in a series of laws dating from 1601, discouraged paupers from even seeking relief, limited the charity they could receive, and established the notorious systems of workhouses.⁴ When asked to help the poor, Dickens' Ebenezer Scrooge yells, "Are there no workhouses? Are there no prisons?" When told that many would rather die than go there because life in a workhouse was so horrible, he suggests they do that. (Treadmills, one of the machines used in the workhouses, generated human energy into power to do tasks (an entirely different concept than that of today's treadmill.))



Charles Dickens was perhaps the most famous of the crusaders against the inhumane system of treatment of the poor in his country. *David Copperfield*, *Little Dorrit*, *Nicholas Nickleby* and many of his other novels are commentaries on the harshness of life for the poor. He wrote from observation and personal experience. When Charles was a child, his father had been imprisoned in the debtors' prison at Marshalsea for an inability to pay his bills. The elder Dickens was released only when left a legacy that enabled him to pay his creditors.

In 1869 the debtors' prisons were abolished and through social reform, the laws were changed so that property of the debtor became the remedy rather than the punishment of the individual.

1. Anderson, Janette J. *Bankruptcy for Paralegals*, Prentice Hall, Upper Saddle River, NJ, 1997, p.8.
2. Ibid.
3. *Namby v. Scott*, 86 Eng. Rep. 781, 786 (Exch., 1659).
4. *The People's Chronology*, licensed from Henry Holt & Co., Inc., Copyright 1995, 1996 by James Trager.

Encarta 98 Desk Encyclopedia c&p 1996-97 Microsoft Corp.

(New & Advice cont. from page 1)

receive notice electronically rather than in paper form (for download into your own computer systems) of the 341 meeting of creditors and discharge orders. Rhode Island currently has four creditors using this service, including the Internal Revenue Service. Information about this service is available on our website, in the Clerk's office public area or by calling the Clerk's office. In addition, the Bankruptcy Noticing Center is working with the Administrative Office to offer two new alternatives for electronic noticing to meet the needs of the bar, trustees and smaller creditors — service by either Fax or Internet E-



Mail. Court implementation of these new features is expected to begin in early 2000. We will keep you apprized as more information develops.

The Court will hold its annual Employee Reward and Recognition Program on Monday, September 27, 1999 from 11:30 am to 2:30 pm, during which time the CLERK'S OFFICE WILL BE CLOSED to the public. Once a year, the Court takes this time to recognize, thank and appreciate the extraordinary efforts and tremendous accomplishments of the bankruptcy court staff who, notwithstanding the consistent increase in filings, continue

(Team Coach Continued from page 1)

1. Our Defective Pleading Notice has been updated to reflect the requirement that specific notice and response language must be included on pleadings objecting to claims. Rule 3007-1 requires that in addition to the regular objection deadline language, the movant must notify claimants that if they file an objection, they will be given 30 days notice of the hearing date.

2. Case names and numbers must appear on ALL pleadings, particularly missing schedules. Frequently they are filed with the defective notice coversheet attached, but with no identifying information on the actual schedule. This can result in the document being misfiled since the coversheet is generally removed,

“Case names and numbers must appear on ALL pleadings, particularly missing schedules.”

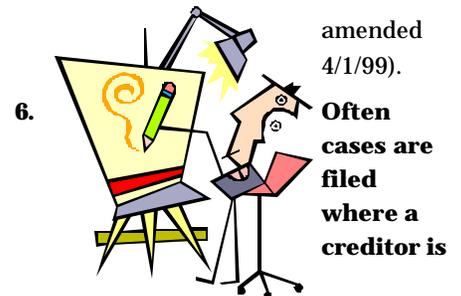
and the case manager doesn't know in which case the pleading was filed.

3. When filing multiple page pleadings (and who doesn't), please remember to include the case name and number on the top of the last page if it contains nothing more than the movant's signature. Case numbers and names on pleadings ensure that the pages will never become separated or inadvertently mixed in with other pleadings.

4. All Proof of Claim and Proofs of Interest must be served on the Trustee and Debtor(s)' Attorney (or debtor, if pro se). See, LBR 3002-1(a) (as amended 4/1/99).

5. Contemporaneous with the service of the summons and complaint on the defendant(s) in an adversary proceeding, copies of the

summons and complaint must also be served on the attorney representing the debtor in the bankruptcy case, if any, and the trustee. See, LBR 7004-1 (as



Please let us know of any specific questions or procedures to address in future publications.

6. Often cases are filed where a creditor is listed on the matrix, but is not included in the schedules. The proper procedure to correct this is to file a motion to add the creditor to the

schedules, with language in the motion indicating the creditor was properly listed on the matrix. Since the creditor will have received the initial notice of

NCBC ANNUAL CONFERENCE

By: Kristen E. Batty, Administrative Specialist

The National Conference of Bankruptcy Clerks (NCBC) held its 1999 Annual Conference in historical Annapolis, Maryland on July 21 – 23. Among the over 150 attendees from all over the U.S., in attendance from our Clerk's Office were: Kristen, Carolyn, Patrice, Jody, Susan R., Debby, Florence, and Susan T.

The conference began with the President's reception on Wednesday evening,



Flo and Susan

Upcoming Office Closings

The Clerk's Office will be closed on the following dates:

September 27, 1999 from 11:30 to 2:30 due to our employee recognition luncheon.

October 11, 1999 in observance of Columbus Day.

November 11, 1999 in observance of Veteran's Day.

Please use the outside

deposit box for any filings when the Clerk's Office is closed.



**We're
CLOSED**

lowing members to meet one another and catch up on court events happening across the country. Thursday and Friday were filled with a variety of court technology demonstrations and training programs, designed to spark everyone's interest, including:

- demonstrations on electronic filing, Autocop, and the Bankruptcy Noticing Center;
- History of the Bankruptcy Court;
- Conflict Management;
- Coping with Change;



*Kristen, Jody, Patrice & Carolyn
At the President's Reception*

It was a very exciting experience and fun was had by all.

INTAKE INPUT

By: Susan Flynn, Intake Clerk

Just a few friendly reminders to avoid a rejected matrix:

- Type in upper and lower case as you would on a letter
- Do NOT include the following on your matrix: Debtor(s); Attorney for Debtor(s); US Trustee; RI Division of Taxation; or Account Numbers.
- Do NOT include duplicate addresses for creditors even if there is more than one account.
- Do NOT type attention lines on the last line.
- States should be abbreviated using two capital letters, omitting punctuation.
- Avoid poor quality type.

Use our website to answer your general information questions, such as case numbers; file, discharge and close dates; incomplete filing dates; hearing dates; attorney and trustee information; fee schedules; and even print your own docket report and creditor matrix.

RECENT COURT DECISIONS

By: Jonathan C. Calianos, Esq., Law Clerk

Over the past few months, the Court has been busy issuing opinions covering some new ground. The full text of recent opinions are available in hard copy at the Clerk's office or on the Internet at our website: www.rib.uscourts.gov.

Some noteworthy opinions:

American Chemical Works Co. v. International Nickel, Inc. (In re *American Chemical Works Co.*), 235 B.R. 216 (Bankr. D. R.I. 1999). The Court determined that corporate debtors are not entitled to damages under 11 U.S.C. §362(h). The Court followed the majority view limiting the term "individual" in Section 362(h) to natural persons. The Court indicated that civil contempt may be available to a corporate debtor seeking to rectify a violation of the automatic stay.

In re Bailey, 234 B.R. 7 (Bankr. D.R.I. 1999). The Chapter 7 Trustee sought approval of a compromise with the Debtor al-

lowing her to keep her home by purchasing the estate's interest for \$7,000. The controversy centered around whether the estate would be entitled to the capital gain tax exclusion available to the Debtor under the Internal Revenue Code. The Court, following *In re Popa*, 218 B.R. 420 (N.D. Ill. 1998), stated that the exclusion is available to the estate.

The Court addressed lien avoidance in *In re Ostroff*, _ B.R._ 1999 W.L. 669311 (Bankr. D.R.I. 1999). The Debtor sought to avoid a judicial lien on her home in the amount of \$8,495 because it impaired the \$16,150 exemption she claimed in the property. The property was encumbered by two mortgages totaling \$103,000, and was valued at \$90,000, leaving negative equity of \$13,000. The creditor argued that because the debtor had no equity in her home, there was no exemption being impaired by the judicial lien. Turning to the legislative history behind 11 U.S.C. § 522(f)(2)(A) the Court disagreed, and avoided the lien in its entirety.

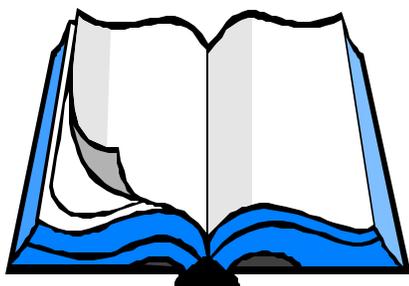
In *Phelps v. Sallie Mae Loan Serv. Center* (In re *Phelps*), _B.R._, 1999 W.L. 669310 (Bankr. D.R.I. 1999), the Court set out the standard for discharging student loans on account of undue hardship under 11 U.S.C. §523 (a)(8). The Court adopted a totality of circumstances approach to determine undue hardship, stating it was a fact-sensitive approach that considers a

debtor's income and expenses, good faith, and any other relevant circumstances. The Court also addressed the creditor's defense that the Court lacked jurisdiction to decide the matter on account of its Eleventh (sovereign immunity) Amendment protections. The Court found that the creditor had waived any immunity afforded by the Eleventh Amendment.

In *In re Regine*, 234 B.R. 4 (Bankr. D.R.I. 1999), the Debtors proposed a Chapter 13 plan that separately classified a \$19,000 unsecured debt which was cosigned by the Debtor's mother and secured by a mortgage on the mother's home. The plan proposed to pay the cosigned debt in full and pay all other unsecured creditors 17% of their claims over the life of the plan. The Chapter 13 Trustee objected on the ground that the plan discriminated unfairly in violation of section 1322(b)(1). The Debtors argued that the unfair discrimination test of section 1322(b)(1) did not apply to co-obligors of consumer debts. The Court disagreed, holding that the unfair discrimination standard applies equally to all consumer debts, whether or not they are co-signed.

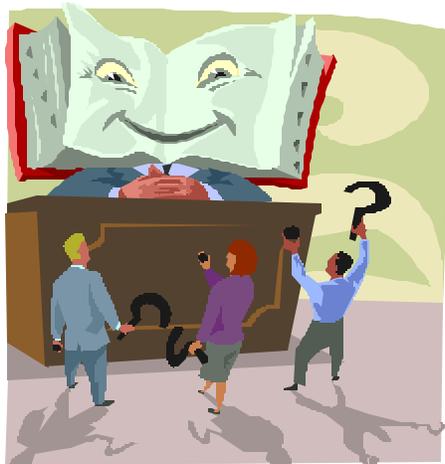
In *In re Smihula*, 234 B.R. 240 (Bankr. D.R.I. 1999), the Court interpreted the provisions of The Religious Liberty and Charitable Donation Protection Act of 1998, P.L. No. 105-183. The Debtors initially filed a Chapter 13 petition showing net disposable income of \$865 per month to

(Continued on page 7)



(Recent Court Decisions continued from page 6)

fund the Plan. Thereafter, the Debtors converted to Chapter 7 and amended their schedules increasing monthly charitable contributions from \$0 to \$700 per month, virtually eliminating their net disposable income. The United States Trustee filed a motion to dismiss under Section 707(b). The Debtors argued that the provision of the Religious Liberty and Charitable Donation Protection Act prohibit the Court from considering whether the Debtors have made, or continue to make charitable contributions in deter-



mining dismissal under Section 707(b).

In granting the motion to dismiss, the

Court stated that the issue of timing, i.e., *just when* a debtor commences charitable giving, is very relevant to the 707(b) inquiry.

In *In re Voccola*, 234 B.R. 239 (Bankr. D.R.I. 1999), the Court addressed the ability of a creditor to file a late proof of claim in Chapter 13 and ruled that the excusable neglect standard found in Fed. R. Bankr. P. 9006 is not applicable in Chapter 13 cases.

What's New on the Web?

By: Craig Balme, Systems Manager

If you haven't visited recently, take a moment and log on to the Court's website at www.rib.uscourts.gov. The Case Query Information page was recently updated to a more user-friendly format with expanded search capabilities. Searching methods now include a *wildcard** option which allows users who are un-

sure of specific spellings to query the database.

The new format is designed with drop down boxes and easier access to information. The modifications were made with newer users in mind, who may have had difficulty maneuvering through the old version. In the future, features like creditor/matrix print-

ing will be added.

A new feature accessible from the Court's homepage is the Unclaimed Funds Search. This link will give users the ability to search for Unclaimed Funds presently residing in court accounts. Once the database is complete, proof of claim image

Our site is continually evolving as we strive to provide useful information to the public. Your comments and suggestions are always appreciated.

