

Goodbye (and good riddance) to 2020! By: Sheryl L. Loesch, Clerk

Well, 2020 is finally over! If I had been asked ten months ago if I thought we would still be dealing with COVID, I would have emphatically said, "no way!"

Looking back, 2020 not only brought us insurmountable sadness and challenges, it also brought us opportunities for innovation and inner strength. It tested our patience and taught us the importance of thinking outside the box. And it gave us the chance to spend more time with our families.

Looking forward, the start of a new year is typically a time for reflection—and for setting goals for the upcoming year. That reminds me of a quote by Yogi Berra, a catcher for the New York Yankees from 1946 - 1963 and 1965, who once said "if you don't know where you're going, you might not get there."

Yogi was known for his wise and insightful "yogiisms" that include both humor and practical thoughts on life in general. I'd like to share a few of those with you:

"It was impossible to get a conversation going; everybody was talking too much."

"Always go to other people's funerals, otherwise they won't come to yours."

"This is like déjà vu all over again."

"We made too many wrong mistakes."

Having made it through 2020, I hope we can find hope and encouragement in what we are facing in 2021. A vaccine is being made available for those who wish to take it. Hopefully life will return to some semblance of normalcy.

Our work life will likely be forever changed. The world quickly adapted to remote working and demonstrated that work can be effectively done in this fashion. While not completely replacing the benefits of meeting in person, the use of virtual platforms proved that much work can still be accomplished this way—with the added benefit of saving time and money.

The United States Bankruptcy Court for the Middle District of Florida has finished 2020 strong and stands ready to meet the challenges ahead. The Court has many tools in its possession to ensure that justice is timely and fairly served. This is because of the dedication and drive of the Judges and the staff with whom I am proud to serve.

I wish each and every one of you a safe and Happy New Year! And, to again quote Yogi, "If you come to a fork in the road, take it" because we never know what's around the corner.



Chief Judge Delano's 2021 State of the District Will be Presented Virtually District-Wide

on

Thursday, February 25 at 12:00 p.m.

Registration and login instructions will be forthcoming.



Judge McEwen Appointed to Advisory Committee on Bankruptcy Rules

Judge McEwen was recently appointed by Chief Justice John Roberts to a three-year term on the Judicial Conference's Advisory Committee on Bankruptcy Rules. She will also serve as the chair of a subcommittee on Business Rules and as the liaison on the Advisory Committee on Civil Rules.



PRESENTATION OF THE PORTRAIT OF RETIRED BANKRUPTCY JUDGE FATHER C. TIMOTHY CORCORAN, III By: Chief Judge Caryl E. Delano

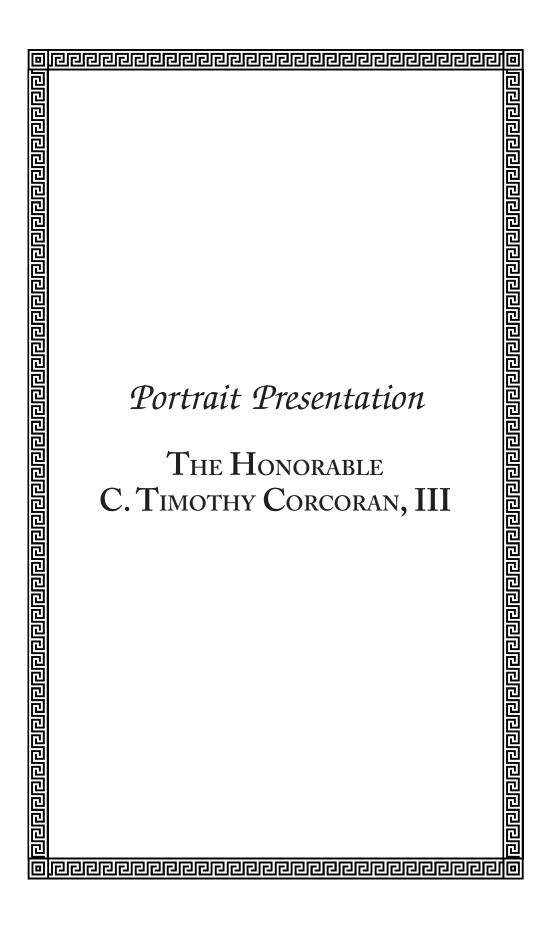
On November 4, 2020, retired United States Bankruptcy Judge, Father C. Timothy Corcoran, III, and the Tampa bankruptcy judges gathered in Courtroom 9B for the presentation of Fr. Corcoran's official judicial portrait to the Court. They were joined by dozens of viewers via Zoom, including Judges Karen Jennemann and Lori Vaughan and retired Judge Arthur Briskman in Orlando; Judge Jerry Funk in Jacksonville; retired Judge Rodney May; our Clerk of Court, Sheryl Loesch; and our former Clerk of Court and now Deputy Director of the Administrative Office of the United States Courts, Lee Ann Bennett, along with retired Court staff, and numerous attorneys. Click <u>here</u> to watch the video of the presentation or <u>here</u> to read the transcript of the presentation. Chief Judge Caryl Delano presided at the informal ceremony. After she welcomed the attendees, Fr. Corcoran explained the unique history and development of his portrait. On behalf of the Court, Judge Delano accepted the portrait with thanks to the Tampa Bay Bankruptcy Bar for its sponsorship of the portrait. Judge Delano, Judge Williamson, and Judge McEwen then shared their experiences as lawyers who appeared before Judge Corcoran. Judge Colton, who now sits in Courtroom 9B, commented that Judge Corcoran's portrait depicts him as a jurist but also as a man of great faith.

In 1989, after practicing commercial law for years at Carlton Fields, Judge Corcoran was appointed as a bankruptcy judge in the Orlando Division. At that time, he was the only judge in Orlando. In 1993, when Judges Jennemann, Briskman, Glenn, and Funk were appointed as judges in the Middle District, Judge Corcoran transferred to the Tampa Division.

In 2003, Judge Corcoran completed his 14-year term and retired from the bench. He transitioned to a successful solo practice as a "bet the company" bankruptcy litigator and mediator. And in 2008, he embarked on yet another career, studying for the Roman Catholic priesthood at a Boston seminary. In 2012, Fr. Tim (as he is now known) was ordained as a priest in the Diocese of St. Petersburg, and he now serves as the pastor of St. Mary Catholic Church in North Tampa.

The judges and Fr. Tim hope—when we are no longer restricted by pandemic concerns—that you will stop by Courtroom 9B to view the portrait.





Portrait Presentation for

THE HONORABLE C. TIMOTHY CORCORAN, III

Retired United States Bankruptcy Judge Middle District of Florida

> Tampa, Florida November 4, 2020 4:30 P.M.



Honorable C. Timothy Corcoran, III

Proceedings

CHIEF JUDGE DELANO: Good afternoon. I can't tell you how wonderful it is to see all of your faces. We're here today on a very special occasion. On behalf of the bankruptcy judges of the Middle District of Florida, I want to welcome everyone who has joined us today: members of the Bar, court staff and family and friends of Retired Bankruptcy Judge Father C. Timothy Corcoran, III, or as we now call him: Father Tim. It is just wonderful to see your faces.

We're gathering today virtually on the wonderful occasion of the presentation of Father Tim's official judicial portrait. I am joined today in Father Tim's former courtroom, Courtroom 9B, by Father Tim and our colleagues: Judge Michael Williamson, Judge Catherine Peek McEwen, and Judge Roberta Colton.

And by Zoom, we are joined by Judge Karen Jennemann, Judge Jerry Funk, Judge Lori Vaughan, Retired Judge Rodney May, our Clerk of Court Sheryl Loesch, and our former Clerk of Court and now Deputy Director of the Administrative Office of the United States Courts Lee Ann Bennett.

Father Tim did not want a big fuss and because we're doing this by Zoom, we didn't prepare a formal program. But I want you all to know today's agenda. After I finish these introductory remarks, I'll turn the podium over to Father Tim to give you some history and to explain the development of his portrait.

After that, Judge Williamson, Judge McEwen, Judge Colton, and I will briefly share some reminiscences of our experience as attorneys who practiced before Judge Corcoran. We will then let Father Tim have the last word. As Father Tim will tell you, his portrait has been many years in the making and many people are responsible for our being here today.

As most of you know, Father Tim completed his 14-year term and retired in the summer of 2003. Officially, Father Tim retired but he did not rest on his laurels. Instead, he transitioned to a successful solo practice as a "Bet the Company" litigator and a mediator par excellence.

In 2008, Father Tim embarked on yet another career: studying for the Roman Catholic priesthood. In 2012, Father Tim was ordained as a Priest in the Diocese of Saint Petersburg, and he now serves as the Pastor of St. Mary Catholic Church in North Tampa.

Looking through the way-back machine in May 2003, Judge McEwen, then known as "Cathy," was the outgoing President of the Tampa Bay Bankruptcy Bar Association. I had just joined the TBBBA Board, and I have a special recollection of the initial joint meetings of the old and new Board members at the University Club. One of the agenda items was whether there should be a portrait for Judge Corcoran and a discussion ensued as to whether it should be an oil portrait or a formal photograph. Hold onto that thought.

In any event, the seeds for today's program were planted at that meeting over 17 years ago. The TBBBA Board members in 2003 were: Cindy Burnette, Donald Kirk, Scott Stichter, Zala Forizs, Herb Donica, David Hicks, Julia Waters

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Sullivan, Bill Zewadski, Harvey Muslin, Ed Rice, Lorraine Jahn, Keith Fendrick, John Lamoureux, and David Tong.

Don Workman has been instrumental behind the scenes and current TBBBA officers President Kathleen DiSanto and Past-President Jake Blanchard and Board member John Landkammer have worked to make this happen. I know that John and Stephenie Anthony have also been involved, as well as Leonard Gilbert, and there are probably others of you who have been involved and I'm overlooking your names and, if so, I apologize.

On behalf of the Middle District of Florida Bankruptcy Court, I thank all of you for making this a reality. I also want to thank our IT Manager Bill Miguenes and my Judicial Assistant Laura Stevenson for all your hard work in planning this program.

Now, to begin the program, I will turn the microphone over to Father Tim. Father Tim.

RETIRED JUDGE CORCORAN: Well, thank you, Judge Delano and my fellow judges as well. And thanks to all of you who are attending on the Zoom platform whom I see in gallery view before me, those of you who are in your PJ's and those of you who are all dressed up, but it's great to see you all. I'm delighted to be here with you this afternoon.

Presenting this portrait to the Court today is important. It's important for historical reasons. When I joined the Court in 1989, there were just four judges on the Court covering the whole District from Jacksonville to Fort Myers. And, of course, they were Judge Paskay, Judge Proctor, Judge Baynes, and then me. My three initial colleagues are gone now, and I feel lonely as the last man standing. And having this portrait here, particularly in the Tampa courtroom in which I presided, is important to the history and the legacy of the Court.

Presenting this portrait to the Court is also important to me personally. I served as a judge of this Court for 14 years, service for which I am very proud. I'd like to think that I made some significant and lasting contributions to the Court for the benefit and welfare of this Court and the Bar and the public. So, having that service recognized in this way is indeed satisfying. So, thank you very much.

Mainly, though, I wanted to tell you about how this portrait came about. The way in which the portrait was commissioned and painted is unique among judicial portraits, as far as I'm concerned, and it's an interesting and, I hope, even entertaining story to tell.

The portrait came about through a serendipitous confluence of events. And I use that word "serendipitous," knowing that the word "serendipity" is the secular term for the work of the Holy Spirit. Definitely, that's how this portrait came about.

As Judge Delano mentioned, it's been 17 years since I retired from the bench. And although the Bankruptcy Bar approved the commissioning of a portrait long ago, it just never got done and for a whole bunch of reasons, inertia, I suppose, being one of them.

As everyone knows, there are no Government funds available for judicial portraits and, typically, private fund-raising has to take place to pay for them. So, the Bankruptcy Bar a couple of years ago renewed its interest and commitment to this project and discussions ensued about what we would do and how we would do it.

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At precisely the same time that we were beginning those discussions, in my role as the Pastor of St. Mary Catholic Church on North Boulevard up in the North Tampa/Lutz area of town, I became involved in placing art in some newly constructed space at the church. We had added a new covered entrance to the church and a driveway, as you can see in the photograph. And the new entrance of the church, what we call a narthex, needed appropriate art. And the architect for the project suggested a firm, Oil Paintings Gallery, that had talented artists in China, who reproduced in oil anything that you wanted to give them.

And to make a long story short, we commissioned for the church reproductions of classical Marian art. I'm just going to scroll through those reproductions we commissioned so you'll get a flavor for their quality and beauty. We don't need to focus in great detail, but these are the beautiful reproductions of classical Marian art that were so appropriate for St. Mary Catholic Church.

Enthroned Madonna — Crivelli.

The Immaculate Conception — Rubens.

Annunciation — Lippi.

Our Lady Worshipping the Child — Correggio.

The Holy Family with the Infant Saint John the Baptist — Raphael.

Pieta — Bouguereau.

Now having been particularly pleased with this art, the reproductions, and having been very, very pleased with their economical cost, it occurred to me that this would be a means by which we could produce the desired judicial portrait that we were beginning to talk about. And because the artists could produce whatever you gave them, as you just saw the beautiful classical paintings, all we needed to do was give them something to replicate in oil, but that, itself, presented some problems.

First, the taking of a new photograph wouldn't work very well because, in the 17 years since I left the bench, I've aged. Some would even say I've greatly aged. And, obviously, a portrait prepared from a current photograph of me wouldn't be historically accurate as of the time in which I served as a judge.

Second, although there were several official photographs that were taken during the time I served on the bench, I never liked any of them. So, having a portrait painted of a picture that I didn't like wouldn't produce a portrait that I would like. So, that wasn't a good option either.

I did have a professional photograph taken contemporaneously with my retirement that I liked very much, but that photograph wasn't in a judicial robe which, obviously, was something that was needed for a judicial portrait.

So, I spoke with a wonderful professional photographer in Old Hyde Park Village, Steve Poisall, who has The Gallery Studios on Rome Avenue, who also is a parishioner of St. Mary. And Steve suggested that we take a new photograph replicating the pose of that retirement photograph I liked, but with me wearing a judicial robe which, of course, I still had hanging in the closet. Steve said that if we did that, he could combine the two photographs to have the 2003 face and image with the judicial robe and that we could then send that combined photograph to the portrait artists in China for them to replicate in the oil portrait. And that's exactly what we did.

So, this is the 2003 photograph that I liked very much that was taken contemporaneously with my retirement. And here's a closer look at it.

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And then here is Steve Poisall's new photograph replicating the pose, in a judicial robe, with my greatly aged face and countenance and the different color of my hair. And here, you can see it even better in this close-up.

Here now is the photograph that Steve Poisall put together, combining the old 2003 face and the new one of the judicial robe, that we sent to the artist in China to use in painting the oil portrait.

And finally, this is the portrait that was produced by the artist in China from that photograph that Steve prepared, combining the two, the old, the new and wearing the robe.

As was the case with our Marian art reproductions at the church, our St. Mary parishioner Colette Burgess handled and coordinated with Oil Portraits Gallery the ordering, supervising, and receipt of the portrait. In some cases, they sent us images of the work in progress, and she ordered up some modifications, brightening, and lightening and the like. Colette Burgess did a marvelous job and, of course, just as she had done with the Marian art at the church, she did that for this portrait, as well.

And her husband, Jack Burgess, framed the portrait beautifully, as you can see, and he used framing materials provided by another St. Mary parishioner, Judge Rex Barbas and his wife, Donna, who have an art gallery on Bay to Bay Boulevard in South Tampa named Gallery Barbas.

So, of course, I'm incredibly grateful to Steve Poisall, to Colette and Jack Burgess, and to Rex and Donna Barbas for their work in bringing this about, coordinating the painting of it in China and the receipt, the framing, and the preparation for hanging it on the wall.

And here's a closer look at the portrait. This is what's hanging right now here in Courtroom 9B, and you'll see another photograph of it, as it is hanging, a little later.

So, instead of raising thousands of dollars for the commissioning of a portrait, we were able to bring this portrait in for less than a thousand dollars, which is a spectacular feat, I think. And, of course, I'm enormously grateful to the Tampa Bay Bankruptcy Bar Association for its underwriting of that cost and for helping make this all possible.

Just one last point that I just can't avoid mentioning. I was admitted to The Florida Bar 47 years ago on October 19, 1973. And 12 days later, on October 31, 1973, I was admitted to the Bar of the United States District Court for the Middle District of Florida in the old Federal Courthouse in a private ceremony late in the afternoon of that day by Judge William Terrell Hodges.

Now the significance of that October 31st date is this: On the next day, on November 1, 1973, the fee charged for Bar admissions in Federal District Courts all around the nation went up from \$2 to \$10, meaning that I am — I have the distinction of being — the very last \$2 lawyer in the Middle District of Florida. So I think it's altogether fitting that my frugality reflected in my Bar admission and membership is reflected in this portrait that is now hanging on the wall.

Judge Delano and my fellow judges, it's my distinct pleasure and indeed my honor to present this portrait to the Court in remembrance of my judicial service as a member of the Court. Thank you.

CHIEF JUDGE DELANO: Thank you, Father Tim. On behalf of the judges of the Middle District of Florida and with thanks to you and to the Tampa Bay

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Bankruptcy Bar Association, I am delighted to accept your portrait on behalf of the Court and to see it hanging here in the courtroom.

(Pause, dramatic.)

So, that's the portrait itself hanging on the wall here in Courtroom 9B.

I'm also delighted to have this opportunity to say a few words about you on this special occasion.

I first appeared before Judge Corcoran as an attorney in 1996, when the Bankruptcy Court was located in a private office building on Memorial Highway. I had been practicing law in another state since 1980, and I considered myself to be a pretty experienced attorney. Well, I learned a lot from practicing before Judge Corcoran.

One of the first things I learned was that if you appeared as plaintiff's counsel at a pretrial conference, you'd better know the elements of your claims. And if you were representing a debtor, you'd better know the elements of your affirmative defenses. Appearing before Judge Corcoran made me a better lawyer.

Judge Corcoran had a particular skill that I still remember, and it's one that I've never developed. From time to time, he would dictate an order from the bench. Yvonne Shepherd, who I see on the screen today, was Judge Corcoran's long-time judicial assistant, and she must have been listening in the courtroom from the judge's chambers. Judge Corcoran would dictate lengthy orders, and he was just as precise as you could imagine, down to the last comma, the last semicolon and the last period.

I have the distinction of having represented a client in the very last case ruled upon by Judge Corcoran before he retired —

RETIRED JUDGE CORCORAN: In this courtroom.

CHIEF JUDGE DELANO: — in this courtroom, that's right. I won't bore you with all the details, but it involved a \$2.6 million dispute between a Chapter 11 debtor and the Internal Revenue Service.

Herb Donica and I tried the case on June 26th, 2003, and less than two weeks later, which included the 4th of July holiday, Judge Corcoran, with apologies for not having had the time to enter a written opinion, announced his ruling in court. His ruling reduced the claim to about \$600,000, so a huge victory for my client.

Well, the IRS wasn't happy about this and it appealed to the District Court. Sadly, the District Court reversed Judge Corcoran's ruling and we appealed to the Eleventh Circuit Court of Appeals.

But, fortunately, while the appeal was pending in the Eleventh Circuit, we were able to reach a settlement with the Internal Revenue Service that provided for the debtor's payment of \$600,000, exactly the same amount that the IRS had achieved under Judge Corcoran's ruling.

But the best part of this story happened years later. One day, I must have been a little bored and I wondered if the District Court's ruling had ever been cited by another court. So, I did a quick search on *Westlaw* and guess what? There was a yellow flag. The lawyers all know what the yellow flag on *Westlaw* means.

You can imagine how delighted I was to email Father Tim a copy of a 2013 Internal Revenue Service Technical Advice Memorandum that disagreed with the District Court's analysis reversing Judge Corcoran's original ruling. The District

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Court's analysis had been in the IRS's favor and the IRS disagreed with it. That's why they settled with us on appeal.

So, *albeit* by 10 years, this was a — or, *albeit* delayed by 10 years, this was a very satisfactory conclusion to Judge Corcoran's tenure on the bench.

Father Tim, thank you for your years of service to our Court. Thank you for making me a better lawyer. And thank you for your support, as I applied for and was appointed as a judge of this Court. Thank you.

And now I'll turn over the podium to Judge Williamson.

JUDGE WILLIAMSON: Thank you, Judge Delano. It's an honor to be here.

I was there when Father Tim became a judge and took Lon Silberman's place. Lon was with us for a very short time. You'll see in — I guess you can't see but in the schedule for this, they have everybody's tenure on the bench and Lon was there part of one year.

Tim came into a court that had had two judges. We had had Judge Paskay up until Judge Proctor got there, and then they split Orlando, and each had their own cities, Jacksonville and Tampa, and they did 50/50 in Orlando. And they were both brilliant, wonderful judges, but I don't know if you all know this but neither one of them ever practiced bankruptcy law. I don't know if they had ever been in a Federal District Court. In fact, Judge Paskay had actually never practiced law, as brilliant as he was and how lucky we were to have him.

Tim Corcoran came on the bench with a wealth of experience. He was one of the preeminent leaders in the Litigation Section of the ABA. He understood federal practice and he brought that practice to our bench.

And my team at Maguire, we were debtors' lawyers, we did most of the bigger cases, along with other firms. I see some of the people who were here at the time, Jules Cohen: Hi, Jules. Good to see you. Jules is one of my early mentors. But we loved practicing in front of Tim. We tried to do everything perfect, and he appreciated it. We tried to be prepared and we learned: You better be prepared because Judge Corcoran was prepared. You had to know the whole file, and it made us better lawyers and also rewarded us for being better lawyers.

And you know, in the entire time — and, Father Tim, you can correct me if I'm wrong — but in the entire time that he was our judge, we never appealed a single decision ever and it was because he got it right. He nailed it. And when we got it wrong, we understood why we got it wrong because he would tell us in detail, excruciating detail.

That professional relationship migrated into a personal relationship. We had mutual respect for each other. Tim got to know my wife Linda, who's actually in the audience out there. She played tennis with Tim. He joined our — we joined the same club.

We took trips. Tim invited me to the Eleventh Circuit Judicial Conference a couple times.

We went up on one trip to visit his friend Sid, who was a Captain and an Annapolis grad, a wonderful individual. And we went to see the Navy/Air Force game.

And, you know, Tim, you don't know this but sitting in my chambers in my wall on which I keep memories of important things in my life is the ticket to that

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game. It was the 1,000th Navy football game, Navy versus Air Force, October 12th, 1991.

And also, let me mention one other case that Tim — after Tim retired and went into practice before he went into the priesthood, I had a case filed called Electric Machinery Enterprises. It was the biggest case of my professional career. It took four years. It was just a trial, but it was an eight-week trial, it ended up being, and produced the longest decision I'll ever write. It was a huge endeavor.

But what lots of people don't know, that big case came in on a one-count complaint and was filed by Tim Corcoran on behalf of the debtor. The project involved the Orange County Convention Center. It was a \$500 million project. This was a very big case. Some of the best lawyers in the country came in, who do construction litigation. But they needed somebody to go out and stop the spoliation of evidence.

What had happened is Tim had had an expert go out there and start assembling the case to help them. And, actually, they had had an expert go out there and they discovered when the expert went out to look at the documents that he was supposed to be picking up, they were putting the documents in a Dumpster. They were pulling hard drives — the project had shut down. They had finished successfully the project, they were throwing everything away. So they went to Tim Corcoran and they said: How do we stop this immediately?

Well, we're not fans of TRO's in Bankruptcy Court. We like preliminary injunctions after a little bit of notice. This was the only TRO I entered in my whole career as the judge to this day. I always require evidence and a hearing.

And I went back, and I have the fond recollection of reading the complaint and seeing the documents that were being requested were in a pile in a Dempsey Dumpster and Tim had arranged to have pictures of it, and I looked at that and I said: This is TRO material. And I entered it on December 23rd, 2003. And, boy, were those lawyers embarrassed and very quick to fix the problem.

We spent two years peeling apart wet documents — not "we" but experts going in with HAZMAT uniforms on. Even while the trial was going on, they were still digging through those Dumpsters and producing evidence — produced some of the most damning evidence. And it wouldn't have happened if Tim Corcoran didn't know how to do that, and they went to him for that kind of relief.

So, Tim, you were missed when you left us as a colleague and you were missed when you left us as a lawyer, but we know you found the calling that you are best at and is so important to you. But thank you for your time in Orlando. It was a great time for my career as I know it was for those with whom I practiced.

RETIRED JUDGE CORCORAN: Thank you, Mike. Thank you.

JUDGE McEWEN: May it please the Court. Thank you, Chief Judge Delano, for hosting this event and inviting us to make remarks. And welcome, everybody.

I am happy to have this opportunity to talk about my friend Father Tim, and I would like to center my remarks not so much on what happened in hearings and so forth when I appeared before him, but rather I would like to center my remarks on the legacy that Father Tim, as Judge Corcoran, bestowed upon our Court, the Bar, and our community's bankruptcy practice. He has just told you that he'd like to think that he contributed, and I'm going to tell you that he did.

He exemplified the highest traditions of our legal profession in his service as a judicial officer, but I'm going to speak specifically to three aspects of that. I'm

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going to speak to his scholarship, his procedures to make lawyers' lives easier or cut costs for the client — the parties, and his mentoring initiatives, all of which guide us or remain with us today and are a part of our Court's culture. We all inherited that from him.

So, first, I'll start with his scholarship, his considerable and considered published opinions. I ran a quick search before walking in here today. I found 128 of them. They range from everything from RESPA to insurance to equitable liens to homestead to tax issues to attorney's fees and then all manner of things that construe the Bankruptcy Code in the context of pure bankruptcy litigation. I'm going to mention just two of those many and well-reasoned decisions.

There are many more decisions that he didn't publish, the ones that he dictated on the bench. We won't have that chronicled. But those of us who remember his doing that, as Judge Delano mentioned, it was an impressive thing when he did that. But we've got some in writing that we can look to.

The most noteworthy — in my opinion — decision that he published is *Official Committee of Unsecured Creditors vs. Liberty Savings Bank.* Now, that probably doesn't ring a bell with you, but it came in the case *In re Toy King Distributors, Inc.* And so, perhaps, *Toy King* resonates with you. That's reported at 256 B. R. 1, and it's a 2000 decision.

This decision followed 17 days of trial time and myriad state and federal legal issues. The decision itself comprises 211 printed pages in the *West Reporter* and if you were to print it out in its hard copy form, as he entered it, it would take you an entire ream of paper. I know because I did print it out. It is an encyclopedia of bankruptcy and state law legal theories by which a bankruptcy trustee can recover money, many of which theories are novel and presented issues of first impression at the time.

One lawyer remarked, only half in jest, that this decision is the only bankruptcy authority he needs to keep on his desk, and he calls it his "Bible." I'm not sure you can see what I'm about to hold up, but this is the Table of Contents and it runs from page 29 through 34 in the published decision. And so he even gave you a quick-finding aid in the published decision. It really is quite a treatise on voiding actions and breach of fiduciary duties.

The second case I want to mention and commend to you is one that I personally cite frequently and more often lately. It's called *Wood vs. Ghuste* or *In re Wood.* That's reported at 216 B. R. 1010, and that's one of his earlier decisions in 1998. It's on discretionary or permissive abstention, to abstain from hearing state law issues or claims that we really don't need to spend time on or spend resources on.

The *Wood* factors inform whether the Bankruptcy Court should keep or send back a removed action. Most times, the factors point clearly to an answer of "no, we should not keep it" and even "heck no, we should not keep it," particularly when the removal is a maneuver for forum shopping away from unfriendly state court decisions.

So thank you, Father Tim, for that one. I have it right there at my bench and if I had a dollar for every time I said *In re Wood*, I think I could retire.

Now, secondly, I'm going to turn to your procedures, the procedures for our Bar's benefit and procedures to create efficiencies to cut costs for the clients.

A starting point relates literally to our starting point. And by this, I mean I'm going to applaud his reset of the time when court starts. Almost like Daylight

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Savings Time, he did a spring-forward move to start our hearings at a civilized time of 9:30 a.m., as opposed to Judge Paskay's then 8:30 a.m. start or Judge Proctor's sometimes 7:00 a.m. start.

Lawyers have time to get to the office, grab a cup of coffee, their files, get over to the courthouse — or, these days, clean up their desk so they can be seen on Zoom — and maybe even have a chat, perhaps by email, with opposing counsel to arrive at a consensual resolution before the hearing starts.

And to this day, the 9:30 a.m. start time is our custom, and I really like it. I'm not a morning person. Thank you for that as well.

Next, I turn to our ending time. How about our after-hours filing procedure? Do you remember that long drive out to Chuck Kilcoyne's house before they had the Veterans Expressway? I do and many of you on this Zoom call do.

Well, once Judge Corcoran understood what the lawyers had to do to accomplish an after-hours filing, he came up with a more convenient solution for us lawyers: File the first page and the signature page by fax; get the original here the next day.

Simple. This procedure continues to this day for non-CM/ECF filers. Thank you for that.

Did you know that Judge Corcoran was the first judge here to post his published decisions on the Court's website so that the attorneys and the litigants would have ready access to them? Yes, he was the one, and then other judges followed suit.

Next, what we now call our "Chapter 13 Administrative Order Prescribing Procedures for Chapter 13 Cases" is of Judge Corcoran's making. He used to call it the "Debtor's Duties Order," but he's the one who started it. That order clearly lays out what a Chapter 13 debtor does for his or her case to be successful.

Also in Chapter 13's, Judge Corcoran was the father of the put-the-adequate-protection-payments-through-the-plan procedure. He saw it as a way that secured creditors could save big money, rather than file motions in every case.

He allowed adequate protection payments to be stockpiled by the Trustee and then disbursed upon confirmation, dismissal, or conversion. And that procedure has evolved to permit ongoing adequate protection payments through the plan with disbursements occurring pre-confirmation now.

Chapter 11's also benefitted from his streamlining touch. He's the one that instituted the confirmation affidavit that we use for Chapter 11 cases and that was in lieu of live testimony to support the confirmation standards of section 1129. He recognized that not every case requires a trial-type evidentiary showing, and this was a way, again, to save money, save time.

Adversary proceedings were also not outside his creative reach either. Although we may have gotten away from some of his procedures, I'm thinking that by talking about them here today, we may want to look at reinstituting some of those in the future, for those of us who don't do this currently.

He brought over from the District Court the method of trying adversary proceedings District Court style: the case management orders, trial scheduling orders that made it clear when and what. And so there was no ambiguity, no slipping through the cracks in terms of important stages of the litigation.

PORTRAIT PRESENTATION

He scheduled trials on a trailing trial calendar. So, he would overbook, recognizing that most of those were going to settle and many times they did. And so that was another way of providing efficiency.

He also tried probably more jury trials as a bankruptcy judge than any of us bankruptcy judges. I know I haven't tried one as a bankruptcy judge. We've come close, but I don't think any of us has.

All right, the third area I wanted to talk about with regard to Father Tim/Judge Corcoran is to remind everyone of his legacy of mentoring our Bar, particularly the young lawyers. He literally "raised the Bar," and I mean that with a double meaning.

You may recall that he posted Practice Guidelines on our website to help lawyers know how to draft particular papers and orders or, speaking of TRO's, Judge Williamson, how to tee up a TRO or a preliminary injunction. Those remain on our website today and I frequently refer lawyers to them.

He was also a regular contributor to the Tampa Bay Bankruptcy Bar Association's newsletter called *The Cramdown*, providing insightful practice tips and how-to lessons on topics as varied as: How to comply with Rule 26; how to effect proper service; the basics of bankruptcy sales; how to prepare and present argument to the Court — and, by the way, whoever is on the screen that deals with *The Cramdown* publication, that one is worthy of a reprint, in my opinion — and other practice topics.

But perhaps his most impactful mentoring came in the form of his mentoring Brown Bag Luncheons, which he used to hold monthly, once a month, in his courtroom, this courtroom, over the noon hour. And later, the program became so popular, he had to move it to the fifth-floor training room because too many people wanted to come.

The program allowed for informal face time between bench and Bar in a comfortable setting, encouraging open and candid discussion. And now his program, *albeit* only on a quarterly basis, is carried on through the help of my chambers.

Because of his demonstration of concern for and willingness to assist young lawyers, Judge Corcoran was the first bankruptcy judge to win the esteemed Robert W. Patton Outstanding Jurist Award from the Hillsborough County Bar Association's Young Lawyers Division. That brought great, great credit to our Court. It showed the general Bar community that we have bankruptcy judges who are really fabulous, smart, professional, caring.

So, to conclude, I am so happy, Father Tim, that Judge Corcoran — I'm pointing to the Judge Corcoran who's on the wall over there — is back at home in this courthouse in this, your former courtroom. It's appropriate and it's right that we honor your upstanding and outstanding judicial service as an officer of this Court in this way. And I guess the old adage is true: that good things come to those who wait.

For our part, we are thankful that your legacy is a part of our Court's culture and we appreciate this visible reminder of that legacy.

And now I invite Judge Colton to the lectern to make remarks.

RETIRED JUDGE CORCORAN: Thank you, Judge Cathy. Thank you.

JUDGE COLTON: Father Tim. On behalf of my good friend, the Honorable K. Rodney Kay, who graces that wall, Abraham Lincoln and, of course, Thomas Jefferson, for whom we share a love, I welcome you back to Courtroom 9B.

HONORABLE C. TIMOTHY CORCORAN, III

Your portrait, it's fabulous. It certainly depicts you as a jurist and a judge but it also, I think, depicts you as a man of great faith. And I trust that you will continue to watch over me in this courtroom and that you will bless those who come here seeking justice for a very, very long time.

Thank you and congratulations.

RETIRED JUDGE CORCORAN: Thank you, Robbie. Thank you.

CHIEF JUDGE DELANO: Father Tim, would you like to make a few more remarks?

RETIRED JUDGE CORCORAN: Well, thank you, all. That's all I can say. It's wonderful to be back in this courtroom. I walked in today for the first time in 17 years, and the first thing that I noticed was all of the art that was here 17 years ago is still here: Abraham Lincoln and Thomas Jefferson and out in the vestibule the George Washington and the Naval art that's there. I had a warm feeling in returning, to walk into this courtroom. And I'll walk out of the courtroom in a moment feeling even warmer still, based upon all of the wonderful comments that you judges shared with me and the others. I only wish that half of what you said was true.

Thank you very much, Judge Delano and my fellow judges.

CHIEF JUDGE DELANO: Thank you, Father Tim, and thanks to all of you who have joined us today. I hope you have enjoyed this presentation. And if you really enjoyed it, we've been recording it and it will be posted on the Court's website in a few days and you can relive it all over again. But we do really appreciate your being here. It's been a lot of fun to look over and see, you know, familiar faces on the screen, some whom we haven't seen for a while, like Yvonne Shepherd, Judge Corcoran's former judicial assistant, and Bill Zewadski, I see. Very nice to see you.

And Judge Briskman, Retired Judge Briskman, has joined us and we're delighted to have you with us, Judge Briskman.

And Susan Coberly. Susan, where are you? I'm blinded by the number of people here. Okay.

Okay. All right. Well, thank you all so much for joining us.

Some day, hopefully in 2021, some day many of you will have the opportunity to come back to the courthouse and when you do, I hope that you will stop by Courtroom 9B and come admire Judge Corcoran's portrait in person.

We really have enjoyed this afternoon. I want to thank my colleagues. I think all of us spoke from the heart. And Judge Corcoran is a — or Father Tim is a beloved member of our Court family. The one, I think, unique thing about our bankruptcy bench is that we are a group that enjoys each other's company and, prior to March of 2020, used to get together fairly regularly. We're looking forward to doing that again.

So, with that, I'll close out this program and court will be adjourned. Thank you all and I look forward to seeing you sometime soon.

(Applause.)



IN MEMORIAM~ DENISE MARTIN By: Chief Judge Caryl E. Delano

Our friend and colleague Denise Martin, born on April 30, 1956, passed away suddenly on Saturday morning, November 21, 2020. Denise had suffered a major heart attack on Saturday, November 14, but seemed to be recovering and was discharged from the hospital the following Thursday. Tragically, just two days later she suffered another major heart attack. A memorial service was held on December 4, 2020, and many Court staff, judges, and local attorneys attended or watched the live stream from the church.

Losing Denise is a terrible blow to her family and to our Court, especially to the Tampa Division. November 19, 2020 marked the 41st anniversary of Denise's employment with the Court. In fact, other than Judge Paskay, who served on the bench for 48 years, to our knowledge, Denise is our Court's longest-tenured employee. Denise was hired as a docket clerk in 1979, and later served as the Courtroom Deputy for Judge Paskay, for Judge Baynes when he was appointed to the bench in 1987 (throughout the *Celotex* years), and, after Judge Baynes' retirement in 2005, for Judge McEwen.

Denise was an integral member of Judge McEwen's chambers staff, and will be greatly missed by Judge McEwen, Lisa Scotten, and Dedra Gann. She was also very close friends with Mary Morrison (Judge Paskay's and Judge McEwen's retired judicial assistant), Mary Maddox (JA to Judge Williamson), Laura Stevenson (JA to Judge Delano), and Tampa's longtime court reporter, Kim Johnson. Denise will be missed by all of us in the Tampa Division.

In addition, during her 41 years with the Court, and having worked as a courtroom deputy for three judges, Denise was well known to the lawyers in the Tampa bankruptcy community, several of whom had served as law clerks to her judges. Judge McEwen recalls that prior to CM/ECF and, before that, the Court's after-hours emergency fax filing procedure, attorneys would take their after-hours emergency filings to Denise's South Tampa home so that she could accept them for filing.

On May 8, 2019, Denise arrived uncharacteristically late to a Tampa Division "Taco Lunch and Trivia Contest." Unbeknownst to her Tampa friends and co-workers, Denise and David Martin, her long-time beau, had slipped off to First Presbyterian Church in downtown Tampa to be married during their lunch hour. Denise was known as a great cook, a wonderful party planner, a sharp dresser, and the life of any party. Denise and David loved relaxing by their pool and entertaining friends. In 2008, at age 52, after training for over a year, Denise completed and "placed" in a senior body building competition.

Denise and David also loved to spend with their family. Denise is survived by her daughters, Alyson Walsh (Nate) and Megan Long (Chris), stepson Andrew Martin, and five adorable grandchildren between the ages of nine months and five years old: Addy and Callen Walsh (and Baby Boy Walsh due in March 2021), Cooper and Molly Long, and Monroe Martin. As sad as we all are to have lost Denise, it is comforting to know that she was at a very happy stage of her life, enjoying life with David and her grown children and grandchildren, and looking forward to retiring in the foreseeable future.

I asked Judge McEwen to share her memories of Denise. She said

Denise was a personal friend of every member of our chambers. We so enjoyed each other's company and socialized frequently. She was the life of any of our parties. She delighted in hearing stories about our individual adventures, always responding with a big smile and an enthusiastic "how fun!"

On the job front, Denise was an integral member of a team that thrives on each member's being empowered to do her job with much discretion, while keeping in mind the overall goal as well as what the others are doing. Denise was a good fit for this kind of team culture. We trusted her to deal with the attorneys in a way that made sense for us and was in keeping with the prohibition against ex parte contacts. The attorneys really liked and respected her, based on what folks have related to me since her passing.

Denise was incredibly organized; she never left her office without leaving a clean desk behind. And she willingly took on the extra burden I placed on her to set up the pre-341 meeting status conferences — a/k/a pep talks — for our first-time pro se filers, which is no easy task as it involves immediately scheduling, noticing, and furnishing the materials that I discuss during the status conference. One last thing: Denise was a heck of a cook. When she would make lunch for us in our galley

kitchen, even if it was a lunch of her leftovers, it wasn't unusual for me to say out loud, "I could mainline this!"

Denise is missed by many people, but she will be especially missed by Dedra Gann, Lisa Scotten, and me.







WE WILL MISS YOU MAGGIE!

On December 31, 2020, the Orlando division bid farewell to Maggie Moyet, who was an exceptional and well-loved Case Management Supervisor. Maggie retired after a 30-year career with the Bankruptcy Court. She leaves behind a legacy that will be hard to replace or duplicate. She was dedicated to the very end: it was tough to convince her to leave early on her last day in the office!

Given her hard work, fiery spirit, and extensive knowledge, it is easy to see why she was so well respected throughout the district by the Judges, Clerk's Office staff, attorneys, and trustees. Even during the pandemic, a great number of staff masked up and came into the office to show their support and wish her well on her next adventure. It was a tearful day that left a void in the Orlando division. But we know whatever the future holds for Maggie, she will embrace it with vim and vigor.



Upcoming Events – February-April 2021

February 2 TBBBA Consumer Webinar			
12:00 p.m.	The Calm Before the Storm: What to Expect and How to Deal		
	With the End of Moratoriums.		
	Speakers: Nicole Mariani Noel, Peter Kelly, Keri Ebeck, and		
	Gavin Stewart		
February 25	State of the District 2021 (Virtual)		
12:00 p.m.	Presented District-Wide by Chief Judge Caryl E. Delano		
March 2	TBBBA Consumer Webinar		
12:00 p.m.			
March 18	CFBLA Webinar		
12:00 p.m.	D&O Liability Litigation, Cutting Edge Strategies & Insights		
-	Panel Panelists: Brett Amron, Brett Marks, and Ross Hartog		
March 25-26	Alexander L. Paskay Memorial Seminar (Virtual)		
April 6	TBBBA Consumer Webinar		
12:00 p.m.	Featuring Chief Judge Caryl E. Delano		



CENTRAL FLORIDA BANKRUPTCY LAW ASSOCIATION

The 2021 CFBLA Board of Directors would like to thank Christopher Thompson (Secretary, Vice President, President), Robert Davis, Jr. (Director, Secretary, Treasurer), Jason Johnson (Director), and Esther McKean (Vice President, President, Director) for their outstanding service and dedication to the Board over the last three years. We would also like to welcome to the 2021 CFBLA Board of Directors: Jennifer Morando, Camille Sebreth, Jason Johnson, and James Timko. CFBLA's 2021 Officers are: Andrew Layden – President; Jonathan Sykes – Vice President; Camille Sebreth – Secretary; and Jennifer Morando – Treasurer.

Kevin E. Mangum Memorial Volunteer Service Award

On October 15, 2020, CFBLA honored the recipients of the Kevin E. Mangum Memorial Volunteer Service Award for 2019. This award is presented each year to an individual or individual for outstanding service, hours, and dedication to the Bankruptcy Pro Se Assistance Clinic for the Middle District of Florida. In 2019, Prof. Linda Coco of Barry University and her bankruptcy law students volunteered 76 hours. CFBLA was honored to present Prof. Coco and her students with the Kevin E. Mangum Memorial Volunteer Service Award for 2019. Thank you, Prof. Coco and your students.

CFBLA Webinars

2020 was a first for CFBLA: we had to change our CLE luncheons to CLE webinars. All our CLE webinars are available for viewing on our website. Here is a list of CLE webinars we presented in 2020: (1) Mortgage Modification Mediation Program – 10year retrospective; (2) Virtual Trials and Depositions: A Panel Discussion; (3) The State of Real Estate in Central Florida During a Pandemic; (4) The Many Perspectives of the SBRA; (5) Bankruptcy 101 Series: Chapter 11 – Before You File Bankruptcy, How to Plan, Questions to Ask; (6) Bankruptcy 101 Series: Chapter 13; (7) Bankruptcy 101 Series: Chapter 7; (8) Payroll Protection Program – Overview of Uses and Forgiveness, including Interim Final Rules, FAQ's, and the New Flexibility Act; (9) Case Law Update: Landlord/Tenant Issues in Bankruptcy; (10) Student Loan Management Program for the Middle District of Florida; (11) Subchapter V and the Retroactive Effect of the SVRA and CARES Act.



TAMPA BAY BANKRUPTCY BAR ASSOCIATION

By: Kathleen L. DiSanto, Esq.

The TBBBA continues to grow and adapt to the challenges presented by the COVID-19 pandemic. The TBBBA offered its members multiple Zoom CLE opportunities on a variety of timely topics, including the SBRA, bad faith claims, cryptocurrency, and mortgage relief and mortgage servicing in the wake of COVID-19. TBBBA members have gathered at virtual happy hours and lunches throughout the fall and early winter. The TBBBA's Pro Bono clinic reopened virtually in December and has already assisted several clients. In November, TBBBA members enjoyed an excellent View from the Bench seminar presentation from the comfort of their (home) offices.

The bankruptcy bars of the Middle District of Florida are jointly presenting the State of the District Address on February 25, 2021. The TBBBA intends to continue offering its virtual consumer CLE lunches on the first Tuesday of the months of February through May. Other virtual CLE offerings will be advertised throughout the winter and spring. The TBBBA will continue to offer virtual happy hours and lunches, as well as other opportunities for members to connect during the pandemic.



SOUTHWEST FLORIDA BANKRUPTCY PROFESSIONALS ASSOCIATION

On December 17th, the Association enjoyed a virtual meeting with Chief Judge Delano to announce its new officers.

The SWFBPA is proud to announce its officers for 2020-21:

President – Michael Cecil Vice-President – Jonathan Bierfeld Treasurer – Jerry McHale Secretary – Ryan Really





CASE LAW UPDATE FOR Q1 2021 ISSUE OF THE COURT CONNECTION

Editors:

Bradley M. Saxton & C. Andrew Roy, Winderweedle, Haines, Ward & Woodman, P.A.

U.S. Supreme Court Opinions

City of Chicago v. Fulton

2021 WL 125106, 2021 U.S. LEXIS 496 (Supr. Ct. Jan. 14, 2021)

In an 8 - 0 unanimous opinion, the Supreme Court reversed the decisions of the bankruptcy court and the Seventh Circuit. The Court held that the mere retention of property does not violate the automatic stay under § 362(a)(3). In *Fulton*, the debtors had their cars impounded by the City of Chicago for failure to pay parking fines. After filing bankruptcy, the debtors demanded return of their cars. The City refused. The debtors prevailed in contempt proceedings in the bankruptcy court, which the Seventh Circuit affirmed. The Supreme Court accepted the case because of a significant circuit split over whether a creditor has an affirmative duty to turn over repossessed property once a debtor files for bankruptcy.

In an opinion by Justice Alito, the Court relied on statutory analysis of § 362(a)(3). The Court expressly avoided addressing the other subsections of § 362. Instead, the Court relied on the fact that ruling otherwise would render the § 542 turnover provision "superfluous" and would make § 542 and § 362(a)(3) contradictory. In a concurring opinion, Justice Sotomayor noted that the City of Chicago may have satisfied the "letter of the Code," but it "hardly comport[ed] with its spirit." Justice Sotomayor suggested that turnover under § 542 should be enhanced to benefit debtors to ensure prompt resolution of turnover demands.

Eleventh Circuit Opinions

USF Fed. Credit Union v. Gateway Radiology Consultants, P.A. (In re Gateway Radiology Consultants, P.A.), 983 F.3d 1239 (11th Cir. Dec. 22, 2020)

The Eleventh Circuit is the first appeals court to weigh in on a bankrupt debtor's ability to obtain a Paycheck Protection Program ("PPP") loan under the CARES Act. The bankruptcy court held that the Small Business Administration exceeded its statutory authority and acted arbitrarily and capriciously by excluding debtors from the PPP loan program. On direct appeal to the Eleventh Circuit, however, the circuit court reversed. The Eleventh Circuit's 44-page opinion concludes that the SBA did not exceed its authority by declaring debtors ineligible for PPP loans and that the SBA acted reasonably—not arbitrarily and capriciously—in adopting its bankruptcy exclusion.

Wizenberg v. Wizenberg (In re Wizenberg)

2020 WL 7352578, 2020 U.S. App. LEXIS 39276 (11th Cir. Dec. 15, 2020)

The Eleventh Circuit upheld an award of sanctions, under 28 U.S.C. § 1927, against the debtor, a lawyer who was representing himself in litigation against his brother, where the debtor was "rude and unprofessional at depositions and trial," "asked repetitive and hostile questions," "ignored the Judge's rulings," and "filed voluminous and irrelevant motions." The Court rejected the debtor's argument that the bankruptcy court lacked subject-matter jurisdiction to award the sanctions. The circuit court even imposed sanctions under Rule 38, Federal Rules of Appellate Procedure, for filing a frivolous appeal.

Tufts v. Hay

977 F.3d 1204 (11th Cir. Oct. 20, 2020)

A Florida attorney acted as ostensible special counsel for a North Carolina debtor, believing he had been retained as such based on representations by the debtor's primary North Carolina bankruptcy counsel. After the North Carolina bankruptcy court disgorged the Florida counsel's fees because he had not been properly retained, the Florida attorney sued the North Carolina bankruptcy counsel in the Middle District of Florida for (among other things) negligent misrepresentation. Relying on the *Barton* doctrine, the district court dismissed the action for lack of subject-matter jurisdiction. On appeal, the Eleventh Circuit reversed, holding that the *Barton* doctrine did not apply because the North Carolina bankruptcy case had been dismissed, there was no longer any conceivable effect on the estate, and that the bankruptcy court no longer had jurisdiction.

Bankruptcy Court Opinions

Trujillo v. Moffitt (In re Moffitt)

2020 WL 7706920, 2020 Bankr. LEXIS 3592 (Bankr. M.D. Fla. Dec. 28, 2020) (McEwen, J.)

On its own motion under Bankruptcy Rule 7016, the bankruptcy court concluded that a complaint seeking to except debt from discharge was untimely. The plaintiff initiated the adversary proceeding with the filing of a Statement of Corporate Ownership. The statement was filed within the applicable filing deadline, but the complaint was not filed until the next day. The court distinguished the case of *Beem v. Ferguson*, in which the Eleventh Circuit permitted a "motion" to determine nondischargeability to be deemed timely filed. Here, the Statement of Corporate Ownership failed to include a short and plain statement of the grounds for the court's jurisdiction, the relief sought, and the basis for entitlement to relief. The bankruptcy court therefore concluded that the statement was not a "pleading" to which the later filed complaint could relate back. The bankruptcy court also ruled that, while certain deadlines may be extended under Rule 9006(b)(1) upon showing of "excusable neglect," the deadline for filing a non-dischargeability complaint under Rule 4007(c) is not one of them.

In re Shumbera

2020 WL 7183540, 2020 Bankr. LEXIS 3438 (Bankr. M.D. Fla. Dec. 3, 2020) (Vaughan, J.)

The bankruptcy court denied the debtor's motion to modify a confirmed plan, agreeing with the majority of courts that 1325(a)(5)(B)(iii)(I) does not permit a balloon payment absent consent by the secured creditor.

In re Rivera

2020 WL 7333588, 2020 Bankr. LEXIS 3502 (Bankr. M.D. Fla. Nov. 20, 2020) (Colton, J.)

The bankruptcy court sustained the Chapter 13 Trustee's objection to confirmation where the Trustee showed that the debtor's income from "bonuses" was "virtually certain" such that the debtor failed to dedicate all of his projected disposable income to the plan.

In re Watkins

620 B.R. 377 (Bankr. M.D. Fla. Oct. 5, 2020) (Williamson, J.)

The bankruptcy court held that a tax certificate expired because the seven-year statute of limitations was no longer tolled by the debtor's bankruptcy case once the subject property was no longer property of the estate via the debtor's claim of exemption, which went without timely objection.



DISTRICT-WIDE STEERING COMMITTEE UPDATE: NINTH ANNUAL BENCH BAR CONFERENCE

By: Ana V. De Villiers, Esq.

In keeping with 2020 being an unprecedented and historic year, the Steering Committee hosted its Ninth Annual Bench Bar Conference by Zoom. As always, the Conference, which was held on November 4, 2020, was well attended and included judges, courtroom personnel, trustees, and attorneys from each division in the Middle District. Although the attendees were "together" for the opening and closing general sessions, each table "zoomed" out to virtual breakout rooms for the topic discussions to allow for more personal interaction.

This year's topics were Administering Subchapter V Cases under the Small Business Relief Act and Practicing During and After the Pandemic: Guidelines for Now and for the Future. The Committee felt that both these topics were particularly apt for the 2020 Conference considering that the SBRA was enacted February 19, 2020, and we have all been practicing under this "new normal" since the end of March 2020.

In lieu of a general presentation of each topic, as has been done in prior years, each breakout group was given a roadmap for discussion. Because each breakout group had a mix of judges and practitioners, the discussions were more practical than theoretical.

Regarding the SBRA, the general consensus was that the process needs some tweaking. While the SBRA is based on Chapter 11 procedures, Subchapter V debtors would benefit from a slightly faster moving process. To streamline the process, participants suggested that changes could be made to the First Day Orders, Plan, and Confirmation Order, making it easier for small businesses to maintain their day-today business activities and, thus, increasing the likelihood of a successful reorganization. While the SBRA is still in its early stages, everyone agreed that

carving out a separate process for small businesses was something that has been missing in the Bankruptcy Code.

The second topic—*Practicing During and After the Pandemic*—was the source of more lively discussion because this is a topic that has affected every single person in attendance. A key aspect of the discussion was the pros and cons of telephonic or video hearings versus the traditional in-person hearings. Across the board, there was a strong preference for video appearances over telephonic appearances. And, given the choice, most practitioners preferred any version of virtual hearings over in-person hearings.

Many attorneys felt that removing the need to commute, park, and wait for a hearing at the courthouse has allowed for a noticeable savings in time and expenses. Unfortunately, the other side of the convenience is the reduction in respect for the process that some debtor and attorneys have exhibited since virtual hearings began. Some judges and trustees told war stories of some of the more interesting/disappointing experiences that they have witnessed during a virtual hearing.

There was also a lot of discussion about what technology and virtual aspects of bankruptcy practice should be kept post-pandemic. For example, if someone can appear virtually, can distance no longer be claimed as an undue hardship to testifying? Everyone agreed that once in-person appearances are safe again (and possible), perhaps some hybrid of in-person and virtual appearances is the future for Bankruptcy practice.

Thankfully, technology allowed the Steering Committee to be able to host the Conference in the year of no gatherings. While the virtual nature of the Conference allowed attendees from all over the district to attend, participate, and contribute with minimal disruption to their work routine, many of us did miss the opportunity to make personal connections and have some rare one-on-one time with the judges and other courtroom staff. Perhaps along with the practice of bankruptcy, a hybrid of virtual and in-person attendance is also in the future for the Committee's Annual Bench Bar Conference.



Make Me Smile Moments By Honorable Catherine Peek McEwen

I'm back with three more Make Me Smile moments. One has to do with the pro se clinic; the other two are reaffirmation agreement success stories:

- 1. The Tampa Bay Bankruptcy Bar Association has re-started its courthouse clinic in virtual form. Details for scheduling a telephonic appointment may be found here: <u>https://www.tbbba.com/pro-bono-news/</u>. Lawyers, please consider taking a turn (or two or three or more) in the clinic. Your Florida Bar aspirational goal of 20 pro bono hours can be met easily while sitting in the comfort of your home. To sign up, contact John Landkammer: <u>jlandkammer@anthonyandpartners.com</u>.
- 2. "My clients are ecstatic," reported attorney Angela Reimer during a comeback on a reaffirmation agreement. After contacting a redemption lender and learning that the lender also has an inventory of used cars available for purchase-money financing, the debtors got into a more gas-efficient Honda Civic at a lower loan balance and interest rate than what they had originally intended to reaffirm on their Toyota RAV4. Being upside down on the RAV4, and with no concession by their current lender, the debtors happily rescinded the reaffirmation agreement and surrendered the RAV4.
- 3. A pro se debtor decided that reaffirming a debt secured by an out-ofwarranty, under-water, older car financed at a 9.19 percent interest rate was not a financially sound decision. She decided to rescind the reaffirmation agreement and purchase a newer car at a lower interest rate.



FORT MYERS DIVISION CASE NUMBERING CHANGE

To align the Middle District of Florida Bankruptcy Court's case numbering system with that used by the District Court, effective January 1, 2021, the "location code" for cases filed in the Fort Myers Division changed from "9" to "2" (e.g., Case No. 2:21-bk-xxxx-FMD and Adv. Pro. No. 2:21-ap-xxx-FMD). This change will also apply to all pending Fort Myers cases. Beginning January 1, 2021, attorneys and parties should use the "2" location code in all filings in Fort Myers Division cases.



Time to Update Your Templates!

Are you using the most up-to-date Negative Notice Legend?

Although updates to the approved Negative Notice legend became effective on July 1, 2020, the Court still often sees filings with outdated Negative Notice language. Now is a good time to review your form templates to ensure they are up to date. Here is the current Negative Notice language, as it appears in the Court's Local Rule 2002-4:

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING

If you object to the relief requested in this paper you must file a response with the Clerk of Court at (address) [and, if the moving party is not represented by an attorney, mail a copy to the moving party at (address)] within (number) days from the date of the attached proof of service, plus an additional three days if this paper was served on any party by U.S. Mail.

If you file and serve a response within the time permitted, the Court will either notify you of a hearing date or the Court will consider the response and grant or deny the relief requested in this paper without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, and the Court may grant or deny the relief requested without further notice or hearing.

You should read these papers carefully and discuss them with your attorney if you have one. If the paper is an objection to your claim in this bankruptcy case, your claim may be reduced, modified, or eliminated if you do not timely file and serve a response.



Florida Bar Pro Bono Challenge Starts in February

The Florida Bar hosts an annual pro bono challenge, encouraging Florida's twelve law schools to support pro bono service in the profession. Students who sign up for the challenge are paired with attorneys and given pro bono projects. The pro bono projects come from legal aid and other organizations. Each of Florida's twelve law schools earns credit through participation by students and alumni in the challenge. Please consider participating in the challenge!

Not only does participation provide critical pro bono services for the community, but it also helps in the formation of law students as they help you with the pro bono project. You may sign up to take a case beginning February 1 (don't delay...the challenge ends March 26!). More information is available at floridalawschoolchallenge.org.



A Message From Your Point & Click Authors

Happy New Year! Each new year is a good time to take inventory of your CM/ECF Profile Information, District Court Admission Status, and Florida Bar Information.

<u>CM/ECF Profile Review</u>

Your CM/ECF Profile Information should be reviewed for each court for which you are an authorized user (unfortunately updating your information with one court does not update your information for other courts). For our purposes here, we will focus on the Profile Information for the United States Bankruptcy Court for the Middle District of Florida, though the process for reviewing your CM/ECF account information for other federal courts should be similar. Keeping your contact information current is crucial to ensure proper service of case documents and receipt of important Court announcements.

To verify the information in your CM/ECF Profile:

- Login to CM/ECF as if filing a document.
- Select Utilities from the Main Menu Bar.
- Select Maintain Your ECF Account

Step 1: Review the information on the initial screen. This information includes your name, firm name, address (where documents would be served at), phone number, and fax number. If your phone or fax number needs to be changed, you can change it from this screen. If your firm name or address needs to be changed, you must contact the CM/ECF Help Desk, <u>echelp@flmb.uscourts.gov</u>, for help.

Step 2: Left-click [E-mail Information]. Review the e-mail address(es) associated with your account. If an e-mail address needs to be changed, added, or removed, you can do that from this screen. Left-click [Return to Account screen].

Step 3: Left-click [More User Information]. If you have Filing Agents associated with your account, they will be displayed at the bottom of this screen. If so, review the list of Filing Agents. If any of the listed Filing Agents should no longer have access to file documents on your behalf, check the box to the left of the name(s). Left-click [Return to Account screen].

Step 4: Left-Click [Submit]. You should receive confirmation that any changes you made were successful. If you do not, contact the CM/ECF Help Desk, <u>ecfhelp@flmb.uscourts.gov</u>.

District Court Admissions

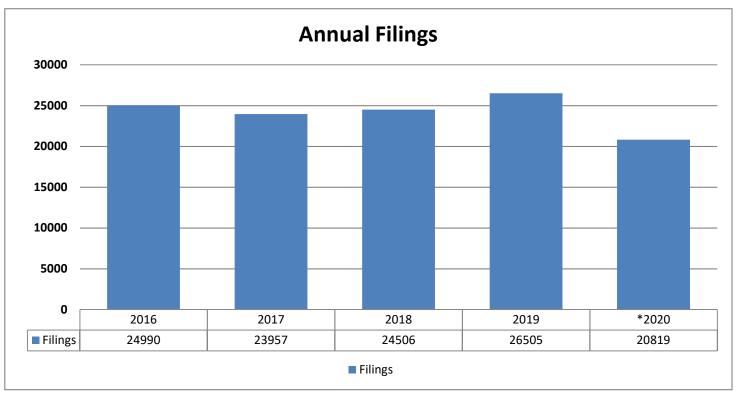
Attorneys are eligible to practice in the Bankruptcy Court based on their admission to practice in the United States District Court for the Middle District of Florida.

The District Court's membership renewal period ended on December 31, 2020. If you failed to renew your admission, you are no longer eligible to practice in the Middle District of Florida and must re-apply to the Middle District Bar. <u>www.flmd.uscourts.gov</u>

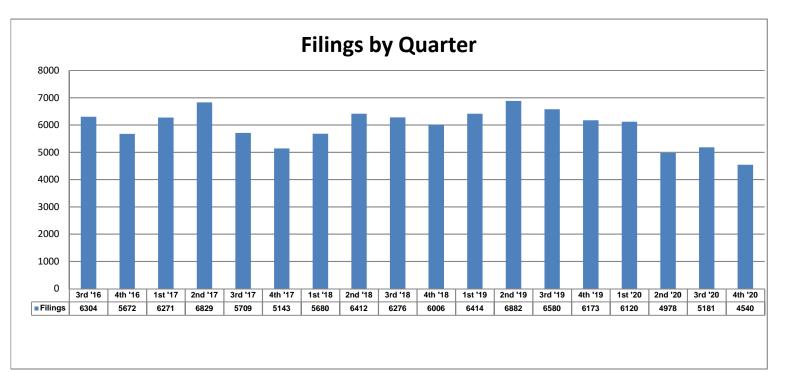
Soon, the Bankruptcy Court Attorney Roll will be compared to the District Court's roll, and any attorney whose admission has lapsed will lose his or her filing access in the Bankruptcy Court.

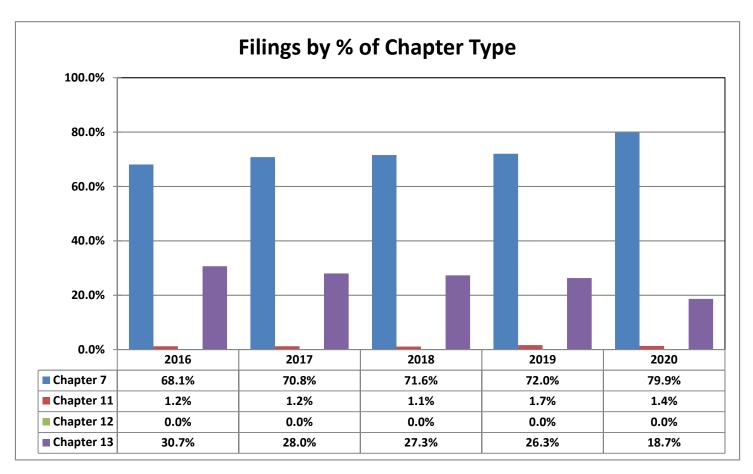
<u>Florida Bar Profile</u>

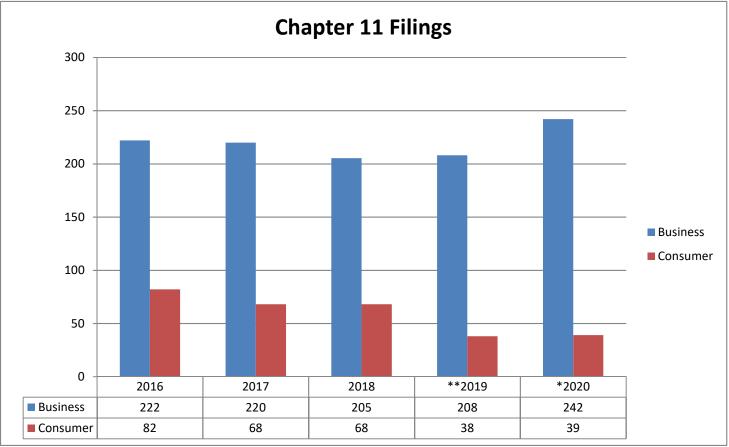
Visit <u>www.floridabar.org</u> to verify your contact information is current with the Florida Bar. From the home page, left-click Login, to access your profile.

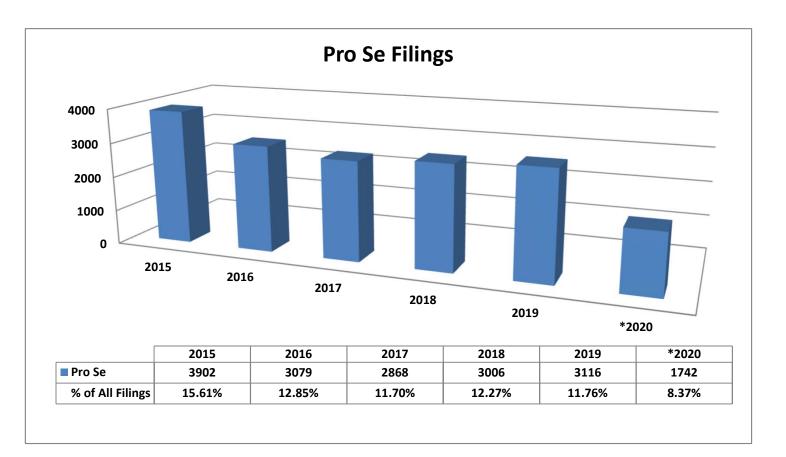


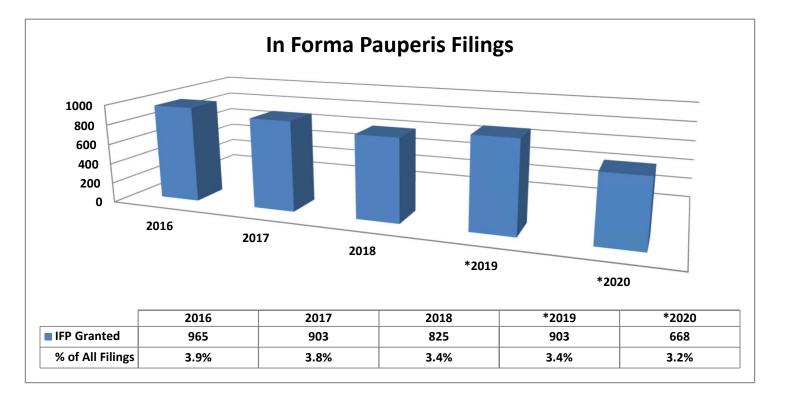
Year	Annual Filings	vs. 2015	vs. Prior Yr.
2015	30112		
2016	24990	-17%	-17%
2017	23957	-20%	-4%
2019	26505	-12%	11%
*2020	20819	-31%	-21%

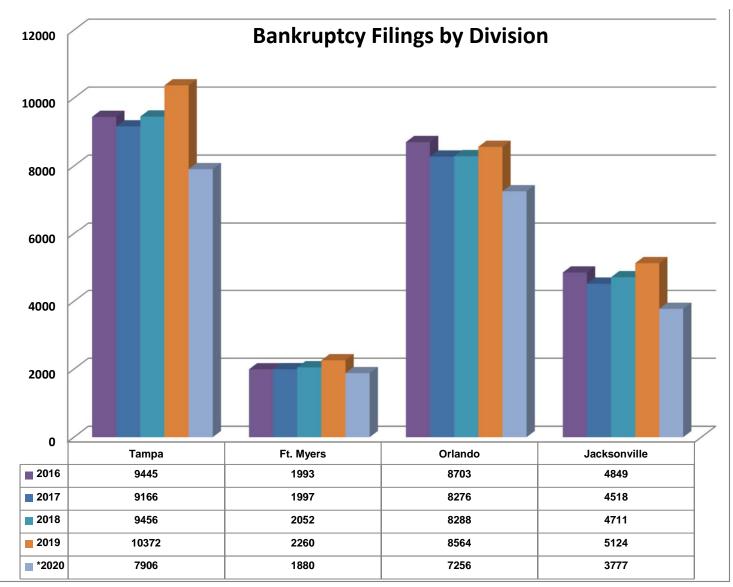












Note: *2020 Counts include reopen cases.

Order Granting IFP counts have been corrected to include approving language.