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NEWSLETTER

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JUDICIAL PROFILE: CHIEF JUDGE RONALD B. KING OF THE WESTERN DISTRICT OF TEXAS UNITED STATES BANKRUPTCY COURT

By: Abigail Ottmers, Haynes and Boone, LLP (Abigail.Ottmers@haynesboone.com)
(Ms. Ottmers served as Judge King's law clerk from 2002-2003. She practices bankruptcy and restructuring in San Antonio)

The Honorable Ronald B. King exemplifies high achievement in the judiciary – he is smart, fair, patient, funny, welcoming, thoughtful, and dedicated. Lawyers and litigants have been fortunate for his service on the bench the last 22 years, where he has consistently made practical, insightful rulings whether the debtor is an individual saddled with medical bills, or a troubled public company dealing with hedge fund creditors seeking control of the business.

The Road to the Bench

Judge King's road to the bench started like so many of us. He didn't have a burning desire to become a trial lawyer or even practice law, but a law degree was the next step to his liberal arts education, where his interests were government and history. His interest in the law was sparked by years of conversations with his father, who attended law school but did not finish because of family obligations.

Judge King's progression in bankruptcy law, however, wasn't so natural. Following a stellar undergraduate career at SMU and then an equally stellar law school career at the University of Texas, Judge King served as a briefing attorney for Texas Supreme Court Justice James G. Denton. He returned to his hometown of San Antonio and became an associate at Foster, Lewis, Langley, Gardner & Banack, Inc., where he focused on business litigation and appellate law. By the time he became partner in 1982, he pictured his future career as an appellate lawyer perhaps serving at some point on an appellate level court. It was only by happenstance that bankruptcy came into view.

Fortunately for lawyers and litigants, however, Judge King stumbled upon the exciting world of bankruptcy law. Judge King admits that he stayed away from the bankruptcy course at UT law. The bankruptcy professor was infamous for stressing out already stressed out law students, so Judge King managed his course load away from the class. He first ended up at the bankruptcy court when a firm client needed bankruptcy advice, and Judge King was the only Foster, Lewis partner that knew where the bankruptcy courthouse was located. From then on, he was the "go to" lawyer at the firm regarding bankruptcy issues.

Building a bankruptcy practice from the ground up in a prestigious law firm in San Antonio was a daunting task. Judge King had no mentors, and no fellow attorneys to brainstorm with or strategize about difficult issues in his case docket. The bankruptcy bar in San Antonio at the time in the early eighties was also very small, and newcomers sometimes found it difficult to break into. The entire Western District of Texas had only two sitting bankruptcy judges and had also earned a reputation for being somewhat of a difficult place to practice. Regardless, with his hard work and self-study, Judge King flourished, and developed a sizable bankruptcy practice to augment his already busy commercial litigation and appellate docket.

Judge King first considered serving as a bankruptcy judge after talking with then Judge Glen Ayers. Despite the hard choice and difficulties in leaving private practice with Foster, Lewis, Judge King applied for an open position, and took the bench in October 1988. When asked why he thought he would make a

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A MESSAGE FROM YOUR CHAIR:
DOES THIS EVER MAKE SCENTS

BY: BYRNIE BASS, BANKRUPTCY CHAIR

In late May of 1967, I headed back to Lubbock after having just completed my sophomore year at Baylor. As my pride and joy 1963 four-on-the-floor Chevrolet Super Sport with the 327 engine cruised through Comanche, Rising Star, and on past Abilene and Snyder to the house, I didn't feel too good about the upcoming summer's prospects. I was madly in love with a girl from Jackson, Mississippi, who obviously wasn't going to spend any time in Lubbock. We didn't work out (I should have known it wouldn't work when she told me one time that she knew the sunsets were prettier the further west you went). Also, my brother Dave, a missionary kid from Brazil named Paul Smyth who was living with us at the time, and I had summer jobs doing construction work at Lubbock Swine Breeders, which was east of Lubbock on the Slaton Highway and on the other side of the beer warehouses near Posey. Lubbock Swine Breeders had 3,500 hogs that were raised indoors and wanted us to work on a construction crew that was building facilities for 3,500 more hogs.

Now doing construction work in 100 degree weather in the near presence of that many hogs is needless to say aromatic. The work wasn't too bad, but in mid-July, some parts didn't come in that were needed to keep the construction work going, so we shut down for a couple of weeks on the construction part. But not to worry. The bosses put us to work with the hogs.

Bright and early at 7:30 a.m. each day, we donned these white coveralls and boots and were put to the task of weaning pigs. For those of you with no hogs in your background or who don't know about raising hogs indoors, they spend the first eight weeks of their lives in what is called a farrowing crate. The crate is about twelve feet by six feet. The bottom consists of wooden slats about six inches off a concrete base. And though they try to wash those crates down with some regularity, you can't wash them down fast enough to prevent ten or twelve little pigs over an eight week period from accumulating quite a bit of, shall we say, "stuff" on their little pig feet.

Pigs don't like to be weaned. When they become aware of what's happening to them and their brothers and sisters, they start scampering all over that crate. The wooden slats, coated with "stuff", are slippery. Ten or twelve little pigs peelin' out on slippery slats trying to get away from the pig weaners (us), can stir up and sling quite a bit of "stuff". About all you can do is take it, and try to grab the pigs. After about an hour of that, there was a serious need to keep your hands down wind.

After work, we discovered that the pig "stuff" wouldn't wash off with soap and water. Dishwasher soap wouldn't get it. Washing machine soap wouldn't get it. We eventually found out that the only thing that would get rid of the smell on our hands was Lava soap and about a week.

Brother Dave had a date to the movies with a girl that he was going with at the time. They'd just graduated from high school. Holding hands at the movies didn't turn out to be a good deal. They shortly broke up. I guess the girl figured that one date with a pig weaner was about all she could stand.

In reflecting on our days as pig weaners, I've uncovered a small moral to the story. Weaning pigs is a very necessary part of a successful part of a hog operation and is good and useful work to be performed; however, the smell of it stays with you a while.

The practice of law, and sometimes even bankruptcy law, seems to be like that. All too often, the good work that we do as lawyers is lost in the focus on the bad "smell" that doing that work on some occasions causes.

The Bankruptcy Law Section Council, and I'd like to think bankruptcy lawyers in general, does a good job in combating the legal profession's sometimes low image. I'd like to think that the Bankruptcy Law Section Council this year has moved us ahead in that regard, particularly in the area of "section defining" contributions to the area of pro bono work. But the work is far from over. We all need to continue to participate. Stay involved. We can change the "smell". And that makes scents to me.

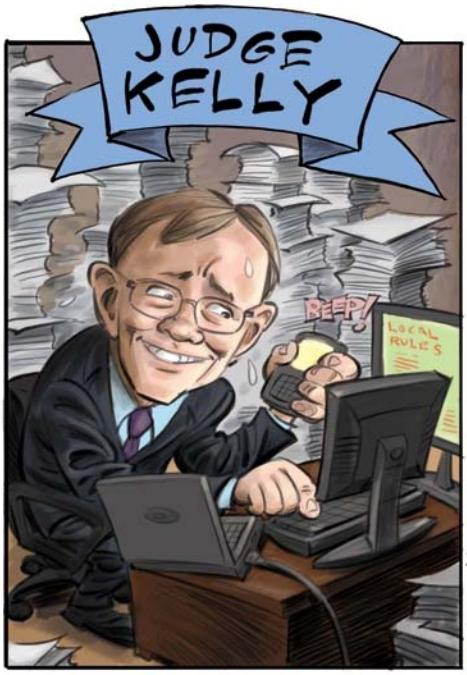
LIFE AFTER THE BENCH: A TALE OF TWO JUDGES' RETURN TO PRACTICE

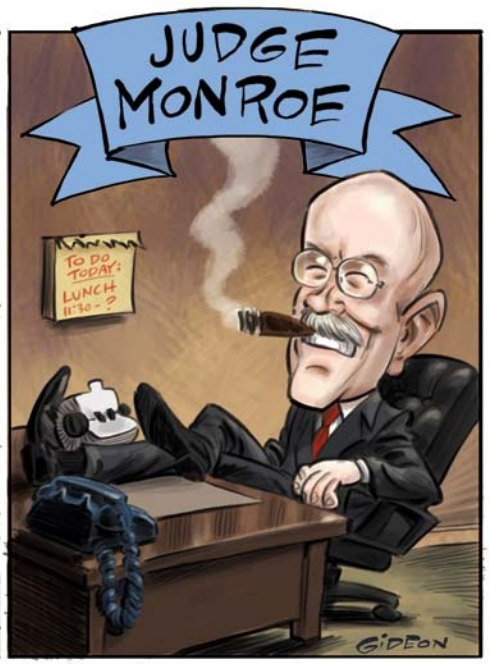
By: Eric M. Van Horn, Rochelle McCullough LLP (evanhorn@romclawyers.com)
(Mr. Van Horn served as a judicial intern to the Hon. Frank R. Monroe in 2004)

After spending about 20 years each on the bench and enjoying short-lived retirements, former Western District of Texas bankruptcy judges Larry E. Kelly (Waco) and Frank R. Monroe (Austin) returned to private practice. Kelly and Monroe[1] spared time from their busy new positions to have a conversation about their time on the bench, their return to practice, how the practice has changed, and many other topics.

Larry Kelly presided as the bankruptcy judge for Austin and Waco from 1986 – 2007 when he retired early for health reasons. As the chief bankruptcy judge for the Western District, Kelly spearheaded many of the technological developments that are used in bankruptcy courts and clerk's offices today. Kelly also taught annually at Baylor Law School.

Frank Monroe presided as the bankruptcy judge for Austin from 1989 – 2009 when he retired after becoming eligible to do so. In contrast to Kelly, Monroe was not known for being technologically savvy (Kelly joked that "for the longest time [Monroe] thought you put a chain on the computer to use as a boat anchor"); however, by the end of his judicial term, he was sending his own emails. Besides being actively involved with his church and family, Monroe first started farming a few years after becoming a judge.





So why did each return to practice? For Kelly, his health improved and then he became bored which led him conclude that he could either "stay home and play with cats or do something for [his] mental health." Monroe jokes that "after 4-5 weeks, my wife told me she felt like I was interfering with her schedule and that maybe I should accelerate any plans to do something else." Now, Kelly practices with Beard Kultgen Brophy Bostwick & Dickson, LLP in Waco, representing mostly creditors and buyers. Monroe practices with Graves Dougherty Hearon & Moody, P.C. in Austin and represents creditors and debtors, in addition to mediating.

Both are back to practicing full time despite efforts to do otherwise. Kelly initially intended to work part-time and thought his role would be like the Queen of England – show up, wave, meet with clients (or potential clients) and go home. But after three weeks he was already up to 40 hours/week, and then 50, noting that "there is only one way to practice – full speed or not." Kelly has also returned to teaching at Baylor. Monroe is also working hard, although he has been able to mostly incorporate his judicial practice of not working on Fridays, but still is not playing golf as much as he would like.

For day to day work, Kelly is frequently on the phone and develops strategy and planning for cases, but also researches and drafts pleadings (the worst part of his day) because he does not have any junior lawyer support. Monroe helps with case strategy, fields a lot of questions on procedure and how to do certain things in bankruptcy, and is on the phone a lot – all of which, he says, is better than drafting pleadings.

So far, their most memorable days in practice have been in court. For Kelly, he was in bankruptcy court in Reno, Nevada as an audience member minding his own business. But the lawyers in the case had told the judge Kelly was coming. The judge called the case, then called Kelly to the podium who confessed he was not admitted to practice in the court. The judge said he could apply *pro hac vice*. "But that will cost $175!", Kelly exclaimed. Another time, Kelly was on hold by telephone waiting to do a closing argument for a case in Phoenix. Before court started, one of his law partners was in the courtroom talking about getting Kelly reversed. Kelly, able to hear this conversation, then interrupted with "this is God and I'm listening to you." For Monroe, his best day in practice so far was when opposing counsel complained that Monroe had been overly influencing an appraiser. Monroe had an email from the appraiser to opposing counsel saying otherwise, to which opposing counsel objected to as hearsay. Monroe countered by saying he would just call opposing counsel to the stand. Another memorable time occurred when Monroe says he received unsolicited advice from a U.S. Trustee about not lumping time like a certain former judge in Waco who had

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SUPREME COURT CASE LAW UPDATE

A KING'S "*RANSOM*:" THE SUPREME COURT REJECTS *TATE*

By: Austen Swaim, Judicial Extern to the Hon. Harlin D. Hale and third-year JD/MBA student at the SMU Dedman School of Law and Cox School of Business (aswaim@mail.smu.edu)

On January 11, 2011, the Supreme Court handed down an 8-1 ruling in favor of the Creditor, FIA Card Services, N.A (FIA). *Ransom v. FIA Card Services, N.A.*, 131 S.Ct. 716 (2011), available at http://www.supremecourt.gov/opinions/10pdf/09-907.pdf. The question presented was whether a Chapter 13 debtor, who owns his automobile free and clear, may nevertheless claim a deduction for car ownership costs reducing the amount he pays to his creditors. *Id*. at 1.

Resolving a circuit split, and over a well-reasoned dissent of Justice Scalia, the majority rendered a pragmatic holding, stating that a debtor who is not making loan or lease payments on his or her vehicle may not take the car-ownership deduction. *Id*. at 1-2. In its holding, the Court emphasized that the "text, context and purpose" of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), particularly the means test ("Test"), is to ensure that debtors who can pay creditors indeed do so. *Id* at 2. Thus, to allow a debtor to take deductions and thereby minimize his monthly disposable income payable to creditors would be in contravention of this statute. *See Id*.

Background: The Means Test and the Debtor

Under a Court-approved plan, a Chapter 13 debtor must pay his creditors in the amount of his monthly "disposable income." *Id*. at 1. The purpose of this statutory framework formula is to "ensure that debtors who can pay creditors do pay them." *Id*. To arrive at a Chapter 13 debtor's disposable income, a court will look to the Test which states in pertinent part that "disposable income means current monthly income received by the debtor…less amounts reasonably necessary to be expended" *inter alia* "for the maintenance or support of the debtor." 11 U.S.C.A. §1325(b)(2)(A)(i). Under the statute, "the debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards ("Standards"), and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." 11 U.S.C.A. §707(b)(2)(A)(ii)(I). Pertinent to the case at hand, the Standards include a standardized table ("Table") which allows a deduction of $471 for car ownership costs. *Ransom* at 4. But a supplement to the Standards, the Collection Financial Standards ("Financial Standards"), states that "a taxpayer who has no car payment may not claim an allowance for ownership costs." *Id*.

In July of 2006, petitioner Ransom filed for Chapter 13 Bankruptcy. *Id*. at 4. Among his liabilities was a claim for unsecured debt by FIA. *Id*. Ransom's assets included a 2004 Toyota Camry valued at $14,000 which he owned free of any liens and for which he made no payments. Per the Test, Ransom reported a total disposable income of $210.55 but excluded from disposable income a $471 car ownership deduction on his Camry. *Id*. The Bankruptcy Court, the 9th Circuit Bankruptcy Appellate Panel as well as the Ninth Circuit Court of Appeals rejected Ransom's plan. *Id*. at 5-6. Over the life of the 5-year plan set forth in the repayment schedule, including this $471 would have increased Ransom's disposable income by $28,000. *Id*.

Analysis: The Meaning of "applicable"

The Court looked to the plain meaning of the statute, specifically to the word "applicable" and its positioning in the statutory language.[1] *Id*. at 6-7. After defining "applicable" as appropriate, relevant, suitable, or fit, the Court stated that Ransom's car ownership deduction would necessarily hinge upon whether or not "that deduction [was] appropriate for him" and that it would only be appropriate if [he had] costs corresponding to the category covered by the table—that is, only if the debtor will incur that kind of expense during the life of the plan." *Id*. at 7. In the Court's reasoning, "applicable" must carry weight and so "presumably" Congress inserted the word to differentiate those debtors who are eligible to receive the car ownership deduction from all others. *Id*. at 8.

Moreover, the majority found evidence supporting their plain meaning reading of the statute in the general context of the Bankruptcy Code. *Id*. Disposable income is "current monthly income…less amounts *reasonably necessary to be expended*." §1325(b)(2) (emphasis added). The Court reasoned that an expenditure's reasonability should only be acknowledged if the debtor qualified for that deduction by actually incurring an expense during the life of his plan. *Ransom* at 8.

Finally, the Court pointed out that the purpose of the BAPCPA and the Test is to gauge a debtor's disposable income to ensure that creditors are paid back to the greatest extent the debtor can afford. *Id*. at 8-9. With that goal in mind, "requiring a debtor to incur the kind of expenses for which he claims a means test deduction…advances the BAPCPA's objectives." *Id*. at 9.

Because the Court decided that an individual cannot claim a deduction for car ownership costs unless he actually incurs such costs, the Court next considered what vehicle ownership costs actually include. *Id*. at 9. Since the ownership costs in the Table are the "average monthly payment for loans and leases nationwide" and "are not intended to estimate other conceivable expenses associated with maintaining a car," Ransom was not entitled to an ownership deduction.[2] *Id*. at 9-10. The Court emphasized that the Financial Standards, the IRS guidelines, while not a part of the statute could be used as an explanatory tool by courts if they are in accord with the statute, as was the case here. *Id*. at 10. In this case, the Financial Standards required that an individual actually incur some sort of vehicle ownership cost in order to take the deduction. *Id*.

The petitioner argued that a debtor might try to "game" the system by timing his bankruptcy filing to coincide with his last few car payments to get the deduction anyway. *Id*. at 16. In response, the Court conceded that this situation may arise but that by "eliminating the pre-BAPCPA case-by-case adjudication of above-median-income debtors' expenses…Congress chose to tolerate the occasional peculiarity that a brighter-line test produces." *Id*. Additionally, the Court pointed out the flexibility of the Bankruptcy regime: if a debtor has tried to improperly take advantage of a deduction, his creditors can move to modify the plan. *See Id*. at 18. Likewise, if a debtor unexpectedly needs to purchase a car, he can move to modify the plan as well. *Id*.

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SUPREME COURT CASE LAW PREVIEW

STERN V. MARSHALL— THE ANNA NICOLE SMITH SAGA CONTINUES: DEFINING THE CONSTITUTIONAL LIMITS OF THE BANKRUPTCY COURTS' JURISDICTION

By: Austen Swaim (aswaim@mail.smu.edu) and Chibundu Nnake (cnnake@smu.edu), Judicial Externs to the Hon. Harlin D. Hale and JD/MBA candidates 2012 at the SMU Dedman School of Law and Cox School of Business

[Editor's Note: This article is being published as an overview of the complicated substantive and procedural issues in this case in anticipation of the Supreme Court's ruling at the end of June 2011. As noted below, a summary of the Court's decision will be published in a future newsletter].

This case is before the Supreme Court for a second time.[1] The original parties, Vickie Lynn Marshall[2] ("Vickie", the "Debtor", or the "Petitioner") and E. Pierce Marshall ("Pierce" or the "Respondent") are deceased. Howard K. Stern is the executor of Vickie's estate, and Elaine T. Marshall is the executrix of Pierce's estate. Pierce was the son of J. Howard Marshall, II ("Howard"), Vickie's spouse who is also deceased. Vickie filed for chapter 11 bankruptcy protection after Howard's death in the Central District of California (the "Bankruptcy Court"). During her chapter 11 case Pierce filed a nondischargeability complaint and proof of claim based upon his defamation claim against Vickie. Vickie filed a counterclaim for tortious interference alleging that Pierce fraudulently caused Howard to leave Vickie out of his estate depriving her of a $300 million gift she claimed she was to receive from Howard.

The Bankruptcy Court first found for the Debtor and entered final judgment awarding her approximately $475 million. *In re Marshall*, 600 F.3d 1037, 1046 (9th Cir. 2010). However, the Texas court probating (the "Texas Probate Court") Howard's will held that Vickie was not entitled to anything from Howard's estate. *Id.* at 1047. Pierce filed an appeal with the United States District Court for the Central District of California (the "District Court") arguing that the Texas probate court's ruling applies to the bankruptcy case. *Id.* at 1047-48. The District Court agreed and held that the Bankruptcy Court could not enter a final judgment on Vickie's tortious interference counterclaim because it was a "non core" claim that only weakly related to the facts underlying Pierce's claim and because her counterclaim was much broader than Pierce's claim. *See id.* at 1048. But the District Court ultimately ruled in Vickie's favor and found that Pierce committed tortuous interference. *See id.* Believing that the probate exception to federal subject matter jurisdiction precluded our consideration of the case, the Ninth Circuit vacated the judgment and remanded with instructions that the District Court order the Bankruptcy Court to vacate its judgment against Pierce Marshall. *Marshall v. Marshall* (*In re Marshall*), 392 F.3d 1118, 1137-38 (9th Cir. 2004).

Pierce appealed and the Ninth Circuit held that the "probate exception" to federal subject matter jurisdiction precluded the court's consideration of the case, and, therefore, remanded the case to the District Court with instructions to order the Bankruptcy Court to vacate its judgment. *Marshall v. Marshall,* 392 F.3d 1118, 1137-38 (9th Cir. 2004). Vickie appealed, and the Supreme Court remanded the case to the Ninth Circuit to determine if her counterclaim was "core" and whether the probate court's ruling precluded the Bankruptcy Court's ruling. *Marshall v. Marshall,* 547 U.S. 293, 126 S. Ct. 1735 (2006); *see also, In re Marshall,* 600 F.3d at 1049. The Ninth Circuit held that Vickie's claim was "non core", that the Bankruptcy Court was not allowed to enter a final ruling on her counterclaim, and that the Texas Probate Court's ruling, as the first one entered, should have been given preclusive effect by the Bankruptcy Court.

Vickie appealed and the Supreme Court granted certiorari again. *See Stern v. Marshall,* 131 S.Ct. 63, 63 (2010).

The central issue before the Supreme Court is whether it is constitutional for a bankruptcy court to issue a final decision regarding a compulsory counterclaim based on state law, or is the bankruptcy court limited to only issuing final decisions regarding counterclaims which are based on "core" issues of the bankruptcy case?

The specific questions presented to the Supreme Court are (1) whether the Ninth Circuit's opinion which renders § 157(b)(2)(C) surplusage in light of § 157(b)(2)(B), contravenes Congress' intent in enacting § 157(b)(2)(C); (2) whether Congress may, under Articles I and III, constitutionally authorize core jurisdiction over debtors' compulsory counterclaims to proofs of claim; and (3) whether the Ninth Circuit misapplied *Marathon* and *Katchen* and contravened the Supreme Court's post-*Marathon* precedent, creating a circuit split, by holding that Congress cannot constitutionally authorize non-Article III bankruptcy judges to enter final judgment on all compulsory counterclaims to proofs of claim.

Stern v. Marshall may decide whether bankruptcy courts are constitutionally authorized to hear not only "core" bankruptcy counterclaims but compulsory, non-core counterclaims. The Supreme Court's ruling could have a broad impact on the jurisdiction of bankruptcy courts. Oral arguments were held on January 18, 2011. A decision is expected by June 30, 2011 and will be summarized in a forthcoming newsletter.

[1]The Supreme Court's first decision was *Marshall v. Marshall,* 547 U.S. 293, 126 S. Ct. 1735 (2006).

[2] Vickie was also known as "Anna Nicole Smith."

Fifth Circuit Case Law Update

Exemptions Post-BAPCPA - Domicile, Opt-Out, and Extraterritorial Application

By: Michael Baumer, Law Office of Michael Baumer, Austin (www.baumerlaw.com)

On January 21. 2011, the Fifth Circuit ruled in Camp v. Ingalls, 631 F.3d 757 (5th Cir.2011), affirming the District Court which reversed the Bankruptcy Court. In re Camp, 396 B.R. 194 (Bankr.W.D.Tex.2010). The issue presented was whether a debtor who moved from Florida to Texas within the 730 day period prior to filing would be allowed to take Florida or federal exemptions.

Mr. Camp moved from Florida to Texas in 2007 and filed Chapter 7 in 2008, less than 730 days later. The question presented was what exemptions the debtor was allowed or required to claim. Section 522 (a)(3)(A) was added by BAPCPA and provides that a debtor may claim the exemptions of the state where he was domiciled for the 730 day period prior to filing. If the debtor has not been domiciled in the state for the 730 day period, he may claim the exemptions of the state where he resided for the 180 day period prior to the 730 day period, or the state where he resided for the greatest part of such 180 period.

The problem is that Florida's exemption statutes say that specified property may be claimed exempt by "residents of this state." Since Mr. Camp was no longer a resident of the state, he is not entitled to claim Florida exemptions. (Or so you might think.) Judge Gargotta held that BAPCPA required Mr. Camp to use the Florida exemptions, not withstanding the residency requirement, because that was the intent of Congress. The Fifth Circuit held that although Florida has opted out, the Florida exemptions are only available to residents and since Mr. Camp was no longer a resident, the Florida opt out statute did not preclude him (as a non–resident) from claiming the federal exemptions.

Personally, I think the Fifth Circuit got to the right result the wrong way. I think the court twisted the meaning of the statute. The court held that "Florida has opted out of the federal exemption scheme only with respect to Florida residents." By "its own express terms" the opt out statute does not apply to non-residents "who remain eligible to use the federal exemptions because nothing in Florida law specifically disallows them from doing so." The court cites several opinions interpreting Florida law, but only one is from Florida and it is from 1989 (slightly pre-BAPCPA) and I would suggest that a different result might result post-BAPCPA. (Of course, these residency questions came up very rarely, prior to BAPCPA. Why would Florida or any other state have anticipated this issue prior to BAPCPA?)

The problem is that the drafters of BAPCPA (lobbyists for MBNA) did not think through the results of the proposed legislation. (Can you say "Law of Unintended Consequences?") They wanted a law which prohibited venue shopping to take advantage of generous state exemptions. I suspect that nobody ever bothered to look at individual state exemptions laws. Many state laws impose residency requirements for homestead or personal property, or both and many prohibit extraterritorial application of their exemptions.

The Fifth Circuit specifically declined to address the "corollary questions of (1) whether the choice-of-law provision in Section 522(b)(3)(A) preempts state-law restrictions on the extraterritorial application of state-law exemption schemes, and (2) whether the "savings clause" in the hanging paragraph at the end of Section 522(b) permits debtors to claim the federal exemptions when the applicable state law opts out of the federal scheme and, at the same time, restricts the extraterritorial application of the state-law exemption scheme, thereby rendering both exemption schemes unavailable to the debtor through the normal operation of the Bankruptcy Code."

Only five days after the Fifth Circuit ruled in Camp, Judge Leif Clark issued an opinion in In re Fernandez, 09-32896 (Bankr.W.D.Tex.2011) in which he addressed the extraterritorial application of Nevada's homestead exemption. In Fernandez, the debtor had purchased a home in El Paso, Texas some years ago and lived there until he lost his job when he relocated to Nevada where he lived for seven years. He then returned to Texas in 2008 and filed Chapter 7 in 2009, less than 730 days before the filing.

Judge Clark held that the domiciliary limitation of Section 522(b)(3)(A) required the debtor to use Nevada exemptions unless as a result he was deprived of any exemption in which case he would be able to use federal exemptions under the "savings clause" of Section 522(b)(3). The problem for the debtor was that he had approximately $70,000 equity in his homestead and under the federal exemptions he would have been limited to $20,200. (Under the Texas homestead exemption his entire homestead would be protected. Under the Nevada exemption, his would be limited to $550,000. Either state exemption scheme would protect the entire homestead, if either exemption scheme was available.)

By its express terms, the Nevada homestead exemption is not limited to property located within Nevada. A review of Nevada court decisions, however, indicates that the Nevada legislature intended to provide homestead protection to Nevada residents.

The result is that now courts (and debtor's attorneys prior to filing) must look at state exemption laws to determine whether those laws have a residency requirement, whether the language of the opt out statute prohibits non-residents from using federal exemptions (most state exemption statutes have language similar to Florida), whether state law permits extraterritorial application of the state law exemptions, and whether 522 (b) permits a debtor to claim federal exemptions when state law opts out of the federal exemption scheme and at the same time restricts extraterritorial application of state exemptions.

Let me suggest that the credit card companies (and their minions in Congress) did not intend to make the exemption analysis under the Code more complicated - they intended to limit venue shopping to take advantage of generous homestead laws. (If you haven't lived here for two years, you have to use the exemptions of the state where you came from. Period.) What they got is a mess.

STATE OF THE BANKRUPTCY SECTION UPDATE

[Editor's Note: The following is a series of updates provided by officers of the Bankruptcy Section of the State Bar of Texas. These updates are intended to keep you apprised of the Section's CLE and social events, as well as its efforts to promote the bankruptcy practice.]

Hon. Richard S. Schmidt—

Vice President Professional Education:

Exciting CLE opportunities await members of the Section! The State of Texas Bankruptcy Bench Bar Conference will be held May 26 and 27 at the Horseshoe Bay Resort. All of the Texas Bankruptcy Judges and even one from New York are scheduled to attend. The State Bar Advanced Business and Advanced Consumer Bankruptcy Seminars will be held September 8 and 9 at the Westin Hotel in Houston. It will be preceded by a one day Bankruptcy 101 seminar on September 7. Considerable effort has been made to make these programs both informative and entertaining. Expect several surprises.

Michelle A. Mendez—*Treasurer:*

Revenues from attorney dues to the section were off slightly this year from the prior year because fewer attorneys joined the section. Until recently the dues for non- attorney (financial adviser) members covered a two year period, so there were no revenues for non- attorney member dues this year. The budget for this fiscal year was a balanced budget - that is, operations of the section were budgeted to use no more funds than what would be generated during the year. Thanks to the support of our members for the events offered by the section through sponsorships, the budget was maintained overall and the section supported several "one time only" events. The section has for several years accumulated excess revenues such that it was able this year to make contributions to our legal aid agencies throughout the state to support their operations, the funding for which is usually provided by IOLTA interest which has not been sufficient in recent years.

Beth Smith—*Vice President Public Education:*

MoneyWise is a comprehensive financial education program targeted to high school students. The State Bar of Texas Bankruptcy Law Section, in partnership with the Consumer Information Foundation, Inc., sponsors the *MoneyWise* program by recruiting teams of attorneys and financial professionals to teach students about financial management. The *MoneyWise* presentations provide an interactive, hands-on educational program about the benefits of keeping a budget, setting financial goals, and preparing for the future. Students will learn about: (i) various types of bank accounts, (ii) paying cash versus credit, (iii) credit reports and (iv) secured versus unsecured debt, among other things. *MoneyWise* includes a Flashpoint© presentation with corresponding handouts, and encourages students to explore real-life scenarios involving budgets, college expenses, and planning for the future. The program has been implemented successfully in various school districts in Houston, Austin, Dallas, East Texas, El Paso and San Angelo. If you are interested in participating in the *MoneyWise* presentations, please contact Beth Smith at beth@egsmithlaw.com.

Tom Howley—

Vice President of Business Bankruptcy:

We are focusing our current efforts on the planning of the 2011 Advanced Business Bankruptcy Conference set for **September 8 and 9, 2011** at the Westin Oaks Hotel in Houston, Texas. Once again, this Conference will be held at the same time and at the same place as the Advanced Consumer Bankruptcy Conference. The Chair of the Business Conference is Johnathan Bolton, Fulbright & Jaworski, Houston, Texas. The Vice-Chair of the Business Conference is Trey Monsour, Haynes and Boone, Dallas, Texas. They have put together a seminar filled with cutting-edge, pertinent presentations for all business bankruptcy practitioners across the state. Speakers include sitting Judges, retired Judges, practicing attorneys and non-attorneys. One of the highlights of the Business Conference will also be the networking reception on Thursday night - it will be held jointly with the Consumer Conference attendees and will feature the entertainment of Judge Schmidt and his rock'n'roll band. We also plan to invite non-attorneys who are involved in the turnaround and workout field to join us for some good food, music and networking. Please save the date and make plans to sign-up and join us for a stellar program. Don't miss out on this great opportunity. If you are interested in being a sponsor, please contact Trey Monsour at Haynes and Boone.

Timothy A. Million—

Vice President Communication & Publications:

We are very excited about the improvements that are in the works for the Section's newsletter. Among the many changes to be implemented are: a change in the delivery method (which you may have noticed with this edition); an update to the newsletter format in order to make it more web/screen reader friendly; and the introduction of Casemaker. Casemaker is a third party service, paid for by the State Bar, which will allow for the insertion of hyperlinks for all cases cited in the Section's newsletter. These hyperlinks will provide the reader access, at no cost, to each case cited in the Section's newsletter. While these improvements will take some time to implement, you can expect to see them start to roll out over the course of the next few editions. As always, we continue to seek out submissions for publication in the newsletter and welcome your comments as to how we can improve the newsletter.

Results from the Sixth Annual Texas/Fifth Circuit Elliott Cup Bankruptcy Moot Court and the Nineteenth Annual Duberstein Bankruptcy Moot Court Competition

By: Thomas "Tom" Rice, Cox Smith Matthews, Inc. (trice@coxsmith.com)

On February 19th, the Sixth Annual Fifth Circuit Elliott Cup Moot Court Competition sponsored by the Texas State Bar Bankruptcy Section - and named in Honor of the Honorable Joseph C. Elliott, former Chief Bankruptcy Judge for the Western District of Texas - was held at the University of Texas School of Law in Austin, Texas. Seventeen law school teams from nine law schools around the Fifth Circuit attended the Elliott Cup. The team of Mr. Sid Mody and Mr. Michael Martinez, from the Texas Tech University School of Law, was the winning team for this year's Elliott Cup competition, with coaches Ms. Vanessa E. Gonzalez of Mullin Hoard Brown LLP and Ms. Lisa Lambert with the United States Trustee's office in the Northern District of Texas. Mr. Mody also garnered the Best Advocate Award at the competition.

The Elliott Cup serves as a run-up to the Annual National Duberstein Bankruptcy Moot Court Competition held at St. John's School of Law in New York in March, and Elliot Cup teams have historically posted excellent results at the national competition. This year proved to be no exception, as the winner of this year's Duberstein Competition from the University of Houston Law Center was the team of Mr. Seth Gagliardi, Mr. Patrick McKee and Mr. Jameson Watts. The second place team also was an Elliott Cup participant from the Baylor University School of Law. Finally, the Best Oral Advocate at the Duberstein Competition was Nicole Hay from the SMU, Dedman School of Law. Many thanks to the numerous judges and attorneys involved in this year's Elliott Cup, who provided their time and efforts to benefit the aspiring young bankruptcy lawyers throughout the Fifth Circuit.

The Honorable Barbara J. Houser Presented SMU's Distinguished Alumni Award

On February 19, 2011, Southern Methodist University awarded the 2010-2011 Distinguished Alumni Award for Judicial Service to the Hon. Barbara J. Houser (J.D. 1978), chief bankruptcy judge of the Northern District of Texas. Of her many achievements, Judge Houser was recognized for her successful law practice, including her chapter 11 debtor representation of the Dow Corning Corporation; and, primarily, for her judicial tenure, including her recent term as the President of the National Conference of Bankruptcy Judges, and her current service as chief bankruptcy judge, vice president of the American College of Bankruptcy, member of the SMU Dedman School of Law executive board, and member of the Legal Hospice of Texas board of directors. Congratulations to Judge Houser on this well deserved honor.

(Picture (l-r): R. Gerald Turner (President of SMU), Judge Houser, and John B. Attanasio (Dean of the Dedman School of Law).

DFW Association of Young Bankruptcy Lawyers Presents Donation to the Dallas Volunteer Attorney Program

On February 3, 2011, the DFW Association of Young Bankruptcy Lawyers ("DABYBL") presented the Dallas Volunteer Attorney Program with a donation of $5,000.00. DAYBL raised funds for the donation from its annual Casino Night fundraiser held in the fall of each year. This year's Casino Night was well attended by bankruptcy lawyers and financial professionals from across the Dallas-Fort Worth area, and featured remarks from the Honorable Barbara J. Houser, chief bankruptcy judge of the Northern District of Texas. Congratulations to DAYBL for another successful fundraiser and its generous contribution to the Dallas Volunteer Attorney Program.

Picture (l-r) Gregory M. Zarin (2011 DAYBL President); Frances A. Smith (2010 DAYBL President); Chris Reed-Brown (DVAP); Michelle Alden (DVAP); John Middleton (2011 DAYBL President-Elect).

Upcoming Events

May 23-25, 2011	**State Bar of Texas Bankruptcy Bench Bar; Horseshoe Bay Resort, Horseshoe Bay, Texas.**
June 17, 2011	**Starting Out Right CLE Program, Houston, Texas**
September 7, 2011	**Bankruptcy 101 Course; Westin Oaks Hotel, Houston, Texas**
September 8-9, 2011	**Advanced Business Bankruptcy Conference; Westin Oaks Hotel, Houston, Texas**
September 8-9, 2011	**Advanced Consumer Bankruptcy Conference; Westin Oaks Hotel, Houston, Texas**

LOCAL EVENTS

Dallas:
The Dallas Bar Association Bankruptcy and Commercial Law Section normally meets the first Wednesday of each month at the Belo Mansion. Social begins at 5 p.m. with program beginning at 5:30 p.m.

Fort Worth - Tarrant County:
Bankruptcy Section - monthly CLE luncheon meetings on the third Monday of each month to its members. Contact - Marilyn Garner at (817) 462-4075 or marilyndgarner@flashwave.com. Meetings are normally held at the Ft. Worth Petroleum Club.

San Antonio:
The San Antonio Bankruptcy Bar Association meets on the 4th Tuesday of every month at the San Antonio Country Club. Social begins at 5 p.m. with program beginning at 5:30 p.m. Participants receive 1 hour CLE .

A Brown Bag lunch with Judge Clark, Judge King, the Bankruptcy Clerk, and members of the Bankruptcy Bar is held quarterly at the Adrian Spears Judicial Training Center.

Houston:
The last Friday of each month from 7:30 to 9:00 Judge Bohm and the Moller/Foltz Inn of Court present the Issues in Chapter 11 Program in Judge Bohm's Courtroom. The program is available to all lawyers (Inn membership is not required). CLE credit and donuts provided. For more information or to RSVP, please contact Liz Freeman (efreeman@porterhedges.com).

Members of HAYBL are invited for monthly "Chamber Chats" with Judge Bohm and a special guest. Eight monthly spaces available and HAYBL membership required. For more information, contact Jason Cohen (Jason.Cohen@bgllp.com).

Members of HACBA are invited for monthly "Chamber Chats" with Judge Bohm and a special guest. Eight monthly spaces available and HACBA membership required. For more information, contact Pam Stewart (plsatty@swbell.net).

Troop Movement

Austin

Patty Tomasco (formerly of Munsch Hardt Kopf & Harr, P.C.) joined Jackson Walker L.L.P.

Dallas

Louis E. Robichaux IV (Principal), **Todd M. Patnode** (Director), and **Russell A. Perry** (Restructuring Manager) (all formerly of Bridge Associates LLC) all joined Deloitte's Reorganization and Services Group.

Zachery Z. Annable (formerly of Cox Smith Matthews, Inc.) joined Munsch Hardt Kopf & Harr P.C. as Associate.

Houston

Michael P. Ridulfo and **Angela N. Offerman** (formerly of Brown McCarroll, L.L.P.) joined Kane Russell Coleman & Logan PC. as Director and Associate, respectively.

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Young Lawyers Committee

The Young Lawyers Committee for the Bankruptcy Section is a group of motivated young attorneys from across the State who have volunteered their time and talent. The purpose of the Committee is to increase the involvement of and integrate young lawyers on a State-wide basis into the Section at all levels, promote participation of young lawyers in seminars and events at all stages, and raise the visibility of our young lawyers by assisting them in professional networking and promoting professional development on a State wide basis. The Committee holds monthly conference calls on the second Wednesday of each month, and has a variety of exciting opportunities for young bankruptcy professionals to be involved. If you are interested in joining, please contact one of the Committee's new officers below.

The Committee's leadership has recently changed, and will be led by Jermaine Watson of Dallas as Chair (jwatson@coxsmith.com); Eric Van Horn of Dallas as Vice-Chair (evanhorn@romclawyers.com); and Vanessa Gonzalez of Lubbock as Secretary (vgonzalez@mhba.com).

The Committee's new Liaisons to the respective Section's Vice-Presidents are:

Liaison - Public Education - Jessica Hanzlik

Liaison - Business Division - Russell Perry

Liaison - Non-Lawyer Outreach - Jonathan Howell

Liaison - Professional Education - Sara Keith

Liaison - Law School Relations - Jessica Voyce

Liaison - Communications - Rachel Kingrey

Liaison - Consumer Division - Lloyd Kraus

Liaison - Membership - Angie Offerman

CALL FOR ARTICLES AND ANNOUNCEMENTS

The **State Bar of Texas Bankruptcy Law Section** is dedicated to providing Texas practitioners, judges, and academics with comprehensive, reliable, and practical coverage of the evolving field of bankruptcy law. We are constantly reviewing articles for upcoming publications. We welcome your submissions for potential publication. In addition, please send us any information regarding upcoming bankruptcy-related meetings and/or CLE events for inclusion in the newsletter calendar, as well as any items for our "Troop Movements" section (changes in practices).

If you are interested in submitting an article to be considered for publication or to calendar an event, please either e-mail your submission to a member of the Editorial Staff at **tmillion@munsch.com, evanhorn@romclawyers.com** or **eborrego@whc.net** or send your submission by regular mail (addresses on page 8).

Please format your submission in Microsoft Word. Citations should conform to the most recent version of the Bluebook, the Texas Rules of Form, and the Manual on Usage, Style & Editing.

Should you have any questions, please visit our website at **http://txbankruptcylawsection.com**.

JUDICIAL PROFILE OF THE HONORABLE RONALD B. KING

(Continued from page 1)

good judge, his answer was honest – "I thought I could do a good job at it and that I would be fair and objective."

Mentor to Many

Judge King purposefully has employed many law clerks over the years. He believes he has a duty to mentor and educate younger lawyers on the judicial system, the bankruptcy bench, and the practice of law in general. His clerks, generally recent law school graduates, can be found in Judge King's chambers acting as his counsel and absorbing every lesson he hands out. Any of his past 24 clerks will gladly describe their year with Judge King as a significant highlight of their professional life. Judge King freely talks through issues, banters about humorous matters that arose at a hearing, and is simply available to talk about daily life and all that it brings.

The loyalty and fondness held for Judge King by his former clerks is exemplified by the turnout two years ago at a gathering to celebrate his twenty years on the bench. Seventeen of his then-twenty former law clerks and their families joined together with Judge King and his wife Cindy and shared their experiences, Judge King's pearls of wisdom, and many hilarious stories.

Judge King's loyal staff has been with him for many years. Mrs. Tricia Bade Haass has honorably served as Judge King's secretary for over thirty years, dating back to his Foster, Lewis days. Tricia is smart as a whip, warm and kind, and has been a good friend to Judge King and his law clerks. The delightful Mrs. Jana Brisiel has served as Judge King's courtroom deputy for 22 years. Judge King is quick to credit Jana for her professionalism with the bar and her excellent organizational skills in keeping his court running smoothly. The courtroom and chambers function seemingly effortlessly due to the hard work and dedication of Tricia, Jana and the entire Clerk's Office for the Western District of Texas.

Civility in the Courtroom

One of Judge King's least favorite parts of serving on the bench is incivility among the litigants or counsel, especially if it proceeds to lawyers arguing with each other instead of presenting legal arguments to him. Yet, he recognizes that few people are happy when they are in court and understands that anger is a byproduct of the stress and events that have brought them to a bankruptcy proceeding. Days when he has dealt with overly contentious parties understandably make Judge King wish for more civility in the courtroom. Despite these challenges, which have included being the subject of recusal motions and even a party litigant, Judge King maintains his ever-present cool demeanor. I've never seen him lose his temper – not in court, not in chambers, not ever – even when he had every reason to be angry. He epitomizes civil judicial temperament – he listens to the arguments, examines the evidence, and rules accordingly.

Judge King smiled when I asked him his favorite type of cases. The answer was immediate – the matters that pay everyone 100%. He often espouses the ideal that bankruptcy is a mechanism to pay all creditors, and even better on the rare occasion when creditors are paid in full.

Pearls of Wisdom – Be Prepared

To be successful in Judge King's court, lawyers should be prepared. They should know the law, the factual background, and the key issues in dispute. They should be direct and tell the Judge up front the relief they are seeking. He also adds this bit of advice: "Don't ever lie or misrepresent anything to the judge, or even shade the truth. Your reputation for veracity is your most important asset. Don't forfeit it for one lousy client. This probably won't be your last case." As for younger lawyers, he suggests you "be collegial and respectful, not only to the Court and your colleagues, but the entire staff." Being genuinely nice to the courtroom staff and treating everyone with respect is critical for a successful career.

Greatest Accomplishments

Judge King names his family as his greatest accomplishment. Judge King has been happily married to his high school sweetheart, Cindy Sauer King, for 35 years. They raised three amazing children – Kari King, Ronald Baker King, Jr. (known as "Baker,") and Kelsey King. Both Kari and Kelsey are following in their father's footsteps – Kari is a lawyer practicing in Austin, Texas and Kelsey is in her second year of law school at the University of Houston. Baker chose another noble profession – medicine - and is practicing in San Antonio. Baker and his wife, Kelly have further blessed the King family with two handsome and energetic grandsons.

Judge King is grateful that his judicial schedule enabled him to be involved in his children's lives, including coaching softball, baseball, basketball, soccer and track, and attending their numerous academic and athletic events over the years. His schedule has also allowed him to time to play a little basketball himself. Despite sustaining several injuries on the court, Judge King continues to regularly play with three different groups, one of which he is proudly the youngest playing member. He is currently recovering from surgery for a torn muscle, but is itching to get back on the basketball court. He has certainly put his down-time to good use: relaxing with his family, spending time with his grandsons, enjoying his family's annual deer lease, and sampling Texas' many great barbeque restaurants.

If your reputation is everything, then Judge King is golden. For our local bar and all who practice bankruptcy in the Western District of Texas, we hope that 22 years is just the beginning for this very gracious and honorable judge.

Life After the Bench: A Tale of Two Judges' Return to Practice

(Continued from page 3)

his first fee application objected to.

For Monroe his worst days are those that require him to draft pleadings. For Kelly, his worst day came when his friend's business was shut down by the Texas Comptroller and the employees had to be laid off. Monroe remembered that Kelly had another bad day when Kelly appeared before Monroe representing a landlord in a new chapter 11 case. The debtor had previously filed a case in Kelly's court, but was now a new entity. Kelly confirmed with the debtor's counsel that the prior filing before Kelly would not be an issue. But in court, debtor's counsel immediately made an issue of it, infuriating Kelly and stressing his newly recovered heart. Kelly won the matter, after which Monroe called Kelly to ask if his cardiologist knew what he was doing.

Aside from that instance, Kelly has not had any real issues with lawyers being collegial, or noticed much of a change since he last practiced. He has gotten along well with lawyers outside of Waco, but says it is easier in Waco "because you can't get away from each other, or get away with it." Monroe noted that "Austin's always been Austin, so it is hard to compare with Houston" where he practiced before the bench. However, one of the most surprising things for Monroe is that he has not run across anyone with a score to settle, which did not happen the first time he practiced. Overall, he feels like he has been treated well.

The biggest changes they have noticed since returning to practice is their schedules and technology. Now as lawyers, Kelly and Monroe have lost their independence to control their schedules. Kelly has been up into the middle of the night on cases, and Monroe does not leave the office without checking in with others. Technologically speaking, email has taken the place of phone calls and letters. Monroe notes that "some lawyers will answer your email when they would never answer your phone call" and chides that they include "some of the trustees in Austin who shall remain nameless, but know who they are." Kelly remembered that before computers and cell phones, he had to make calls on pay phones. As a result, he liked driving to Midland "because no one could get a hold of you." Both also agree that their jokes are less funny now that they are no longer judges.

Some of the challenges for their return to practice include the transition to representing clients again, and, believe it or not, complying with local rules (at least those not in the Western District).

On clients, Kelly explained the new pressure of representing clients: "As a judge, you make sure that there was notice and due process, that you understood the facts, and then you applied the law. Now having clients is like having kids wrapped around you by a pool: you don't know if you can save them or if they will drown you." Kelly also notes that challenge of not having law clerks and fellow judges to discuss issues and ideas. Monroe agreed and added that as a judge, everyone was there to cater to you and made your life easier, but in practice, other lawyers in the firm have their own issues and may not be able to help you. That, and, as a judge, "people would return your phone calls."

On local rules, Monroe noted that as a judge "the local rules were really irrelevant unless some said someone else messed up. But now, I have to read them." As a result, Monroe spends more time than before complying with technicalities and does not want to take an out of district case if there is a difference in the local rules. He highlighted, for example, that some of the Houston local rules "will drive you crazy" and that "they have their own form pleadings." Kelly feels similarly and noted a few instances in different courts in the country where the local rules were very difficult to comply with and resulted in much higher legal fees and costs for his clients. Although Kelly concedes that some local rules help the courts operate more efficiently. He explained that the increase in local rules, and even judge specific rules led to the statewide bankruptcy bench/bar conference envisioned by the Hon. Harlin D. Hale (Bankr. N.D. Tex. – Dallas) so that lawyers could talk off the record with judges to discuss issues like local rules.

But even with these new changes and challenges, Monroe would not change much with the practice of law because it is still all about preparation and being more prepared than opposing counsel and having effective arguments. He advises the bar to try and make life easier for each other because "lawyers really can be trusted most of the time and you don't have to threaten them with sanctions to get them to do what you want."

In the end, neither Kelly nor Monroe would go back to being a judge. Monroe has no desire, and enjoys the second income from practicing (first being retirement for which he is happy to be a taxpayer burden), but admits he would do it all over again because he is not qualified to do anything else ("I could farm, but that gets old"). Kelly noted that going back would result in forfeiting the cost of living adjustments for retirement, and that "I get bonuses quarterly, so my attitude is better."

[1] Last names are used throughout in order to save space. For those wanting to know how to address these two former judges, Monroe tells people "they can call me anything but four-letter words and I will be happy." For Kelly, most call him "Larry" except his law partners who call him "Judge" in front of clients.

SUPREME COURT CASE LAW UPDATE

A KING'S "*RANSOM*:" THE SUPREME COURT REJECTS *TATE*

(Continued from page 4)

Based on the foregoing, the Court held that a debtor may not take deductions on a car that he owns free and clear of any outstanding obligations. *Id*. at 18. This practical ruling should serve the "text, context, and purpose" of the BAPCPA by ensuring that debtors who are able to repay their creditors do so. *Id*.

The Dissent: "More metaphysical than practical"

Justice Scalia attacked the holding of the majority by first addressing the word "applicable" and its importance in the statute. Ransom v. FIA Card Services, N.A., 131 S.Ct. 716 (2011) (Scalia, A., dissenting). While the majority held that under the BAPCPA provision held in 11 U.S.C. §707(b)(2)(A)(ii)(I) the word "applicable" "imports into the Local Standards a directive in the Internal Revenue Service's Collection Financial Standards," Justice Scalia noted that the "directive forms no part of the Local Standards to which the statute refers." *Ransom* dissenting at 1. What's more, according to Justice Scalia, "the court believes…that unless the IRS's Collection Financial Standards are imported into the Local Standards, the word "applicable" would do no work, violating the principle that 'we must give effect to every word of a statute wherever possible.'" *Id*. at 2. Disagreeing, Justice Scalia pointed out that the "canon against superfluity is not a canon against verbosity," and thus we need not necessarily give or import meaning into every verbose word or phrase. *Id*. at 2. In short, we must read what we have before us in the four-corners of the document and not go off on a fishing expedition. *See Id*.

By way of a series of organizational and structural examples, the dissent illustrated how the statute might have alternatively been written if its authors intended the Court's finding. *Id*. For instance, it would not have been hard to have a "no car column" next to the one and two vehicle columns under the ownership costs deduction category. *Id*. The majority of Justices wrote "that the tables 'are not self-defining' and that "[s]ome amount of interpretation" is necessary in choosing whether to claim a deduction at all, for one car, or for two." *Id*. at 2-3. Backhandedly, Justice Scalia opined that this problem is "more metaphysical than practical" and that the debtor should have little trouble "interpreting" which ownership deduction category applies. *Id*.

Justice Scalia also employed an analysis of the statutory construction: he pointed out that if the legislature intended to discriminate between debtors who own cars versus those who do not using the word "applicable," they might have instead stated: "monthly expense amounts specified under the National Standards and local Standards, if applicable for IRS collection purposes." *Id* at 3. Justice Scalia bolstered his argument by demonstrating that the legislature knew how to use the word "applicable" in the Code by way of the following: "'The debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary' for that purpose." §707(b)(2)(A)(ii)(II), *Ransom*, dissenting at 3. Given Congress' ability to use more precise language, Justice Scalia found the Court's interpretation of the use and import of the word "applicable" to incorporate the Collection Financial Standards into a reading of the Code and Standards to be troubling. *Ransom* dissenting at 4. This, especially in light of the fact that the Court concedes that the Bankruptcy Code does not incorporate the IRS guidelines but nonetheless, still affirms that the Financial Standards can still be used to simply reinforce the majority's conclusion. *Id*. at footnote.

Finally, the dissent delved into a policy argument about the majority's modification arguments in a situation where a debtor ceases making car ownership payments or needs to purchase a car during the repayment period. *Id*. at 5. Justice Scalia was ardently against this form of modification as it would be costly, time-consuming and require a case-by-case adjudication that the new BAPCPA sought to eliminate. *Id*.

Ultimately, Justice Scalia was not concerned with "eliminat[ing] or reduc[ing] the oddities" the current means test may produce but rather giving "the formula Congress adopted its fairest meaning." *Id*. Simply put, that the "'applicable monthly expense amounts' for operating costs 'specified under the…Local Standards,' are the amounts specified in those Standards for either one or two cars, whichever of those is applicable." *Id*.

Conclusion

The Supreme Court held that a debtor may not deduct car ownership costs that he does not actually incur from his monthly disposable income. In doing so, the Court resolved a contentious circuit split and overruled the 5th Circuit holding in Tate v. Bolen. *Tate v. Bolen (In re Tate),* 571 F.3d 423 (CA5 2009). In addition, the Court appears to have taken a practical approach to BAPCPA, which may assist lower courts and practitioners in future litigation under what had become a rather confusing statute.

[1] "The debtor's monthly expenses shall be the debtor's *applicable* monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." (emphasis added) 11 U.S.C.A. s. 707(b)(2)(A)(ii)(I).

[2] Ransom did properly take a vehicle operating cost deduction of $388. Pg. 10.