EXXTRA! EXXTRA!
READ ALL ABOUT IT

A PERIODIC NEWSLETTER BY THE
OFFICE OF THE UNITED STATES TRUSTEE, REGION 20

Volume 2, Issue 3
September 1, 2004

A WORD FROM THE U. S. TRUSTEE

On August 11-13, 2004, Region 20 held its first Regional Conference under my leadership. The Agenda was action and information packed. We learned, for example, that our body language "speaks volume." We also learned that since 1983 ,the columns which appear on Social Security cards are slightly raised and that the signature line isn't a line at all, but rather "social security administration" repeated over and over again. We learned what "performance based management" is all about, that trustee oversight remains a critical part of what we do, and that the U.S. Trustee has a statutory duty to make referrals of suspected bankruptcy crimes. And, even though numbers don't tell the whole story, we saw how Region 20 stacks up against the rest of the Nation. We learned to think "outside the box," that CM/ECF (or a facsimile thereof) is a reality (like it or not), that we can learn from our mistakes, that sharing information and ideas makes each office better, and that Paul Thomas' grandmother is right, any job worth doing is worth doing well and is what our clients – the public – deserve. Plus much, much more.

In spite of the information overload, there was time for some R&R, too. The Region's Olympians gathered for a softball game to round out the first day. There was no clear winner or loser – and no real athletic prowess. The second day of the Conference ended with burgers, brats, beverages and boat rides at my house.

By all accounts, the Conference was a success. A great deal was learned, and a good time was had by all. Thanks to Director Friedman for his direction and words of encouragement. They were just the kick-off the Conference needed. Thanks to Jeff Miller, Santal Manos, Sara Kistler, and Sandy Klein, who each took time out of their busy schedules to be a part of the Conference. Thanks to Michele Campbell, who tended to every detail in helping to organize the Conference. Thanks also goes to Kathy Wieland, the Region's official photographer, Bill Schantz, our newly anointed Athletic Director, the Wichita office for its generosity, and the folks of Region 20 for their participation. I couldn't have pulled this off without you.

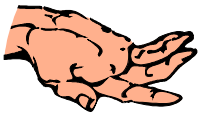
Until next time,

Mary E. May

U.S. Trustee

Inside this issue:

WE'RE FROM THE GOVERNMENT AND WE'RE HERE TO HELP



Alice Nystel Page, Trial Attorney. I am very happy to be with the United States Trustee Program again and plan to stay here for the rest of my career, as my roots are now firmly planted in Albuquerque. Since I left the program in 1995, I was married to my wonderful husband and have a five year old son who keeps me on my toes and young at heart. I know who the Teen Titans, Totally Spies and Yu-Gi-Oh are, as those are my son's favorite cartoon characters, in addition to the perennial favorites The Hulk, Spiderman, and the silly Power Rangers. My husband is originally a New Yorker, so living in New Mexico is a happy compromise and is thankfully close to my family in Texas.

My legal career has been varied, to say the least. When I started practice in Dallas in 1983 with Rochelle and Balzersen, Texas was in the middle of an oil and gas industry economic downturn. I represented oil and gas industry Chapter 11 debtors, and then graduated in the late 1980s and early 1990s to real estate, steel and retail Chapter 11 cases. Practice in Region 16, where I served as an Assistant U. S. Trustee from 1993—1995, ranged from lots of no-asset Chapter 7s to large film business Chapter 11s and included the Orange County Chapter 9 case (I helped with committee formation, which was a team effort on the part of the LA office staff), and various music and film industry notables. Funk music recording artist Rick James was one of the Chapter 11 debtors I supervised, I conducted his 341 meeting via telephone, as he was in state prison for an assault conviction at the time. We also dealt with lots of foreclosure fraud schemes in Region 16 while I was there. I represented a lot of secured creditors while working at Rodey, Dickerson, Sloan, Akin and Robb in Albuquerque (1995-1999) and was even a Chapter 11 trustee in a family-feud case with oil and gas assets.

My tenure at Sun Healthcare (2000-2004) was one of the more interesting and rewarding times of my career, other than my time with the United States Trustee Program. Sun had just filed Chapter 11 in Delaware when I went to work in its corporate credit and collections department as one of only two corporate counsel handling collection and bankruptcy work. My co-corporate counsel gladly handed over the bankruptcy work to me, and I handled all of the bankruptcy claims and litigation for Sun and its ancillary services (physical therapy, medical supplies, temporary staffing, and pharmacy) subsidiaries nationwide. Much of the long-term care industry was in bankruptcy at the time, so the bankruptcy part of my job kept me pretty busy. After Sun emerged from Chapter 11 in the spring of 2002 and hired its current General Counsel, my co-corporate counsel and I were finally added to the legal department (instead of finance), and my duties grew to include more commercial litigation. Being on the inside of a Chapter 11 debtor was a unique, although stressful, experience, and being with a corporate legal department taught me a lot about what clients expect from their counsel and what goes into the decision-making process in litigation and collections strategy. I also learned a lot about using the Internet to help me perform my job more efficiently.

On a personal note, I am a Texas Tech graduate (B. A. in English and J. D.), and an avid reader, although I gave it up briefly while I was in law school since reading was then a chore and not a pleasure. I grew up in a family of readers and am passing my love of books on to my son. My husband is an artist, as well as an excellent cook. We enjoy going to art exhibits, listening to music, and collecting photography (my husband also does his own photography and assemblages). I love hiking, downhill skiing and going to the gym for Yoga or step classes when I have a chance, as exercise helps me stay centered and healthy.

Karla Schumacher, Paralegal Specialist.

Oh Great!

Mary May tells me it's my turn to prepare a short autobiography.

I don't know what to write.

Perhaps she'll let me out of it, this time.

I'll just ask her.

On second thought.....I won't ask her. I'll just do it and keep it brief.

A GOOD LIFE

SWF[1], n/s[2], BYOL[3], companion—one Golden Retriever, FDIC[4] and USTP 1985—present, Educ—AA[5]. Enjoy—reading, music, gardening, animals, friends, family, and working for Mary May.

[1]Single white female

[2]Non-smoking

[3]Approaching the Best Years Of my Life

[4]While working for FDIC, my supervising attorney was Karen M. Humphreys, now U. S. Magistrate in Kansas. FDIC was where I learned bankruptcy law.

[5]Associate of Arts in paralegal studies from Wichita State University

Chris Harmon, Paralegal Specialist. I have lived in Tulsa for all but two years of my life, so I was fortunate to find such a great job in my hometown. Other than myself, my entire family is from Southern Illinois, but I only spent one year there when I was ten years old. I graduated from Union High School in Tulsa and then received a BS/BA in Marketing from the University of Tulsa (GO HURRICANE!). After working as a paralegal at law firms in Tulsa and Dallas, I moved to the small town of Coweta, Oklahoma. I had intended to stay in Dallas to work on a career producing electronic music, but I met my wonderful wife two weeks before I moved to the Lone Star State. So, I only spent eight months in Dallas before taking a job in the Bankruptcy and Collections department of MCI WorldCom in Tulsa. It was a good thing – as I had put 30,000 miles on my new car, driving back to Coweta every weekend to see my future wife.

Once I got to Coweta, things really changed for me. The last five years have been hectic and full of changes, but I wouldn't have it any other way. Let's see...in the past five years...I got married, survived Hurricane Floyd on my honeymoon, changed jobs

Please see We're From the Government, Page 16

REGION 20 CONFERENCE

Ladies and Gentlemen:

I very much wanted to be with you today at your Conference. Unfortunately, my schedule required me to be elsewhere.

I did want to tell each of you personally how pleased I am with the job you have been doing. Our mission is to insure the integrity of the bankruptcy system. For years, people have speculated as to how much fraud and abuse exists in the system. In my mind, $600 million and 41,000 actions speak for themselves. News accounts demonstrate that the debtors' bar recognizes the need to be more precise in gathering information for preparing schedules. We continue to be on the watch for systematic creditor abuse. We have completed a debtor audit project, and that report of some 1,500 cases is expected in the fall. Soon we will lend our support to outreach programs in the areas of financial literacy and debtor education.

Much has been accomplished. More can be done. Thank you for your support, your cooperation, and your effort. Together we are accomplishing our mission. I look forward to seeing you all soon.

Best wishes for a great Conference.

Larry Friedman, Director

Much to Learn

Let's Get Started

Body Language

Social Security Fraud and Bankruptcy

Captive Audience

Let the Games Begin

Coin Toss

Proud Commish

Cheering Section

Batter Up!

Much More to Learn

Performance Based Management System

Trustee Oversight: Enforcement Actions and Management

Problem Trustees: If I'd Only Known Then What I Know Now

Case Law Update

And the Learning Continues

An Evidence Primer

The Criminal Side of Civil Enforcement

Civil and Criminal Enforcement: Thinking Outside the Box

By the Numbers: Region 20 and the Rest of the Nation

You've Got Our Attention

Eat, Drink and Be Merry

Burger, Brats and Boat Rides

Eat, Drink And Be Merry (Cont.)

Seven Day Slaw (Edward Walsh)

Bring to a boil

1 c vegetable oil

1 c white vinegar

2 T celery seed

2 T sugar

1 T salt

Let mixture cool

Dry ingredients:

Chop

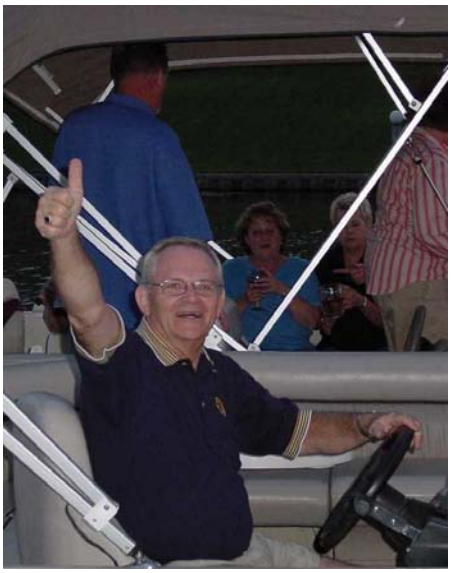
1 head cabbage, 1 onion, 1 green pepper

Mix in Bowl

Pour 1 ½ c sugar over the dry ingredients

Dump the liquid over the dry ingredients and mix well

Keep in refrigerator for at least 3 days and stir each day. Good for up to 7 days and best on the 7th day.



Oh Captain, My Captain
(Mr. U. S. Trustee)

Yet Even More Wisdom to Absorb

Almost Everything I Needed to Know About Being a Good Government Employee I Learned from My Grandmother

Our Paperless Society: CM/ECF, ACE, and then there's OKC

The New and Improved Monthly Operating Report

Body Language?

Candid Camera

Candid Camera (Cont.)

Future USTP Employee?

10TH CIRCUIT REVIEW

UNITED STATES SUPREME COURT

Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004).

According to the Supreme Court, the appropriate method for determining the adequate rate of interest in a Chapter 13 cram down plan is the formula approach, which requires adjustment of a prime national interest rate based on the risk of nonpayment. Risk factors include the circumstances of the estate, the nature of the security, and the duration and feasibility of the plan.

Tenn. Student Asst. Corp. v. Hood, 124 S.Ct. 1905 (2004)

Under the Eleventh Amendment, an unconsenting state is immune from suits by its own citizens, as well as by citizens of another state. According to the Supreme Court, however, the bankruptcy court's exercise of its *in rem* jurisdiction to discharge a state-held student loan does not infringe on state sovereignty. As a result, the debtor's initiation of an adversary proceeding seeking hardship discharge of her student loan is not a suit against the state under the Eleventh Amendment. Moreover, an adversary proceeding seeking a hardship discharge is not rendered a suit against the state for Eleventh Amendment purposes simply by the fact that the bankruptcy rules require service of the summons and the complaint against the state.

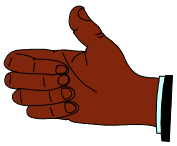
DISTRICT COURT

In re Smith, 310 B.R. 631 (D.Kan. 2004). (Judge Robinson).

In four separate Chapter 13 cases, the bankruptcy court applied the formula approach in determining the market rate of interest, rather than the coerced loan approach advanced by the creditor. The creditor appealed the decision to the Kansas District Court. While the appeal was pending, the Supreme Court issued the *Till* decision, which the district court applied, because when a change in law occurs while an appeal is pending, the court applies the law in effect at the time of its decision. The Kansas District Court concluded that while the bankruptcy court correctly adopted a formula approach, its application of the formula – using the "Agreed Formula" of T-bill rate plus a 3% risk adjustment – was in error. According to the court, although the T-bill rate is similar to the prime rate in that it is frequently published and adjusted, it is a risk-less rather than low risk rate. In addition, the bankruptcy court did not conduct case-by-case evidentiary hearings to determine the proper risk adjustment for each loan as required by *Till* (even if viewed by the bankruptcy court as impractical given the high number of Chapter 13 filings in the district.) The order of the bankruptcy court was reversed and the case remanded.

PLEASE SEE 10TH CIRCUIT REVIEW, PAGE 14

BEST OF CIVIL ENFORCEMENT



Trip to Sri Lanka for Acupuncture Treatment Unacceptable Excuse to Miss 341 Meeting. The Wichita office reports that in *Hobbs*, Case No. 04-11609-7, the Court dismissed the case upon the U. S. Trustee's motion. The debtor filed her petition for relief on April 7, 2004. The debtor failed to attend her meeting of creditors and sought to submit interrogatories. The medical excuse provided was from a doctor in Sri Lanka stating that the debtor was under his treatment and required complete bed rest. The letter from the doctor, dated April 10, 2004, showed that his practice was in homeopathy and acupuncture. The debtor listed 87 creditors on Schedule F with $283,164 of debt while listing only $4,900 in assets. The U. S. Trustee stated that a direct examination of the debtor was necessary in order to properly examine a debtor with this much debt, and the court apparently agreed.

Debtor's Attempt to Dismiss His Own Improperly Filed Case Thwarted. The Oklahoma City office reports that although debtor Bruce Lendsey's Chapter 13, Case No. 03-22392, was dismissed with prejudice to refiling on January 14, 2004, Lendsey filed a Chapter 7 petition on March 1, 2004. Lendsey then filed his own motion to dismiss his improperly filed 2004 case on the grounds that he had not filed his schedules and statement of financial affairs (even though he had filed them). While the motion to dismiss was pending, the Chapter 7 trustee was contacted about a pending sale of certain real property which Lendsey owned, but had not disclosed. The net funds payable to the estate from the sale were sufficient to pay off all of Lendsey's scheduled unpaid taxes of $12,000.

To prevent the dismissal of the case, the Oklahoma City office filed a motion in the 2003 case requesting the Court to modify its "dismissal with prejudice" to "dismissal without prejudice." The office also filed an objection to the debtor's motion to dismiss his 2004 case. The 9024 motion was granted in the 2003 case, and the Court denied the dismissal of the debtor's 2004 case. In the interim, the Chapter 7 trustee has been contacted about a proposed sale for another parcel of unscheduled property.

Failure to Turnover Tax Refunds Results in Revocation of Discharge. On June 28, 2004, the Wichita office succeeded in having the Chapter 7 discharge of Timothy J. and Neosha M. Bryant revoked for violations of § 727(d)(2) & (3), failure to turn over tax returns and tax refunds to the trustee and violation of the Court's prior order of turnover. The debtors listed unsecured debt totaling $245,219.

Bankruptcy Petition Preparer Disgorges Excessive Fees In Response to U. S. Trustee's Inquiry. The Wichita office reports that on February 24, 2004, the U. S. Trustee verified that $600 in excessive fees was returned to the debtors in *Whiters*, Case No. 03-16957. The Bankruptcy Petition Preparer (BPP) was a recent graduate of a non-accredited law school. The petition was signed by both the BPP and an attorney. The U. S. Trustee discovered that the attorney was acting as a "mentor" for the BPP. The attorney had not worked on the case at all, and the BPP was not in fact employed by the attorney in any capacity. The attorney was advised that she may be aiding in the unauthorized practice of law by the BPP. The BPP was advised that she could not act at all as a BPP if she were

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Best of Civil
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employed by or associated with an attorney, and that in accordance with § 110, she could act only as a typing service, with her fee limited to $150 of the $750 that had been paid.

Debtor's Inability to Account for Assets and Produce Records Results in Denial of Discharge. On April 16, 2004, the Bankruptcy Court for the Northern District of Oklahoma entered judgment on the U. S. Trustee's complaint seeking to deny the discharge of Al West, Case No. 03-05393-R, under § 727. The complaint was based on the debtor's failure to explain the disposition of assets and his failure to provide any books and records. The order prevents the Chapter 7 discharge of priority unsecured claims of $3,659 and unsecured claims of $373,045.

Unsecured Creditors Can Still Receive Dividend Even With Payments to the IRS. On April 30, 2004, an order was entered converting the Chapter 7 case of David and Roberta Agee to a Chapter 13 proceeding. The order was entered in response to a motion to dismiss under §707(b) filed by the Albuquerque office. The motion alleged that when $1,349 in monthly payments to the IRS were combined with $433 in §401(k) contributions, the Debtors could pay their entire tax bill and pay a significant dividend to unsecured creditors in a Chapter 13 plan. The Debtors filed their motion for conversion only after the U. S. Trustee conducted significant discovery in the matter. As a result of the conversion, $60,663 in unsecured debt will not be discharged.

Gambling and 401K Contributions Part of Disposable Income. On March 5, 2004, a stipulated order dismissing the Chapter 7 proceeding of Mark and Sheri Scholz was entered. The dismissal was in response to a § 707(b) motion filed by the Albuquerque office. The motion was based on the debtor's voluntary retirement contributions of over $1,000 per month. Additionally, during the course of a deposition, it was learned that Debtors incurred gambling losses of approximately $800 to $1,000 per month. As a result of the court's order, $70,124 in unsecured debt was not discharged.

Credit Counselors Fined $319,300 in Penalties and Restitution in State Court. The U. S. Trustee's Office was contacted by the Sedgwick County District Attorney's Office concerning actions by Jubliee Debt Free, consumer credit counselors operating in Kansas. The Wichita office worked with the state prosecutors in explaining the nuances of bankruptcy and what is generally expected of consumer credit counselors in the bankruptcy venue. The credit counselors were found guilty of violating the Kansas Consumer Protection Act and were fined appropriately.

Debtor's Counsel Agrees to Return Fees Charged in Case. In *Farkas,* Case No. 04-21016-7, the Wichita office filed a motion to dismiss and a motion to examine transactions with attorney when the office learned that the Chapter 7 debtor had not lived in Kansas for over nine months. Although the debtor was a Kansas resident when she began the bankruptcy process with her Kansas attorney, she moved to Texas in June, 2003. The bankruptcy was not filed until March 18, 2004. The case was dismissed and attorney's fees of $1,000 were returned to the debtor.

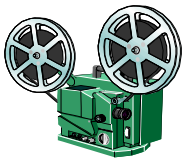
Debtors with Clear Ability to Pay Voluntarily Convert Their Cases to Chapter 13. The Oklahoma City office reports the conversion of two chapter 7 cases to chapter 13 after the filing of motions to dismiss pursuant to § 707(b). *McClung*, Case No. 03-24045, was filed as a chapter 7 on December 24, 2003, and on March 10, 2004, the U. S. Trustee moved for dismissal of the case because Debtors had disposable income of $1,437 per month and could repay their unsecured creditors in 27 months, inclusive of a trustee fee and additional attorney fees. Debtors agreed to convert to chapter 13 without responding to the motion to dismiss. *Clark,* Case No. 03-23652, was filed as a chapter 7 on December 15, 2003, with the U. S. Trustee filing a motion to dismiss on March 11, 2004, alleging the Debtor had disposable income of $1,412 per month and could repay his unsecured creditors in 13 months inclusive of additional attorney and trustee fees. The Debtor agreed to conversion of his case to chapter 13 without responding to the motion to dismiss.

Gamblin' Man Has Discharge Denied. On April 16, 2004 the Bankruptcy Court for the Northern District of Oklahoma entered an Order Denying the Discharge of Hoa Tang, Case No. 03-04761-R, who admitted using his credit cards to support his gambling habit. As result, $62,691 of unsecured debt was not discharged.

Debtors with Disposable Income of $2,022 per Month Agree to Dismiss Their Case. The Oklahoma City office reports the dismissal of the chapter 7 case of *Acosta*, Case No. 04-10034. Debtors filed their chapter 7 case on January 6, 2004, and on March 12, 2004, the U. S. Trustee moved to dismiss the case for "substantial abuse" under § 707(b) asserting that the debtors retirement contributions of $477 per month were not necessary for their "maintenance and support" and therefore available for the payment of creditors' claims. Debtors also reported paying $500 per month for credit card debt, $500 per month for "loan payments" and $511 per month for their adult son's 2001 Ford Expedition. Debtors could repay their unsecured creditors in 23 months. After answering the U. S. Trustee's motion, the debtors agreed to the dismissal of their case on April 14, 2004. As a result, over $41,000 in unsecured debt was not discharged in bankruptcy.

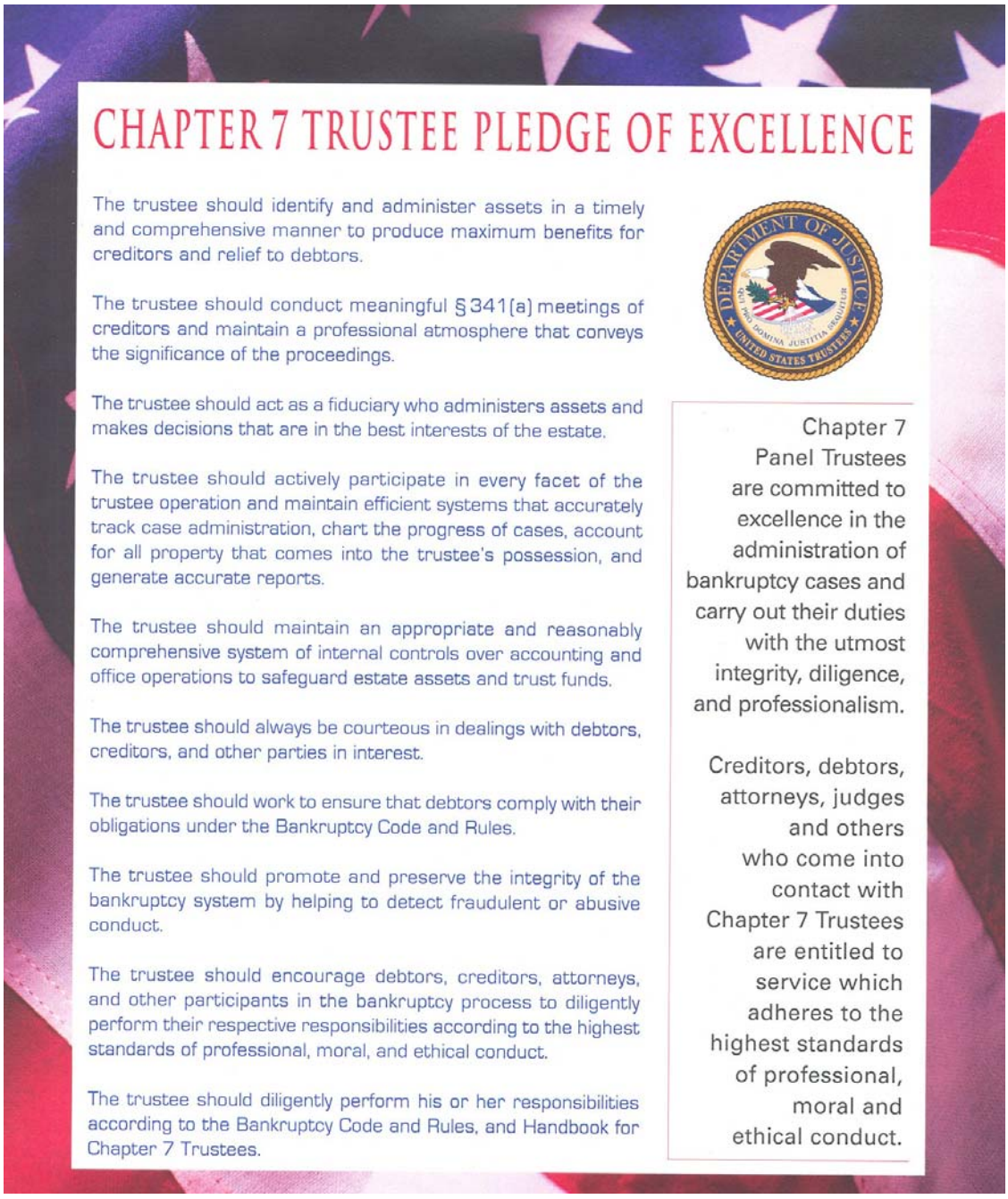
Debtor's Inability to Explain Transfers and Loss to Estate Results in Waiver of Discharge. On April 22, 2004, the court entered an order approving the debtor's waiver of discharge pursuant to § 727(a)(10), *In re Vo,* Case No. 03-138974706-7/Adversary No. 03-5401. The Wichita office had filed a complaint objecting to discharge under § 727(a)(2), (3), (4) and (5). The debtor testified that he had used the items purchased on his credit cards to pay off gambling debt, but failed to disclose any details concerning the transfers made within the year preceding the filing. Further, the debtor failed to provide any documentation to explain the loss to the estate. In a 40 day period within 4 months of filing his bankruptcy, the debtor made over $21,000 of purchases on his credit cards, most notably $15,795 at a local jewelry store. The debtor only disclosed $1,500 of household goods on Schedule B. As the result, $54,300 of unsecured debt was not discharged.

INTEGRITY, DILIGENCE AND PROFESSIONALISM



Panel trustees are fiduciaries with wide-ranging responsibilities to effectuate the goals of the particular chapter under which a bankruptcy is filed. As fiduciaries, trustees are held to high standards of honesty and loyalty[1]. Trustees are obligated to maintain the integrity of the bankruptcy system and to be free of prejudices which would interfere with the unbiased performance of their duties[2] Among their many duties, Chapter 7 trustees are required to liquidate the property of an estate and close the case as expeditiously as is compatible with the best interests of all of the parties[3]. They are also accountable for all property received [4].

On March 11, 2004, the National Association of Bankruptcy Trustees adopted the CHAPTER 7 TRUSTEE PLEDGE OF EXCELLENCE. The National Association of Bankruptcy Trustees and the United States Trustee Program jointly developed the Pledge, which is similar to the Standing Trustee Pledge of Excellence adopted in July of 2002. The Pledge demonstrates to the public that chapter 7 trustees are committed to providing excellent service in the administration of bankruptcy cases and to carrying out their duties with the utmost integrity, diligence, and professionalism.



Integrity, Diligence and Professionalism
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[1] *See generally Woods v. City Nat'l Bank & Trust Co.*, 312 U.S. 262,278 (1941); *Mosser v. Darrow*, 341 U.S. 267 (1951).

[2] 28 C.F.R. 58.3(b).

[3] 11 U.S.C. § 704(1).

[4] 11 U.S.C. § 704(2).

BACK TO THE BASICS

Default Judgments. What could be better? Your well-drafted adversary complaint is followed by . . . . a period of silence. The defendant has failed to respond. Your complaint is now ripe for default judgment, but how do you get there from here?

First, read the rules. You will find that Fed.R.Civ.P. 55, made applicable in bankruptcy adversary proceedings by Fed.R.Bankr.P. 7055, provides a two-step process for obtaining a default judgment. The first step is set forth in Rule 55(a). That subsection provides that if the defendant has failed to answer or otherwise plead in the case, and that fact is established by affidavit or otherwise, the clerk shall enter the party's default. The entry of a default, however, is not the entry of a default *judgment*. In order to obtain a judgment against a defaulting defendant, you must proceed to the second step of the process, which is set forth in Rule 55(b).

Rule 55(b) presents a fork in the road. The path you are required to pursue depends upon the manner in which you have plead your claim and whether your adversary has made any sort of appearance in the case. If your claim is for a sum certain or an amount that can be easily ascertained, *and* if the defendant has not appeared in the action at all, you can go back to the clerk for your judgment as set forth in Rule 55(b)(1). This involves filing a request for judgment along with an affidavit stating the amount due. The clerk then enters judgment for the amount due, plus costs, without any judicial involvement. Note that this procedure cannot be used if the defendant is an infant or an incompetent person, or if the defendant is the United States. Note further, default judgments are not allowed against a person in the military service[1].

What if a defaulting defendant has entered his appearance in the action, but otherwise fails to answer or respond? Or the defendant doesn't appear, but your complaint seeks only to revoke the debtor's discharge, but doesn't ask for money damages? Or asks for an unliquidated amount of money damages? In these cases, default judgment can only be granted by the court as provided for in Rule 55(b)(2). That subsection has two important aspects.

First, if the defendant has entered an appearance in the case, he is entitled to notice before default judgment is entered against him by the court. Specifically, written notice of the application for default judgment must be served on the defendant at least three (3) days prior to any hearing on the application.

Second, the application establishes only the default — the failure to answer. That failure establishes the truth of the allegations set forth in your complaint, but doesn't necessarily entitle you to judgment as a matter of law. Accordingly, make certain the allegations in your complaint are sufficient to entitle you to the relief you have requested. If not, then you must be prepared to provide the evidence necessary to prove your case before the court will consider granting judgment in your favor.

Another reason to be careful in crafting your pleadings is that the court cannot grant a default judgment for anything other than the relief prayed for in the complaint. (*See* Fed.R.Civ.P. 54(c) made applicable by Fed.R.Bankr.P. 7054). A default judgment which grants relief that is different in kind or scope than that prayed for is void.

(Note: This article does not take into account any additional or other requirements which may be imposed by applicable local rule. For example, some courts may require that an affidavit as to military service accompany the motion.)

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[1] Service Members Civil Relief Act, 50 U. S. C. § 501, *et. seq.*, was enacted on December 19, 2003, and is a restatement of the Soldiers' and Sailors' Civil Relief Act of 1940.

ECF ALERT

Be Prepared! MANDATORY electronic case filing:

District of Kansas	September 1, 2004
Northern District of Oklahoma	September 1, 2004
Eastern District of Oklahoma	October 1, 2004

ANALYZE THIS

Chapter 13 case filings amount to 13% of all the filings in Region 20 (See Exhibit #1). Nationally, they account for 28% of the bankruptcy filings.

Exhibit 1

2003 Region 20 Filings			
		Region 20	National
Chapter 7	46,050	87%	71%
Chapter 11	163	-	1%
Chapter 12	78	-	-
Chapter 13	6,880	13%	28%
Total	53,171		

Exhibit 2

Region 20		
Year	Chapter 7 Unsecureds	Chapter 13 Unsecureds
2003	$8,142,214	$14,914,839
2002	$5,305,214	$14,967,959
2001	$10,408,181	$15,680,408
2000	$6,558.402	$16,323,853
Total	$30,414,011	$61,887,059

The disbursements to unsecured creditors in Chapter 13 cases in Region 20 are double those made in Chapter 7 cases (See Exhibit #2). One can only wonder what the disbursements would be if the percentage of Region 20 Chapter 13 filings reached the national average?

POINTS OF INTEREST

Old Town is nestled in the heart of Wichita, among brick-lined streets and converted brick warehouses dating from 1870 to 1930 with native limestone accents and distinctive architectural features. There are more than 100 restaurants, shops, clubs, theatres, galleries, museums and other businesses. Old Town offers a variety of annual events including a Jazz Crawl, Blues Crawl, Music Fest, Moonlight Car Show, Cinco de Mayo, Winefest Walkabout, Summer Concert Series, Taste of Old Town, and the Farm and Art Market. The area has several different residential offerings for those who wish to experience urban dwelling in the heart of Old Town. Scheduled for a fall 2004 opening is the Kansas Sports Hall of Fame, which will be relocating from Abilene, Kansas. The relocation decision was based on the area's growth and its proximity to other museums, including the Museum of Ancient Treasures. Visitors to the Kansas Sports Hall of Fame will have the chance to see the mark Kansas athletes have made on the national and international sports scene, including video footage showcasing legends like basketball inventor and University of Kansas athletics instructor James Naismith from the 1920's, track star Jim Ryun breaking the 4-minute barrier in the mile run in 1964, and NFL running back Barry Sanders from the 1990's. The Hotel At Oldtown is a great place to spend a weekend. It also has an excellent meeting facility, which served as the site for this year's Region 20 Conference. For an area calendar go to www.oldtownwichita.com .

LET'S EAT

This recipe was handed down to Pat Sheets from a friend. The recipe is from Pet Milk and was printed in the 1940's or 1950's. It is oh so good!!

Mae Belle's Meat Loaf

Mix:

2 lbs. ground beef

1 pound ground sausage (any flavor)

1 ½ cups bread crumbs

Puree in Blender:

3 ribs celery

1 jalapeno pepper (remove seeds)

1 green bell pepper

1 onion

2 cloves garlic

1 small can Pet Milk

Please see Let's Eat, Page 14

Let's Eat
From page **13**

Mix all ingredients with 3 eggs

Divide in half and form into loaf pans.

Mix together and pour over meat loaf:

1/4 c. Ketchup

3 T. brown sugar

1/4 t. nutmeg

1 t. mustard

Bake for 1 hour at 350 degrees and test for doneness. Eat and enjoy!

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BANKRUPTCY APPELLATE PANEL

Campbell v. Stewart (In re Campbell), — B.R. —, 2004 WL 1837024 (B.A.P. opinion filed August 16, 2004). (Judges Thurman, Michael and Weaver) (Wyoming).

Although the opinion concerns the Wyoming homestead exemption, it also addresses an issue of universal relevance to those bound by Tenth Circuit law. According to the BAP, "the most logical reading of Bankruptcy Rule 4003(b) is that the thirty-day objection period runs from the conclusion of the meeting of creditors in the Chapter 13 case and from the conclusion of the meeting of creditors called in the converted Chapter 7 case. . . . Since the Code fails to restrict which 'meeting of the creditors' triggers the time period for objections, to hold that only the first § 341 meeting in a converted case prompts the period would unnecessarily restrict Rule 4003(b) and the Code as a whole."

Bank of Cushing v. Vaughan (In re Vaughan), 311 B.R. 573 (B.A.P. 10th Cir. 2004). (Judges Brown, McFeeley and Campbell) (Oklahoma).

Prior to their bankruptcy filing, the debtors executed a guaranty agreement in favor of the Bank of Cushing. When the borrower defaulted, the Bank made demand on the debtors under the guaranty. In the course of negotiating a settlement agreement, the debtors provided the Bank with a personal financial statement. The debtors defaulted under the settlement agreement and filed bankruptcy. The Bank claimed that the financial statement contained material omissions and that it was defrauded into entering into the settlement agreement. The Bank successfully pursued a § 523(a)(2) complaint against the debtor and was also awarded attorneys' fees. The Bank then recorded a judgment lien against the debtors' residence. The debtors filed a motion to avoid the lien pursuant to § 522(f), because it impaired their homestead exemption. The Bank claimed that since its lien arose post-petition, the lien was not subject to avoidance. Likewise, the Bank claimed that the award of legal fees on its claim also arose post-petition and could not be avoided. Finally, the Bank claimed that it had a consensual, not a judicial lien. The Bank was wrong on all counts, and the Bank's pre-petition judicial lien on the debtors' homestead was avoided.

Alderete v. Educ. Credit Mgt. Corp., 308 B.R. 495 (B.A.P. 10th Cir. 2004). (Judges Clark, Michael and Brown) (New Mexico).

Debtors sought a hardship discharge of their student loan. The New Mexico bankruptcy court applied the modified *Bruner* test adopted in *Polleys* and granted the debtors a partial discharge of all but the principal amount of the student loan. ECMC appealed the bankruptcy court's decision, but the debtors did not cross-appeal. The BAP found that undue hardship did exist and affirmed the judgment. The BAP also noted that even though based on *Polleys* the bankruptcy court should have discharged the student loans in their entirety, since the debtors did not appeal that decision, the BAP had no jurisdiction to decide if the bankruptcy court erred in selecting only a portion of the debt for discharge.

A.C. Rentals, Inc. v. Hough (In re A.C. Rentals, Inc.), BAP No. WO-03-906 (B.A.P. 10th Cir. opinion filed May 28, 2004) (Judges Nugent, McNiff and Thurman) (Oklahoma).

Ashley and Charles Hough divorced in 2000. Ashley was awarded alimony in lieu of property in the amount of $325,000. The award was partially secured by a lien on property owned by the debtor; however, notice of the lien against the debtor's property was not filed until one day following the debtor's Chapter 11 filing. The debtor filed a complaint to avoid the lien. The bankruptcy court found that although Ashley had a valid lien against the property, it was not perfected as to a hypothetical lien creditor and could, therefore, be avoided pursuant to § 544(a)(3). The BAP affirmed. According to the BAP, even though the debtor had actual notice of the lien (Charles' was the sole owner of debtor), that notice was irrelevant for § 544(a)(3) purposes. To determine if the lien survived, the court was required to decide whether a *bona fide* purchaser (BFP) of debtor's property on the petition date would have constructive notice of Ashley's interest in the property. Constructive notice under Oklahoma law exists "when a reasonably prudent person would inquire into the rights of others in the property." Because there was nothing in the chain of title that would lead a reasonably prudent person to review papers filed in the divorce case, where the lien was created, the divorce decree did not serve as constructive notice of Ashley's interest in the property. Since Ashley never placed anything of record prior to the debtor's bankruptcy filing, a reasonably prudent person searching the land records would have no means of discovering her interest in the property. As a result, not only was the lien notice potentially void as having been filed in violation of the automatic stay and avoidable under § 549(a) as an unauthorized post-petition transfer, it was also ineffective to give constructive notice to a hypothetical BFP.

BANKRUPTCY COURT

In re Adkins, Case No. 02-14110-7 (Bankr.D.Kan. opinion filed August 19, 2004). (Judge Somers).

At least through 2002, the debtor was married and had one minor child. The three of them lived together during the first half of 2002, but on June 1, 2002, the debtor leased an apartment which

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she and her daughter moved into a short time later. The debtor filed a Chapter 7 bankruptcy petition on August 21, 2002. Because the debtor lived separately from her husband for the last six months of 2002 and her daughter was a qualifying child, the debtor was entitled to receive both state and federal earned income credit (EIC). The trustee claimed a pro rata share of the EIC, to which the debtor objected, claiming that because post-bankruptcy-filing events were necessary prerequisites for her to be eligible for EIC, the EIC was not property of the estate. The contingent nature of the EIC notwithstanding, the court felt bound by the controlling precedent of *In re Montgomery,* 224 F.3d 1193 (10th Cir. 2000) and the "overwhelming weight of authority that a debtor's [earned income credit] for a tax year, as pro-rated to the date the bankruptcy petition was filed, is property of the estate regardless of whether the petition was filed prior to the end of the tax year."

In re Biazo, Case No. 03-13800-7 (Bankr.D.Kan. opinion filed July 20, 2004). (Judge Somers).

In sixteen separate bankruptcy cases, mortgagees' counsel sought relief from the automatic stay. Each motion included an amount for attorneys' fees and expenses. The bankruptcy court found that mortgagees' counsel was not entitled to an allowance of either because (i) the motions failed to give adequate notice to the debtors and other interested parties of the request for fees and expenses, (ii) the motions failed to ask for an award of attorneys' fees and costs, (iii) none of the mortgagees had an allowed secured claim in the bankruptcies, (iv) there was no proof that the mortgagees were oversecured, (v) there was no proof or allegation that the mortgage contract authorized the recovery of attorneys' fees and costs, and (vi) no evidence was presented from which the court could determine that the fees and costs sought were reasonable. (All sixteen cases are on appeal.)

In re Thompson, 311 B.R. 822, (Bankr.D.Kan. opinion filed 2004). (Judge Berger).

Although the Kansas Supreme Court, another Kansas bankruptcy court, and a 10th Circuit BAP have all found that the tools of the trade exemption in Kansas applies to the debtor's principal occupation, this bankruptcy court declined to follow that precedent. Rather, the court found instead that the "test should be whether each of an individual's businesses and vocations has a legitimate business or profit motive, and, if so, the property used may be protected up to a maximum exemption of $7500 per person." The opinion also concluded that even if the tools of the trade exemption was limited to the debtor's principal occupation, then "under the 'principal occupation' test, the Thompsons' tools-of-trade exemption . . . is proper."

Estis v. Credit Union of Johnson County (In re Estis), 311 B.R. 592 (Bankr.D.Kan. 2004). (Judge Berger)

Debtor filed an adversary complaint against the Credit Union of Johnson County, claiming that the Credit Union violated the automatic stay when it sold debtor's vehicle, which had been repossessed by the Credit Union before the debtor's Chapter 13 bankruptcy was filed. The day before the debtor filed her bankruptcy, the Credit Union had applied for a repossession title, which was issued by the Kansas Department of Revenue six days later. In ruling on the Credit Union's motion for summary judgment, the bankruptcy court found that the Credit Union's possession of the vehicle did not alter the debtor's interest in the property and that the debtor's right of redemption was enough to bring the vehicle within the bankruptcy estate. The court noted, too, that the Credit Union filed a secured (by the vehicle) proof of claim in debtor's bankruptcy. Not only did the Credit Union lose, but it was ordered to show cause why judgment should not be entered in favor of the plaintiff and an evidentiary hearing on damages set forthwith.

Malloy v. Oklahoma Central Credit Union (In re Reddick), Case No. 03-05097-R, Adv. No. 03-0217-6 (Bankr.N.D.Okla. opinion filed June 24, 2004) (Judge Rasure).

Debtors purchased a vehicle pre-petition and granted the Credit Union, which provided the financing for the purchase, a security interest in the vehicle. The security agreement provided that it was to be "governed by the laws of Oklahoma." The debtors did not reside on an Indian reservation, allotted land or a dependent Indian community at the time the security agreement was executed or at the time they filed their bankruptcy. No steps were taken by the Credit Union to perfect the Credit Union's interest under Oklahoma law. A certificate of title with the Credit Union's lien noted thereon was, however, issued by the Muscogee Creek Nation. However, because the contract expressly provided that it was to be governed by the laws of Oklahoma, that law applied and not the law of the Muscogee Creek Nation. As a result, the Credit Union's lien was unperfected.

Mandala v. Educ. Credit Mgt. Corp., 310 B.R. 213 (Bankr.D.Kan. 2004). (Judge Nugent).

The bankruptcy court applied the modified *Bruner* test adopted in *Polleys* in determining that the debtor was not entitled to a hardship discharge of her student loan debt. The court found that the debtors could do more to "actively minimize current household expenses" which would allow them to maintain a minimal standard of living while repaying their student loan obligation.

In re Lewis, 309 B.R. 597 (N.D. Okla. 2004). (Judge Michael)

This case addressed "several troubling questions" regarding the conduct of an attorney who regularly practices before the Oklahoma bankruptcy court. The debtor lived with her daughter and son-in-law in the debtor's home. Unbeknownst to the debtor, her daughter and son-in-law (Rycraws) failed to make the mortgage payments on the home as promised, and foreclosure was imminent. The mortgagee met with the debtor and Rycraws, suggested bankruptcy as a viable way to save debtor's home and introduced them to the attorney. At their meeting, it was decided that the debtor should file a Chapter 13 and the Rycraws should file a Chapter 7. At that same meeting, both the debtor and the Rycraws signed fully completed bankruptcy papers. Fees for these services were $2,000 and $700, respectively, exclusive of the filing fees. The attorney accepted a post-dated check for $1,101 (the filing fees plus attorneys fees for the Rycraws' case) from the debtor. At the time they filed their bankruptcies, both the debtor and the Rycraws filed applications to pay their filing fees in installments. Each application, which the attorney signed, certified that the debtor had "not paid

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any money or transferred any property for services in connection with this case" and that the debtor "will neither make any payment or transfer any property for services in connection with this case until the filing fee is paid in full." The attorney's 2016(b) statement stated that the entire balance of his fees remained due and owing. No mention was made of the post-dated check. Subsequently, the debtor obtained a cashier's check for $1,101 and delivered it to the attorney, who returned the post-dated check. Contrary to the debtor's expectations, the filing fees were not paid. She contacted the Chapter 13 trustee, and shortly thereafter, the filing fees were paid. Noting that the truthful and accurate disclosure requirements imposed on debtors, attorneys and creditors are "essential to the preservation of the integrity of the bankruptcy process," the court found that the delivery of the post-dated check, the cashier's check and use of the funds received from the debtor to pay the Rycraws' attorneys fees should have been disclosed and that the "non-disclosure of these critical facts rendered the actual disclosures meaningless." The court also found that delivery of the post-dated check constituted a transfer of property for purposes of Bankruptcy Rule 1006(b), making the application to pay the filing fee in installments false. The court further found that the monies used to fund the cashier's check were property of the debtor's bankruptcy estate and should have been used for the debtor's living expenses and/or paid to creditors. When it was all said and done, the court required the attorney to disgorge the entire amount of the cashier's check, less the amount of the debtor's filing fee and compelled the attorney to make a supplemental disclosure under oath concerning every bankruptcy case in which he appeared as counsel since January 1, 2003. The court also referred the matter to the U.S. Attorney and the Oklahoma Bar Association for possible actions by those agencies.

In re Ehrig, 308 B.R. 542 (Bankr.N.D.Okla. 2004). (Judge Rasure)

The debtor filed his Chapter 7 Bankruptcy in August, 2002 and filed an adversary complaint for a determination of the dischargeability of his federal income tax debt for 1990. On April 3, 1995, the IRS filed a "substitute for return" on behalf of debtor for the 1990 tax year. In April of 1997, the IRS issued a notice of deficiency advising the debtor that he owed income tax in the amount of $5,971, plus penalties and interest. The debtor did not contest the amount of the deficiency; however, in July of 2000, the debtor filed a tax return for 1990 which reported a negative adjusted gross income. The return was posted by the IRS on the debtor's account as an amended return, but processed as an "audit reconsideration" of its original assessment. In granting the IRS' motion for summary judgment, the bankruptcy court found that the (i) substitute return filed by the IRS provides it with a mechanism for assessing liability, but does not excuse the taxpayer from his statutory obligation to file a return, and (ii) debtor's only remedy for any perceived inaccuracies in the IRS' assessment required him to pay the tax under protest and then commence a suit for a refund. As a result, the return filed by the debtor was not only not required, but had no legal sanction or effect. Debtor's filing of a return was therefore a nullity and did not cure his non-filing status for the purposes of § 523(a)(1)(B)(i). Debtor's claim that he made a good faith attempt to comply with the tax laws was not persuasive: "A deathbed conversion from being a chronic non-filer to an earnest (but late) filer does not serve the policy of uniform, timely and accurate self-reporting upon which the tax system is based."

In re BeautyCo, Inc. 307 B.R. 225 (Bankr.N.D.Okla. 2004). (Judge Michael)

In deciding that the Chapter 11 debtor should be given additional time in which to assume or reject 33 storefront leases, the bankruptcy court found that the timely filing of a motion to extend the deadline to assume or reject unexpired leases served to toll the 60-day period during which the debtor would otherwise have had to make its decision, even though the court had not ruled on the debtor's motion within the 60-day period.

In re Lucas, 307 B.R. 703 (Bankr.D.Kan. 2004). (Judge Nugent)

This case was previously remanded by the BAP (300 B.R. 526 (BAP 10th Cir. 2003)) for a determination as to whether the law of the State of Kansas imposed a pre-petition constructive trust with respect to property acquired from proceeds from a testamentary trust in which the debtor was both executrix and beneficiary. The debtor's right to receive the trust res was challenged pre-petition; however, no constructive trust was declared or imposed in the state court action. First, the bankruptcy court noted that the debtor had claimed the car and home she bought with estate proceeds as exempt in her bankruptcy. The exemption was not challenged, so the court lost jurisdiction over this property. With respect to the remaining property, the bankruptcy court concluded that the constructive trust remedy sought was so inextricably intertwined with the state court decision that the bankruptcy court was without subject matter jurisdiction to impose a constructive trust. (The *Rooker-Feldman* doctrine precludes a federal court from reviewing matters actually decided by the state court or providing relief which is inextricably intertwined with the state court decision.)

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twice, bought ten acres and built a house, did loads of traveling, went on five four-day horseback trail rides, had my first child, and now have five horses, two dogs and two cats. I'm tired just thinking about it.

In my spare time (if there is such a thing), I publish an online sports magazine that covers the University of Tulsa athletics, as well as write feature articles for the McAlester News Capital in McAlester, Oklahoma. Other than that, I spend time with my lovely wife and beautiful little girl.

This December will be the end of my third year with the United States Trustee Program, and I have thoroughly enjoyed everything about it. Retirement is a long way away for me, but I hope I am still with the USTP when that time comes.

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EXXTRA! EXXTRA! Read all about it

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Sandy Stacy, Paralegal Specialist. I'm a transplanted Yankee from Harrisburg, PA. I arrived in Oklahoma City in the year 1960 (barely out of diapers - well, maybe a little older). I graduated from Midwest City High School and attended Oklahoma State University (approx. 3 years - go Cowboys!). I majored in Pre-Law - left for Homestead, Florida before I graduated (no degree). I returned to OKC - worked for the Oklahoma Highway Patrol (3 years) - transferred to the Oklahoma State Bureau of Investigation's accounting department, where I was very happy, until I received a phone call from a friend advising me there was an opening in the Bankruptcy Court Clerk's office. (Let me see, state income vs. federal income; job happiness vs. more money, etc etc.) Yes, the feds won and I became a federal employee. After two years with the Bankruptcy Court, I wanted to broaden my law experience and thus, transferred to the Federal District Court Clerk's Office to learn more about civil and criminal law. What I learned, however, was that I did not want to be a government employee so, after a year, I left, vowing I would never work for the government again. Took a job with an OKC law firm, as paralegal to the managing partner. Yes, it was inevitable I would "chew leather" and in 1987, I was, once again contacted by another friend, advising me of a new agency within the Department of Justice looking for a paralegal. In January, 1988, I began my employment with the United States Trustees Program, and the rest is history! I have two children (a son 24 and a daughter 22 - not living with me) an 81 year old Mother, (who does live me and whom I take care of), my dog Lucky, my cat Louie and my dove Snowball! I love spending time at my place on Lake Texoma, snow skiing when I can, taking long walks with my dog and hanging out with friends and family and remembering the following:

"Life should NOT be a journey to the grave with the intention of arriving safely in an attractive and well-preserved body, but rather to skid in sideways, Champagne in one hand - strawberries in the other, body thoroughly used up, totally worn out and screaming WOO HOO - What a Ride!"