



Central District  
Consumer Bankruptcy  
Attorney Association

### **PROGRAM SUMMARY 9-23-23**

By: Gary Wallace-Program Summary Committee Chair

#### **CDCBAA Holds Eighth Meeting and MCLE Program of 2023: “8th ANNUAL JAMES T. KING BANKRUPTCY SYMPOSIUM - COMMUNICATING WITH JUDGES: JUDGES ARE PEOPLE TOO.”**

On September 23, 2023, the CDCBAA held its eighth members meeting and MCLE program of the year. The meeting and program were conducted as a live webinar via Zoom video. The program topic was: “**8th ANNUAL JAMES T. KING BANKRUPTCY SYMPOSIUM - COMMUNICATING WITH JUDGES: JUDGES ARE PEOPLE TOO.**” Our distinguished speakers were Hon. John Owens | Judge, Ninth Circuit Court of Appeals; Hon. Robert Faris | Chief Judge, Ninth Circuit Bankruptcy Appellate Panel; Prof. Daniel Bussel | UCLA School of Law; and M. Jonathan Hayes | Law Clerk to Hon. William Lafferty-Judge, Ninth Circuit Bankruptcy Appellate Panel. CDCBAA president-elect and current board member Hale Andrew Antico moderated. What follows are some of the highlights of the program.

Mr. Hayes began the program by offering a few fond personal memories of his good friend, James T. King, who was a highly respected long-time consumer bankruptcy attorney and former CDCBAA member. It was in his honor that this program was held.

Judge Owens was then to discuss the benefits and drawbacks of private practice versus being on the bench. Judge Owens commented on the recent massive turnover of judges on the Ninth Circuit resulting from retirements. Since 2018, 17 (soon to be 18) of the 29 judges have been replaced due to retirement. Judge Owens also touched on the confirmation process in the United States Senate and how it has also changed from a 60-vote requirement when he was nominated to a simpler majority vote requirement. Judge Owens also spoke about his clerkship for Supreme Court Justice Ruth Bader-Ginsburg in the late 90’s. He noted how hard she worked on her opinions, frequently well into the late evenings. He also recalled that she sought to avoid being excessively combative whenever possible and would often say to her staff, especially when preparing a dissent, “it’s better to shed light than heat.”

Judge Faris discussed how he came to live and practice bankruptcy law in Hawaii. As the only bankruptcy judge in Hawaii, he joked that there is no better bankruptcy judge within 2000 miles of the Islands. Regarding his additional BAP status, he stated that, since the bankruptcy issues that the BAP considers are rarely ever ideological in nature, it is generally easier to reach a consensus, thus making dissents rare.

Professor Bussel, who previously clerked for Justice Sandra Day O’Connor in the mid-80’s and Justice Stephen Breyer (when Breyer was a First Circuit appellate judge), discussed

his reasons for entering the legal profession. He noted that Justice O'Connor was not particularly ideological in her views and was more concerned with getting the "right" answer. She would encourage her clerks to speak their views and she listened to all and would take copious notes as well as carefully review their extensive memos before taking a firm position on an issue. He noted that Justice Breyer had a different working style in that he preferred more one-on-one discussions with his clerks before assigning research and writing tasks to each. Professor Bussel pointed out that one of the other differences between working for a Supreme Court justice and a judge of the Court of Appeal is that the latter court is a court of mandatory jurisdiction which means that many relatively routine cases come before it that have less impact on shaping the law or society in general. In contrast, most Supreme Court cases were accepted on a discretionary basis and the rulings would frequently have broader societal impact. Professor Bussel also joked about the highest "court" in the land actually being the basketball court that exists on the upper floor of the Supreme Court building.

Regarding appearances by remote technology (like zoom), Judge Faris stated that the BAP continues to permit remote appearances. Judge Owens mentioned that the Ninth Circuit now requires a hardship showing by counsel to permit a remote appearance.

The panel also discussed the way in which changing technology has affected almost every aspect of their professions. Although there was a general appreciation noted for the benefits of advanced technology, there was still an expressed preference to be able to print out and read paper briefs.

On the subject of briefs, both judges offered tips for counsel on preparing effective briefs, such as keeping them shorter, better organized and more focused on the central issue or issues. Both judges also agreed that, while oral argument can certainly be helpful and even sway a judge, the briefs are nearly always more critical. At oral argument, counsel are strongly advised to answer the question(s) that are raised with direct, non-evasive, responses. Judge Owens also noted that none of the new judges on the Ninth Circuit have significant prior bankruptcy law experience. Thus, bankruptcy counsel should bear that in mind when preparing their briefs. It was also noted that one of the benefits of appealing to the BAP rather than the District Court is that case will be reviewed by three judges with very significant bankruptcy law experience, and oral argument is nearly always allowed. Furthermore, the rate of reversal of the BAP by the Ninth Circuit is very low. Judge Owens also mentioned that pre-argument 'focus orders' (which are a method that Courts use to direct counsel's attention to a particular issue or issues in advance of oral argument) may soon become more common in the Ninth Circuit. Judge Owens also addressed the manner in which the workload is typically divided on the Ninth Circuit.

The seminar was interactive, and attendees were permitted to ask questions.

The next CDCBAA members meeting and Zoom MCLE program will be held on October 21, 2023. The topic will be "**Some Unusual Issues with Proofs of Claims: How to Avoid Some Traps and to Exploit Others.**" Our panelists will be Honorable Julia Brand, Bankruptcy Judge-Los Angeles Division, and Steven Fox, Esq. CDCBAA president-elect Hale Andrew Antico, Esq. is expected to moderate.

Lastly, if you haven't already done so, please don't forget to register for the 2023 Calvin Ashland Awards Dinner, which will be held in the beautiful Skyview Ballroom of the Sheraton Universal Hotel on November 9, 2023

We hope you will join us.

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