Central District Consumer Bankruptcy Attorney Association

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Welcome Address from the President

By: Brett Curlee
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The new era of bankruptcy practice is upon us. To you who have taken up the challenge of practicing bankruptcy law under BACPA during the past year, I offer a strong salute and hardy congratulations. This last year has been a tough transition year for all, consumer bankruptcy attorneys, bankruptcy judges, and trustees, as they have met the challenges of implementing BACPA.

One of the great bright spots of this last year is that the bankruptcy community at large here in Los Angeles has noticeably come together and begun an open dialogue on implementing the new Code. In the process, consumer bankruptcy attorneys, judges, and trustees alike are becoming more sensitive to the challenges that each other is facing, and actively reaching out for input and fresh ideas.

The CDCBAA is seeking to meet these challenges head on in 2007. A tremendous amount of time and effort has been devoted to reorganizing the CDCBAA to participate in this open dialogue on your behalf. New this year, is this newsletter which will be distributed quarterly under the guiding hand of Editor M. Jonathan Hayes. Also, new this year, is CDCBAA very own website, which can be found at www.bklawyers.org. Hale Antico has done a tremendous job in building a website we can all be proud of. Not satisfied to rest on his laurels, Hale is already busy planning the next phase of build-out and expansion of the website. You will be hearing much more about this in the future.

Our very own David Tilem has single-handedly taken on the challenge of organizing the CDCBAA's first annual convention which will take place in July of this year in Las Vegas, July 27-29, 2007. This year, we are planning our first convention as a social event. David has booked the hotel and we are looking to a couple of great days of fun and entertainment. From the level of interest we are getting, I think we are going to need more buses.

Hank Toles, James King, and Lou Esbin have taken on the CBCDAAs effort to help Judge Maureen Tighe organize a self-help clinic in the Valley Division here in the Central District of California. The self-help clinic project has received a commitment for funding of $25,000.00 seed money from the Attorney Admissions Fund of the U.S. District Court for the Central District of California and will begin in September. Way to go Judge Tighe, Hank, Jim, and Lou.

The CDCBAA is also sponsoring the first ever Inn of Court for the Bankruptcy Courts here in the Central District of California. The application is being prepared for filing with the American Inns of Court, and Judges Tighe, and Robert Kwan have agreed to serve on the Founders committee. The Inn will start in the fall and meet monthly. This will offer an informal setting for judges, experienced bankruptcy attorneys, young lawyers, and students to sit together over dinner and to discuss the issues of the day and the opportunity to mentor and practice the professionalism,

collegiality, and civility for which are bankruptcy court and bar are so famous. We hope to see you all there.

Pat Green and his committee have done a wonderful job of setting up the monthly general meeting and MCLE courses that many of you have attended this last year. This year started off with a bang. On March 23, 2007, Judge Victoria Kaufman and M. Jonathan Hayes, with valuable input from Judge Kathleen Thompson, put on the first annual 9th Circuit Bankruptcy Case Review. Thank you, Judges Kaufman and Thompson and Jon Hayes for your hard work. We look forward to your presentation next year!

On May 12, 2007, Pat's program was a first ever program featuring a panel of chapter 7 and 13 Trustees to answer your questions. Many members and five trustees attended. WELCOME TRUSTEES. Our programs feature a collegial atmosphere where our members and guests can exchange ideas in a relaxed setting while gaining truly useful insights on the practice of consumer debtor work in the Central District of California. We hope to see you all there.

As an aside, many of you know that Jim King and his dinner committee are already hard at work setting up the awards annual dinner in November. This year, the CDCBAA will be presenting the Calvin K. Ashland Award for the Trustee of the year. This is only the second time since the CDCBAA was formed three years ago that this award has been presented to a trustee. Our very first Calvin K. Ashland award recipient was none other than chapter 13 trustee, Nancy Curry. We have gotten to know Ms. Curry over the last 3 years, and we are all proud that Nancy was not only our very first Trustee of the year, but the very first recipient ever of the Calvin K. Ashland Award. Nancy, thank you for your support and most importantly your hard work, dedication, and years of service to the bankruptcy community and as a panel trustee.

2007 Calvin K. Ashland Award Dinner honoring the Trustee of the Year.

Wednesday, November 7, 2007, Downtown Marriott.

For reservations contact Lou Esbin (661) 254 - 5050 or
Jim King (818) 242 - 1100

See official posting on the cdcbaa website www.bklawyers.org and on the Yahoo Group!

Lastly, I cannot say enough about how proud I am of our members for the support they have shown during the last four years in helping to establish the CDCBAA as what it has now become—the second largest association of consumer bankruptcy attorneys in the United States. This could not have been accomplished without your support! There is a true esprit décor growing among the consumer bankruptcy attorneys that we are all proud to be a part of, and we hope all of you will participate as we kick off the CDCBAA's fourth year.

Unauthorized Bank Account Freezes

By: Keith Alan Higginbotham.
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ISSUE:

Whether an administrative freeze of an account by a bank, without a right of setoff, constitutes an inappropriate exercise of control over property of the estate in violation of §362(a)(3).

FACT PATTERN:

Debtor filed a Chapter 7 Bankruptcy and listed funds in his checking account on Schedule ~~B~~" and properly exempted them on Schedule ~~C~~".

Bank is informed that Debtor has filed a Chapter 7 Petition and freezes the Debtor's funds located in his regular checking -- without notice to the Debtor or obtaining authority from the Court. Bank contacts Chapter 7 Trustee informing her of the freeze and then waits for further instructions from the Trustee. This action prevents the Debtor from accessing these funds. These funds are absolutely necessary for the Debtor to meet his current monthly expenses, such as rent, food, car payment and medical insurance – and are necessary for his basic maintenance and support.

Debtor's attorney contacts the Bank which advises him that the funds were frozen due to an internal banking policy and that in order to release the funds, Debtor must obtain a letter from the Chapter 7 Trustee authorizing said release. Debtor's counsel contacts the Chapter 7 Trustee for assistance. Chapter 7 Trustee responds that she didn't have enough information at this time to provide help and to wait until the 341(a) meeting – which is 30 days away.

ANALYSIS:

Counsel for Debtor needs to explain to Bank that the freezing of account, when Bank is not a creditor of Debtor's,

constitutes a violation of the automatic stay under 11 U.S.C. §362(a)(3), because the Bank was exercising control over property of the estate. The Debtor needs to assert that Bank has violated 11 U.S.C. §362(a)(3) when it placed an administrative freeze on Debtor's account funds. 11 U.S.C. §362(a)(3) provides as follows:

> Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 operates as a stay, applicable to all entities, of
> ***
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.

At the time Debtor filed his petition, all of his assets became assets of the estate. Bank had actual knowledge at the time it imposed the freeze on the Debtor's account of the Debtor's bankruptcy filing; indeed, the bankruptcy filing itself was the impetus for the freeze. Thus, according to the plain language of 11 U.S.C. §362(a)(3), by freezing these funds, in the absence of any creditor relationship, and without any court authority from this Court to do so, Bank has improperly exercised control over property of the estate. Under 11 U.S.C. §362(k)(1), sanctions, including punitive damages, are warranted.

This exact issue - whether an administrative freeze of an account by a depository bank, without a right of setoff, constitutes an inappropriate exercise of control over property of the estate in violation of §362(a)(3) has apparently not been addressed by the Ninth Circuit. Other courts in other circuits have addressed this issue and have rendered differing opinions. The better reasoned, most consistent with other Ninth Circuit decisions, is that as set forth in *Jiminez v. Wells Fargo Bank*, 335 B.R. 450 (Bankr. NM 2005). *Jiminez* is factually identical to the present fact pattern.

In *Jiminez,* Wells Fargo Bank froze $5,173.33 of the debtor's funds, after learning of the debtor's bankruptcy filing. The *Jiminez* debtor had exempted the funds and Wells Fargo Bank was not a creditor of the debtor. Wells Fargo Bank took the position that under Sections 541 and 542 of the Bankruptcy Code, the funds were property of the estate and it was obligated to act to preserve estate property until it received direction from the Court or 31 days after the scheduled first meeting of creditors. *Jiminez v. Wells Fargo Bank*, 335 B.R. 450, 451-452 (Bankr. NM 2005). In support of its position, Wells Fargo argued as follows:

> the administrative freeze does not violate §362(a)(3) because it was not asserting a claim of setoff but was maintaining the status quo until a determination that the funds were either property of the estate subject to administration by the Trustee or were exempt property. Wells Fargo argues that courts have found administrative freeze violate the stay only in cases where banks froze accounts to claim a right of setoff.

Jiminez, 335 B.R. at 457 [internal citations omitted]. Wells Fargo Bank also relied upon the Supreme Court case of *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 21, 116 S.Ct. 286 (1995).

Jiminez discussed *Strumpf,* as follows: In *Strumpf,* the Court discussed §362(a)(3) when the Court addressed the argument that:

> even if an administrative hold on a bank account was not per se setoff, the hold nevertheless violated §362(a)(3). The Court stated that the respondent-debtor was operating from a false premise in making the argument.
> ***
> Respondent's reliance on ... [§362(a)(3)] rests on the false premise that petitioner's administrative hold took something from respondent, or exercised dominion over property that belonged to respondent. That view of things might be arguable if a bank account consisted of money belonging to the depositor and held by the bank. In fact, however, it consists of nothing more or less than a promise to pay, from the bank to the depositor,...and petitioner's temporary refusal to pay was neither a taking of possession of respondent's property nor an exercising of control over it, but merely (*continued*)

a refusal to perform a promise.

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The Supreme Court continued: "in any event, we will not give §362(a)(3) ... an interpretation that would proscribe what §542(b)'s "exception' and §553(a)'s general rule were plainly intended to permit: the temporary refusal of a creditor to pay a debt that is subject to setoff against a debt owed by the bankrupt."

Jiminez, 335 B.R. at 459 [internal citations omitted].

The present fact pattern is distinguishable from the Court's reasoning in *Strumpf*: the money held in the bank account belonged to the Debtor. Moreover, there is no setoff rights held by the Bank.

The *Jiminez* Court pointed out that *Strumpf*, itself, noted that its holding is limited to the so called "bankers dilemma" of preserving a creditor's setoff rights and that the case at bar presented a different issue. *Jiminez*, 335 B.R. at 459. "A checking or savings account is an intangible right to payment, it is nevertheless property of the estate protected by the stay." *Jiminez*, 335 B.R. at 459.

The *Jiminez* court found the cases relied upon by Wells Fargo were "unpersuasive". First, the holdings contradict the plain language of §362(a)(3). Denying access to account funds is an exercise of control over property and violates the express language of §362(a)(3). This court agrees with the conclusion in *Flynn*, which was decided two months after *Pimental:*

> "The placing of an administrative freeze on a debtor's bank account is undeniably an act designed to "exercise control over property of the estate," and that thus we conclude is an express violation of the automatic stay. This Court also agrees with the *Flynn* court's characterization of a freeze:
>
> > The most fundamental problem with countenancing the freezing of the debtor's bank accounts before any judicial determination of the rights of the parties has been made is that it begs the critical question, assuming in advance the precondition for its validity...the freeze is essentially an extra judicial temporary restraining order.

Jiminez, 335 B.R. at 460, citing Flynn, 143 B.R. 798 (Bankr. R.I. 1992).

As stated above, Bank's actions in freezing Debtor's accounts, *without* prior notice, and *without* court authority, may cause Debtor irreparable harm. These actions are indeed an "extra judicial temporary restraining order."

The Bank's Conduct is also sanctionable.

11 U.S.C. §362(a)(3) provides as follows:

> Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys fees, and in appropriate circumstances, may recover punitive damages.

Bank undertook the role of a policing authority under the guise of preservation of estate assets; however, it is also exercising control over those assets. Bank voluntarily searches the court dockets for information about its depositors and then uses that information to penalize them without warning.

Bank had actual knowledge of the Debtor's bankruptcy filing. It froze assets of the estate, thereby exercising control over them in direct violation to the plain language of 11 U.S.C. §362(a)(3). Accordingly, the Bank can be sanctioned.

Finally, there is the August 7, 2006 Department of Justice Directive to Office of United States Trustee regarding the "Duty of the Chapter 7 Trustees to Secure the Turnover of Non-Exempt Bank Accounts", the "Directive".

The Directive provides as follows:

> When a bank account is scheduled or disclosed, the trustee should determine immediately whether it is exempt. If the account is non-exempt and of consequential value, the trustee must immediately notify the bank and request turnover of the funds under 11 U.S.C. §542. *...In cases where the bank has independently frozen the debtor's account as of the date of filing and the bank notifies the trustee of the hold and requests further direction, the trustee must be responsive and attend to the matter immediately. Among other things, this responsiveness will protect debtors against unnecessary hardships caused by the loss of the use of the exempt funds* and avoid the pointless burden of turnover of exempt funds that the trustee must account for and return to the debtor.

In our fact pattern, the funds are *exempted.* The funds must therefore be immediately released. Moreover, contrary to the Directive and the request of Debtor's counsel, the Trustee in our fact pattern has not acted "immediately" to determine that the funds are exempt. The Trustee has instead indicated the opposite; that the matter can't be addressed prior to the 341(a) meeting of creditors.

Therefore, under case law and the Directive, both the Debtor's counsel and the Chapter 7 Trustee must be extremely vigilant to protect exempted bank accounts where Banks attempt to exercise their control and dominion and thus depriving the Debtor of the free use of his exempted assets.

Annual Calvin K. Ashland Award Dinner

By: Louis J. Esbin
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On November 28, 2006, the Central District Consumer Bankruptcy Attorneys Association awarded to Kenneth N. Klee the Calvin K. Ashland Award. This year was the first year the award was named in honor of the late Calvin K. Ashland. It is an annual award to those who exemplify in the course of their profession compassion, understanding and concern for consumers and individuals. Each recipient has upheld these values that were found in the heart and courtroom of the Honorable Calvin K. Ashland. This award alternates between judges, trustees, and attorneys, each of equal importance in our bankruptcy system of justice. The first year's award was presented to Nancy Curry, as Trustee of the Year, and last year to Judge Samuel L. Bufford as Judge of the Year. Judge Mund accepted the Calvin K. Ashland Award on behalf of Judge Ashland's widow and family.

Kenneth Klee was chosen by the cdcbaa membership because of his well recognized co-authorship of the 1978 Bankruptcy Reform Act, replacing the Bankruptcy Act of 1898. When first approached with the nomination, Ken was understandably surprised since he is best known as a named partner of the law firm of Klee, Tuchin, Bogdanoff & Stern LLP, which is one of the premier business reorganization and corporate insolvency boutique law firms in the country, and as a professor of law at UCLA But, what Ken had not thought about, but which the cdcbaa membership considered so profound, is that through Ken's authorship of the 1978 Code he became one of the most influential figures for consumer bankruptcy causes and protection. One need only consider the millions of people that were able to obtain a fresh start with the mere payment of a filing fee and complete filing of schedules and petition documents to realize that Ken was and is worthy of the Calvin K. Ashland Award as Attorney of the Year. Judge Geraldine Mund provided Ken Klee biographical history not only from her own personal relationship, but also from the Ninth Circuit archives.

The Award Dinner was attended by Judges Mund, Bufford, Thompson, Robles, Tighe, and Kwan. Peter Anderson, United States Trustee, Nancy Curry, Chapter 13 Trustee, and Diane Weil, Chapter 7 Trustee, all attended. The Klee, Tuchin firm and Ezra, Brutzkus & Gubner firm sponsored tables and continue to support the cdcbaa. Thank you to all from the membership. Brian Wirshing was acknowledged for his past year as president, and Dennis McGoldrick presented the current status of membership and programs the cdcbaa promotes or will promote in the future, including MCLE, the Inn of Court, and development of a pro bono pilot program.

This year the cdcbaa also awarded its Founder's Award, an award given to recognize the member of the cdcbaa who tirelessly devotes their time to the furtherance of the mission of the cdcbaa. David A. Tilem, past president, was honored as the member with the foresight and dedication to assemble and keep organized the consumer lawyers of the Central District of California. His efforts were during a time of a dramatic shift in the law without whose devotion we could have seen the demise of consumer bankruptcy practice. Each member is grateful for his efforts.

Lou Esbin and Jim King were the co-chairs of the Award Dinner Committee and were the co-masters of ceremonies. In honor of Judge Ashland, Lou, Jim, Dennis, David, Brett, and Brian each donned bow ties. Many members and nonmembers attended with their significant others, only showing how the cdcbaa is more than just a bar association. The evening of music, comradery, fun, and recognition ended without a seat being vacated early; a testament to the success of the evening!

This year's Award Dinner will honor the Trustee of the Year. Plans are already under way for Wednesday, November 7, 2007. The place will be the Downtown Marriott. Make your reservations early by contacting Lou Esbin at 661-254-5050 or Jim King at 818-242-1100 to reserve a table in the front row! Look for an official posting on the cdcbaa website www.bklawyers.org and on the Yahoo Group!

Chapter 13 Notes

By: Jim King
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The question addressed here is what are you going to pay to those pesky unsecured creditors under the Chapter 13 plan? Remember that the focus of the changes in BAPCPA was to maximize the payments to unsecured creditors–primarily credit card companies--by establishing stringent bright line tests intended to take away judicial discretion. In doing so, Congress has created a confusing and dysfunctional scheme whose various component parts aren't always so bright and the line becomes obscured when applying real world facts and data.

The analysis begins at 11 U.S.C. § 1325(b)(1)(B) which requires the debtor to pay *all of his or her projected disposable income* to unsecured creditors during the *applicable commitment period*. Congress removed two words from 11 U.S.C. § 1325(b)(1)(B) and replaced them with five words. The net result is that the old standard of a minimum plan length of thirty-six months largely no longer exists, in my opinion. The best efforts test of the past has been replaced with a formula which is so unworkable that it leaves room for judicial intervention, contrary to what Congress intended.

The first determination under 11 U.S.C. § 1325(b)(4) is whether the debtor is above or below the median income level for the state in which he resides. In California, the median income for a single person household is $43,436.00, and for a two person household is $55,320.00. If the debtor's income exceeds the median income level, two sections of BAPCPA come into play. First, the debtor's *commitment period* becomes sixty months. Second, subparagraphs (A) and (B) of 11 U.S.C. § 707(b)(2) come into play to determine the amount of disposable income available to unsecured creditors. This can be found at 11 U.S.C. § 1325(b)(3).

For an ~~"a~~bove median income debtor," the commitment period is sixty months. And 11 U.S.C. § 1325(b)(3) requires the application of subparagraphs (A) and (B) of 11 U.S.C. § 707(b)(2) to determine reasonable and necessary monthly expenses of the debtor based on IRS standards. Monthly disposable income is determined by subtracting these expenses from CMI *(as defined in* 11 U.S.C. § 101(10A)). This result is multiplied by sixty months. This net is the disposable income available to the debtor and therefore available to be paid to unsecured creditors. This amount can be paid over whatever length your plan proposes. It can be as short as one month or as long as sixty months. There is no requirement that the number of plan payments be any particular number, in my opinion although this is a hotly contested issue now. Since the debtor's income exceeds median income, the provisions of 11 U.S.C. § 1322(d)(1) apply; hence, cause is no longer required to extend the plan beyond three years.

Where your client's Current Monthly Income, multiplied by twelve, does not exceed the median income level, *projected disposable income* may be determined differently. Congress has not legislated a brightline test where the annualized CMI is below median income. Why shouldn't those same standards apply?

Before we answer the question, guideposts without specificity are set forth in BAPCPA for finding projected disposable income. First, 11 U.S.C. § 1325(b)(4) tells us that the *commitment period* is thirty-six months. This is your multiplier, not sixty. To compute *projected disposable income*, 11 U.S.C. § 1325(b)(2) states that *disposable income* is *current monthly income* less amounts reasonably necessary for the maintenance or support of the debtor or dependent of the debtor. Does this mean the actual expenses of the debtor contained in Schedule J - Current Expenditures of Individual Debtor(s)? Or does this mean something else? Does it mean a more empirical standard as required for those debtors who exceed the median income level? This is certainly arguable.

If your client is prudent enough (or unlucky enough) to be paying rent below the IRS standard, why should that debtor pay more to the unsecured creditors than a debtor who pays more for rent? Did Congress legislate away judicial discretion and require a standardized application to the expenses of debtors? Schedule J is merely a device to determine the feasibility of a plan under 11 U.S.C. § 1325(a)(6). It is **not** the proper standard to be employed in

determining *projected disposable income*. Utilize the attached form and be prepared to argue that the expenses contained therein are the standards which Congress has chosen throughout the United States to be applied in determining expenses reasonably necessary for maintenance and support of the debtor and any dependents. Remember Congress has not changed the language of 11 U.S.C. § 1325(b)(2). It has, however, gone to great lengths to establish standards and guidelines for that determination.

Since the enactment of BAPCPA there has been a lot of discussion, argument, disagreement, confusion and misunderstanding among attorneys, judges, and others concerning how these changes in BAPCPA affect the net outcome and funds available for unsecured creditors in a Chapter 13. Below is a current review of the cases decided on the topic of what is PROJECTED disposable income available to fund a Chapter 13 Plan.

However, it appears that the judges, and the Chapter 13 Trustees in the Central District are taking a more global view of the analysis and will take into consideration things like the actual net income of the debtor based on their Schedule I and J, the reasonableness of expenses (using pre-BAPCPA standards), projected changes in income or expenses and general good faith to mention a few.

THE CURRENT CASES ARE:

In re Jass, 340 B.R. 411 (Bankr. D. Utah 3/22/06). Projected disposable income is different than disposable income. Form B22C is only the starting point for determining projected disposable income, and its calculation of disposable income can be rebutted by evidence, including information on Schedules I and J.

In re Quarterman, 342 B.R. 647 (Bankr. M.D. Fla. 3/28/06). For below-the-median debtor, "amounts reasonably necessary to be expended" are calculated by deducting allowed expenses on Schedule J and the monthly payment on secured debt under the plan.

In re Kibbe, 342 B.R. 411 (Bankr. D. N.H. 4/16/06). Debtor's new job substantially increased her income in proximity to the bankruptcy filing. Court held that "projected disposable income" to be paid to unsecured creditors under the plan had to be based on anticipated rather than historical income. To hold otherwise would allow the debtor "to avoid paying any money to unsecured creditors despite having the ability to do so." Reviewed by the BAP and Affirmed

In re Fuller, 346 B.R. 472 (Bankr. S.D. Ill. 6/21/06). "Whether a debtor is above or below the median income, parties must determine 'projected disposable income' by looking at Schedule I to determine the debtor's income as of the petition date. The parties should look to Form B22C to determine which expenses to deduct – reasonable Schedule J expenses for below-median debtors, standardized expenses for above-median debtors. But for income, parties must look to actual income at the time the debtor filed the petition, not the average historical income from the six months before. In short, parties in all cases must use Form B22C and Schedule I to calculate 'projected disposable income.'"

In re Grady, 343 B.R. 747 (Bankr. N.D. Ga. 6/21/06). Due to wife's heart condition, debtors' income substantially decreased during six months prior to bankruptcy filing. Consequently, the court allowed the debtors to could pay the "projected disposable income" calculated under Schedules I & J. "The Court recognizes that the Debtors are honestly attempting to repay their debts to the best of their abilities, … [and] this Court believes that Congress intended the Debtors to propose a monthly payment to unsecured creditors based on their financial situation as of the date when the first payment is due."

In re Dew, 344 B.R. 655 (Bankr. N.D. Ala. 6/21/06). For below-the-median debtors, Schedules I & J determine "projected disposable income," and the applicable commitment period requirement is a temporal requirement, meaning above-the-median debtors must be in 60-month plans.

In re Risher, 344 B.R. 833 (Bankr. W.D. Ky. 07/12/06). Relying on Hardacre and Jass, the court ruled that debtors must contribute postpetition tax refunds to their plan as projected disposable income: "The numbers resulting from the calculations on Form B22C represent a starting point for the Court's inquiry. It represents a floor, not a ceiling."

In re Johnson, 2006 WL 2059078 (Bankr. S.D. Ga. 7/21/06). Contributions or loan repayments to 401(k) plans are not disposable income under §541(b)(7)(A) and (B) and §1322(f), and such are in made in good faith so long as they

comply with nonbankruptcy law. Tax refunds received more than six months prepetition are not included as income on B22C.

In re Demonica, 345 B.R. 895 (Bankr. N.D. Ill. 7/31/06). "Projected disposable income" must mean something different than "disposable income" and projected disposable income to be paid to unsecured creditors is reflected on Schedule I rather than the historical average on B22C.

In re McPherson, 350 B.R. 38 (Bankr. W.D. Va. 7/31/06). The word "projected" modifies both income and expenses such that projected disposable income is calculated based on anticipated (future looking) income and expenses.

In re Nevitt, 2006 WL 2433491 (Bankr. N.D. Ill. 8/18/06). Below-the-median debtors argued that it was unfair to calculate their projected disposable income using Schedules I & J because if they were above-the-median, they would pay less under their plan because they could take the greater deductions allowed by Form B22C. The court held that the Code clearly limits B22C deductions to above-the-median debtors and that the appropriate approach for below-the-median debtors is to deduct court-allowed expenses on Schedule J and then deduct the plan payments on administrative and secured claims to arrive at projected disposable income to be paid to unsecured creditors (see *In re Quarterman* below). This result is fair because below-the-median debtors only have a three-year applicable commitment period, which is a temporal requirement.

In re Edmunds, 350 B.R. 636 (Bankr. D.S.C. 9/18/06). For above-the-median debtors, court could look beyond B22C to debtors income and expenses on Schedules I & J to determine whether proposed return to unsecured creditors was made in good faith.

In re Casey, 2006 WL 3071401 (Bankr. E.D. Wash. 10/27/06). "The conclusion is that for above-median income debtors, the disposable income calculated on Form B22C, as modified by any anticipated change in financial circumstances known at the time of confirmation [as listed on Schedules I & J], constitutes 'projected disposable income' for purposes of § 1325(b)(1)." However, the applicable commitment period for an above-the-median debtor is 60 months, which is the required length of the plan.

In re Bossie, 2006 WL 3703203 (Bankr. D. Alaska 12/12/06). "The figure stated on Line 58 of Form 22C is not the sole factor to be utilized in determining [a debtor's] projected disposable income."

In re Teixeira, Bankr. D.N.H. 12/21/06). Income of above-the-median debtor decreased after filing for Chapter 13 relief. The court agreed with *In re Jass**(please see above) in finding that there is a rebuttable presumption that "disposable income" on B22C is that same as "projected disposable income." If a moving party rebuts the presumption, then "below-median debtors will use Schedule I to determine income and Schedule J to determine expenses, as set forth in Kibbe. Above-median debtors will use income from Schedule I to determine income, but will continue to deduct the standard expenses permitted under sections 1325(b)(3) and 707(b)."

CDCBAA Gambles on Vegas

By: David L. Tilem
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In its fourth year and with a membership of more than 100 attorneys, CDCBAA is pleased to announce its first annual weekend gathering -- July 27-29 in LAS VEGAS, NEVADA. The plan is to have fun, get to know your fellow attorneys better, have some more fun, win a little money, have some more fun, take a break from the normal weekend routine, have some more fun, and, oh yes, get some CLE credit in the process. The Board thought it particularly appropriate to include a program on substance abuse, something which we all need. That's the credit! Not the substance abuse!

While some details still need to be planned, groups of 30 will assemble (at a time and place to be named later) sometime after 4:00 p.m. on July 27. Each group will board a party bus, complete with food and drink. We will be chauffered to the Tuscany Suites & Casino located at 255 E. Temple Street, no sorry, that 's 255 E. Flamingo Road in Las Vegas. The Tuscany has a great location, one long block off the center of the Strip. The prices are

VERY reasonable and the rooms, at 600 sq.ft. each, are huge.

The schedule includes a Saturday buffet lunch, the CLE program on substance abuse and a lesson on the hottest game around: Texas Hold'em. We hope there will be enough interest following the lesson to have a CDCBAA (and significant other) tournament. Sunday will include a buffet brunch featuring an egg/omlette bar and a waffle bar. By early afternoon (time to be determined), it's back on the bus for the trip home. We expect to be home before 7:00 p.m., but that depends on traffic. Besides, you will be whooping it up with your friends on the bus and hopefully won't know what time it is. Still being considered are a Friday late night event, a Saturnday evening event and additional CLE programs.

As those who attended the NACBA conventions in New Orleans and Philadelphia know, there is nothing better for promoting comraderie than sharing a weekend with your fellow travelers. Everyone, lawyers and non-lawyers alike, had a wonderful time. We expect to reproduce that result in Las Vegas.

Here are the details (so far):

1. Dates: Friday, July 27 - Sunday, July 29. Departure time is Friday after 4:00 p.m. Precise time and location will be announced. Return arrival time is expected to be 7:00 p.m.

2. Rooms: Must be booked directly and paid for separately with the Tuscany. The telephone number for reservations is 877-887-2261. The group confirmation number is 11H7EQ. The price is $115/night plus applicable taxes.

3. Price: $350 per person which includes at least $50 in fully redeemable casino chips for each person and a raffle with someone on each bus winning an extra $50 in chips.

4. Payment: Checks should be made payable to "CDCBAA" and sent to convention chair: David Tilem, 206 N. Jackson St., #201, Glendale, CA 91206.

Ninth Circuit Appoints New Judges to Bankruptcy Appellate Panel

U.S. Bankruptcy Judges Meredith A. Jury of Riverside and Bruce A. Markell of Las Vegas have been appointed to the Ninth Circuit Bankruptcy Appellate Panel, or BAP, which resolves appeals arising out of bankruptcy court decisions in nine western states.

The appointments, which are effective August 1, 2007, and have a term of seven years, were made by the Judicial Council of the Ninth Circuit, governing body for federal courts in the west. The newcomers will fill seats being vacated by Bankruptcy Judges Philip H. Brandt of Seattle, who has served on the BAP since 1998, and Erithe A. Smith of Santa Ana, who has served since 2004.

Judge Jury was appointed in 1997 to the U.S. Bankruptcy Court for the Central District of California, sitting in Riverside. Prior to coming onto the bench, she had practiced with the the law firm of Best Best & Krieger in Riverside from 1976 to 1996.

Judge Jury received her undergraduate degree in 1969 from the University of Colorado at Boulder, graduating Phi Beta Kappa and cum laude. She received an M.A. in Economics in 1971 and an M.S. in English/Education in 1972 from the University of Wisconsin. She received her J.D. in 1976 from University of California at Los Angeles School of Law.

Judge Jury has been an active member of a number of community organizations, including the Riverside County Coalition for Alternatives to Domestic Violence, the Riverside County Mental Health Advisory Board, NOW and the Sierra Club. She also has an extensive list of achievements as a lecturer, panelist and moderator for a number of local and national educational forums.

Pro Se Filing of Chapter 13 Petitions

By: Elizabeth F. Rojas, Chapter 13 Trustee

HOW MANY CHAPTER 13 CASES IN THE SAN FERNANDO VALLEY AND THE NORTHERN DIVISION ARE FILED *PRO SE*?

- For fiscal year 2006 a total of 725 chapter 13 cases were filed in the San Fernando Valley and Northern Divisions. Of those cases, 523 (72%) of the cases were filed by debtors represented by legal counsel and 252 (28%) were filed by pro se debtors. Of the 725 cases, 420 (58%) of the cases were dismissed prior to confirmation. Of the represented cases, 225 (43%) were dismissed. Of the *pro se* cases 195 (97%) of the cases were dismissed prior to confirmation.
- For fiscal year 2007(from October 1, 2006 to April

30, 2007) a total of 739 chapter 13 cases were filed in the San Fernando Valley and Northern Divisions. Of those cases, 501(68%) of the cases were filed by debtors represented by legal counsel and 238 (32%) were filed by *pro se* debtors. Of the 739 cases, 355(48%) of the cases were dismissed prior to confirmation. Of the represented cases, 139 (28%) were dismissed. Of the *pro se* cases 216 (90%) of the cases were dismissed prior to confirmation.

WHAT NEW PROGRAMS WILL BE AVAILABLE TO ASSIST *PRO SE* DEBTOR?

The United States Bankruptcy Court, Neighborhood Legal Services of Los Angeles County, San Fernando Bar Association, Public Counsel and the Central District Consumer Bankruptcy Attorneys Association are proposing to operate a self-help desk and a bankruptcy clinic to assist individuals with the filing of bankruptcy cases in the San Fernando Valley Division. The self-help desk is tentatively scheduled to be staffed the 3rd Monday of each month from 1:00 pm to 3:00 pm and will be located on the first floor of the San Fernando Bankruptcy Court Building. The bankruptcy clinic is tentatively scheduled to be held on the 3rd Thursday of each month at the University of West Los Angeles Law School.

Calendar of Events	
6/16	Monthly Meeting - MCLE
7/27-29	Las Vegas Trip A Study of Substance Abuse and Ethics
9/15	Monthly Meeting - MCLE: US Attorney Tax Issues with Judge Kwan
10/20	Monthly Meeting - MCLE: TBD

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WEBSITE
Hale Antico

CENTRAL DISTRICT CONSUMER BANKRUPTCY ATTORNEYS ASSOCIATION

Advancing the interests of Consumer Bankruptcy Practice in the Central District of California

I hereby apply for membership in the ***CENTRAL DISTRICT CONSUMER BANKRUPTCY ATTORNEYS ASSOCIATION*** **(*cdcbaa*)**, a nonprofit association. I understand the basic goals of the organization are to address issues and concerns which affect consumer bankruptcy attorneys and their clients in the Central District of California and to provide educational and networking opportunities for attorneys who primarily represent consumer bankruptcy debtors. As a condition of membership, I declare as follows:

1. I am a duly-licensed attorney presently authorized to practice law in the Central District of California;
2. I am interested in consumer debtor practice; and
3. I support the basic goals of the ***cdcbaa*** as outlined above.

I understand the ***cdcbaa*** intends to incorporate as a 501(c)(6) nonprofit organization and that a portion of my dues will not be deductible as a business expense because ***cdcbaa*** advocates within California for legislation on behalf of consumer debtors.

Signature: _____

Name: _____

Firm: _____

Address: _____

_____

Tel: _____

Fax: _____

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Foreign language spoken by attorney: _____

One year membership fee: ~~**$100.00**~~ -
*Renewal or New Membership For 2007

Half year membership fee: **$50.00**
(*for remainder of 2007*)

Make check payable to: ***cdcbaa***

Mail completed application and fee to:

cdcbaa
c/o Paul L. Winkler
315 W. Arden Ave., #28
Glendale, CA 91203