

# THE ABSOLUTE PRIORITY

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New Jersey Bankruptcy Lawyers Advisory Committee

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## A Discussion With Judge Vincent F. Papalia

**By: Ross J. Switkes**

On December 29, 2014, the Honorable Vincent F. Papalia was sworn in as a Judge of the United States Bankruptcy Court for the District of New Jersey. Judge Papalia filled the vacancy left by the late Honorable Morris Stern.

Prior to taking the Bench, Judge Papalia was a partner with and chairperson of the Bankruptcy and Creditors' Rights Department of Saiber, L.L.C. Before joining Saiber, Judge Papalia was an associate and then a partner with Clapp & Eisenberg, P.C.

For virtually his entire 30 year career in private practice, Judge Papalia represented various parties-in-interest in bankruptcy and foreclosure-related litigation. Also, Judge Papalia served as a mediator in bankruptcy cases and as Vice-Chair of the District V-A Ethics Committee.

I recently had the privilege of asking Judge Papalia a series of questions about a variety of topics, including his transition to the Bench, tips for attorneys appearing before him, and his love of sports and great food. His responses provide a unique opportunity for practitioners to understand Judge Papalia's perspective from the Bench and to learn about his life away from the courtroom. The Lawyers Advisory Committee sincerely thanks Judge Papalia for graciously taking time out of his busy schedule to participate in this interview.

**You are nearing the two-year anniversary of your swearing-in. What were some of the challenges you experienced during the transition from private practice to the Bench?**

Serving as a Judge is a very different job as compared to working as a private practitioner. Although both require reading cases and dealing with various legal issues, as a Judge, I need to

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approach the issues from a different perspective. I have learned how to look at issues more objectively as opposed to wearing the “advocate hat” I had on for 30 years.

Also, many parties appear before me that I have known from practice and other walks of life. I have had to be cognizant of this fact and deal with everyone objectively and even-handedly.

**What do you miss the most, if anything, about private practice?**

Time sheets . . . just kidding!

I really do miss the back-and-forth and camaraderie among colleagues in the office and outside the office. It is true that there is a physical and *de facto* isolation when you take the Bench. You simply don’t have the same interactions you did while in private practice. But here, I was fortunate in that the existing Judges and clerk’s office extended me such a warm welcome and several new colleagues came on board at about the same time, so I am developing new friendships here at the courthouse. I was also fortunate to inherit a very knowledgeable, experienced and professional staff who helped me greatly during my transition and continues to do so every day.

**Have there been any positive surprises about being a Judge that you did not anticipate?**

By and large, I have been very happy with the professionalism displayed by the members of the bar both in terms of courtroom demeanor and the quality of their written and verbal presentations. There have been very few unpleasant surprises.

You guys have made it very easy on me! I am very grateful for the professionalism demonstrated by the practitioners appearing before me.

**What is the one thing you want practitioners appearing before you to know?**

I actually have two. First, service is critical. Parties-in-interest must be afforded due process. Thus, all parties must comply with the service rules.

Second, attorneys must submit certifications from individuals with personal knowledge of the facts presented and that is usually not the attorney. I do understand the expediency factor, especially in

smaller consumer cases, and acknowledge that it is easier and more practical for the attorneys to prepare and execute certifications themselves, but those certifications are usually not based on personal knowledge, as is required by the rules. This becomes particularly important in contested (and even in uncontested) matters when significant factual issues are raised.

**The new local rules went into effect approximately one year ago. What impact are you finding the revised rules are having on the attorneys who appear before you?**

For the most part, I have found that attorneys have done pretty well with complying with the new local rules. In my experience, the new rules have led to more consistency among practitioners. This has been a positive.

**You have a reputation as being a hard-worker, to what do you credit your work ethic?**

Working hard is the only way I have been able to get things done during my entire life. Nothing really comes that easily to me; I have to work hard for it. Also, I was always told that preparation is the key to not only being a good lawyer, but also in succeeding in most things you do. That requires hard work.

**When you are not working hard, what are some of your interests outside of being a Judge?**

I have three daughters; ages 26, 24, and 22. I think of them and what they are doing whenever I am not working and many times at work as well. We enjoy spending time together at the Jersey Shore and on family vacations. This year we are traveling together as a family to Europe, and we are really looking forward to that.

I am also an avid sports fan. I was a huge Knicks fan growing up, but they have since pushed me away. I have also been a big Jets fan since the mid-60’s. Also, I love watching college hoops and the NBA Playoffs. I still go to a game occasionally, but with a few exceptions, I have generally found it to be a lot easier to watch a good game at home rather than trekking to the stadium or arena.

I also enjoy reading my favorite newspaper every day and particularly enjoy a good meal.

**Funny you say that. Everyone knows how much you enjoy a good meal. What is your favorite place to have lunch near the Courthouse? What is your favorite thing to order there?**

That is easy – Caffé Espresso D’Italia. I have been eating there for 30 years. My favorite meal there is a special dish called the “Half an a Half” (with the proper Italian accent). It is half Chicken Murphy and half Baked Ziti. I had it for lunch today. The reason it is called “Half an a Half” is because once while ordering, I told the owner I liked both dishes so much, I couldn’t decide which to order. So she immediately said “why not have half an a half?” I agreed and was also glad that the two halves always add up to more than a single order.

**As a result of your love of food, do you enjoy cooking too?**

No! I am a horrible cook. I am more of a participant in the eating part and an observer and a critic as to the cooking part -- which understandably drives my wife crazy.

**If you had to choose 3 people to have dinner with, dead or alive, who would you choose and why? Also what would be served?**

That is a tough question. Though I am dating myself, I think it would be Joe Willie Namath, Willis Reed, and Walt “Clyde” Frazer. I grew up watching these guys and loving their teams. It would be a great experience to share a meal with them. The time when their teams were great (they actually won championships for the New York Metro area in the late 60’s and early 70’s) coincided with my growing up in an era of so much change. Those players and teams brought me much joy and piqued my interest in team sports, where I learned many life lessons that I still employ today and that I tried to instill in my kids while they were growing up. I am very proud of my daughters, so it seems to have worked pretty well so far.

As far as the meal itself – I would not serve a thing; we would go to a very good Italian restaurant!

**Shoshanna Schiff receives inaugural Seton Hall Law Exemplary Service Award from Dean Kathleen M. Boozang.**



On May 6, 2016, Seton Hall University School of Law presented Shoshana Schiff, Esq. with the inaugural Exemplary Service Award in recognition of her dedication to the law school and her outstanding community service efforts.

**David Ravin and Art Abramowitz receive NJBLF Distinguished Service Award**



On September the New Jersey Bankruptcy Lawyers Foundation honored David Ravin and Arthur Abramowitz with the Distinguished Service Award. The event was held at Maplewood Country Club. Both Mr. Ravin and Abramowitz have had long distinguished careers before the Bankruptcy Court in New Jersey. They are seen here with Judge Rosemary Gambardella at the dinner.



## *Do You Have Any Change?*

By: Chief Judge Kathryn Ferguson

By now, most of you have heard that we in New Jersey have turned over six of our nine judges in the last three years. This has been an enormous change for all of us: certainly for the judges coming and going, certainly for the judges suddenly vaulted into the status of “senior statesmen”, certainly for a new chief judge, and perhaps most certainly of all for a bar that had enjoyed a long period of relative stability and predictability from the bankruptcy bench. It has now been just about a year since the last bankruptcy court judicial vacancy was filled. Can we all just take a deep, cleansing breath and calm

down?

Not so fast. Have you also heard that our bankruptcy court is in the midst of an unprecedented turn over at the highest levels of management in the clerk’s office? Nancy Figueroa became the Deputy in Charge of the Trenton office in June of 2012 after the untimely passing of Dennis Norton. Then Scott Liddle, the Chief Deputy Clerk, went and retired on January 3, 2014. Jeanne Naughton left her position as Staff Attorney to fill Scott’s Chief Deputy position. Ed Gordon, the Deputy in Charge in Newark, retired on January 29, 2016. Tom Walsh then became the Deputy in Charge in Newark as of March 21 of this year. I hope that many of you have already gotten to know Nancy and Tom.

Now we are bracing for a double whammy. Mary Shashaty, the Deputy in Charge in Camden, and Jim Waldron, THE BIG KAHUNA Clerk of the Court both retire on the same day, January 3, 2017. Mary might as well be named Mary Bankruptcy. She has been with our court since August 30, 1976 and was promoted to Deputy in Charge on May 3, 1982. She has seen sea changes in the applicable law (she was a guiding force in our office before the Bankruptcy Code was), the constitutional challenge to the Code, the post *Marathon* adjustments, the shift to electronic filing, BAPCPA and more. She has supported --mothered is more like it-- Judge Lipkin, Judge Gambardella, Judge Wizmur, Judge Burns and now Judges Altenburg and Poslusny. She has supervised scores of Clerk’s Office staff over the years with enormous good humor and grace, and has always been ready to step into other roles to fill gaps as crises arise. Truly the chief cook and bottle washer of the Camden office, she will be sorely, sorely missed.

I’m having trouble even imagining the bankruptcy court in New Jersey without Jim Waldron. When I first stumbled into the Bankruptcy Court in 1985, he was the Clerk of the Court. Oh, I saw Clifford Kirsch’s name from time to time, but it was Jim at the helm when I arrived. We had paper files back then, of course, and paper docket cards that were wheeled around the clerk’s office in little carts. We had piles of filing that obscured windows. We had typewriters, but not enough, so many docket entries were hand written. Jim turned that office into the sleek, well-oiled machine that we all know now (insert laughter here.) Seriously, aside from changes in personnel and the law--no small changes, those--Jim kept our court on the cutting edge of developing technology and in doing so, burnished the national reputation of our court. He served on multiple national committees and his service always reflected positively both on him and on the rest of us. He was a driving force behind many of the events staged by the Historical Society, and we all came to depend on him to make

our various events as entertaining as possible. Despite significant health problems, including a rare form of Tourette's Syndrome that seemed to flare only during Judges Meetings, he devoted unfailing energy to making our clerk's office the best that it could be. By doing so, he also brought out the best in each of us. He has been an incredibly loyal and generous friend to countless among us. I don't know about you, but I'm feeling bankruptcy bereft just thinking about his retirement.

But don't despair. We have a plan, and as Price Pritchett<sup>1</sup> says "Change always comes bearing gifts." In Camden, Jim has recently announced that that Sean Quigley, Judge Kaplan's career law clerk, has been selected to fill Mary Shashaty's actually tiny but metaphorically enormous shoes. As a career clerk, Sean has considerable knowledge of the bankruptcy laws and rules, as well of the culture of our court. After years of working with Judge Kaplan, he has experience in trying to finesse, shall we say, idiosyncratic personnel. The folks in Camden should be a piece of cake after herding Judge Kaplan.

As to the impossible task of succeeding Jim, we have a one-two punch. The Board of Judges has unanimously selected wonderful Jeanne Naughton as our new Clerk of the Bankruptcy Court. Jeanne brings a wealth of experience to the job. She was Judge Tuohey's first and later career law clerk, she practiced in the bankruptcy department at McCarter and English, she served as staff attorney for our court for many years, and has worked as one of Jim's closest support team members for a good long time. If anybody faced with a problem can answer the question "What would Jim do?" more reliably than Jeanne, I'm not sure who it is--with the possible exception of her new Chief Deputy, the amazing Mo Wong. Whether they proceed to act in accordance with the answer to that question is a different matter--but they will know the answer, and that has to be good for continuity.

And so we beat on, boats against the current.<sup>2</sup> Change is here, whether we like it or not. And while we will miss those moving on and we wish them well, those of us left behind to continue the tradition of service in the Bankruptcy Court for the District of New Jersey will carry on. Change is good.

Oh, and yeah. My courtroom deputy of almost 23 years just announced that she is retiring....

<sup>1</sup> Price Pritchett is an M & A guy, a business advisor, speaker and author specializing in change management. **Change Management** (CM) refers to any approach to transitioning individuals, teams, and organizations using methods intended to re-direct the use of resources, business process, budget allocations, or other modes of operation that significantly reshape a company or organization. When I get nervous, I start researching .....

<sup>2</sup> Do I need to tell you this is a reference to F. Scott Fitzgerald's "The Great Gatsby"?

**CONGRATULATIONS TO ROSS AND AMY SWITKES ON  
THE BIRTH OF THEIR DAUGHTER !!!**



## Jeanne Naughton to become Clerk of Court for the United States Bankruptcy Court for the District of New Jersey

On January 4, 2017, Jeanne Naughton, the Court's current Chief Deputy Clerk, will be sworn in as the third Clerk of Court for the United States Bankruptcy Court for the District of New Jersey. She replaces Jim Waldron who has served as the Court's Clerk for the past thirty-two years. Jeanne has had a long and illustrious career serving the Bankruptcy Court for over twenty-one years in several different capacities.

Jeanne attended Drew University where she graduated *magna cum laude* as well as receiving *Phi Beta Kappa* honors. Following graduation from Seton Hall Law School in 1984, where she was a member of the Seton Hall Law Review, she clerked for Judge George P. Helfrich in Morris County Superior Court. She then served as law clerk to Judge William F. Tuohey from 1986 to 1987. She then joined the law firm of McCarter and English and stayed until 1989 when she left to care for her young and growing family. Jeanne has two sons, Michael and William.

In 1994, Jeanne again answered the call to federal service by becoming Judge Tuohey's permanent career law clerk. She held that position until 2000 when Judge Tuohey retired from the bench. Lucky for the Court, Jeanne decided to stay on and take a position as the Clerk's Office first Staff Attorney. This was a critical position for the Court since her duties included analyzing all operational procedures of the Clerk's Office as mandated by statutory, case and procedural law. She served as the "go to" expert when it came to local and national rules and their impact on operations. She then engaged in a number of projects, both legal and procedural, that not only affected the New Jersey Court, but the National court scene as well. She also served as the Clerk's chief legal advisor.

Quickly recognized for her organizational ability, as well as her thorough understanding of bankruptcy law, she was appointed by the Administrative Office of the US Courts to serve on the national Bankruptcy Noticing Working Group. This group was charged with analyzing, reviewing and recommending methods and solutions to the ever changing world of noticing in the bankruptcy world, and was comprised of Clerks and Chief Deputy Clerks from around the country. Back at the court, Jeanne served as project manager for the Information Technology Grant from the Administrative Office and stewarded the creation of a standardized web site model for all courts to utilize without having to do their own development. She also worked on the Electronic Self Representation project that served as the model for the rest of the country for electronic pro se petitions.

On the local level, Jeanne supervised the team of management analysts at the court and chaired the Local Rules Committee as it related to procedural issues for electronic filing under the Case Management, Electronic Case Filing, CM/ECF. She also served as the Clerk's Office liaison responsible for assisting in the

development of Judge Meeting Agendas and implementation of recommendations. She served as an Ex-Officio member of the Lawyers Advisory Committee and also the Chapter 11 subcommittee that drafted the Court's local chapter 11 rules.

In January of 2014, upon Scott Liddle's retirement, Jeanne was appointed as the Chief Deputy Clerk. Since that time she has served as Jim Waldron's right hand and has been involved in every aspect of the Court's operations. She was the point person for the recent total revision of the Court's Local Rules. As Chief Deputy, she is responsible for the leadership and management of all non-judicial functions within the court operation. These include Operational, Administrative and Technological stewardship of all court functions.

With her extensive and diverse experience, the Court is very lucky to have her at the helm. We wish her the best of luck, but we know she is not going to need it.



**THANK YOU!!!** *LAC Members Joseph Casello, Virginia Fortunato and Brian Nicholas, who have completed their terms as members of the LAC. Your dedication and service are greatly appreciated.*

**WELCOME!!!** *New LAC Members, Isabel Balboa, E. Richard Dressel, Mark Hall, Brian Hofmeister, and Kim Lynch.*

## Simple Civility

By: Angela C. Pattison

I recently attended a CLE course that was advertised to provide insight on negotiating with difficult adversaries. Instead, the course centered upon the perception that lawyers are rude, hurried and unmanageable people. This experience left me wondering how many lawyers have lost sight of their role as officers of the court. As members of the New Jersey Bankruptcy Bar, we are fortunate to practice alongside people who pride themselves on cooperation and congeniality. Given that lawyers are often the public's closest representation of the legal system, even our segment of the bar can benefit from a reminder of the rules that guide us in an effort to preserve civility as an essential cornerstone of the practice of law.

The Rules of Professional Conduct require lawyers to treat each other, the court and the parties with respect and dignity. Specifically, RPC 3.2 states that, “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client and *shall treat with courtesy and consideration all persons involved in the legal process.*” In addition, RPC 3.3 entitled “Candor Toward the Tribunal,” mandates truthfulness and fairness in communications with the Court. Unfortunately, members of the bar have gone astray of these principals to such an extent that Civility has become the topic of many written opinions and continuing legal education courses. Bar Associations, such as the Camden County Bar Association and the Middlesex County Bar Association, have adopted Professionalism Codes designed to promote civility amongst their members. Additionally, the Essex County Bar Association has created a professionalism committee to facilitate the resolution of issues related to civility.

To address the civility problem on an ongoing basis, we must recognize that civility is not a remote aspiration governed solely by the ethical rules.

Rather, our local rules provide common sense ways in which any lawyer can routinely promote courtesy and consideration. Take D.N.J. LBR 9013-3(a), for example, which imposes a duty upon counsel to confer relative to any opposed motion. Or, consider the purpose of D.N.J. LBR 5071-1, which sets forth the procedure by which adjournments are requested. Moreover, our service rules are designed to ensure fair treatment through the judicial system, which is a fundamental concept that we have come to know as “due process.” In sum, if we adjust our perspective on a few relatively simple requirements in our local rules, every day practices yield opportunities to increase civility amongst members of our bar.

Our first civility-promoting rule, D.N.J. LBR 9013-3 (a), requires lawyers to confer in advance of contested hearings to simplify proceedings and, where possible, obviate the need for judicial intervention. It is commonly understood that advance discussions regarding contested cases provide advantages to the parties that are lost once you reach the day of the hearing. Practitioners are advised to consider that an adversary's mindset can change once an impassioned oral argument has been prepared and expenditures have been made. Courthouse settlement negotiations often lead to last minute adjournment requests. Whether a case is settled or adjourned, the fact is that other people can be inconvenienced in the process (e.g. opposing counsel, the court's staff, and even the Judge) as they have prepared for a hearing that may not be necessary. In other words, a lawyer who fails to confer with an adversary or request an adjournment in advance because he or she is scheduled to appear in Court on other matters, is not practicing civility.

Scheduling is a key issue for all busy attorneys, one which also gives rise to an opportunity for courtesy and consideration toward peers and the Court. There are myriad reasons why we need adjournments, why we run late, and/or have a difficult time keeping up with our responsibilities. However, any approach to



scheduling that fails to consider the impact of your behavior on others causes wasted attorney time and frustration for others. Civility is most certainly eroded when the requirements of D.N.J. LBR 5071-1 are skirted to obtain adjournments without consent or notice. Arriving late or unprepared for court sends a similar message of disregard for others. Non-consensual adjournments, lack of service, and lack of prosecution are uncomfortable issues that potentially place inconsiderate conduct by a lawyer at issue before the court.

While there is no doubt that lawyers are operating under immense pressure to work harder, longer and generate results for clients, a busy journey does not necessitate inconsiderate behavior. There will surely be times when we feel ourselves falling short of our civility goals. However, our group's collective effort to practice with civility will open up the doors to a courtroom where our mistakes are more likely to be met with understanding and compassion.

In the words of Judge Jack Zouhary\*, "civil litigation is not an oxymoron."

\* Judge Jack Zouhary current sits on the United States District Court for the Northern District of Ohio

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## Bankruptcy Filings On The Rise?

After a sustained precipitous drop in filings over the past several years it would appear that filings are actually on the rise. For the last 12 months they have declined slightly more than 1% and yet the last three months have shown an increase with August and September increasing by 7% and 3% respectively.

## IMPORTANT SERVICE REMINDERS

### SERVICE ON THE FEDERAL GOVERNMENT

All matters that involve a federal agency must be served on the United States of America. Federal agencies include, but are not limited to: The IRS, the U.S. Department of Education, and the FDIC, to name a few.

When any federal agency is a party to an action, service should be made on:

**Eamonn O'Hagan**  
**Assistant U.S. Attorney**  
**U.S. Attorney's Office**  
**District of New Jersey**  
**970 Broad Street**  
**Newark, New Jersey 07102**  
**(973) 645-2874 (office)**

### ATLANTIC CITY ELECTRIC, DELMARVA POWER AND PEPCO SERVICE REMINDER:

Bankruptcy paperwork must be served at:  
**5 Collins Drive, Suite 2133**  
**Carneys Point, NJ 08069**  
**Fax 856-351-7667**

Contact information:  
**Renee E. Suglia, Esq.**  
**Assistant General Counsel**  
**Pepco Holdings, Inc.**  
**500 N. Wakefield Dr., 92DC42**  
**Newark, DE 19702**

## **EXCITING UPCOMING EVENTS AND SEMINARS**

- \* **Bankruptcy and Taxes: Everything You Ever Wanted to Know and a Few Things You Didn't**

**10/20 at Stark & Stark in  
Lawrenceville— to register call the  
Mercer County Bar at 609-585-6200**

- \* **November 16, 2016: Annual Bankruptcy Bench-Bar Dinner Honoring Clerk of Court Jim Waldron at the New Brunswick Hilton**

**Register at [www.njsba.com](http://www.njsba.com)**

- \* **December 2, 2016: Mary Shashaty's, Deputy Clerk in Charge of the Camden Vicinage, Retirement Party at the Westin in Mount Laurel,**

**RSVP to Scott Zauber, Esquire:  
[szauber@subranni.com](mailto:szauber@subranni.com)**

### **New Jersey Bankruptcy Inn of Court**

The Bankruptcy American Inn of Court celebrated its 20th anniversary in 2013. The Inn received its charter from the American Inns of Court on June 11, 1993, and has remained in continuous operation since that time.

The Bankruptcy Inn of Court was established in memory of United States Bankruptcy Judges Vincent J. Commisa, D. Joseph DeVito, and Daniel J. Moore. Each Judge was well respected and a leading Bankruptcy Jurist in the District of New Jersey since the current Bankruptcy Code was enacted in 1978. Each Judge left his unique imprint on the Bankruptcy Courts of New Jersey, and, unfortunately, each passed away before the Bankruptcy Inn was established. The Bankruptcy Inn of Court was organized by the Honorable William H. Gindin, U.S.B.J., Hugh Leonard, Esq. (Cole, Shotz, Bernstein, Meisel & Forman), Karen Gilman, Esq. (Wolff & Samson), and Richard D. Trenk, Esq. (Booker, Rabinowitz, Trenk), in order to promote the overall goals of the American Inns of Court Foundation, including legal excellence, civility, professionalism, ethics, and specifically the application of these ideals to the Bankruptcy Bar.

The Bankruptcy American Inn of Court was one of the first specialty Inns across the United States, and remains at the forefront in furtherance of its original goals and purposes by continuing as the longest operating bankruptcy specialty Inn of Court in the United States.

#### **TAP**

##### **Officers:**

William Mackin (LAC Chairperson); Catherine Youngman (LAC Vice-Chair);

Chief Judge Kathryn Ferguson, Hon. Christine Gravelle, LAC Liaison

##### **LAC Members/ Liaisons:**

Isabel C. Balboa, Morris S. Bauer, David G. Beslow, Carrie J. Boyle\*\*, Michael E. Brown, Anne S. Cantwell\*, Ramanjit K. Chawla, E. Richard Dressel, Andrew B. Finberg, Mark E. Hall, Martha Hildebrandt, Brian W. Hofmeister\*, Karina Pia Lucid, Kim R. Lynch, William Mackin, Louis A. Modugno, Jeanne A. Naughton, Eamonn O'Hagan, Cassandra Porter, Shoshana Schiff\*, Robert J. Schneider, Ross J. Switkes\*, Michael J. Viscount, Catherine E. Youngman

##### **Ex-officio Members:**

Hon. Rosemary Gambardella, Hon. Michael Kaplan, Hon. Andrew Altenburg, Hon. Vincent Papalia, Hon. John Sherwood, Hon. Jerrold Poslusny, Hon. Stacey Meisel, James Waldron

\* *The Absolute Priority* LAC Subcommittee Member \*\* *The Absolute Priority* LAC Subcommittee Chairwoman