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IN THIS ISSUE

Minnesota Supreme Court Holds IRAs Exempt Under State Law

In Clark v. Lundquist, 204 WL 1632565 (Minn. 2004), the Minnesota Supreme Court held that an IRA qualifies as exempt under Minn. Stat. § 550.37(24).

In this case, the Debtor filed for relief under Chapter 7 of the Bankruptcy Code. At that time, he and his wife were 55 years old, and he owned a qualified individual retirement annuity, within the requirements of I.R.C. § 408(b), valued at $107,500. The IRA allowed the Debtor to withdraw funds at any time, up to the principal amount of the annuity, less a surrender charge. The Debtor claimed the IRA as exempt under Minn. Stat. § 550.37(24). The Trustee objected. The case was certified by the Bankruptcy Court to the Minnesota Supreme Court. The issue before the Supreme Court was whether the IRA was exempt regardless of whether the debtor has unlimited access to the account balance.

The Minnesota Supreme Court said yes. The Court noted that the Eighth Circuit has held that IRAs are not exempt under the Bankruptcy Code (Section 522) when the debtor has the right to withdraw funds, at any time, subject only to early withdrawal tax penalties. In re Rousey, 347 F.3d 689, 693 (8th Cir. 2003), cert. granted sub nom., Rousey v. Jacoway, __ U.S. __, 124 S. Ct. 2817 (2004). The Court also noted that this circuit has held that debtor's right to payment must be on account of illness, disability, death, age, or length of service. Id. Regardless, the Court held that an IRA is exempt property under Minnesota statute, as limited by the indexed value reasonable necessary for the support of the debtor and the Debtor's spouse or dependents, on the reasoning that the legislature expressly listed IRAs in section 550.37(24) and because the debtor's access to the funds was not completely unfettered. The Debtor's access was restricted by the early withdrawal penalty and the fact that any claimed exemptions exceeding $54,000 must be reasonably necessary for the support of the debtor and any spouse or dependent of the debtor.

U.S. Supreme Court Holds That Interest Based On Prime Rate Is Appropriate In Chapter 13 Bankruptcy Cases

In Till v. SCS Credit Corp., 124 S. Ct. 1951(2004), the United States Supreme Court held 5-4 that courts should utilize the "formula approach", requiring adjustment of the prime national interest rate based on risk of nonpayment, when determining the proper interest rate on a cram down loan in a Chapter 13 case.

Lee and Amy Till (the "Tills") purchased a used truck from Instant Auto Finance. They financed the purchase through a retail installment contract with SCS Credit Corporation (SCS). The contract provided for interest at the rate of 21% per year. Instant Auto Finance retained a purchase money security interest that gave them the right to repossess the truck if the Tills defaulted under the contract.

The Tills later filed for Chapter 13 bankruptcy relief. The Chapter 13 plan provided that they would pay interest on the secured portion of SCS's claim at a rate of 9.5% per year. SCS objected to this lower rate, arguing that they were entitled to the contract rate of 21% because this was the rate it would obtain had it foreclosed on the vehicle and reinvested the proceeds in loans of equivalent duration and risk as the loan originally made to the Tills.

The United States Bankruptcy Court for the Southern District of Indiana confirmed the Tills' Chapter 13 plan. The United States District Court for the Southern District of Indiana reversed, holding that

Bankruptcy Courts could set cram down rates, interest rates for installment payments, at the level the creditor would have received if it had foreclosed on the loan, sold the collateral, and reinvested the proceeds in equivalent loans. The United States Court of Appeals for the Seventh Circuit affirmed, modifying the holding to allow the creditor or the debtor to challenge the rate with evidence that a lower or higher rate should apply.

The United States Supreme Court reversed, holding that the formula approach, requiring adjustment of the prime national interest rate based on risk of nonpayment, is appropriate for determining the appropriate rate of interest on a cram down loan. The Court stated that the formula approach provides a straightforward, familiar, and objective inquiry that minimizes the need for costly additional evidentiary proceedings. In addition, this approach depends only on the state of financial markets, the circumstances of the bankruptcy estate, and the characteristics of the loan, not the creditor's circumstances or the prior interactions with the debtor. Finally, the formula approach places the evidentiary burden on the more knowledgeable party, thus facilitating a more accurate calculation of the appropriate interest rate.

Although this decision arose in a chapter 13 case, it might be used in chapter 11 cases. It may result in debtors being able to use lower interest rates in their plans. In this case, the court affirmed the Bankruptcy Court's approval of a rate of prime plus 1.5% and stated that "other courts have generally approved 1% to 3% above prime. The Court further stated that "courts must choose a rate high enough to compensate a creditor for its risk but not so high as to doom the bankruptcy plan".

Bankruptcy Appellate Panel Finds That Minnesota's Homestead Exemption Can Apply To Property In Arizona

In <u>In re Drenttel</u>, Bankr. No. 03-6094 (8th Cir. B.A.P. 2004), the Bankruptcy Appellate Panel for the Eighth Circuit held Debtors may use the Minnesota homestead exemption for their homestead located in Arizona.

The Debtors were longtime residences of Minnesota before moving to Arizona with their recently orphaned two-year old grandson. The Debtors sold their home in Minnesota and within two months of relocating to Arizona purchased a new home for $181,682.00. Thereafter, the Debtors filed a Chapter 7 Petition in the State of Minnesota and claimed their Arizona home as exempt pursuant to the $200,000 Minnesota homestead exemption (Minn. Stat. § 510.01) (Arizona's homestead exemption was only $100,000 at the time the Debtors filed for bankruptcy). The Chapter 7 Trustee objected to the Debtors' exemption claim since the property was located outside of Minnesota. The question before the Bankruptcy Court was whether the Minnesota homestead exemption had extraterritorial effect for the benefit of the Debtors.

The Bankruptcy Court sustained the Trustee's objection by stating that the Minnesota statute should be construed to prohibit extraterritorial effect in order to prevent abuse of the bankruptcy process and forum shopping. In rejecting this view, the 8th Cir. B.A.P. cited the venue provision in 28 U.S.C. § 1408 which required the Debtors to file for bankruptcy in the State of Minnesota because they had lived the majority of the 180 days before the petition date in Minnesota. The Court held that the federal venue provision prevented the forum shopping and that the Bankruptcy Court's concerns about abuse of the bankruptcy process and forum shopping were unfounded. The Court stated that the federal venue provision (the 180-day rule) prevents a debtor, living in a state with a limited homestead exemption (e.g. Missouri), from selling his or her homestead and moving to a state with an unlimited homestead exemption (e.g. Kansas) and then immediately filing for bankruptcy. The Court also noted that the Bankruptcy Code, 11 U.S.C. § 522(b) (2), restricted the Debtors from using exemptions from other states. Section 522(b) (2) of the Bankruptcy Code limits a debtor to using the state exemptions of the state in which the debtor had live the majority of the 180 days prior to the petition date.

As additional justification for its holding, the Court relied upon some public policy grounds. The Court realized that while a homestead exemption statute which is silent as to its extraterritorial effect can be a significant factor in determining its extraterritorial reach, it was confident that it was upholding the strong public policy in Minnesota that exemption statutes should be liberally construed. Lastly, the Court noted that creditors who extended credit to the Debtors, while they lived in Minnesota, presumably were aware of the $200,000 Minnesota homestead exemption and, therefore, were not put into a worse position because of the extraterritorial application of that exemption.

Student Loan Dischargeability Actions Do Not Implicate A State's 11th Amendment Sovereign Immunity

In <u>Tenn. Student Assist. Corp. v. Hood</u>, 541 U.S. ___ (2004), No. 02-1606 (May 17, 2004), the Supreme Court held that a debtor's undue hardship action to discharge a student loan debt does not implicate a state's sovereign immunity under the Eleventh Amendment to the U.S. Constitution.

The lower courts, including the Sixth Circuit Court of Appeals, had determined that Bankruptcy Code § 106(a) was a valid abrogation of a state's sovereign immunity in bankruptcy actions because states ceded their immunity from private actions in bankruptcy in the Constitutional Convention. The Supreme Court, however, did not address this broader issue. Instead, the Court adopted the argument made by bankruptcy professor Kenneth Klee, in an amicus brief, that a Bankruptcy Court's jurisdiction is premised on the "res," not the "persona." Therefore, reasoned Professor Klee and the Court, the Eleventh Amendment does not apply as a Bankruptcy Court's exercise of its *in rem* jurisdiction in a student loan dischargeability action does not infringe a state's protection from being sued.

When the Court agreed to hear this case, many bankruptcy practitioners anticipated that Congress' attempt, via Section 106(a), to bring states' to the undue hardship table would finally be determined. While the validity of Section 106(a) remains unknown, the Court's decision means that states will no longer be able to avoid undue hardship actions by raising the shield of sovereign immunity.

Student Loan Dischargeability Action Not Ripe In Chapter 13 Before The Discharge Is Entered

In <u>Bender v. Educ. Credit Management Corp.</u>, No. 03-2507 (8th Cir. , May 12, 2004), the Eighth Circuit Court of Appeals affirmed the District Court for the District of Nebraska, in holding that a student loan dischargeability action is not ripe if brought before the time of discharge. The Court reasoned that whether undue hardship exists is a factual question to be determined at the time of discharge. Thus, during the Chapter 13, the automatic stay protects the debtor from a state's or student loan company's efforts to collect the debt. The debtor may then commence the undue hardship action at the time of his or her discharge, rather than at the commencement of the bankruptcy proceeding.

Presumptive Nondischargeability For An Award Labeled As Alimony In A Divorce Decree

In In re Portwood, 308 B.R. 351 (B.A.P. 8th Cir. 2004), the Bankruptcy Appellate Panel for the Eighth Circuit held that the labeling of an award in a divorce decree as alimony shifts the burden of proof to the debtor to prove that it was a property settlement subject to discharge.

After fifteen years of marriage, and twelve children, Jerry Portwood and Gwendolyn Young dissolved their marriage. The Circuit Court for Taylor County, Florida ordered, among other things, Portwood to pay Young lump sum alimony in the amount of $42,000, payable in monthly installments of $350 per month for ten years. A few years later, Portwood filed a Chapter 7 bankruptcy petition in the Western District of Arkansas. While the case was pending, Portwood filed an adversary proceeding to obtain a determination as to the dischargeability of the lump sum payment to Young, arguing that it was actually part of the parties' property settlement and, therefore, dischargeable. Young did not appear at the hearing.

The Bankruptcy Court noted that debts characterized as alimony in a divorce decree are generally excepted from discharge under section 523(a) (5) of the Bankruptcy Code. Although she was the defendant, Young had the initial burden of proving that the debt was in the nature of alimony, after which, the burden of proving otherwise was on Portwood. The Bankruptcy Court determined that Young's burden was met when Portwood entered the divorce decree into evidence because the divorce decree labeled the lump sum award as alimony. The Bankruptcy Court found that Portwood did not prove otherwise, and, therefore, determined that the debt was excepted from discharge.

On appeal, Portwood argued that the Bankruptcy Court erred in shifting the burden of proof to him. The Bankruptcy Appellate Panel ("B.A.P.") disagreed. Once the Bankruptcy Court received the divorce decree, which labeled the award as alimony, Young had sustained her burden because there is a presumption of nondischargeability for an award labeled as alimony. Portwood further argued that the Bankruptcy Court did not consider the appropriate factors in making the determination that the lump sum award was alimony. Again, the B.A.P. disagreed. Because the divorce decree labeled the lump sum award as alimony, which was payable in monthly installments directly to Young, and Young had custody of six of the seven children under 18, the B.A.P. found that the Bankruptcy Court did not err in finding the lump sum award to be nondischargeable.

Constructive Trust Requires Strict Tracing

In Ferris, Baker, Watts, Inc. v. Stephenson (In Re MJK Clearing, Inc.) No. 83-2443 (8th Cir. June 9, 2004), the Eighth Circuit affirmed the Bankruptcy Court's finding that the Debtor did not hold the Appellant/Creditor's funds in constructive trust, and that the Creditor instead held a general unsecured claim.

Four days prior to the Debtor's financial demise, Ferris and the Debtor entered into a stock loan transaction that required Ferris to pledge cash collateral equal to the fair market value of the stock to secure the stock loan. The agreement permitted the Debtor to use or invest the cash collateral and did not require the Debtor to segregate the funds. Concurrently, on September 21, 2001, Ferris transferred $22 million as cash collateral to Debtor's depository trust company account ("DTC Account") and the Debtor transferred two million shares of stock to Ferris' depository trust company account. The Debtor had numerous other unrelated transactions settled through its DTC Account on the same day. As a result, by the end of September 21, 2001, the Debtor's DTC Account had a negative balance, requiring the Debtor to transfer funds from one of its other accounts into the DTC Account.

In the following two to three days, as the price of the stock fluctuated, the Debtor transferred $4 million to Ferris to "mark" the collateral to the market price of the stock, leaving $18 million of Ferris's cash collateral in the Debtor's possession. When the price of the stock fell again, Ferris demanded that the Debtor transfer an additional $6 million of its cash collateral back. The Debtor failed to comply, which was a default under the parties' stock agreement. Two days later, the case was removed to Bankruptcy Court, and Ferris tendered the stock to the trustee and demanded that the trustee return Ferris's cash collateral.

Subsequently, Ferris brought an adversary proceeding in the Bankruptcy Court requesting that the Court impose a constructive trust on the Debtor's assets. On cross motions for summary judgment, the Bankruptcy Court entered partial summary judgment for Ferris and the Trustee granting Ferris a general unsecured claim against the Debtor for $19 million and holding that Ferris could not establish a constructive trust because Ferris could not trace its cash collateral to any property in the Debtor's estate and Ferris could not prove fraudulent inducement.

The Eighth Circuit held that Minnesota law governs the resolution of property rights within the bankruptcy proceeding and that to establish the right to a constructive trust under Minnesota law Ferris needed to prove that the Debtor obtained the cash collateral by fraud, bad faith or by improper means and that in addition to proving wrongful conduct. Ferris must be able to trace the cash collateral into an identified product or property currently in MJK's estate. The Court held that to trace assets into an account, the Court employs the "lowest intermediary balance test." Under the lowest intermediary balance test, "a court follows the trust fund to and decrees 'restitution from an account where the amount on deposit has at all times since the commingling of the funds equaled or exceeded the amount of the trust fund.'" "'Should the amount on deposit be reduced below the amount of the trust fund but not depleted, the claimant is entitled to the lowest intermediate balance in the account.'" "The lowest intermediate balance test is based on a fiction that non-trust funds are first withdrawn, retaining as much of the trust fund as possible in the account." "However, if the account is depleted after the trust fund has been deposited, the trust fund is treated as lost."

Ferris requested that the Court apply the lowest intermediate balance test to all the cash and cash equivalents in the Debtor's estate, not just to the particular account. However, the Court held that the constructive trust Ferris sought to impose is a creature of equity and a constructive trust subject is property wrongfully retained by another and, therefore, unlike a common law trust, a constructive trust creates a trust in specific property not an amorphous amount. Accordingly, Ferris and the Debtor's interests were not merged into an indistinguishable mass of interests across all of the Debtor's cash and cash equivalents. Ferris deposited the cash collateral into a particular account – the Debtor's DTC Account. The Court further held that Ferris could not trace the cash collateral to property currently held by the Debtor's estate. On the date Ferris transferred the cash collateral, the Debtor disbursed more money from the DTC Account than had been deposited, and by the end of that business day, the DTC Account possessed a negative balance. Because of the negative balance, the Court found that the lowest intermediate balance on the account was zero. Therefore, the Court held that no property existed upon which the Court could impose a constructive trust.

Bankruptcy Appellate Panel Holds An Adversary Proceeding Is Commenced When Filed

In In re Klesalek, No. 03-6092-ND (8th Cir. B.A.P. 2004), the Bankruptcy Appellate Panel for the Eighth Circuit held that to commence a case under Federal Rule of Bankruptcy Procedure 7003, a case must be filed, but need not be served.

Prior to the filing of the Debtor's Chapter 13 Petition, an interfamily dispute arose between Debtor and Appellants (a group of his family members). The Appellants sued Debtor in his former capacity as the personal representative of his mother's estate. In the Debtor's Chapter 13 Plan, the Debtor scheduled the Appellants' claim as disputed and/or unliquidated, and required that such claim would not be deemed allowed until the claim was estimated or liquidated. In particular, the Debtor's Chapter 13 Plan provided that:

> "[i]f [Appellants] do[] not **commence** proceedings to have a court of competent jurisdiction estimate or liquidate this claim, as provided by law, within 120 days of the confirmation of this [Plan], this claim shall be deemed abandoned and this claimant shall be entitled to no dividend or distribution herein."

(emphasis added).

The Appellants filed an adversary proceeding against the Debtor within 120 days of Debtor's Chapter 13 Plan being confirmed. However, the Appellants did not serve the Debtor within that120-day window. The question before the Bankruptcy Court was whether "commencement" of the proceedings under Federal Rule of Bankruptcy Procedure Rule 7003 (making Rule 3 of the Fed. R. Civ. P. applicable to adversary proceedings) meant simply filing of an adversary complaint or filing and serving an adversary complaint was required. The Bankruptcy Court held that commencement of an adversary proceeding required an adversary complaint to be filed and served upon a party. In reversing the Bankruptcy Court, the 8th Cir. B.A.P. noted the clear and unambiguous language of Bankruptcy Rule 7003, meant that Appellants had commenced a proceeding (in compliance with the Debtor's Chapter 13 Plan) when they filed their adversary complaint with the Bankruptcy Court within 120 days of the Debtor's Chapter 13 Plan being confirmed.

Debtor's Alteration Of Jurat On Tax Return Renders Tax Liability Nondischargeable

In Carroll v. United States of America (In Re Carroll), BKY Case No. 97-40519; ADV No. 03-4348 (Bankr. D.Minn. 2004), U.S. Bankruptcy Court Judge Robert J. Kressel held that a Debtor's altered jurat (signature area) on a tax return rendered the tax return ineffective and the tax non-dischargeable under 11 U.S.C. § 523(a) (1) (B) (i).

Following a dismissal of a Chapter 13 case in 1995, the Debtor filed a Chapter 7 bankruptcy petition in 1997. Subsequent to the Debtor's discharge, on April 15, 2002, the IRS applied a tax refund overpayment of credit of $2,403 for the tax year 2001 to Carroll's unpaid 1988 federal income tax liabilities. Similarly, on April 15, 2003, the IRS applied a tax refund overpayment of credit of $2,506 for the year 2002 to Carroll's unpaid 1988 federal income tax liabilities. On June 25, 2003, Carroll filed a complaint in the United States District Court for the District of Minnesota requesting that the Court impose quiet title on Carroll's property by determining that certain federal tax liens were invalid, ordering the release of Carroll's individual income tax liabilities, and to allow Carroll to recover damages for wrongful IRS collection efforts after a discharge of bankruptcy in violation of 11 U.S.C. § 524(a) (2).

On October 21, 2003, the District Court referred the case to the Bankruptcy Court. The United States moved for summary judgment and, among other arguments, the United States argued that Carroll's income tax debts were nondischargeable pursuant to 11 U.S.C. § 523(a) (1) (B) (i). Carroll filed her 1988 and 1989 forms 1040A in 1993. In the 1040A box labeled "your social security number", Carroll listed the number as "Surrendered". Under the 1040A signature blocks, Carroll printed "Citizen Pauline Carroll, without prejudice and under duress." The Bankruptcy Court noted that 11 U.S.C. § 523(a) (1) (B) (i) excepts from discharge under 11 U.S.C. § 727 any debt for taxes with respect to which a tax return, if required, was not filed.

A document is a "return" if it (1) purports to be a return, (2) is executed under penalty of perjury, (3) contains sufficient data to allow a computation of the tax, and (4) represents an honest and reasonable attempt to satisfy the requirements of the tax law. In addition, IRC §§ 6061 and 6065 require individuals to sign federal income tax returns and verify by written declaration that the return is made under penalty of perjury. Accordingly, an altered jurat on a tax return is ineffective and renders the tax nondischargeable under 11 U.S.C. § 523(a) (1) (B) (i). The Bankruptcy Court found that Carroll's alteration of the jurat by adding the words "without prejudice and under duress" made the 1988 and 1989 tax returns ineffective and the Court held that the tax was nondischargeable under 11 U.S.C. § 523(a) (1) (B) (i). The Court further found that Carroll's printing of her name on the signature block when the remainder of the return was in cursive constituted further evidence that the Debtor intended to avoid the legal requirement of a legitimate tax return.

Filing Of Writ Of Execution Does Not Transfer Property

In In re Howard, 14 CBN 351 (Bankr. D.Minn. 2004), United State Bankruptcy Court Chief Judge Gregory F. Kishel ruled that a judgment creditor's levy on money in a debtor's bank account created a lien that was avoidable under 11 U.S.C. Section 522(f).

Wells Fargo Bank, N.A. ("Wells Fargo") levied against money the debtors held in an account at another bank to collect a judgment Wells Fargo had against the debtors. The Debtors claimed that the money in the account was exempt because it was proceeds of the wife's wages. The Debtors then filed for bankruptcy, where they claimed the money was exempt under 11 U.S.C. § 522(d) (5). The Debtors' attorney demanded that Wells Fargo release the funds it had attached. Wells Fargo did not release the funds arguing that the money in the account was transferred to it when the levy attached the funds. After the Debtors received a discharge, their attorney again asked for the funds to be released. Wells Fargo disagreed and the Debtors pursued a motion to avoid Wells Fargo's lien and seek sanctions. The Court agreed with the Debtors that Wells Fargo had a lien against the money in the Debtors' bank account that was subject to 11 U.S.C. Section 522(f). The Court (which had lost a similar action) also awarded the Debtors attorneys' fees pursuant to 11 U.S.C. Section 362(h) finding Wells Fargo had violated the automatic stay.

Payment By Guarantor Reduces Debt

In Stephenson v. Greenblatt (In re MJK Clearing), No. 03-6118-DSD (D. Minn. 2004), the U.S. District Court held that a $3 million global settlement between a debtor corporation and third party reduced the amount owed to the Debtor under a personal guaranty.

The Defendants held brokerage accounts at Miller Johnson Steichen Kinnard. After the Defendants' accounts suffered severe losses in May 2001, MJSK issued margin calls requiring Defendants to remit funds to cover the losses. In lieu of immediate payment, the Defendants and MJSK negotiated a settlement in which Banco Panamericano, Inc., Loop Corp, and Leon Greenblatt agreed to execute promissory notes in favor of MJSK ("Settlement Agreement"), and Greenblatt agreed to personally guaranty those notes. MJSK negotiated a separate guaranty of the Defendants' indebtedness with John Feltl, who agreed to guaranty up to $3,000,000 of the Defendants' indebtedness, as well as any future loans or advances. In a settlement between MJSK and Plaintiff (the Trustee of MJK Clearing, Inc.), MJSK assigned the Defendants' notes, the Greenblatt guaranty, and its rights to certain tax credits to the Trustee.

One year later, as part of a settlement resolving a number of claims arising out of the MJK bankruptcy, Feltl, the guarantor paid approximately $3,000,000 to the Plaintiff. Following that settlement, and the maturity of the Defendants' notes, the Plaintiff brought this cause of action seeking payments under the original margin account, and the Settlement Agreement. The Bankruptcy Court granted summary judgment for the Plaintiff on the Defendants' obligations and determined that Plaintiff's settlement with Feltl did not reduce the Defendants' obligations.

Among other issues raised on appeal, the Defendants argued that if they owed the Plaintiff any amount, it must be reduced by the $3,000,000 paid to the Plaintiff by Feltl on his personal guaranty. Unsatisfied with the Trustee's assertion that Feltl's payment resolved other claims the Plaintiff had against Feltl, the District Court reversed and held that the Defendants' obligations were to be reduced by $3,000,000. The District Court noted that the Feltl guaranty related to loans or other accommodations made by MJK or MJSK, and that Feltl agreed to guaranty both the margin accounts and any subsequent indebtedness of the Defendants. Permitting the Plaintiff to recover against both Feltl and the Defendants would constitute an improper windfall.

NEWS

Within the past year, the **Chapter 13 Trustee's office** has begun holding quarterly "brown bag lunches" to discuss various issues and procedures in Chapter 13 practice. The lunch/seminars are held in the Plymouth Building, generally on the first available Friday (*i.e.*, one in which we are not scheduled for 341 meetings) in the first month after the end of the calendar quarter. They have applied for and obtained one standard CLE credit for each of these lunch meetings so far. Issues and topics have included: Communication between the 13 Office, Debtors and Counsel; Dealing with Secured Creditors in Chapter 13; and Dealing with Tax Issues in Chapter 13. So far, this new initiative by the Chapter 13 Trustee's Office has been well received. Attendance has varied between 15 to 25 attorneys, plus legal assistants. Invitations are sent by e-mail to the list of debtor attorney e-mail addresses they have compiled, plus providing paper copies of the notice/invitation in our 341 meeting room. Any attorney who has not received an invitation and wishes to be added to the list, please contact Tom Johnson at tej@ch13mn.com. Although the focus of the meetings has been on debtor attorney practice, they may hold a meeting for creditor attorneys at some future date.

Tom Johnson is chairing a subcommittee of the local rules committee whose primary objective is the revision of the local form Chapter 13 plan. Several meetings have been held so far and they hope to have a final draft of the revised plan ready for the full committee to review by the end of the year.

Jasmine Keller, Tom Johnson and **Margaret Culp** attended the National Association of Chapter 13 Trustees annual convention at the Mandalay Bay Resort and Hotel in Las Vegas, June 27-30. Tom was on a panel with four other staff attorneys and Bankruptcy Judge Jimmie Walker for a staff attorney workshop on appeals.

Judge Nancy Dreher is completing her physical therapy and intends to be back on the bench sometime early in September. Judge Dreher wishes to express her thanks to all those who sent her cards and letters during her recuperation.

Rob Parish, a graduate of the University of St. Thomas, College of Law, has joined the Bankruptcy Court on August 23, 2004, as Judge Kressel's law clerk.

William Wassweiler, Rider Bennett LLP, is the new Chair of the Bankruptcy Section Pro Bono Committee.

PUBLIC NOTICE

APPOINTMENT TO PANEL OF CHAPTER 7 TRUSTEES

The Office of the United States Trustee is seeking resumes from persons wishing to be considered for appointment to the panel of trustees who administer cases filed under Chapter 7 of the Bankruptcy Code. The appointment is for cases filed in the United States Bankruptcy Court for the District of Minnesota, Duluth Division. Chapter 7 trustees receive compensation and reimbursement for expenses in each case in which they serve, pursuant to court order under 11 U.S.C. § 330 and § 326. Please note this is not a salaried position.

The minimum qualifications for appointment are set forth in Title 28 of the Code of Federal Regulations at Part 58. To be eligible for appointment, an applicant must possess strong administrative, financial and interpersonal skills. Fiduciary experience or familiarity with the bankruptcy area is desirable but not mandatory. A successful applicant will be required to undergo a background check, and must qualify to be bonded. Although chapter 7 trustees are not federal employees, appointments are made consistent with federal Equal Opportunity policies which prohibit discrimination in employment.

Forward resumes to the Office of the United States Trustee, Attn: Robert Raschke, Assistant U.S. Trustee, 300 S. 4th Street, Room 1015, Minneapolis, MN 55415. All resumes should be received on or before October 29, 2004.