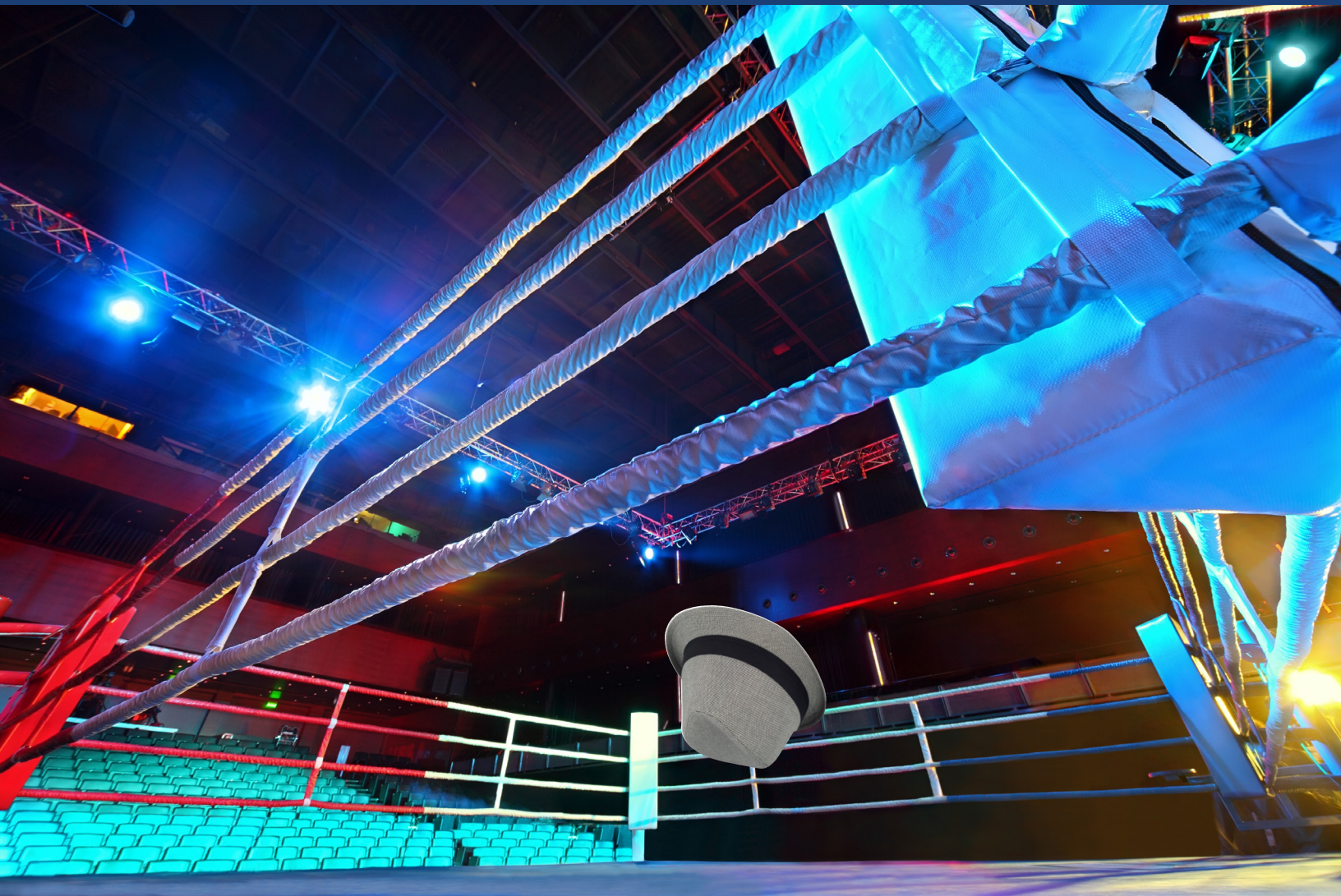


COMMERCIAL LAW & BANKRUPTCY SECTION NEWSLETTER

IDAHO STATE BAR - MAY 2017



CONTENTS

PAGE 2 - JUDGE JIM D. PAPPAS RETIRING

PAGE 2 - JIM D. PAPPAS BIOGRAPHY

PAGE 3 - INTERVIEW WITH JIM D. PAPPAS, MAY 8, 2017

JUDGE JIM D. PAPPAS RETIRING

Judge Jim D. Pappas has been a sitting United States Bankruptcy Judge in Idaho since 1990. His first 14 year term expired in 2004. He was reappointed at that time for a second 14 year term.

Judge Pappas recently announced he will be retiring as a full-time judge when his second term expires in March 2018. You can find Judge Pappas's announcement at https://www.id.uscourts.gov/Content_Fetcher/index.cfm/Message_from_Judge_Pappas_to_the_Bankruptcy_Bar_2693.pdf?Content_ID=2693

A new bankruptcy judge will be appointed to fill Judge Pappas's seat. That process has already commenced. The United States Court of Appeals for the Ninth Circuit has posted the vacancy announcement at the following website: https://isb.idaho.gov/pdf/temp/6thdba_bankruptcyjudge_announcement.pdf

The deadline for applications is 5:00 p.m., Thursday June 15, 2017.

In his announcement of his retirement, Judge Pappas wrote that "[i]f you have questions about the position or appointment process, I would be happy to visit with you." Newsletter editor Bob Faucher took advantage of that offer and discussed these subjects with the judge. An edited transcription of that discussion appears at pages 3-15 of this newsletter so that all section members can receive the benefit of Judge Pappas's insights.

The Board of the Commercial Law and Bankruptcy Section of the Idaho State Bar encourages all interested attorneys to apply, to ensure that we can all benefit from the strongest possible applicant pool.

JIM D. PAPPAS BIOGRAPHY

HONORABLE JIM D. PAPPAS

United States Bankruptcy Judge, District of Idaho

Judge Pappas received his undergraduate degree from Idaho State University in 1974, and his law degree with honors from the University of Idaho College of Law in 1977, where he was editor-in-chief of the Idaho Law Review. Prior to his appointment, Judge Pappas practiced throughout Idaho and the Northwest in cases involving commercial litigation, banking, workouts, secured transactions and all aspects of bankruptcy law representing debtors, creditors, committees and trustees in proceedings under all chapters of the Bankruptcy Code.

Judge Pappas was appointed to serve as one of Idaho's two United States Bankruptcy Judges in 1990, and reappointed in 2004. He was Chief Judge in the district from 1993 until 2004. In 2005, Judge Pappas was appointed to serve on the Ninth Circuit's Bankruptcy Appellate Panel, a court that reviews the decisions made by other bankruptcy courts throughout the Western United States. From 2010 until 2013, he served as Chief Judge of the BAP. Judge Pappas's term on the BAP ended in 2015.

Judge Pappas was a founder of the Commercial Law and Bankruptcy Section of the Idaho State Bar, is a Fellow in the American College of Bankruptcy, is a former member of the governing board of the National Conference of Bankruptcy Judges, and is a former editor of the American Bankruptcy Law Journal. He is an adjunct instructor at the University of Idaho College of Law in Boise, and speaks, writes and teaches extensively about bankruptcy law.

INTERVIEW WITH JIM D. PAPPAS, MAY 8, 2017

Question: Judge, your retirement announcement says, "Chief Judge Myers and I are hopeful that the Ninth Circuit will decide to fill the vacancy created by my retirement."

Judge Pappas: Correct.

Question: And then subsequently, the Circuit published its notice giving attorneys the opportunity to apply to apply for the position. Does that mean the Circuit has, in fact, made that decision?

Judge Pappas: That's correct. And it was just a question of timing. I had to give one year's notice. The filling of positions in this environment is a matter that both the Ninth Circuit Judicial Council and the Judicial Conference Committee on the bankruptcy system both look at every time a vacancy occurs to ensure that we're not putting judges into positions where the filings don't justify it. That's relatively new but, as a result, I was required to give my notice in advance of them doing that. And, in effect, my notice started the process of their review but like almost everything that the Ninth Circuit does when it comes to bankruptcy judges, that consideration was made promptly and we were told, I guess it was, last week that both the Circuit Council and the Judicial Conference Committee have now approved filling the position.

That then caused the personnel folks at the Ninth Circuit to get busy. Let me tell you, they've done this process a lot. They're very, very good at it and so the time table is something that they can cope with really well. So, we were happy to see that happen promptly because it's about a ten-month window from start to finish or at least that's what they like to allow themselves. So, we're pleased the decision was made as quick as it was and we're right on schedule.

Question: Your announcement also says that, "Chief Judge Myers and I will be requesting that the Ninth Circuit Judicial Council authorize me to serve as a part-time recalled Bankruptcy Judge on an as-needed basis." Has that determination been made yet?

Judge Pappas: It's been made.

Question: Oh, good. Well, congratulations.

Judge Pappas: I've been approved. I chuckle about all of this because, to the extent that folks have this notion that the government in general works slowly and that it's cumbersome and inefficient, they don't know much about the federal judiciary. The federal judiciary, in general the Ninth Circuit, when it comes to matters like this in particular, is like a well-oiled machine. And, so we're just tickled with the efficient way in which all of that's been handled.

Question: Is that due to any particular persons?

Judge Pappas: Yes. We've got an incredibly professional and effective staff working at the Ninth Circuit in San Francisco. The personnel department, the circuit executive, all those folks give priority to questions like this, and so they're very good at getting you prompt answers.

Question: Is it always the case that an outgoing Bankruptcy Judge does not participate in the selection process for the next one? Or, why are you not participating in that process?

Judge Pappas: Well, two reasons. Number one, if I were eligible to do so, I would decline to do so. I don't really think that I need a place at that table. I don't need to be part of that conversation. Secondly, the Ninth Circuit regulations basically specify the folks who make up the local merit screening panel. They include the Chief District Judge, the Chief Bankruptcy Judge, the President of the State Bar or his or her designee, the Dean of the local law school or his or her designee, and I think there's one other that I'm forgetting. I would have to check the regs, but the point is the regulations generically specify who should be on that local committee. Now, of course, the regs also require that the sitting Bankruptcy Judges be consulted about the applicants and that, to me, is more than enough opportunity to know what's going on in that process.

The kinds of folks we're going to have on that committee are just going to be top notch and, so I've got complete confidence that's going to be a thoughtful, excellent decision. I've got similar confidence in the applicant pool. How could there be anything other than a good result? That's a luxury for a judge to be able to say that the odds are slim indeed that there would be either any problems with the process or with the quality of the selections.

Question: What do you remember about the selection process [when you were chosen] that you're comfortable sharing?

Judge Pappas: I remember a lot about it. I'll make a couple of comments. First of all, I want to say that watching the quality of the folks being appointed Bankruptcy Judges throughout the country over the last 25 plus years and, in particular, the last five years, I'm thankful I got appointed when I did because I doubt very much I would be in the running for this vacancy. The competition is so keen for these positions that the qualifications of the applicants are just sterling. The second thing I appreciate is that I didn't have to fill out the same application that people do now. I think there's a link to the application in the announcement there that you've got. The last time I looked, it's 25 pages, plus you add to that a lot of supplemental information. So it's kind of a daunting endeavor just to fill out the application. It's very comprehensive. The local screening panels do an extremely comprehensive review of the applicants. They do a lot of vetting. They do a lot of inquiry. They do a lot of homework and research. They then conduct interviews of those who they think are most qualified and I can remember my interviews. The word "inquisition" comes to mind. It was a very, very thoughtful and thorough kind of interview about not only judicial qualities but I can remember as part of that process I had circuit judges asking me substantive questions about bankruptcy law—in effect kind of testing your knowledge of bankruptcy law. Which is interesting because this kind of position frequently attracts applicants from outside of the bankruptcy practice. That's what I remember.

Question: Did that interview take place in Boise or Pocatello?

Judge Pappas: It took place in Boise right next door in our conference room. When I left that meeting, I felt like I had had an opportunity to tell them everything I wanted to tell them about me, and they had had an opportunity to ask me everything they wanted to ask me. So, in other words, it's not one of those summary kinds of interviews that sometimes people go through in connection with employment opportunities and walk out of thinking, well, I wish I would have told them this and I wonder why they didn't ask that. I can remember when I left there thinking, nope, there's nothing I would have added that wasn't either in the application or we talked about and, nope, there's nothing that I thought they would ask that they didn't ask.

Question: Now, I assume, based on your suggestions, that you also participated as the Chief Bankruptcy Judge when Judge Myers was selected, is that correct?

Judge Pappas: Correct. As I recall, I chaired the committee, yes.

Question: So you were on the other side of the table.

Judge Pappas: Absolutely.

Question: What insights did that give you? What additional insights, if any, about the process?

Judge Pappas: This is not just a duty or an obligation that the committee is fulfilling. They feel strong responsibilities to the district, to the court, to the bar, to do as good a job as they can do. I mean, it's a 14-year term, and it's an important decision they're making. And, they're very, very engaged. They're not spectators at all in the process. All of them basically get involved in knowing all of the information, and from the questioning—I can recall both my own and the one process we went through with filling Judge Myers' position—multiple members of the Committee had obviously done homework on me as was the case on the Committee with Chief Judge Myers, too. So, it wasn't simply one person being assigned one applicant; you had several members of the Committee involved in talking to all sorts of people. I can recall when I was appointed, not only did they talk to the folks who are listed as references, they asked the references who else the Committee should be talking to about me and then talked to them. By listing someone as a reference then you're not only counting on them to say good things about you but you're hoping they'll also refer the Committee to other folks who will say good things about you, but there's no guarantee there. So, it's a really interesting process. One of the questions I recall they used to ask is for you to list five or six of the most important cases you've been involved in. Invariably, they talk to opposing counsel in those cases and frequently they talk to other folks that opposing counsel recommended. They go at least one level further in their inquiries than you expect, based on the information in the application, and that's just the first level. They then promptly get together and make a recommendation to the Court Council Committee which consists of three Circuit Judges, the Chief of the Conference of Chief Bankruptcy Judges--in other words, a representative of the Bankruptcy Judges--and any judge in the Circuit who is also serving on the National

Bankruptcy Committee. That's important here because Judge Smith serves on the National Bankruptcy Committee, so, it'll be four Circuit Judges and a Bankruptcy Judge that do the second level of review and interviews at the Circuit level. And those vary.

I had an opportunity to sit on five or six of those committees when I was Chief of the Bankruptcy Judges and they have the recommendation of the local merit screening panel, which may or may not lead them to do additional investigation at the Circuit level. It just depends upon how the Court Council Committee feels about the recommendation and the depth of inquiry that's been made at the local level. In other words, when you go from Idaho to San Francisco, there may be additional research and homework that gets done. So, they then make a recommendation to the Ninth Circuit Court of Appeals and, of course, bankruptcy judgeship decisions are made by the active judges on the Ninth Circuit. The last time I looked, there were about 28 of them, but I don't know much about that.

Question: Well, you've maneuvered it successfully, at least. It might be a black box but . . .

Judge Pappas: I don't know that we need to know much about it. A bunch of folks get up in the morning, making decisions, and they don't quit making decisions until they go to sleep at night. It's at that point when they pick someone. Then, the files are turned over to the IRS, the FBI, and all the background checks get done. So you're only conditionally approved. It takes usually in the area of a couple to three months for all that background information to be developed. Then the Chief [Circuit] Judge gets another report based on those investigations to make sure there's nothing discovered that may be a problem before the Chief [Circuit] Judge signs off on the appointment. That's why the folks who end up in the Ninth Circuit have been examined pretty microscopically.

Question: Is it fair to say there are a lot less politics involved than there would be for the appointment of a district court judge?

Judge Pappas: My cautious response is I'm apolitical so I don't know a whole lot about what goes on in the appointment of Article III Judges, other than what I read in the paper. But, I can tell you that the process of picking Bankruptcy Judges is not political. In fact, in my experience, I've never seen a Bankruptcy Judge appointment where you can say it was more because of connections than qualifications.

Question: That's always been my impression.

Judge Pappas: Absolutely. By the way, I'm also not a bomb thrower when it comes to the Constitution. I love the Constitution. But this sure seems to me to be an excellent way to pick Federal judges.

Question: Yes, it does. Absolutely.

Judge Pappas: You know, I'm not suggesting we amend the Constitution or anything but this system is efficient and effective, and in this context that's something we really need that we haven't enjoyed on the Article III side. So, when my term ends, there will be someone in waiting to hand the keys to. I guarantee it.

Question: Something you said really interests me and that's the concept of someone who is not a full-time bankruptcy attorney being a bankruptcy judge. I mean, what attributes do you think a non-bankruptcy lawyer could bring to the table to help his or her candidacy?

Judge Pappas: First of all, they're going to have to be a superlative lawyer because it might sound unfair. If you're going to make the selection of a bankruptcy judge from a pool of folks who include both what I'll call the local experts and those who don't have background or experience in that area of the law, I think you can expect the non-bankruptcy lawyer is probably going to have superior strength in the other attributes that are important for being a good judge. So, they're going to have to be a really good lawyer in whatever area of the law that they do practice. Plus they're going to have to be very strong in the other judicial attributes. Having said that, over the years, I would estimate we've seen non-bankruptcy types appointed now about 10 percent of the time, maybe 15 percent of the time. And almost all of them have business-related and/or courtroom-related practices, so they're either strong analytically or they've spent their career in courtrooms. Both of which are pretty important for this position. So, they also bring a completely fresh and perhaps healthy new perspective to interpreting the Bankruptcy Code. We get so engrained in the work that sometimes it's hard for us to take a fresh look at something. Someone who comes in from outside the practice is effectively taking a fresh look at everything, and I guess sometimes that could be seen as an opportunity. We've had some real success stories across the country. We've had some other folks getting into the position who maybe didn't understand what it was all about or what the daily work was like, and they have been less effective and maybe not quite as happy as they could have been.

Among the Idaho's bankruptcy judges over the years, I would count Bud Hagan as having had a significant bankruptcy background but he was not exclusively a bankruptcy lawyer. And then, of course, next in line was Ed Lodge, who had no bankruptcy experience. We have a small group that have been on the bankruptcy bench but, of course, Chief Judge Myers and I did come from bankruptcy practices, so we've had examples of each here in our own district. I don't think Judge Lodge would get too upset if I suggested that he was ready to go to the District Court when the opportunity came up. It was something very different for him. If you come from a district court practice, I'm sure that's a big change.

Question: It occurred to me that being a bankruptcy judge in the Ninth Circuit is a really unique and wonderful opportunity in that there's the potential of serving as a trial court judge and an appellate judge at the same time and, in fact, you've done that.

Judge Pappas: As did Judge Hagan, by the way.

Question: It just seems like there aren't that many judges who get to do that.

Judge Pappas: It is an incredible opportunity.

Question: What did you draw from that experience?

Judge Pappas: Let me tell you before answering your question, it's an incredible opportunity. You only get it in selected circuits – there's only five BAPS in the country. And in the Ninth Circuit, there's 75 or so Bankruptcy Judges, six members on the panel. So, not all the Bankruptcy Judges—not even all those who want the opportunity to serve on the BAP—get that opportunity. So it is, indeed, a rare and treasured opportunity to get to do that. I sat pro tem five or six times before I went on the panel and I always came away with a couple of thoughts. Number one, it gives you a profound confidence in the quality of the Circuit's bankruptcy judges. They're doing a really good job. When you consider, especially I was on the BAP in 2005 and 2015 during the glut. The quality of decision making during this incredibly high-volume time for those judges in many districts who were just slammed is just astounding. A lot of decisions were made without the luxury of a lot of deliberation, research and thinking, and they were still almost uniformly good quality decisions. So, one of the things I drew from the experience is a high degree of confidence in the Ninth Circuit's Bankruptcy Courts. I think they're just excellent.

I also learned from the experience how to hopefully be a better trial judge because it's one thing to be in the middle of the proceeding. It's another thing to be able to sit back and thoughtfully and at length review what's going on, think about how things could have been handled differently or better, and, hopefully, take those as lessons back into my own cases.

It was also an incredible experience to do two things. Number one, to work with a group of judges who were simply the best bankruptcy judges in America and clearly some of the best bankruptcy scholars in America. They were always smarter than I was, and I like to work with people who are smarter than I am because I learn a lot from them.

So, there was a profound, positive aspect in that. The other thing was the chance, on occasion, when you're dealing with issues of first impression to be part of the conversation, both at the Ninth Circuit level and nationally, when it comes to new and exciting issues of bankruptcy law. One of the things I've always loved about bankruptcy law—I don't know if you share this—but I've been doing it a long, long time now. But, it still frequently surprises me to be confronted with issues that we've really never thought about before and to get a chance for, if not original thinking, kind of leading edge thinking, and that's just so invigorating.

Question: Do you – or does someone else – keep track of to what extent the Ninth Circuit Court of Appeals affirms decisions of the Bankruptcy Appellate Panel?

Judge Pappas: Religiously.

Question: I couldn't find that on the internet today. To the extent I did find anything, it said that as of five or six years ago the rate of affirmance by the Court of Appeals of BAP decisions was incredibly high. Like 90 percent or something.

Judge Pappas:

I could give you some rough figures. That are basically persisted certainly since my exposure to the BAP so that would have been, basically, since 2005 and later because that information is developed by the BAP on an annual basis for the panel members and then frequently shared with all the other bankruptcy judges. You're talking about secondary appeals. First of all, let me back up. The BAP affirms bankruptcy courts about 85 percent of the time. What the BAP can't track is the affirmance rate of appeals that go to district courts in the Ninth Circuit. So I don't know how that compares. But let's start from there. The BAP affirms bankruptcy courts about 85 percent of the time. On average, between only 10 to 15 percent of all decisions made by the BAP are appealed to the Ninth Circuit. It's usually around 12 percent. It varies from year to year, but it's consistently 10 to 15 percent. There are usually approximately twice that many cases appealed from district courts to the Ninth Circuit originating from bankruptcy court. So, in the typical year you'll have 12 to 12 and a 1/2 percent of the BAP's decisions going to the Ninth Circuit and somewhere in the area of 25 percent of the District Court's decisions going to the Ninth Circuit. And "why?" is a question that's better asked of the lawyers, the litigants, than to judges, but the BAP gets affirmed by the circuit, usually in the neighborhood of 90 percent. The district judges, 75 percent plus, so less but still a high rate.

The one statistic that I can't quote you but it's one that I always found the most interesting is how often the Ninth Circuit ends up siding with the Bankruptcy Court. They'll affirm the BAP but you've got to keep in mind that the BAP most of the time is affirming the Bankruptcy Judge. The District Judges, not so much. The Ninth Circuit will frequently prefer the decision of the Bankruptcy Court to the District Court, but there're a ton of variables in all of that. But that was always very interesting to look at. So, one of the reasons that our Ninth Circuit Court of Appeals collectively and institutionally is such a big fan of the Ninth Circuit BAP is that BAP reduces its workload. Fewer appeals go up from the BAP to the Ninth Circuit than from the district courts. And, so, almost all the district judges in the Ninth Circuit you talk to will tell us we'd have preferred the litigant take their appeals to the BAP. But, of course, that's up to the litigants, so.

Question:

I think that when attorneys think of going to the bench they think often of the fact that they won't have to answer to the court anymore cause they'll be the court and they won't have to answer to clients anymore because they won't have any clients. Are you comfortable identifying for the people who might be interested in your chair what kind of continued review and evaluation bankruptcy judges face, if any?

Judge Pappas:

Well, I hope I didn't give you the wrong impression. The appellate process is the formal review. Beyond that, it's up to the individual bankruptcy judges how much evaluation and input feedback that they get about their performance and so I would suggest that there are no institutional kinds of requirements that judges don't stand for evaluation. Now, there's a robust process for reviewing complaints in the federal courts in general and in the Ninth Circuit in particular. So, if a party or a lawyer or someone has a complaint about a judge's performance and files a complaint, those get filed with the

circuit. I happen to know those are handled individually and seriously by the Circuit staff and supervised by the Chief Judge of the Circuit so you really don't worry about others reviewing your work other than as a matter of the personal pride that you have in doing a good job.

Question: Based on your relationships with Judge Wedoff or Judge Zive, it seems like you really enjoy collegiality among other bankruptcy judges.

Judge Pappas: Oh, my. Yes, I do.

Question: What are the mechanisms or processes by which you are able to enjoy that because, obviously, most of the time you're in your courtroom.

Judge Pappas: You can talk to judges other than bankruptcy judges if you'd like, but I'll go so far as suggesting to you I think the bankruptcy judges in America are probably some of the most collegial judges in the American system. And I think the Ninth Circuit's bankruptcy judges are some of the most collegial bankruptcy judges in America. It works like this: as soon as you're selected, as soon as you're appointed, then you're enrolled in what we call Baby Judges' School which is an educational process conducted by the Federal Judicial Center to provide training to newly appointed judges and you're part of a class. And you get through a couple of different sessions of Baby Judges' School. They're a week or ten-day sessions where you all get together either in D.C. or some other location together to get the instruction, and you get really close with those folks in your Baby Judges' class. You start out right away. Right away with a group of new friends and, traditionally, and almost without exception, all those classmates kind of stay in touch with each other and will be fast friends throughout your judicial career. In the Circuit, especially, when a new judge is appointed, that judge can expect colleagues from all around the Circuit will be reaching out, wanting to get to know them, offering to help them, being there to serve as a mentor, to do whatever and help in any way that we can, okay? You get together with your Circuit bankruptcy judges every year at least once at the Ninth Circuit Conference where you have breakout activities that are only the bankruptcy judges. And I can tell you the bankruptcy judges get to be good friends not only in those programs but they socialize, spouses get acquainted, that's terrific.

You have annual training from the Federal Judicial Center which will either be regional or national. So you also then get together for your annual educational seminar. And then we have an organization called the National Conference of Bankruptcy Judges. By definition, the core membership are sitting Bankruptcy Judges in America and it is the most collegial group that you'll ever encounter. In the Ninth Circuit the NCBJ folks are always communicating and corresponding; we have a lot of contacts with each other. I would like to say that it's a lonely job and profession but we work really hard to help each other out and to stay in touch and be collegial. It's a hoot. They're good people. And you get to work with them on a lot of projects and, so, every bankruptcy judge in the Ninth Circuit I would suggest has an opportunity to meet and probably become friends with and probably does become friends with almost all of the other Ninth Circuit Bankruptcy

Judges. And then they have at least one opportunity per year, if not two or three, to meet and interact with other bankruptcy judges from other places in the country. They're friends and they're all bright, smart people. If you need some help on something, they're there to give it to you. You won't find a group that understands what you're going through any better than they do. They're really good folks.

Question:

Judge Pappas, it seems that one nice thing about being a bankruptcy judge in Idaho is that you're in the same federal courthouse as the Article III judges and the Magistrate Judges. We have an integrated Clerk's Office, and that's just not the case I think for most other bankruptcy judges.

Judge Pappas:

One of the two or three best things about this job would be the relationship among Idaho's federal judges. I'm here to tell you that I don't think it is the same in all places. We benefit from the fact that most of the folks that I've served as federal judges I knew and worked with them and was actually friends with most of them before coming to the job and, since then, it's been an incredible family atmosphere. I can honestly tell you, we have precious, few opportunities to regard each other any differently depending upon whether there's an Article I or an Article III after your names. It's kind of like the Idaho Bar. That's our background. That's the environment from where we came and, so, a lot of that has just come right with us onto the bench.

We govern ourselves here a little differently than they do most places in America, too. We sit as a board of judges in making any important decisions. So, as opposed to our Chief District Judge or our Chief Bankruptcy Judge making the important decisions, we get input from the others, and we make almost all of our decisions by consensus, collectively. And you can do that when there's this small number.

I can truly say the bankruptcy judges, and the magistrate judges, but the bankruptcy judges in particular, have gotten more of our fair share of resources. We've got equivalent space in facilities, we've got all the things that are important to doing the job without regard to the fact that we don't have a lifetime appointment, so that's a pleasure. That'll be something that the new judge really enjoys.

Question:

You said that was one of your three favorite things. Do you have the two other favorite things in mind about your job?

Judge Pappas:

The staff and the Bar.

The staff is incredibly talented, engaged and energetic, and committed. This impression that the public gets about government employees is simply 180 degrees wrong when it comes to employees with the federal courts in Idaho. They are some of the smartest people that you'll encounter. Extremely high qualified, lots and lots of training. And they work really, really hard. And they take a lot of pride in what they do and, so in my position, having that kind of support is just wonderful. With all the help we get from staff, together with the other resources like facilities, automation, technology, how can you not do your best? It's just wonderful to not be constrained, to be able to do your best.

And then the Bar. I think the court's relationship with the Bar and the Bar members' relationship with one another is such a positive factor here. We spend so little of our time worrying about the way our lawyers treat one another and how they treat clients and the public and we're so impressed and proud of the amount of time they spend committed not only to representing their clients' interests but promoting their profession and professionalism. That's also something that's not the same everywhere, being on the back, giving an opportunity to be exposed to 13 districts in the Ninth Circuit, 13 district bar associations. And there is a different prevailing attitude in some of those places as compared to places like Idaho. It's unfortunate, but it's also a reality. The Idaho lawyers care for their clients and they care for one another. And that's such a luxury and such a positive thing for judges to be able to work in that environment. Now, that's not to say they don't work very zealously, very enthusiastically about looking out for their clients and prevailing. They do. But they can do that in an atmosphere that's civil and healthy and that just makes everyone's jobs, collectively, a lot easier. So those are the three good things about the job. Do you want to hear the bad things?

Question: Sure. That'd be great.

Judge Pappas: I'll save you the trouble. Because those are also easy to identify. Are you ready?

Question: Yes.

Judge Pappas: Number one. The travel.

Question: Yes.

Judge Pappas: Number two. The travel. The travel that the federal judges in Idaho engage in is challenging. My wife and I were talking about it. We got the calculator out, made some assumptions, looked back over—my wife keeps a journal—and came up with a rough estimate that she and I have driven 450,000 miles just going between Pocatello and Boise.

During my tenure. And that's just the intrastate travel that I do.

In addition to that, there's all of the out-of-state and out-of-district travel and that varies depending upon what your responsibilities are at any given point in time but that's usually 10 to 15 additional trips a year outside the district. So, it's very hard both logistically and physically to get all that done while still paying as much attention as you'd like your other responsibilities, including your family.

We have a little bit different attitude here in this district and you'll find a lot of them. We get out to where the people live, where the lawyers practice, as opposed to suggesting everyone come to see us. That's more the norm in the larger metropolitan districts and we continue to be committed to that. But it comes at a cost and the cost is the travel because it's challenging when you consider our geography and our weather; it's tough.

On the bankruptcy side—which is probably what I ought to be talking about here and not commenting on Article III issues—I'm convinced that the decisions made by

Congress are the primary reason for either increases or decreases in the number of bankruptcy cases we have. I was reading the study that came out earlier this week which confirmed an earlier study estimating that the decrease in bankruptcy cases that we've been experiencing over the last few years is directly traceable to the amount of health insurance that is available to Americans and, therefore, the decision by Congress to take a different route there can be expected to impact the number of bankruptcy cases being filed if you were to project things going forward. That sort of thing.

The 2005 amendments. I mean, wasn't that interesting? This incredible glut in cases up to the effective day and then this precipitous decline thereafter for a period of about two years before the Bar figured out how to navigate the new rules, at which time the cases went back up again. I'm not embarrassed to say that I think in this environment that we have in Washington, D.C., with Congress and the President, I am supremely confident that they will be making some decisions that will turn around this decrease and filings quite promptly on both the business and consumer side. What you're likely to see as a result of the inability of Congress and the President to get together on a game plan may manifest itself in a significant increase in the number of bankruptcy cases. And the bankruptcy courts will be ready and able and willing to take them as they come. Congress!

Question: After a new judge is appointed, is the Chief Bankruptcy Judge here going to retain his same geographical responsibilities?

Judge Pappas: Are you talking about case assignment?

Question: Yes.

Judge Pappas: That's totally up to the discretion of the Chief Bankruptcy Judge. So that's a good way of me telling you I have no idea.

Question: What are the attributes of an effective judge that might surprise practitioners or they might not be fully cognizant of? Because I think, obviously, part of what we do all the time is to evaluate what the judge is doing. That's part of the fun of being a lawyer, but are there things that you've learned or important attributes the practitioners might not fully understand?

Judge Pappas: Yes and this is especially true in the bankruptcy world. And I know your question is directed at judges as opposed to lawyers but I'll kind of turn it around on you. You, the Bar, the practicing Bar, think we know a lot more than we do. So, we especially appreciate those cases where we get more rather than less information than we need to do our jobs. What I'm talking about is background context, in one sense, but, more importantly, just the fundamental factual record that we need to make the kinds of legal decisions we are called upon to make. Frequently, the lawyers who work with these cases every single day, work with one another and are intimately familiar with them on this fast-track approach that we take in the bankruptcy court, that doesn't always encourage the development of a comprehensive record. We end up with the assignment

of trying to decide cases without enough information. And, so, one response to your question would be, if you're going to be a judge, a bankruptcy judge, you're probably going to have to get used to deciding cases without all of the information and facts that you would ideally like to have. And, so, you have to develop an approach to try and deal with the holes. Sometimes we deal with the holes via the burden of proof. If we're missing facts that are essential for a party to prove a claim, then we deal with a hole in the record by ruling against the party bearing the burden of proof.

Sometimes we deal with it by making alternative assumptions and kind of tell you that if the facts are one thing, then here's the answer. If it would prove that we're incorrect and the facts are something else, then there would be a different answer. So it's in the way we write and structure our decisions. But that would be one thing in coming to the bankruptcy bench: you need someone who is going to be thoughtful and careful and always cognizant of encouraging that we get enough information because the lawyers always know more about cases than the judges do and God bless them, they're trying to frequently get the job done in the least amount of time because it costs their clients money to do otherwise. And so sometimes the [evidentiary] records aren't as good as they might be. So you have to be resourceful and creative sometimes in dealing with [evidentiary] records.

Someone in this job has to have a pretty good sense of when it's time to listen and when it's time to move parties along. I don't want to sound schizo when I tell you that one of the worst things that can happen sometimes is if we have parties who are intent on taking too much time. And so you've got to be able to encourage parties to better focus and move things a little more directly.

By the same token, there are sometimes that what you really need to do is just sit back and listen carefully. If you're talking about patience, I guess that's one version of it. But I think it's a prerequisite that you're going to spend a lot of time listening to things that don't end up being as important as you might think they could be at the time you're listening to them.

You've got to listen anyway.

Unlike lawyers, if you want to be a judge, you've got to commit to being thorough. I can remember as a lawyer, I was always constrained by the amount of time I had and the amount of money my client had to pay me. And my challenge was to do as good a job as I could, given constraints on time and budget. As a judge, our chambers' motto, for example, is if we have to choose between getting the decision out today and doing a better job on it, we'll always elect to do a better job, another rewrite, than get it out today. So that requires a shift in your focus and your attitude.

I think, frankly, it's refreshing to be in that position. It's a good thing, in other words. But you've got to get used to it. Sometimes you just can't do things in a haphazard manner and you've got to catch yourself and be prepared to take some more time and think

it through, do some more research, spend another half hour arguing with a law clerk about it, that sort of thing.

I don't know a lot of other things I could tell you. I could repeat the same things that you would hear from most judges. But, it's also really important that we understand how difficult it is to be a lawyer. I like to tell people who will listen that it's one of the toughest jobs I know of. And I see it every single day. And so, there are lots of times when it would be pretty easy to get upset or impatient that I try to tell myself it's a hard job, and give the lawyer a break in the sense of not making it about the lawyer. It's about how hard a job it is. Because a lot of times—I'm not telling you anything you don't know—you have neither the facts nor the law. But that doesn't mean you don't have a role to play. A pretty important one. And, so, judges need to be willing to let lawyers do their thing.

Question:

How about one more question. What judges do you feel like you've learned the most from that you've incorporated into your practice on the bench?

Judge Pappas:

Well certainly any other bankruptcy judges. Judge Hagan taught me so many times just by watching him and being around him and being able to visit with him, how important it was for a judge to be a nice person. The public wants their judges to be nice people, and he was as nice as you could ever meet. So I think that's important.

I think a lot of Lynn Winmill. He is bright and works so very hard. And, of course, Chief Judge Myers is so smart, he makes my head ache. It's a matter of intelligence. I've been around a few people of that caliber. He falls into that caliber. I can name a few others, for example, on the BAP, I worked years with both Chris Klein and Bruce Markell, both of whom are just top quality legal scholars. They cannot only tell you the reasons for their decision, of course, they will tell you in outline form with citations for all the sub-points. And they're almost always on target. The Chief is a lot like that. He is wondrously insightful. He can always take the analysis to another level. If you combine that with good intuition and good judgment, you're a force to be reckoned with. And that's the goal you strive for. You've got to be smart, you've got to be intelligent, you've got to be wise, you've got to be timely. If you can do those things, you probably can handle the job. Any one of them could go wrong on any given day. We've had a great group around here.

I have adjoining chambers in Pocatello with Randy Smith. And there is a guy that ought to be a role model for all of us. He not only is a rock solid judge, he is a people person. He has incredible people skills, which, believe it or not for a judge, are pretty important, especially in his position where he has to rule by committee all the time. But even as trial judges, those people skills are important. And he is thoughtful to a fault. He'll show up in my chambers, he'll put his arm around my shoulder, and he'll say, eat this cinnamon roll.

But those are truly giants.

