

BANKRUPTCY PRACTICE IN NEW MEXICO

Hon. Robert H. Jacobvitz¹

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Referees

Twelve referees in bankruptcy served the District of New Mexico, starting in 1922, ten years after New Mexico became the 47th state. Of those twelve, three served for twenty years or more.⁴ Ernest A. Polansky served as bankruptcy referee in Albuquerque from 1926 to 1948. John A. Shettler served in Silver City from 1926 to 1946. Jethro S. Vaught, Jr., was appointed referee on August 1, 1950, and served a total of 28 years, through the 1973 application of the title of bankruptcy judge to referees, until his death on September 23, 1978, just weeks before the present Bankruptcy Code was enacted, and the position of referee was eliminated from American bankruptcy jurisprudence.

Judges

New Mexico has been a two-judge district since 1979, when (Oreste) Louis Puccini, Jr. joined Robert A. (Joe) Johnson, each as a half-time bankruptcy judge. Since then, the following persons have served as full-time bankruptcy judges for the District of New Mexico:

Mark B. McFeeley	1981 – 2009 (part time 1981-83)
Stewart Rose III	1982 - 1998
James S. Starzynski	1998 - 2012
Robert H. Jacobvitz	2009 - present

1 United States Bankruptcy Judge for the District of New Mexico

2 Law Clerk to the Hon. Robert H. Jacobvitz

3 Former Chief Deputy Court Clerk, District of New Mexico (1/5/98 – 11/13/11)

4 The referees, their years of appointment, and assigned location, if known,* are:

D.A. Paddock	1922	Clayton, NM
Ernest A. Polansky	1926	Albuquerque, NM
Robert A. Morrow	1926	Raton, NM
John A. Shettler	1926	Silver City, NM
Willis N. Birdsall	1927	
Charles Fahy	1928	Santa Fe, NM
James M. H. Cullender	1929	Roswell, NM
Herbert K. Greer	1933	
O.E. Little	1936	
Lemuel C. White	1941	
Donald B. Moses	1948	
Jethro S. Vaught, Jr.	1950	Albuquerque, NM

*Source: Journal of the National Association of Referees in Bankruptcy, October 1930.

Jethro Sparkman Vaught, Jr.: Appointed on September 1, 1950, Judge Vaught, a 1931 A. B. graduate of the University of New Mexico, received his LL.B. degree from George Washington Law School in 1941. He served as a clerk in the United States Senate from 1937 to 1941 and also served as a part-time Commissioner for the United States District Court from 1942 to 1945. Married to the former Dorothy Jane Ashton, Judge Vaught had two children, Richard and Jane. He passed away in 1978.

Long-time practitioners remember that Judge Vaught never wore robes. Judge Puccini's best recollection is that Jethro Vaught did not own a robe. Nevertheless, Paul Fish, who began practicing bankruptcy law in New Mexico in 1974, recalls that referee Jethro Vaught did not need a robe. Referee or not, practitioners' perception of Vaught was that he was a judge. Attorneys so addressed him. Presenting cases before Jethro Vaught required formal presentation of opening statements, witnesses, and exhibits. Judge Vaught often made his ruling at the end of a hearing.

Robert A. (Joe) Johnson: Appointed on October 1, 1978, a year before the effective date of the Bankruptcy Code, Judge Johnson was responsible for clearing out the pending cases filed under the Bankruptcy Act and being part of the group of judges across the country who were blazing new trails by interpreting the new law. A graduate of Yale University who served as a Captain in the United States Army, Judge Johnson went on to graduate from Harvard Law School. Judge Johnson practiced with the firm of Atwood & Malone (one of the founding members of which became general counsel to General Motors Corporation) before being appointed to the bench.

Judge Johnson instituted a number of changes in bankruptcy practice. He insisted on taking testimony only in the courtroom. He conducted three jury trials, including the first in New Mexico bankruptcy history. Judge Johnson remembers there being a learning curve for all involved, having real trials, and he was serious from the outset about enforcing the rules of evidence. Although he was on the bench for only a short time (due to the then relatively low pay for bankruptcy judges), his tenure was marked by enthusiasm, sparkling wit, deep intelligence, an intense desire to get it right, and a genuine warmth that radiated to welcome and embrace everyone, from litigants to clerk's office employees.

Judge Johnson had a sense of humor, which was apparent even when on the bench. For instance, at a hearing before Judge Johnson shortly after his appointment, a creditor presented the court with a judgment bearing an 18% interest rate. Judge Johnson observed that such a high interest rate sounded unconscionable. However, upon learning that the interest rate appeared in a judgment entered by Federal District Judge Bratton, Judge Johnson found the interest rate "conscionable as a matter of law." On another occasion, in ruling on an objection to the admission of a certified financing statement on grounds that such statements were "prejudicial,"

Judge Johnson observed, “heartfelt objection, but overruled.”

Judge Johnson described a trip to Las Cruces where he had a 1:30 p.m. docket after having been held over at a morning hearing in Albuquerque. He was driving about 90 miles an hour, trying to get to Las Cruces on time, when it occurred to him that court could not start without him. He later passed this on to Judge McFeeley explaining, “You may not be on time, but you will never be late; they hardly ever start without you.” In another case, a retrial was granted. Knowing his resignation would soon be effective, Judge Johnson concluded the dictation of the decision to his law clerk: “This case will have to be retried. Sorry, Stew [referring to Judge Rose, his successor].”

Judge Johnson resigned from the bench in 1981, joining the law firm of Rodey, Dickason, Sloan, Akin and Robb to return to the private practice that would enable him to fund his children’s college education. He later associated with Kemp, Smith, Duncan & Hammond, then Eastham, Johnson, Monnheimer & Jontz, and is now with Johnson & Nelson.

Judge Johnson is widely recognized by those old enough to remember his tenure on the bench as the embodiment of judging at its very best.

(Oreste) Louis Puccini, Jr.: Joining Judge Johnson on August 22, 1979, at the age of thirty-five, native New Mexican Judge Louis Puccini filled a half-time bankruptcy judge/referee position.⁵ A 1969 law graduate of the University of New Mexico and the recipient of a B.A. degree from UNM in 1966, Judge Puccini is an American Bankruptcy Institute-certified Business Bankruptcy Law specialist. Judge Puccini is, to date, the youngest bankruptcy judge to have been appointed in New Mexico.

Judge Puccini remembers hearing about an argument that his grandfather (who was a reporter for a New York City-based Italian-American newspaper) had with Giacomo Puccini (the Italian composer) at the Metropolitan Opera. Judge Puccini suggests it may have been due to a personality conflict between the two. He also noted that it appears that everyone in the United States whose name is Puccini claims somehow to be related to Giacomo. Judge Puccini resigned from the bench in August 1981 and returned to private practice.

Mark B. McFeeley: Judge McFeeley was appointed a part-time bankruptcy judge in 1981, to replace Judge Puccini when the Bankruptcy Reporter was on volume 11. This 1966 B.S. graduate of the Merchant Marine Academy attended the UNM School of Law where he was editor of the New Mexico Law Review, and a member of the Order of the Coif, and from which he graduated *cum laude*. He served as a law clerk to Tenth Circuit Judge Oliver Seth and then partnered up to practice law with fellow UNM Law graduate Randy Felker. This bankruptcy

5 Because the Bankruptcy Code did not become effective until November 1979, Judge Puccini spent the first few months of his tenure exercising the duties of bankruptcy referee.

judge position became New Mexico's first full-time bankruptcy judgeship on October 1, 1983.

In 1995, Judge McFeeley was instrumental in the formation of the Bankruptcy Appellate Panel for the Tenth Circuit, serving as its chief judge from its inception until his retirement in 2009. Judge McFeeley was inducted as a Fellow of the American College of Bankruptcy in 2004. A past president of the National Conference of Bankruptcy Judges who served on the Bankruptcy Judges Advisory Committee and the Bankruptcy Rules Committee of the Judicial Conference of the United States, he now serves as an Honorary Bankruptcy Judge of Chesapeake Bay, in perpetuity. Other markers on the chronicle of Judge McFeeley can be found in the transcript of his retirement ceremony at 419 Bankruptcy Reporter XXXI (yes, that's 408 volumes after his appointment to the bench!).

More than any other judge before him, Mark McFeeley gave the modern Bankruptcy Court for the District of New Mexico its form, practices, and character. His twenty-eight year tenure on the bench, coupled with the large number and variety of leading decisions he issued on a wide range of bankruptcy and state law questions, established him as an intellectual and organizing force for both the District of New Mexico and the entire nation.

Judge McFeeley's successor, Robert H. Jacobvitz, as part of the latter's investiture ceremony, praised Judge McFeeley for his wisdom, intellect, compassion, many good decisions, and for elevating the standard of practice in New Mexico. He also recognized Judge McFeeley's uncommon ability to identify and focus on essential issues, to make the complex simpler without over-simplifying, and to apply creativity and practical wisdom to solve problems.

Stewart Rose III: Judge Rose was appointed to the bench in 1982 and served with Judge McFeeley until Judge Rose's retirement in May of 1998. Judge Rose earned his undergraduate and law degrees from the University of New Mexico. He was fluent in both French and Spanish. From 1956 until 1961, he served as law clerk for bankruptcy referee Jethro Vaught. He then practiced with the firm of McNeany, Rose and Sholer in the areas of construction, quiet title, and contract law. While there he assisted with the Cebolleta Land Grant case, which involved meeting every week with affected residents in order to provide them full legal representation in court. From 1971 to 1982, he practiced with the firm of Clayburg, Ashby, Rose and Sholer. Described as a real gentleman, Judge Rose came to the court from the law firm of Clayburg, Ashby, Rose and Paskind. He had been partners with Philip Ashby, who had become a State District Judge, and, earlier, with Bill J. Sholer, who was a long-time bankruptcy trustee. Judge Rose was an original member of the Bankruptcy Appellate Panel for the Tenth Circuit. He received an Outstanding Judicial Service Award from the New Mexico State Bar Association in 1992.

Nineteen ninty-seven was a difficult year for Judge Rose. His wife, Jo Ann Dinsmoor Rose, and his mother, Betty Rose, died within a week of each other in January of that year. Then, in March, Judge Rose was in a horseback riding accident at a Socorro County, New

Mexico ranch which left him in a coma for two weeks. He recovered and returned to work, retiring on May 1, 1998. He served on a recall basis from then until December 31, 1998.

At his retirement ceremony,⁶ one of his former law clerks described the end of a week-long trial, where the attorneys requested that the Judge make oral findings of fact and conclusions of law. With only one word written on his legal pad, Judge Rose proceeded to take 45 minutes to recite every fact and every conclusion of law. His former clerk noted: “I was so impressed that Judge Rose knew the law that well and had listened so closely to all the arguments that . . . he could decide a case fairly without further deliberation.”

Judge Rose passed away in 2012. His obituary describes Judge Rose as having made “the most of this land and this life,” and as having fulfilled his role as bankruptcy judge “with his customary focus, intelligence, cigarettes, and positive outlook.”⁷

James S. Starzynski: Judge Starzynski graduated from Mount Angel Seminary College of Liberal Arts in 1968 and from Yale Law School in 1975. He practiced for many years with the Rodey Law Firm in Albuquerque and represented debtors, creditors, trustees, and other interested parties, having been certified in Business Bankruptcy Law by the American Bankruptcy Institute Board of Certification. He also was a speaker at numerous national, regional, and local continuing education seminars, and served on New Mexico state court and bankruptcy court rules committees. He was a panelist participating in the National Bankruptcy Commission’s hearings in 1997. Throughout his career as a practicing attorney, Judge Starzynski was an active volunteer in the area of children’s rights and legal services in Albuquerque.

The proud parent of world-class soccer players and a soccer coach and referee himself, Judge Starzynski joined the court on August 14, 1998, coming from the law firm of Francis & Starzynski. Judge Starzynski has participated in the work of the United States Agency for International Development in helping former Soviet bloc countries develop legal and financial structures for the transition to more market-oriented economies. He helped conduct training sessions in the Ukraine in 1999 on that nation's then-new reorganization law. Judge Starzynski and the United States Bankruptcy Court for the District of New Mexico have also been the official hosts in 2001, 2004, and 2008 of delegations of Russian judges of the *arbitrazh* courts, the commercial and bankruptcy courts of the Russian judicial system. The sponsor of the delegations' visits to New Mexico was the Congressionally-authorized Library of Congress Open World Program, administered by the American Councils for International Education. Unfortunately, under the recent leadership of President Putin, the Russian judicial reform process has been diminished insofar as it relates to adjudication of disputes concerning business,

⁶230 B.R. XLIII.

⁷ Albuquerque Journal. Sun, April 1, 2012.

commerce, property, and insolvency. In 2013, legislation eliminated the Supreme Arbitrazh Court, Russia's highest commercial court and the source of Russia's most progressive judicial reform.

Judge Starzynski is a firm believer in the benefits that come from the members of the judiciaries from all jurisdictions working together to better implement and improve the rule of law locally and internationally. He and his staff welcomed inquiries for cooperation and help from members of any other judiciary, including judges of the state and tribal courts in New Mexico. After retiring from the bench, Judge Starzynski continues to serve the community through *guardian ad litem* work.

Robert H. Jacobvitz: Robert Jacobvitz was appointed to the bankruptcy bench on August 10, 2009. A Phi Beta Kappa graduate of the University of Colorado at Boulder and the recipient of a J.D. from the University of Iowa College of Law, Judge Jacobvitz came to the court from the firm of Jacobvitz, Thuma, and Walker, P.C. Before his appointment to the bench, Judge Jacobvitz was a preeminent bankruptcy practitioner, primarily representing Chapter 11 debtors, secured creditors, and creditor committees. He also did a substantial amount of transactional work and commercial litigation. In 1985, he founded the New Mexico Bankruptcy Law Section's Annual Year in Review Seminar, which after more than thirty years is still the premier bankruptcy CLE in New Mexico, featuring both local and national speakers. Judge Jacobvitz shared his insights at the seminar on New Mexico's bankruptcy court opinions each year until his appointment to the bankruptcy bench. Judge Jacobvitz was New Mexico State Bar's first recipient of its CLE Sandia Award, the highest CLE award given by the State Bar for a lifetime commitment to continuing legal education. He was also the New Mexico Bankruptcy Law Section's first recipient of its Outstanding Lawyer Award who was still active in private practice and not a former bankruptcy judge.

Within three weeks of his appointment as a bankruptcy judge, Judge Jacobvitz published to his Chamber's web page the Top Twenty Reasons Why Orders Are Returned, and a series of practice guide papers designed not only to guide certain aspects of practice in his court but also to elevate the level of bankruptcy practice in New Mexico. Judges Jacobvitz and Thuma have continued the tradition in New Mexico bankruptcy court started by Judge McFeeley of issuing a significant number of reasoned opinions each year.

Judge Jacobvitz joined the Bankruptcy Appellate Panel of the Tenth Circuit in November 2012. He has been active in the National Conference of Bankruptcy Judges, having served as the Tenth Circuit representative on its Board of Governors, as Chair of its Technology Committee, and as an editor of the NCBJ *Conference News*. He also serves as NCBJ photographer at bankruptcy judge events. His chambers and hearing room are punctuated with some seventy framed 20 x30 photos of wildlife, architecture and landscapes.

At his investiture ceremony, Judge Jacobvitz's former partners described him as a serial

hobbyist and collector, one who joyfully engages in whatever is of interest to him, be it bankruptcy law, jazz, wine, bird watching, astronomy, flashlights, auto detailing, coffee, or photography. Judge Jacobvitz is a former president of the New Mexico Jazz Workshop and former moderator of an automobile detailing web forum. His former colleagues also reported comments of other lawyers, one of whom told them that he had learned from Judge Jacobvitz how to enjoy practicing law again. A former client added: “Now you can use your considerable knowledge and understanding of people to help many and not just the few who can hire you.”

David T. Thuma: Judge Thuma was sworn in as New Mexico’s seventh bankruptcy judge on August 14, 2012. He grew up in Indianapolis, Indiana. He received his undergraduate degree from the University of Chicago in 1980, and his law degree from Duke University in 1984. Judge Thuma practiced law in a large Indianapolis firm for five years before moving to New Mexico. He practiced law in New Mexico between 1989 and 2012, concentrating in bankruptcy and commercial litigation. He formed Jacobvitz, Thuma, and Walker, P.C. in 1993. Ironically, both Judge Jacobvitz and Judge Thuma were lawyers in The Poole Law Firm, which, after they left the firm, filed a voluntary petition for bankruptcy under the name PKR, Inc. *See* Case No. 7-93-13221. There is no indication that either Judge Jacobvitz or Judge Thuma was responsible for PKR, Inc.’s need for bankruptcy relief.

Judge Thuma has been active in the National Conference of Bankruptcy Judges, having served on its Finance Committee and Endowment for Education Committee. Judges Thuma and Jacobvitz present an annual seminar to the New Mexico bankruptcy bar. Judge Thuma created a skit format for the seminars to make them not only educational but reputedly entertaining. The skits have taken such forms as mock courtroom scenes, heated arguments between counsel, and mock chambers conversations between judge and law clerk. Through his creativity, Judge Thuma can devise an interesting skit for just about anything. On request, Judges Thuma and Jacobvitz repeated one of the seminars – on the rules of evidence – at a national seminar for assistant attorneys general.

Judge Thuma lives in Albuquerque. He is married to Rebecca Thuma. They have one daughter, Kate Thuma, born in 2003. In his free time Judge Thuma enjoys reading, bird watching, cars, and ferrying Kate from one activity to the next.

Visiting judges: A number of visiting judges made their mark on New Mexico bankruptcy practice. When Judge Vaught was sick for a long time in the late 1970s, Denver’s bankruptcy judges came down to help with the caseload. Among them were Judge John Moore (nka John C. Porfilio of the Tenth Circuit Court of Appeals) and Judge Glen E. Keller, Jr. Judge Keller prepared his own orders, saying, “I’m the only one who really knows what I want.” When Judge Keller left the bench to enjoy a very successful practice at the Denver firm of Davis Graham & Stubbs LLP, Judge Johnson took to calling him “the formerly Honorable Judge Keller.” Also helping out were Judges Jay Gueck (CO), David Cline (OK-W), and Robert

Morton (KS). Since the late '70s, bankruptcy judges from other districts, including Judge Tom R. Cornish (ED-OK), Judge Sarah A. Hall (WD-OK), and Judge Niles Jackson (WD-OK), have presided over a number of New Mexico bankruptcy cases, sitting by designation.

Practice ⁸

During the referee era, debtors were called “bankrupts.” Referees reviewed the debtor’s schedules and statements and examined the debtor at the creditors meetings, which the referees conducted. They traveled across the state to conduct creditors meetings in Clovis, Roswell, Silver City, Las Cruces, Santa Fe, and Farmington. There was no Bankruptcy Reporter with published opinions. The controlling law interpreting the Bankruptcy Act in New Mexico was judge/referee-made law that practitioners learned through experience. As a consequence, lawyers either knew what there was to know about the local interpretation and application of the bankruptcy law based on an accumulation of knowledge through experience, or they knew practically nothing, and there was no place to look up the controlling case law, except at the appellate level.

One of the last New Mexico pre-Bankruptcy Code cases was filed on behalf of Larry Brennan, who, in the late 1970s, operated a McDonald’s franchise in Farmington. While the fast food store generated significant income, Mr. Brennan managed to spend even more. Reportedly, there was great consternation in the franchisor’s headquarters in Chicago as a result of the filing because the filing suggested that there might be some limit to how much cash even a busy McDonald’s could throw off. This was also about the time that a San Diego man named Ronald McDonald openly declared that he was gay, a development regarded in Chicago’s franchise headquarters with some chagrin. The major legal issue in this case was whether under the Bankruptcy Act the debtor in possession could assume and assign the franchise agreement. Given the uncertainty surrounding the assignment of such agreements, the parties reached a settlement. Mr. Brennan’s McDonald’s franchise was sold to Chet Caldwell, who soon owned a chain of McDonald’s stores in New Mexico. Interestingly, the other major issue in the case was whether, if the debtor in possession were to keep the store, he would be required to upgrade the store with an innovation that McDonald’s was requiring of all its franchisees: a drive-up service window.

In the early days after the Bankruptcy Code’s effective date in November 1979, the practice of bankruptcy law in New Mexico remained somewhat unsophisticated and relatively informal. Off the record conferences between the bankruptcy judge and counsel were not uncommon. Some early practices today would be considered very unusual. For example, when a debtor filed a bankruptcy case, a creditor whose claim was secured by a mortgage on the debtor’s residence could file a motion for stay relief combined with a foreclosure action, and obtain a

⁸ The authors conducted interviews of various members of the bar and retired New Mexico bankruptcy judges to gather much of the anecdotal information included in this section.

foreclosure of the house within 30 days or so of the filing of the motion. Today, of course, creditors must return to state court to complete the judicial foreclosure process after obtaining relief from the automatic stay from the bankruptcy court.

Bankruptcy practice in New Mexico at this time continued to be predominated by a small group of lawyers with specialized experience. At one hearing before Judge Rose, a lawyer not familiar with bankruptcy law made the mistake of candidly informing the Court that he was not a bankruptcy practitioner and knew little about bankruptcy law. Before he could proceed any further with his argument, Judge Rose held his hand up and abruptly told the lawyer, “Stop! You are about to commit malpractice. I will adjourn this hearing right now so your client can find and retain an attorney who *does* know something about bankruptcy law.”

Another development that occurred over time, but was advanced by the passage of the Bankruptcy Code, was the changing roles of bankruptcy and district judges. Bankruptcy judges around the country began adjudicating major civil cases that rivaled anything pending in any District Court in complexity, dollars at issue, and publicity. There is a story, perhaps but not likely apocryphal, that at one of the first hearings in the first Continental Airlines Chapter 11 case, Bankruptcy Judge Flowers in Dallas, in the Northern District of Texas, leaned forward over the bench and asked counsel for the debtor in possession whether it was now the situation that Chapter 11 was just another potential refinancing option for business entities. The answer from counsel was a confident “yes.” Since the early 1980’s that reality has persisted as the national economy and regional economies have gone through the throes of the oil and gas crash, the ensuing real estate crash, the savings and loan crisis (including many personal bankruptcies following guaranty litigation), financial fallout from airline and trucking deregulation, the dot com bust, and the “great recession” of 2008.

In the border-states, including New Mexico, United States District Court Judges’ dockets began to focus more on sentencing, and occasional trials, arising out of illegal immigration, Indian country crime, and all sorts of other crime. As a result, New Mexico District Court Judges, who as lawyers handled sophisticated civil cases, now presided over a predominantly criminal docket. New Mexico bankruptcy judges, on the other hand, presided over a substantial number of complex, high-stakes commercial cases.

Even as that trend continued, a number of bankruptcy judges across the country left the bench in the early and mid-1980’s. Through the efforts of a carefully developed campaign spearheaded by bankruptcy judges, and supported by key congressional leadership, Congress in 1987 substantially increased bankruptcy judges’ pay from \$70,500 to 92% of the statutorily fixed salaries of the district court bench and members of Congress. Furthermore, Congress greatly improved bankruptcy judges’ retirement program, making it effectively equal to that of the Article III federal bench. Those changes did not stop the exodus from the bench altogether, including the resignations of some highly regarded jurists. It did, however, considerably

staunch the flow.⁹

The bankruptcy caseload for the District of New Mexico reflects a trend of, steadily increased filings between 1950 and 2005. In the weeks immediately prior to the effective date of the Bankruptcy Code's last significant amendments, like most of the rest of the country, New Mexico saw a large spike in consumer filings. However, after the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005, filings decreased the following calendar year by 79.72%. Since then, as of 2016, case filings have not recovered to pre-2005 levels. With the slow recovery from the 2008 recession, New Mexico has actually seen a decline in filings from 2012 to 2015.

The Bankruptcy Court for the District of New Mexico offers a *pro se* help desk to assist unrepresented bankruptcy filers and is one of three courts as of 2016 to accept *pro se* electronic submission of petitions, schedules, and statements of financial affairs. Even so, *pro se* filings continue to make up a small percentage of total case filings in New Mexico, hovering between 9% and 12%.

Courthouses

In the modern era, the Bankruptcy Court has always been located in downtown Albuquerque, though the bankruptcy judges occasionally conduct hearings and trials in the federal courthouses in Roswell and Las Cruces. Until 1993, the Bankruptcy Court clerk's offices occupied the 9th floor of the Dennis Chavez Federal Building and United States Courthouse located at 500 Gold Ave. Built in 1965 to house the United States District Court, the courthouse was named in 1976 for Senator Dionisio (Dennis) Chavez, who served in the United States Senate from 1935 to 1962. For a time, Judge Rose and Judge McFeeley used the chambers and courtrooms located on the 13th (i.e., top) Floor of the building, formerly used by the New Mexico District Court Judges. Judge Rose later moved to the 9th Floor.

In the fall of 1983, Judge McFeeley relocated across the street to the historic courthouse, a six-story building with a variegated clay tile roof and southwestern motifs, built in 1930 and located at 421 Gold Avenue. Judge McFeeley occupied the chambers and courtroom on the fifth floor of 421 Gold. He later moved to the ceremonial courtroom on the 6th Floor, restored to its original appearance in 1981 with Native American inspired painted trim work and ceramic chandeliers incorporating the same motifs. In 1993, Judge Rose and the clerk's office moved from the Dennis Chavez Federal Building to 421 Gold as well. Judge Rose, and later Judge Starzynski, were housed in the second floor chambers and courtroom at 421 Gold.

⁹ See Nathaniel C. Nash, "Bankruptcy Judges Opting Off the Bench," The New York Times, February 1, 1976 at <https://nytimes/1LKyeQW> ; John J. Dilenschneider, "Keep Bankruptcy Judges on the Bench," The New York Times, September 23, 1987, Opinion at <https://nytimes.com1987/9/23/opinion>

The Bankruptcy Court moved back to the Dennis Chavez Federal Building and United States Courthouse at 500 Gold in 2002 to fill in the space left by the United States District Court which moved across downtown to the newly built Pete V. Domenici Courthouse, located at 333 Lomas Boulevard. The District of New Mexico's two bankruptcy judges and their chambers staff occupied the 13th floor, with two dedicated courtrooms, renamed the Sandia Courtroom and the Animas ("all souls") Courtroom as part of the 2002 move. The bench in the Sandia Courtroom has a brass plaque engraved with the word "Patience," a relic and gentle reminder from Federal District Court Judge Howard C. Bratton who earlier presided in that courtroom. The Bankruptcy Court clerk's office was located on the 10th floor of the building.

In 2005, the courtroom scenes for the screenplay, *North Country*, starring Charlize Theron, were filmed in the Sandia Courtroom. The film crew re-painted the courtroom walls to achieve the desired lighting effects. John Aylward, who played the judge in the film, pounded Judge McFeeley's gavel so soundly it splintered. Perhaps movie making over-dramatizes real life, as none of New Mexico's bankruptcy judges has ever had to use a gavel to maintain order in the courtroom. The film's location manager presented Judge McFeeley with a new gavel engraved to commemorate the filmmaking.

On February 20, 2018, the Bankruptcy Court re-located to the Pete V. Domenici United States Courthouse, which houses the United States District Court for the District of New Mexico. Named after New Mexico Senator Pete V. Domenici and constructed in 1998, the building is seven stories high, with a central open rotunda. The courtrooms, located on the third through fifth floors, are named for rivers in New Mexico. Currently, each bankruptcy judge has a dedicated courtroom on the fifth floor, directly below the judge's chambers.

The Bankruptcy Court's move was part of an effort to save money for the federal judiciary as a whole. The Judicial Conference adopted a cost-containment plan under which each circuit would reduce its judicial footprint by at least 3%. The Bankruptcy Court's move to the Pete V. Domenici United States Courthouse helped the Tenth Circuit meet this goal. The re-alignment project was the largest space-reduction project in the Tenth Circuit and one of the largest nationwide.

In keeping with modern technologies, the Bankruptcy Court also maintains a video conference facility, opened in July 2014, located in the Harold F. Runnels Building in Las Cruces, New Mexico, from which the court can conduct trials and hearings remotely by video from Albuquerque.

Noteworthy Cases

The following comments highlight some of the significant New Mexico bankruptcy cases from 1980 through 2015.

In re Bokum Resources Corporation. In 1981, an involuntary petition was filed against Bokum Resources Corporation by the Montgomery & Andrews firm and a New York law firm on behalf of LILCO (Long Island Lighting Co.). The debtor, represented by Louis Puccini, was successful in getting a plan confirmed. The case lasted 12-13 years. Due to prior connections to parties in interest Judges McFeeley and Rose recused themselves from hearing the case. Judges from other bankruptcy courts in the Tenth Circuit presided over this case, among them Judge Jay Gueck (CO) and Judge David Cline (OK-W). Judge Gueck presided over a trial against the drilling company in which the debtor was awarded a \$2.5 million judgment. The last trial in that case was in 1993. Several rulings in the case were appealed to the District Court and the Tenth Circuit. One appeal, decided by a divided panel of the Tenth Circuit, addressed complex questions of appellate jurisdiction and proper standards of appellate review in core vs. non-core proceedings before the bankruptcy court and the impact on those issues of litigants' consent to entry of final appealable orders and judgments by the bankruptcy judge. *Teton Exploration Drilling v. Bokum Resources*, 818 F.2d 1521 (10th Cir. 1987). This case was a harbinger of complex bankruptcy court jurisdictional questions that remained to be addressed by the U.S. Supreme Court in the first decade of the 21st century—issues which had been part of the conundrum of summary/plenary bankruptcy court jurisprudence during the 80-years' duration of the Bankruptcy Act of 1898. These were issues that had purportedly been put to rest, first by the Bankruptcy Code of 1978, and then by the Bankruptcy Amendments and Federal Judgeship Act of 1984.

In re Otero Mills, Inc., No. 82-0027. In this relatively early case addressing the breadth of the automatic stay of the 1978 Bankruptcy Code, the Bankruptcy Court granted the debtor's request to enjoin a creditor from collecting against the debtor's president and shareholder on his guaranty of a promissory note executed by the debtor. As of February 15, 2016, *Otero Mills, Inc. v Security Bank*, 21 B.R. 777 (Bankr. N.M. 1982), one of the first cases addressing injunctions to prevent collection from co-debtors in a Chapter 11 case, had been cited by 77 other cases, many of which ruled, contrary to *Otero Mills*, that in order to enjoy protections of the Code's automatic stay, a principal of a debtor must himself first become a debtor.

In re First City Financial Corporation. (a/k/a Moncor, Inc.), No. 85-01146. Moncor was a holding company for Moncor Bank, then one of the largest FDIC insured financial institutions in New Mexico. The FDIC declared the bank insolvent and appointed a receiver through the U.S. District Court. The Bank's failure spawned substantial litigation, much of which was conducted as part of the bank holding company's bankruptcy case.

In re Alan J. and Mary Frances Antweil, No. 86-00254. The Antweil case was a large, highly litigated oil and gas case. An appeal from one of the adversary proceedings in *Antweil* resulted in *Barnhill v. Johnson*, 112 S.Ct. 1386 (1992). In *Barnhill*, the United States Supreme Court held that for preferential transfer purposes, a transfer by check occurs when the check is honored at the drawee bank, not when it is delivered to the payee. Local attorneys William J. Arland and Nancy S. Cusack argued the case before the Supreme Court. Mr. Antweil was accused of

misappropriating substantial funds from investors, and agreed in his principal bankruptcy case to a denial of his discharge.

In re Bellamah Community Development, Case No. 89-11559. Bellamah was a wholly owned real estate development subsidiary of Public Service Company, New Mexico's largest regulated utility. Bellamah had some \$100 million of outstanding real estate loans made by numerous financial institutions. The bankruptcy trustee for Bellamah disbursed \$31,407,453. By the time the final decree was entered in 2001, there were 3462 entries on the docket. The Bellamah case was an example of a regulated utility engaging in unregulated activity through a subsidiary at a substantial loss in the high flying days of real estate investment before the Resolution Trust Corporation took over numerous savings and loan associations.

In re Lee and Gwen Groff, dba Groff Cattle Company. This case involved a 3-week trial, which was at the time the longest trial in New Mexico bankruptcy court. The trial involved whether two ranchers (one of whom was the debtor) had a joint venture or partnership. If a joint venture or partnership existed, some 15,000 head of cattle would not be included as property of the bankruptcy estate, and a lien against all of the debtor's cattle would not attach to the 15,000 head of cattle. The Tenth Circuit in *Groff v. Citizens Bank of Clovis*, 898 F.2d 1475 (10th Cir. 1990), affirmed the bankruptcy court's decision that there existed a joint venture, so that none of the cattle were property of the bankruptcy estate, even though there was no formal partnership or joint venture agreement and no tax return or bank account in the name of the enterprise. One of the debtor's principal lenders ended up with a lien on only eight cattle actually owned by the debtor; the other cattle pledged to the lender were missing.

In re Seven Bar Land & Cattle Company, Case No. 87-01408. Seven Bar Land & Cattle Company was a Black family-owned general partnership. Albert F. Black and Guy Ray acquired an approximate seven by ten mile parcel of land west of Albuquerque that had been part of the Alameda Land Grant given by King Philip IV of Spain to Francisco Montes Vigil and Captain Juan Gonzales of the Spanish army. The land became known as the Black Ranch. Albert J. Black inherited his father's interest in the Black Ranch, and then purchased Guy Ray's interest. Albert J. contributed a portion of the land to Seven Bar Land & Cattle Company. Upon the death of Albert J and his wife, their four children inherited the Seven Bar partnership, thereby each becoming general partners. Litigation among the siblings resulted in an arbitration panel decision to appoint a receiver for the partnership property. Two of the siblings filed an involuntary bankruptcy petition against the partnership before the receiver took possession. After extensive litigation, the siblings reached a settlement under which the involuntary petition would be granted, and Seven Bar's land would be sold at a public auction. The sale occurred in a depressed real estate market, netting a small fraction of what the land was worth some years later. Cottonwood Mall, a Simon Group regional shopping center, and other shopping centers, as well as residential developments, are now located on what was the Seven Bar land.

In re Rubus Realty Company, 11-93-10329 RA. Furr's Inc., which operated some 150 supermarkets in New Mexico and Texas, spun off approximately 70 supermarkets into a newly formed entity (Furr's Supermarkets, Inc.) and then sold the stock in that entity. Furr's Inc. then sold or closed the balance of its supermarkets, and was left largely with real estate holdings. Furr's Inc. then changed its name to Rubus Realty Company before putting Rubus in a voluntary Chapter 11 case. The Official Unsecured Creditors Committee brought a fraudulent transfer action against the buyer of the stock of Furr's Supermarkets, Inc. The adversary proceeding settled for approximately \$34 million. That paved the way to confirmation of a liquidating plan.

In re Angel Fire Corporation, No. 11-93-12176 RA. This case involved five jointly administered bankruptcy cases. Together, the debtors owned the Angel Fire Ski area in Northern New Mexico. Because the assets were divided among five entities, the Unsecured Creditors Committee appointed in one of the cases was unsuccessful in its attempt to confirm a plan involving assets of multiple bankruptcy estates. In an attempt to gain standing to file a plan in the jointly administered case that owned the ski lodge and other amenities at the base of the mountain, the Committee formed a trust under which its chair was the trustee, and all unsecured creditors were trust beneficiaries. The trust then purchased a claim for several times the original claim amount from a nun who lost her pre-petition deposit for a post-petition room stay. The bankruptcy court held that this did not give the Committee standing.

In re Phyllis Crowder, 11-96-19336 ML. This case was filed by the spouse of Charlie Crowder, a very large developer of real estate in southern New Mexico near the Santa Teresa border crossing. There were significant legal battles in the case involving the City of Sunland Park, Dona Ana County, the Trustee, and the Crowders. The Trustee sold a substantial portion of the estate's assets through a sale that closed pending an appeal of the bankruptcy court order authorizing the sale. In *re Crowder v. Given*, 314 B.R. 445 (10th Circuit BAP 2004), the BAP dismissed the appeal on statutory mootness grounds under 11 U.S.C. § 363(m). That paved the way for a major cross border development project. The buyer, Verde Realty LLC, merged with a REIT in 2013. At the time of the merger, it is reported that Verde held some 4.7 million square feet of commercial space in El Paso, Juárez and nearby Santa Teresa, N.M.

In re La Vida Llena, No. 98-14983. La Vida Llena, which is thriving today, is an upscale not for profit life care retirement community. When it filed its Chapter 11 case, La Vida Llena had approximately 400 elderly residents, and \$60 million in widely held publicly-traded bonds. The bonds were refinanced through bankruptcy. The debtor's leverage in cutting a deal with an indenture trustee and the largest bondholder was that only through a bankruptcy case and the good will of the City could the tax exempt status of the bonds be preserved. The § 341 meeting of creditors was held at La Vida Llena, and many of its residents attended the meeting. The debtor emerged much stronger financially. La Vida Llena subsequently expanded significantly. This was a classic case of what Chapter 11 at its best can accomplish.

In re Daniel Krupiak, No. 7-99-10304 SA. This case illustrates the risk of putting someone into

an involuntary bankruptcy case. The Court, after denying the involuntary petition, threatened to assess not only compensatory damages but also substantial punitive damages. The matter settled.

In re Furr's Supermarkets, Inc., 11-01-10779 SA. The debtor in this case, a progeny of Rubus Realty Company, supra, filed its Chapter 11 case in 2001. The case is still pending (as of February 15, 2016), although now as a Chapter 7 case. When the case was filed, the debtor owned and operated 71 supermarkets in New Mexico and west Texas, had around 6,000 employees represented by two unions, and had more than \$1 billion a year in revenue. There have been approximately 265 adversary proceedings filed in this case. There are almost 4,000 docket entries.

In re Vaughan Company Realtors, No. 10-10759. This case is still pending (as of February 15, 2016). The debtor operated a Ponzi scheme in which it raised almost \$100 million. The debtor's principal was sentenced to prison, leaving the bankruptcy trustee to sort out the financial chaos he left in his wake. In that effort, the trustee initiated some 150 avoidance actions against investors in the Ponzi scheme.

In re Otero County Hospital Association, Inc. No. 11-13686. The debtor owns and operates a hospital in Alamogordo, Mexico. The official mailing list in the case contained over 100,000 parties. The bankruptcy case was precipitated by the filing of state court actions against the debtor by more than sixty patients of the hospital. Forty seven of those cases were removed to bankruptcy court. As of February 15, 2016, seventeen trial days have been conducted on various consolidated issues, and the adversary proceedings remain pending.

In re Roman Catholic Church of the Diocese of Gallup, No. 13-13676. This case is one of several bankruptcy proceedings across the country arising from claims of sexual abuse of children by Catholic clergy. This case is still pending (as of February 15, 2016).

Conclusion

The bankruptcy bar for the District of New Mexico started out fairly small. It has gradually grown larger. But even as it has grown, it has retained a collegiality that is missing in many other bankruptcy bars in larger districts. That professionalism, most accurately described by A Creed of Professionalism for the New Mexico Bench and Bar, characterizes the bankruptcy practice in New Mexico as much as, or more than, any other area of practice in the district, whether federal or state. The professional atmosphere among the New Mexico bankruptcy practitioners bar continues today.