



# THE SUFFOLK LAWYER

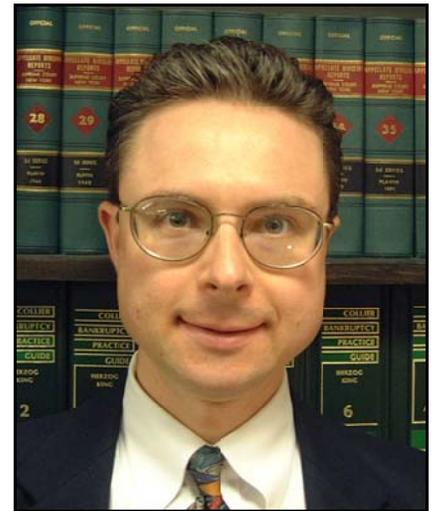
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## BANKRUPTCY

# Judge Stan Bernstein Announces His Resignation

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Just weeks after then-Chief Bankruptcy Judge Melanie L. Cyganowski shocked the bankruptcy bar last month by unexpectedly announcing that she was stepping down from the bench, Judge Stan Bernstein suddenly dropped a bombshell that he was resigning effective July 31, 2007.

However, unlike Judge Cyganowski who will be leaving at the end of her fourteen-year term, Judge Bernstein will be resigning two years early. The Judge has accepted a full professorial position at John Marshall Law School in Atlanta which will begin with the Fall 2007 semester.

The judge apparently revealed the decision at the end of January to a few attorneys prior to formally notifying the clerk's office. This resulted in a flurried maelstrom of gossip and speculation in the relatively close-knit bankruptcy bar. The official notification

came in early February.

The news of Judge Bernstein's departure spells additional turmoil for the Bankruptcy Court for the Eastern District of New York which has courthouses in Central Islip and Brooklyn. Now, two of the three judges sitting in the Central Islip Court will be leaving within a period of just months. Meanwhile, the remaining judge, Judge Dorothy T. Eisenberg, who is in her late seventies, previously completed her fourteen-year term a number of years ago, but has been called back to continue sitting for one-year periods.

In the Brooklyn Bankruptcy Court, where there are four judges, Judge Jerome Feller is currently on medical leave after having just undergone open-heart surgery, and it is a well known fact that Judge Dennis Milton was previously treated for cancer, although he is in a period of remission.

Reaction to the news from the bankruptcy bar was one of surprise. Many practitioners were aware of Judge Bernstein's desire to return to teaching full time, but were greatly surprised to hear that he was doing so now, two years before the end of his fourteen-year term. The bankruptcy bar was also surprised by the timing, which occurred so soon after Judge Cyganowski announced her decision to leave.

Interviewed for this article, Judge Bernstein discussed his long thought-out decision. He commented extensively on his passion for teaching which pre-dated his ascendancy to the bench.

Judge Bernstein first sat as a bankruptcy judge in the Eastern District of Michigan from 1982 to 1984 at the relatively young age of 41, and began his current term in the Eastern District of New York in 1996.

Just prior to taking the bench here, the Judge engaged in private practice involving big business transactions and Chapter 11 bankruptcies for several larger law firms in Michigan, California, Arizona and Massachusetts.

However, the Judge was a professor as early as 1973 and taught law for most of the 1980's at Wayne State University Law School and University of Detroit Law School. Since 2000, the judge has been an Adjunct Professor of Law at Touro Law School and an Adjunct Associate Professor of Philosophy at Hofstra University. The Judge has a Ph.D. in political science and taught full time for seven years before even going to law school.

"It's no secret that I had been considering going back to teaching. My colleagues knew that I had been interviewing for a teaching position for a while," said the Judge who turned 65 last April. He expressed excitement about returning to teaching full time.

Judge Bernstein noted that John Marshall Law School recently doubled in size. Among the courses he plans on teaching there will be Bankruptcy law, Sales, and Secured Transactions.

The Judge also discussed his desire to leave New York and move to Atlanta. He lamented that his children live so far away and commented that "I have never really acclimated myself to Long Island. It is very difficult when you don't have any family here." His daughter lives in Atlanta and has a one-year-old baby girl, the Judge's third grandchild. Judge Bernstein and his wife, also an attorney, have been flying down to Atlanta about once a month to visit, ever since she was born.

The problems with how expensive it is to live on Long Island was a topic that he harped on, which he often brought up in his dialogue in the courtroom as well. He feels that for many, the cost of living on Long Island is prohibitive and that a great number of Long Islanders are falling further and further behind economically. "Housing here is priced way beyond the reach of middle-class families," he said, noting that this had affected him as well.

As for the awkward timing of his notice, the Judge commented that "it was just fortuitous." Apparently, he received the offer in early January and at that time, he was totally unaware of Judge Cyganowski's decision to step down which, like the bankruptcy bar, caught

Judge Bernstein off-guard. "I was very surprised that Judge Cyganowski turned down her second full-length term," he said. Nevertheless, he figured that giving the Second Circuit six months notice would be more than sufficient to make appropriate arrangements to cover his vacancy.

Judge Bernstein believes that despite two judicial vacancies within a short period, court proceedings will nevertheless go smoothly. He will continue to take new cases through May. Then he anticipates needing sixty to ninety days to wrap up his existing case load. A new visiting bankruptcy judge is already slated to take over Judge Cyganowski's calendar in March. Judge Joel B. Rosenthal, from Worcester, Massachusetts, will serve from March 1, 2007 to August 31, 2007. The Second Circuit also posted a notice seeking applicants to permanently fill the seat vacated by Judge Cyganowski.

Judge Bernstein remarked that the Second Circuit has a pretty good understanding that most filings here are consumer cases and that they will select a candidate who will be able to accommodate such a caseload.

When asked about what aspects of sitting on the bench here have made an impression on him, Judge Bernstein cited his appreciation of the varied cases that came before him and mentioned that he enjoyed the diversity of handling different matters. "You never know what to expect. There are many novel issues that come up," he said.

The judge felt that he was especially good about keeping his docket current and was proud of this continuity. All counsel who litigate in his Court are well aware of his predilection for pushing the parties to move their cases along.

Positive relationships between the judges in the court was another aspect the Judge was proud of. "We have a very hardworking set of judges who enjoy a good rapport. Lawyers have benefitted from this," he said.

The 2005 Bankruptcy Amendment Act is a topic that the Judge has always been rather outspoken about. The Judge commented that he felt the new laws were demoralizing because they prevented him from being as helpful to debtors in need as he used to be under the old laws. "I think of myself as a helping judge," he remarked.

The judge also noted the declining number of Chapter 11 cases in Central Islip, which went from about 100 a year to just 20 a year. Nevertheless, Judge Bernstein indicated that he enjoyed hearing these cases, and felt that he produced some noteworthy decisions in some of the larger Chapter 11 cases which included Med Diversified, Photo Circuits and Innapharma.

Judge Bernstein, who previously was an active participant in various legal education programs and seminars, expects to continue his involvement with organizations such as the American Bankruptcy Institute. In addition, he is currently collaborating on a book on the use of expert witnesses in bankruptcy cases. The Judge has previously authored or edited a number of legal treatises including the Matthew Bender Bankruptcy Practice Guide and the publication, Collier Compensation Guide which covers bankruptcy compensation.

During his tenure, Judge Bernstein always had a number of clerks as well as interns from local law schools. The Judge took great pride and felt that one of his most important accomplishments was that he had the opportunity to teach, train and mentor so many "elbow clerks" who would later go on to become successful attorneys. "I loved doing show and tell with the summer clerks; they learned quickly who the good and the bad lawyers were," he said. Like a true teacher, he felt gratitude that many of them have maintained contact with him.

Michael J. Macco, the standing Chapter 13 trustee assigned to Judge Bernstein, recognized that "teaching has become his passion." He said that he will be sorry to see him go and commented that "it is clear that the Judge has a love for the law. He always wanted to teach law and this new position is a great opportunity for him."

However, Mr. Macco expressed concern about the number of judicial vacancies. "We're in a situation where we've lost two of our very experienced judges."

Formalization of noticing requirements was a matter that Mr. Macco felt the Judge improved. "I'm going to miss Judge Bernstein. He came into the system. He changed the system – to make sure that debtors received reasonable notice," he said. Mr. Macco was referring to Judge

Bernstein's concern over debtor's rights which the Judge felt should preclude oral motions by trustees to dismiss Chapter 13 cases. "Very little was done by oral motion after he took the bench," he remarked.

Mr. Macco also attributes to the Judge greater efficiency in the administration of Chapter 13 cases. "He tried to streamline the Chapter 13 process so that it was more efficient for both trustee and counsel," he noted.

Robert Pryor, a bankruptcy attorney and Chapter 7 trustee who regularly appeared before Judge Bernstein, commented on the Judge's keen analytical ability. "He is obviously an impressive legal mind. He brings to an issue a thoroughness of analysis and often times a refreshing slant. He has a very scholarly approach towards reasoning through problems from the bench," he said.

My own personal observation in having appeared before Judge Bernstein for eleven years is that he has a most unusual courtroom demeanor. While I know very little about most other judges' personal lives, my colleagues and I have come to learn about Judge Bernstein's children, travels, political beliefs, ideology, philosophy, likes and dislikes – just from listening to the judge provide substantial "dicta" and commentary in the courtroom. On any given day, one could expect the Judge to deliver commentary on any number of subjects. His life and experiences were somewhat of an open book.

I also found the Judge to be most pragmatic about his approach to lawyering. Judicial efficiency and transactional costs were always key points to him.

Another personal observation is that unlike most other judges, Judge Bernstein has engaged in an unusual but highly appreciated informality with those who regularly appear before him. This is evidenced by his sincere interest in the lives and interests of the practitioners in his Court, and his habit of routinely teasing counsel in an affectionate way.

In addition, I have found Judge Bernstein to be one part judge, one part fatherly figure and one part professor/teacher. In the "parental mode" he recognizes that those who regularly practice before him are sort of like his "kids" who may get out of line or have disputes with each other. However, he takes steps to gently nudge them to "bring them back in line" or persuade

them to work out their differences. His passion for teaching is clearly evident in the courtroom as he strives to provide counsel with scholarly commentary on the law and political events.

These sentiments were echoed by many of those who practiced before him. Said Mr. Pryor, "He is a genuinely nice man. You liked him off the bench." Mr. Pryor remarked that what he will miss about Judge Bernstein is that "he was a friend in the courtroom. He didn't have an intimidating presence. Instead, there was a level of informality."

Michael Farina, another attorney who frequently practiced before the Judge, also commented on the Judge's warmth. "I liked how the Judge took the time to learn about and know the attorneys who regularly practiced before him. That's a very positive thing because you are not just another face in the crowd."

Mr. Farina continued, "Yet, he never showed any favoritism. Just because he was extremely congenial, didn't mean that he would rule in your favor. I am going to miss him."

I n d e e d , a n o t h e r accomplishment cited by the Judge was his impartiality. "From my standpoint, this has been a Court that has had an extraordinary reputation for integrity. The lawyers have been very fortunate. There has never been any favoritism. Never a whiff of controversy," said the Judge.

Such informality was also echoed by Richard Arturo, a practitioner who appeared before the Judge on a number of consumer bankruptcy cases. "When I learned of Judge Bernstein's decision to resign, I thought back to my first time before him, Mr. Arturo said. "The fact that he did not want to be addressed as "your honor" put us all on notice that this was going to be a different kind of judge."

Mr. Arturo also appreciated the Judge's willingness to bring counsel into chambers on contested matters. The Judge frequently did so to encourage the parties to resolve their issues in an informal environment.

Katherine Geraci, an attorney who previously clerked for the judge and now appears before him, called the Judge "unique" and recognized the Judge's unusual way of interacting with counsel. "His Ph.D. and background in philosophy works into his informality," she observed, adding "He is really a wonderful teacher," having been

mentored by him during her clerkship. She noted that some of the clerks of other judges were jealous that Judge Bernstein provided so much of a better teaching environment to his clerks than the other judges.

With the tempting prospect of spending most of his time teaching, Judge Bernstein summed it up: "I think it's time to step down from being a judge."

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*Editor's Note (revised 2008):  
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