



THE STATE BAR OF CALIFORNIA

Business Law Section

Insolvency Law e-Bulletin

February 23, 2016

Dear constituency list members of the Insolvency Law Committee:

The following is the second in a series of profiles of Ninth Circuit bankruptcy judges. Judge Martin R. Barash and members of the Insolvency Law Committee met in his chambers and discussed his personal and professional background, transition to the bench, and other issues of interest.

Personal and Professional Background

United States Bankruptcy Judge Martin R. Barash was sworn in on March 26, 2015, and assigned to serve in the Woodland Hills branch of the Central District of California. He feels as though he won the lottery, both in terms of his new judicial role and the location of his chambers. Indeed, Judge Barash may be the first Woodland Hills-based judge to have grown up locally.

Judge Barash attended Taft High School in Woodland Hills, received his undergraduate degree at Princeton University, and law degree at the UCLA School of Law. Following law school, he worked at two well-respected Los Angeles bankruptcy boutique firms, Stutman, Treister & Glatt P.C. and Klee, Tuchin, Bogdanoff & Stern, LLP. He also taught for a year at California State University Northridge.

The judge sees his new role as an opportunity to serve the community. His parents worked as fundraisers for various Jewish community service organizations. During junior high and high school, Judge Barash got involved with Junior State of America, a national organization formed in 1934 with the mission of "educating and preparing high school students for life-long involvement and responsible leadership in a democratic society." In his senior year of high school, Judge Barash was elected governor of the Southern California Junior State, and has remained involved with the organization ever since. He is the Immediate Past President of the Junior Statesmen Foundation.

He has served on various professional organization boards, including the LA Bankruptcy Forum and the American Bankruptcy Institute, among others, and volunteered at the debtor Reaffirmation Clinic run by Public Counsel.

Judge Barash is a busy father of three children ages 13, 11 and 8, and proudly points out that "being a parent helped me prepare to be a judge. It helped me learn patience." In his free time, he is an amateur photographer, mostly documenting his children and travels. He also loves to cook and garden.

Transition to the Bench and Judicial Style

Judge Barash appears to have made an easy transition from private practice to the bench. His wife tells him that he is more calm now than when he was in private practice. He agrees, noting that, "both of the law firms I worked for had an intellectual rigor and expectation that the work had to be excellent all the time," and that they were "intense environments." He adds, as a judge, "I no longer have to worry about where the next client is coming from, or pleasing a demanding client. It is less stressful."

Judge Barash agrees that being a judge "is a little isolating". However, while "I gave up the camaraderie of my former partners and associates, I gained wonderful new colleagues." The judge often walks down the hall to talk with the other judges. He is effusive when talking about his fellow jurists at the Woodland Hills courthouse, whom he clearly admires greatly.

The judge reveals that he likes to hone his rulings by talking through issues, and is in his law clerks' offices several times a day to discuss various cases. It's an ongoing dialogue because he both wants his law clerks to learn from each case and to have them challenge and identify any holes in his reasoning. "I learn something new every day," he professes. Despite his interest in exploring unusual legal issues, he also tries to be practical in how he approaches his cases.

Judge Barash tries to create an environment where his two law clerks, Enid M. Colson and Ahree Song, feel comfortable expressing their views freely. He has one of his law clerks observe all court hearings, take notes, keep track of rulings and make observations. "My clerks take the laboring oars," he says.

Judge Barash states that he has a reasonably sized docket, but does not yet have a point of reference. Although some rulings are taken under submission, he tries to announce his rulings at the hearings, commenting, "I don't want to be the guy who falls behind."

The Judge's View of Attorneys Appearing Before Him

Although the judge knows and has worked with many Los Angeles bankruptcy attorneys, not many of them have appeared before him yet. For attorneys who do, he focuses on the facts and the law and tries not to be influenced by what he knows about their personalities and styles. Judge Barash tries to keep biases in mind, commenting that "it is the unexamined bias that is dangerous."

There are challenges that he did not foresee. For example, "what does a judge do when an attorney misses an argument or doesn't do as good a job as you might do? Do you punish the lawyer's client or find a way to get to justice?" Judge Barash's style is to sort through and test the arguments to get to the right answer.

Advice to Attorneys Appearing Before Judge Barash

When asked whether he models his judicial style on a specific judge, Judge Barash reveals that he looks to many judges whom he admires. He singles out the Honorable William J. Lasarow, a former bankruptcy judge in the Central District of California, stating that, "he exemplified open-mindedness, had an innate sense of getting parties to a place that is reasonable, was gentlemanly, and I thought the world of him."

The judge has not yet filled out the Judicial Practices Survey, but advises attorneys to "be more familiar with the local rules and what they require, the sometimes overlooked need for evidence, and paying attention to service issues." He emphasizes that he, "takes service issues very seriously, especially where there is no opposition filed. There must be due process." Judge Barash reviewed most of the courtroom procedures followed by other judges in the Central District and took the parts that he thought would work best in his courtroom. "I try to improve customer service" through the courtroom procedures.

The judge does not always issue tentative rulings in advance of hearings, and he sometimes states the tentative only after taking the bench. He posts a tentative when the issues are clear or when the answer has crystalized in his mind before the hearing. Judge Barash likes having a dialogue with attorneys in his courtroom. Although he often sticks to his tentative rulings, he sees oral argument as a valuable part of the process, and has been swayed by oral arguments on occasion. Such courtroom dialogue often tests the judge's analysis of the issues, often confirming his pre-hearing analysis.

One procedure where Judge Barash may diverge from the majority of Central District bankruptcy judges is the use of direct testimony by declaration, as opposed to live testimony. He notes that "the default rule is direct testimony by declaration, but I have seen in my practice the value of live testimony. Witness credibility is easier to assess in person." The judge comments that "declarations streamline what we do but there are also virtues to live testimony."

On settlement, the judge reflects that "the fastest way to settlement discussions is to set a trial date. Part of my job is to encourage settlement."

Judge Barash is cognizant of the costs associated with the bankruptcy process, and the barriers these costs can pose to gaining access to justice. It is clear that the judge views his role as part of a larger landscape of improving government through dedicated service. "People these days don't feel like government listens to them," he says. "I feel like the one thing I can do is listen to people with respect and have them know that they've been heard. The strength of institutions is directly related to the esteem in which people hold them." He concludes by stating, "this is the world's greatest job. I can really make a difference one person at a time. It's an incredible gift, privilege and honor."

This e-Bulletin was written by Corey R. Weber, a partner at Brutzkus Gubner Rozansky Seror Weber LLP in Woodland Hills, California and Co-Chair of the ILC (cweber@brutzkusgubner.com), Uzzi O. Raanan, partner at Danning, Gill, Diamond & Kollitz, LLP in Los Angeles, California, Vice Chair of the California State Bar's Business Law Section and past Co-Chair of the ILC (uraanan@dgdk.com), and Asa S. Hami, an attorney at SulmeyerKupetz, A Professional Corporation in Los Angeles, California and Co-Vice Chair of the ILC (ahami@sulmeyerlaw.com).

Thank you for your continued support of the Committee.

Best regards,

Insolvency Law Committee

Co-Chair
Leib Lerner
Alston & Bird LLP
Leib.Lerner@alston.com

Co-Chair
Corey Weber
Brutzkus Gubner Rozansky Seror Weber LLP
cweber@brutzkusgubner.com

Co-Vice Chair
Asa S. Hami
SulmeyerKupetz, A Professional Corporation
ahami@sulmeyerlaw.com

Co-Vice Chair
Reno Fernandez
Macdonald Fernandez LLP
Reno@MacFern.com