



## THE STATE BAR OF CALIFORNIA Business Law Section

### Insolvency Law e-Bulletin

April 17, 2017

*The following is a profile of the Honorable Maureen Tighe – the seventh in a series of profiles of Ninth Circuit bankruptcy judges. Judge Tighe and members of the Insolvency Law Committee met in her chambers and discussed her personal and professional background, observations from the bench, and issues of interest.*

Judge Tighe was appointed to the bench in November 2003. Prior to her appointment, she was the United States Trustee for the Central District of California between 1998 and 2003, the U.S. Trustee for the Districts of Southern California, Hawaii, Guam, and the Northern Mariana Islands between 2002-2003, and was an Assistant United States Attorney between 1988 and 1998. While an Assistant United States Attorney, Judge Tighe served as the Deputy Chief of the Major Frauds Section and Chairperson of the Bankruptcy Fraud Taskforce. On the bench, Judge Tighe has dedicated a significant amount of time to issues relating to *pro se* litigants, including preventing fraud and encouraging *pro bono* advice and improving processes for *pro se* litigants.

#### **Roles in the Process, Advocacy, Reputation and Mentoring**

Judge Tighe understands and respects the roles that party representatives and attorneys have in the process and how that bears on the positions and actions they take in any given case. She notes, for example, that “the trustee has fiduciary responsibilities and sometimes can’t settle even if the trustee wants to,” and that attorneys must zealously advocate for their client (a trait the Judge “feels strongly about”).

An important issue to the Judge is having a robust and qualified bankruptcy bar. “We are all part of a system, part of the whole and we have to get along.” The judge reflects that “you can still be a zealous advocate and be collegial” and that lack of collegiality could sometimes impact a person’s reputation.

But the Judge does not take reputation into account in issuing a ruling. She admits, however, that reputation could come into play when evaluating whether an attorney will be able to back up what they are proffering and the representations they are making. “If the attorney has proven credibility, I usually give them a chance to show it and come through.” She notes that “if you are up front with problems, that helps.” Where an attorney has consistently made statements and failed to support them, she naturally is less inclined to accept their representations at face value.

Mentoring of new attorneys is another thing Judge Tighe feels strongly about. “We need to continually work on training new lawyers. Junior lawyers don’t get into court enough. We need to do more mentoring.”

#### **Dedication to Improving Processes for *Pro Se* Debtors and Litigants**

After a few years on the bench, Judge Tighe realized that the greatest challenge the court faces relate to *pro se* litigants and inexperienced or untrained attorneys, including junior solo practitioners without mentors, who come to court without understanding the relief they need or should be seeking. While Judge Tighe recognized that “we have a fantastic and robust bankruptcy bar with mentoring, training, an excellent trustee panel and trustee’s attorneys,” she lamented that still “not enough was being done on the *pro se* issue.” She explained that no-asset cases were taking a lot of time but that justice was not always being done because relevant issues were not being raised, and that unrepresented (or inexperienced) parties were not seeking the appropriate or necessary relief.

Judge Tighe took action. For the past approximately 13 years, the Judge has worked to assist *pro se* litigants, with a particular focus on combatting consumer bankruptcy fraud, such as the malfeasance of “petition preparers” or other individuals who claim to help *pro se* litigants, then charge substantial sums for claimed services, but provide little to no actual value. As the Judge explains: “I wanted to be transparent and provide access to all, and I wanted to approach the problem creatively. Access to the court means stopping fraud. The amount of consumer fraud is ridiculous, such as people taking money to do nothing meaningful. She sees all sorts of scams marketed to stop

foreclosure, identity theft, and people taking advantage of non-English speaking communities. The self-help center pioneered by Neighborhood Legal Services and the San Fernando Valley Bar Association has made a big difference. The outreach they do also frees up court resources for things only the court can do.”

### **Tentative Rulings**

Judge Tighe believes that tentative rulings are helpful to the process. “People tease me about how long they are. It’s not Shakespeare or beautifully written or edited. It’s to get the tentative rulings out there and make for more meaningful oral arguments.”

She is gratified that her tentative rulings have changed the way that attorneys prepare their briefs. In one of her chapter 11 plan tentative rulings, Judge Tighe went through her considerations in approving the plan. As a result, she says, “[n]ow, chapter 11 plan briefs go through my original tentative regarding the requirements.”

Attorneys should keep in mind that “a tentative is just a tentative ruling.” Judge Tighe believes strongly in meaningful oral argument and encourages attorneys to be zealous advocates, even if the tentative ruling is not in their favor. “If [a tentative ruling] were a [final] ruling there wouldn’t be oral argument.” If attorneys believe that the Judge overlooked an important fact, or did not address relevant authority, it should be brought to the Court’s attention. The Judge cautions that sometimes it is best to know when *not* to argue – the Judge sees attorneys making arguments when they’ve already won, which “is risky.” But she is mindful that sometimes argument is necessary because the client is in the courtroom and “you have to keep up client relations.” The Judge recognizes that clients sometimes need to see an attorney advocating on their behalf, even if they have an uphill battle.

### **Observations from the Bench**

For pleadings, “the introduction and a synopsis of facts are really key. Mostly the facts. It’s also helpful to summarize voluminous figures in charts.” Like many judges, Judge Tighe often starts her review of pleadings with the reply brief. “That shows exactly where the differences are. It’s really important in some cases.” For that reason, the Judge explained that the court may not begin reviewing the briefs until responses have been filed. Judge Tighe emphasizes the importance of presenting evidence in support of motions and remarked that “it’s amazing how little evidence we get.” She also stressed the importance of clearly stating the relief sought.

Although testimony is often presented at trial through declarations, Judge Tighe prefers live trials – it allows her to assess witness credibility. She believes that trial declarations will almost always have been drafted by counsel with an eye toward advocacy. However, she will accept declarations “if that’s what the parties really want.” The Judge believes that “evidentiary objections are usually a waste of time” prior to trial. “I’d rather you raise the objections at trial unless it is something unusual. At trial, hearsay objections are worth making. Federal Rule of Evidence 801(d)(2) is something that people often don’t understand. People think that since one side can solicit an opponent’s statements, they can offer their own statements, but it doesn’t work that way.”

In regard to documentary evidence, Judge Tighe is not strict on authentication of documents. “Document custodians are not usually necessary if there is no real dispute on authenticity. But you have to jump through the required hoops on documents recovered from computers and e-mails if objections are made because there are so many ways to doctor documents now.” One situation that comes before the court is when trustees take over businesses and get business records from hostile records custodians. “The trustee doesn’t have a documents custodian and people generally don’t want to cooperate. It’s a fascinating and tough issue that I get repeatedly. I look at the speed at which the hearing is held and look at extenuating circumstances. The rules give some discretion.”

For status conferences, “I like the principal of the debtor to be present and know the duties and what’s expected. If they hear it from the judge it’s easier to get compliance.”

As to late-filed pleadings, the Judge comments “I don’t know why people do that. I probably won’t end up reading it. They should just present the argument verbally at the hearing.” Whether Judge Tighe will take late-filed pleadings into consideration depends on the reason for the lateness, whether the filing party is *pro se*, and whether there is prejudice to the other parties who filed pleadings timely and were ready.

For oral arguments, Judge Tighe requires civility and appreciates professionalism. “I don’t like it when people interrupt the other side in oral arguments. I go back and forth multiple times and generally don’t cut people off. I don’t like personally mean *ad hominem* attacks. Attorneys need to take a step back and stick with the facts.” Judge Tighe disapproves of venue/forum shopping. She makes sure to look at the issue of venue closely and is wary of venue decisions made for the purpose of making it more difficult for parties to appear and be heard. One of the Judge’s overriding concerns is ensuring that all parties have equal access to the court.

On the issue of local rules, the Judge takes a balanced approach. Although the rules are not perfect, the Judge believes that they are useful so long as they promote due process, equal access, and overall fairness.

### **Role of the Judge's Law Clerks**

Judge Tighe works closely with her law clerks on issues, and respects their analyses on the outcome of motions. "I love having the law clerks. It is fascinating to have them around." The Judge's clerks provide the relevant pleadings, along with a summary sheet with recommendations, to the Judge. In fact, the Judge requires that her clerks provide her with recommendations as to how she should rule, rather than just providing objective summaries of fact and law. The Judge does not always follow her clerks' recommendations but she wants them to "grasp and grapple with the issues." The clerks always double check key cases and provide the Judge with a notebook of key cases to read. The Judge and her clerks then talk through the issues if there are differences of opinion on the outcome.

### **Implementation of New Technology**

Judge Tighe believes in adopting technology to improve workflow and does some of her work remotely (and hopes that as technology advances her capabilities will as well). She now reviews most pleadings on a computer or tablet, and is starting to take notes electronically. The Judge is trying to transition to a more paperless chambers.

One issue she notes is that when judges review pleadings online through Pacer, it becomes clear that attorneys do not always take care in how they upload pleadings. If the pleading is not correctly linked, such as an opposition or order being linked to the relevant motion, it is more difficult for the Judge to review the applicable pleadings for a hearing. Judge Tighe would like to see the Local Rules require fewer Chambers copies.

### **Independence**

Judge Tighe thoroughly enjoys her adopted State of California, enjoys hiking and is looking forward to hiking along the California coast someday. "I couldn't live anywhere not as diverse and interesting." She has more time to hike now, with her daughter in college. The Judge clearly enjoys her role as a judge and finds particularly interesting small business reorganizations (even though she notes that unfortunately these companies sometimes wait too long before seeking relief).

She also appreciates the freedom that comes along with being a judge. She takes great pride in studying and examining the law in a manner that would not otherwise be possible. "It is wonderful to be totally independent. It is as pure as the law gets. I can spend as much time as I want on issues, including no asset cases." She also speaks very highly of her judicial colleagues and is very appreciative of the advice and guidance they have provided her over the years. In her words, "the judges like each other, and it's amazing to be part of a group where everyone wants everyone else to do well."

### **Encouraging Attorneys to Volunteer and to Be Part of Somethings Larger Than Themselves**

During a recent speech accepting the Co-Presidents Award from the LGBT Bar Association of Los Angeles, Judge Tighe encouraged attorneys to be "part of something larger than themselves." The issues involving *pro se* litigants are issues that involve not only the individuals, but also the court system as a whole. Those attorneys interested in volunteering to assist *pro se* litigants can find out more on the court's website: <http://www.cacb.uscourts.gov/pro-bono-opportunities>.