

# New York Law Journal

## New Bankruptcy Chief Faces Challenges

by Andrew Harris

**MINEOLA** - As if a slew of new, untested bankruptcy statutes and a record number of cases filed in her district this fall were not enough, the new chief judge of the U.S. Bankruptcy Courts for the Eastern District of New York must also follow in the footsteps of a legend.

Judge Melanie L. Cyganowski, a 12-year veteran of the court was recently named to succeed Judge Conrad B. Duberstein. Affectionately known as "Connie," the late judge died of cancer on Nov. 18. He had led the court since 1984.

Interviewed in her chambers at the courthouse in Central Islip, Judge Cyganowski, 53, said her ascension was "bittersweet," but that she was "tremendously honored."

The judge said she does not see the Cyganowski court differing greatly from the Duberstein court.

A chief judge's job is more about administration than it is about authority. Judge Cyganowski said that her role will primarily be to act as a liaison between the seven judges who staff the courthouses in Brooklyn and Central Islip, the clerk's office and the Administrative Office of the Courts in Washington D.C. The post confers no greater decision-making power than that of any other judge, not even a bigger salary.

"There are no gold stripes on my robes," she said.

Eastern District Chief Judge Edward R. Korman said he promoted Judge Cyganowski because she had served with distinction and was highly regarded both by her peers and by the bankruptcy bar.

She got the job even though two other judges on the court have more tenure. Judge Jerome Feller turned down the job and Judge Dorothy T. Eisenberg has passed retirement age and is serving in a recall capacity, Judge Korman explained.

Bankruptcy court practitioners applauded the appointment.

Leslie A. Berkoff of Garden City's Moritt Hock Hamroff & Horowitz once clerked for Judge Feller and now appears regularly before Judge Cyganowski. She described the judge as "well liked and well respected."

The attorney also noted that Judge Cyganowski was "essentially tutored" by her predecessor.

"That relationship will inure to the benefit of continuing his role," she said.

Jericho bankruptcy lawyer Sarah A. Joos briefly clerked for Judge Cyganowski while the judge's regular law clerk was out on leave.

Now an associate at Silverman Pearlstein & Acampora, Ms. Joos described the judge as someone "extremely knowledgeable on all bankruptcy matters" who "renders only well reasoned and thorough decisions."

Attorneys appearing before the judge can expect, "complete impartiality," she said.

Spanning Brooklyn, Queens, Staten Island and Nassau and Suffolk counties, the Eastern District courts' constituency is one of the nation's most varied. It requires interpreters skilled in more than 50 languages and dialects, Judge Cyganowski said.

Although her predecessor sat in

Brooklyn, Judge Cyganowski will retain her Central Islip chambers and courtroom. She said she would spend at least one day a week at the Cadman Plaza courthouse, initially for administrative purposes but later to hear cases there too. "We strive mightily to be one court," she said.

Acknowledging that the remote location of her courthouse earns some practitioners' ire, the judge noted that she and her colleagues there - Judges Eisenberg and Stan Bernstein - are willing to dispense with personal appearance requirements and conduct proceedings via conference call when necessary.

Judge Cyganowski inherits the mantle of leadership at a time when the court is processing a record number of new filings, a surge widely attributed to debtors' desire to take advantage of bankruptcy laws before they became more stringent under the Bankruptcy Abuse and Consumer Protection Act, which became effective Oct. 17.

Ostensibly, the act was crafted to discourage those who run up substantial credit card debt, then wipe it out in bankruptcy court.

Under the new laws, debtors seeking to discharge their debts and get a fresh start under Chapter 7 - the bankruptcy law's liquidation provision - must now get debt counseling before filing for relief and also wade through a debtors' means test to determine their eligibility for the relief.

Attorneys representing those debtors are now required to certify the truthfulness of the petitions filed and may be sanctioned if the filing is

found to be abusive.

Of the more than 36,000 cases filed with the court through November 2005, nearly one third - 11,683 - were received in October, before the new rules took effect.

Judge Cyganowski called the bulge "an incredible blip," adding, "Nobody expected the extreme volume."

Reverberations from that "blip" will be felt in the bankruptcy court for some time.

The one-two punch of record filings and new rules to construe and apply has stretched the court's staffing. Each of the judges is allotted two staffers, typically a legal secretary and a law clerk. Judge Cyganowski has asked the Administrative Office of the Courts for funding to hire two emergency law clerks.

How they would be deployed has not yet to be decided, she said.

### **'Life Happens'**

A suburban Chicago native, Judge Cyganowski studied anthropology at Iowa's Grinnell College and retains a sensitivity to human behavior. She attended University at Buffalo Law School and started her career as a clerk to retired Southern District Judge Charles L. Brieant.

Before being appointed to the bench in 1993, she was an associate with Milbank Tweed Hadley & McCloy for four years. She also spent seven years at Sullivan & Cromwell.

The judge and her husband Kenneth, a computer programmer for a Long Island real estate developer, hold red belts in karate, an interest they developed while their son Daniel, now 11 and a black belt, was learning the art. In chambers, she displays some of the wooden boards she has broken with her bare hands.

Judge Cyganowski also enjoys reading detective novels by Sue Grafton, Dick Francis and Robert Parker. The last book she read, she said, was Bob Woodward's "Shadow: Five Presidents and the Legacy of

Watergate."

Judge Cyganowski teaches at St. John's University School of Law. Being a judge means being focused on the issues in front of her, she said.

"What's refreshing about going back to school is being able to step back and get a view of the forest," she said.

Alluding to allegations that bankruptcy protection has been abused, she said, "people do not rush into bankruptcy." She recounted a typical consumer's slide from solvency due to sudden unemployment, illness and mounting debt. "Life happens," she said. By the time most consumers appear in her court, she added, "they're drowning."

Nearly 98 percent of the Eastern District's cases are personal bankruptcies seeking Chapter 7 liquidation or consumer debt readjustment under Chapter 13. About 30 percent of those debtors appear in court pro se, Judge Cyganowski said.

Comparing her district's caseload with that of the neighboring Southern District, she said that while her Manhattan-based colleagues deal with larger commercial cases, those cases are typically shepherded through the courts by experienced counsel.

Her court, she said, is a "very time intensive, one-on-one court."

One goal she has set is to make the court more user-friendly. Her "dream" is to establish information kiosks in each courthouse where pro se litigants could learn about the process from start to finish. That process is even "confusing to lawyers who are skilled in bankruptcy," she said.

Noting that there is no money in her budget to help the pro se litigants, she suggested that perhaps an arrangement could be made with one of the local law school clinics to gain more assistance.

### **Construing New Laws**

The new bankruptcy laws were passed after nine years of debate during several congressional sessions,

Judge Cyganowski noted.

Because of that lag, by the time the bill won approval, it did so virtually devoid of attached legislative history. Absent that history and without precedent, the Eastern District judges must create their own precedent.

Consequently, the judge said she meets regularly with her colleagues on the court and tasks their law secretaries to research the statutes' origins, in an effort to correctly apply the measures.

Judge Cyganowski said that there is usually a three-month lag between the implementation of new rules and their first appearance in motion papers. But, she also said, "We're struggling. We're looking to see what other courts are doing."

One particularly vexing provision, Bankruptcy Code §521, contains a subdivision that appears to call for automatic dismissal of a debtor's case if certain schedules are not filed within 45 days of the initial bankruptcy filing. That dismissal, the judge noted, is apparently meant to happen without notice to the debtor, without a hearing and without the passing consideration of a judge.

Whether or not this is what Congress intended, the judge said, is open to debate.

For the time being, however, she and her colleagues will be applying the law as it is written. It is not about whether the judges like the new law, she said. "We're here to enforce it."