

Interview: Two Supreme Court Justices Share Thoughts about Legal System

Editor's Note: ABTL's

Seventeenth Annual Seminar last October featured a panel discussion with the Hon. John Paul Stevens, Associate Justice, U.S. Supreme Court, and the Hon. Malcolm M. Lucas, Chief Justice, California Supreme Court. The justices answered questions from the Hon. Pamela A. Rymer, Dean Jesse H. Choper and Jeffrey I. Weinberger. Following are edited excerpts of their remarks.



Justice Stevens

ABTL: It seems that the federal system is becoming a specialized criminal court system. What can be done to facilitate the disposition of civil cases?

Justice Stevens: That's certainly a problem. Judges tell me the criminal dockets are getting so heavy that it's hard to try civil cases. I suppose if there was some way to have the states handle all the narcotics cases and not have the federal government get involved, that might help. But I don't think that's going to occur. I

really think that's a legislative problem, not a judicial problem.

Justice Lucas: As a former federal judge, I think the federal courts should handle all the drug cases so we can try the civil cases. There is no question that this is a problem in the state of California. Between 1984 and 1985 there was a doubling of cases involving drugs. It is estimated that 70% of cases filed are either directly related to drugs or testing shows the defendant was under the influence of some illegal drug. The result is that civil cases are relegated to the back burner.

It seems somewhat unfair that the people who pay the taxes to support the judicial system find themselves in difficulty. It's inevitable and appropriate that questions of liberty take priority, but it's also difficult for the citizens, who see that it is virtually impossible, in some jurisdictions, to get a civil case to trial. San Diego, the southern district of California, is an excellent example of a court that has had great difficulty getting its civil cases to trial.

ABTL: Can you suggest any remedies, such as limiting access to the courts?

Justice Stevens: Some would limit access to the courts. I'm not sure that is the answer. Access is already so limited for extraneous reasons such as the war on drugs, I'm not sure that you should put another impediment.

Justice Lucas: I agree with you. I do not propose, and indeed

I would oppose the English system of having the losing litigant pay his opponent's legal fees. This would be one way of limiting access to the courts and there is no question in my mind that it would dramatically reduce the number of civil cases that actually went to trial.

But there also would be basic concerns for the people who, for example, are on contingent fees, and who might have a very good case, but the horrifying prospect of having to pay very substantial attorney's fees for the other side would probably force the case to settle for much less than might reasonably be expected.

I suppose we can and must do something. The basic bottom line is that there must be traditional judicial resources.

All through the years, as the population has increased and as

the gross national product of the state has increased, we have increased the number of judges. But, that number is dramatically behind what it should be. Despite the fact that we are using the trial court delay reduction program to move cases through — and it seems to be successful at least for the average, routine type case — there is nothing that can replace the Omnibus Judgeship bill that is moving through Congress at the present time or the traditional staffing bill that, hopefully, may some day go through the legislature.

Then we need facilities and a variety of things, all of which, in these economic times, will be tough to come by.

ABTL: Do you think private judging provides a partial solution?

Justice Stevens: I think the additional capacity [provided by private judging] is desirable because we need more dispute resolution. Too much reliance on this system may tend to make justice available only to those who can afford it while those who cannot afford it may be left out in the cold. That is the disadvantage of having to rely on private dispute resolution too much.

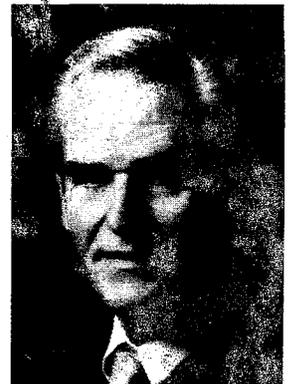
Justice Lucas: It's a difficult social question, I think. Justice for the rich? What happens to the poor people who do not have access to the same system?

We are moving some cases out of the system so that other cases may be tried faster. But there is no precedential value to these cases. They are done in secret. If you continue to devote resources to a private system which dispenses better, perhaps faster justice, ultimately the public system will suffer from a lack of resources for the public system.

Having said all that, as you know, I have commissioned some of your colleagues to come up with a report on this. They have opted for an opinion that this is beneficial over all.

It does help heavily impacted courts both in discovery matters and the actual trials. So, I suppose I would have to say that

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Justice Lucas

Interview

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we must take our help where we can get it. . . .

It is a difficult problem, but I would opt for a continuation of the program, perhaps making it more public, perhaps providing a system for public notice of hearings, opening hearings to the public, and that sort of thing. We will be considering such recommendations next month at the Judicial Council.

ABTL: The nation just completed the Supreme Court nomination process. At various times, the President has been criticized for using a litmus test in selecting nominees for the Supreme Court and the Senate has been criticized for its role in the process. What are your views on appropriate criteria for nomination by the President and confirmation by the Senate?

Justice Stevens: The term "litmus test" in itself is subject to differing interpretations. I suppose we would not be too enthusiastic about a nominee who believes in slavery or was a member of the Klu Klux Klan, so I suppose there are things that the President ought to consider and that the Senate ought to consider.

Certainly the President should select a judge that he thinks will be well qualified and generally sympathetic with his political views. I don't see anything wrong with that.

I don't know whether President Reagan applied a litmus test on the abortion issue — whether he sought that kind of assurance from any nominee for the federal appellate courts or the Supreme Court. I was not aware of it if he did.

I would think something like asking for a commitment in advance from a nominee on how he would vote on a particular issue would be highly improper and unproductive. I myself would be insulted if the President or the Attorney General asked me for a commitment in advance on how I would rule on a major legal issue.

So if you're talking about legal issues that come before the court, I surely would think it was wrong to apply a litmus test and in the same sense, I think it's quite wrong for the Senate to expect a nominee to commit himself or herself on how he or she will vote on a particular issue. That is because the thing we want in our judges is people who do not have a particular agenda but who will listen to both sides and make up their minds after hearing all the arguments. The notion that you should make these commitments in advance is quite foreign to the process.

I remember when, I went through the process, a major issue was capital punishment. I was concerned that I would be asked about that issue. I was prepared to say, I really wasn't sure. I had seen too many cases where, when I first looked at them, the answer seemed quite clear, but after further study, the law seemed to compel a different answer.

The process hasn't changed as much as some people seem to assume. When I was nominated and confirmed, I heard a lot of questions. Some I could answer and some I couldn't.

ABTL: Do you feel it's appropriate for a sitting justice to comment on the advisability of a particular nomination while it is pending?

Justice Stevens: Some people thought I put my foot in my mouth with Judge Bork and I guess I did. I think probably it is wiser not to do so publicly. But there are two sides to that. The American Bar Association Committee on Judicial Candidates routinely asks each of us for our views about nominees when nominations are pending. I was somewhat troubled that the views of the committee were reported and had an impact on the nomination. I thought that, if you would talk to a select com-

mittee like that and make your views known, perhaps the public also should know your views.

ABTL: California's system of electing judges has resulted in controversy. U.S. Supreme Court justices receive lifetime appointments. Some have said this provides presidents with the opportunity to name young appointees, thereby influencing the Court's decisions for decades after they leave office. Do you believe there should be any modification in the system of selecting judges?

Justice Stevens: The greatest weakness in our judicial system is the fact that so many judges are elected throughout the country. That is a great weakness. It's wrong for judges to have to campaign for re-election and to have to be concerned about whether they will be elected when they are doing work that should not be influenced by popular reaction.

As far as the appointment of young people is concerned, I suppose on the District and Court of Appeals level, one of the problems is the salary scale is not that attractive to people who are farther up the ladder.

As far as the Supreme Court is concerned, my impression is that, over the years, all of the appointments have been people who are age 50 to 55. I think that has continued in recent years and the last one older than that was Powell. I don't think there has been much of a change.

Justice Lucas: I was the beneficiary of a lifetime appointment and I gave it up. I suppose that may be viewed as a demonstration of my lack of judgment.

There is no question in my mind that life tenure is the most beneficial system.

There is also no question in my mind that the population at large would reject lifetime tenure. If the issue were put on the ballot, it would fail and perhaps fail resoundingly.

I think our system of confirmation elections only, for appellate judges, where no one can run against you, that provides some minimal assurance of a hoped for non-political approach. But we have seen that the system can fail — to our great regret.

ABTL: It has been my impression recently that there has been an increase in personal shots taken by justices. Is this healthy? Why is it happening?

Justice Stevens: I don't know how much it has increased. There has always been some of that. It is regrettable.

I tell my law clerks every year to do their best to prevent me from doing that sort of thing. I'm sure we fail too on occasion.

I think it's a bad example to set for the bar because I sense there is a problem of civility in the courtroom that is perhaps more serious than it was when I was in practice. But, first of all, it may not happen as often as it seems. One or two examples may be rather dramatic and may make it seem worse than it is. . . . But sometimes a justice tends to feel strongly and may overstate his personal feelings, just as an attorney may overstate a case. It is not the best advocacy, but it does happen. From time to time, someone overstates his or her personal feelings.

It does not reflect poor personal relations on the Court. As a matter of fact, personal relations on the Court are excellent.

ABTL: Do the courts rely too much on law clerks and how do you make do with fewer clerks than other justices?

Justice Stevens: I don't get along with as many fewer as I used to. The quota is four. Until some years ago, I had two. Now I have three.

It's hard to generalize about such things. Different justices organize their work in different ways. Some have law clerks draft bench memos, I do my own bench memos. Some have them draft the first draft of opinions. . . . I generate my own first drafts and I think it's more efficient that way.

Some of them participate in what they call the clerk pool where the justices share all their clerks and they take turns writing memos for everybody in the pool. It sounds like an efficient way to do it, but the problem is, when a clerk is writing for six or seven justices, every opinion is likely to sound like a law review article. My own view is that more effort goes into that system than the time you save. I have a different approach with my clerks. My own view is that they don't even write memos if they don't think there's a chance the judge will have a serious interest in it anyway, or if they think there is a chance I will want to read the papers, they will just ask me, "Hey, do you want to read these papers?"

So there are different ways of doing it. Different people have different work habits. I would hesitate to generalize.

But you asked if I think they have too much impact on the process. Yes I do. The very fact that there are so many clerks in the whole process means they are going to have an impact on what comes out of the process.

They don't make the decisions or anything like that, but they do have an impact on what comes out as the finished product in an opinion.

Justice Lucas: The history of California courts is dramatically different than the history of the federal courts. I know when I was a district court judge I had clerks for two years at a time. . . . There always came a time when [clerks] would be required to leave, no matter how capable they were.

In California, there is a permanency of staff. One of [Stanley Mosk's] clerks was there before he started, and Stanley has been there 25 years. Some have been there 31 or 32 years. They are an institutional resource. The down side is they have their own views about things and it does require some control.

Some of the permanent staff have developed expertise in certain areas. We have some that do nothing but state bar cases. What they don't know about the state bar process is not worth knowing.

So there is much economy and much saving with a permanent staff, coupled with a down side of having a somewhat rigid institutionalization

ABTL: If you could be granted one wish to change a Constitutional provision, what would you change?

Justice Stevens: That is a question you would answer different ways at different times. At this time, I would say I would abolish the death penalty. By popular election, that is not going to happen, but that is an unfortunate part of our criminal justice process.

I have no doubt it is constitutional. But experience has demonstrated it is not a deterrent to crime. It places a terrible burden on the judicial system. It makes us as a country look not quite as good as countries in Western Europe that seem to get along quite well without it. It really seems to me that when you see elections turn on candidates stressing how vigorously they will enforce the death penalty, it cheapens the process. It seems to me we ought to abolish that.

Justice Lucas: Mine is not so serious a suggestion. I would change whatever the provision is in our Constitution that allows the legislature to hold the purse strings over the judiciary. I would

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Bankruptcy Procedure for the Non-Bankruptcy Business Litigator

Bankruptcy practice has grown in size and scope in recent years. In the process, it has become increasingly litigation oriented, making it important that today's business litigator have at least a basic understanding of the bankruptcy system and its peculiar procedures.

This article flags some of the things that a business litigator should know about bankruptcy procedure. Given that entire volumes have been written on this subject, it is not possible to do more than touch on some of the more important topics in this short article.

An Overview of the Bankruptcy System

Technically, the bankruptcy court is not a separate court at all. Under the present system, the bankruptcy judges of a district "constitute a unit of the district court." 28 U.S.C. § 151. The district court, in turn, is authorized to refer any or all cases and proceedings to the bankruptcy judges. 28 U.S.C. § 157(a). Virtually all districts have enacted a procedure for the automatic referral of all bankruptcy cases and proceedings to bankruptcy judges. The bankruptcy judges of a district are known as the "bankruptcy court," even though they are really an adjunct of the district court. 28 U.S.C. § 151.

Several bodies of laws and rules apply in bankruptcy matters. They include:

1. *Bankruptcy Code.* The Bankruptcy Code obviously applies in all bankruptcy matters. The substantive and jurisdictional provisions may be found in all of title 11 and part of title 28 (*e.g.*, §§ 151-158, 1334, 1408-1412) of the United States Code.

2. *Bankruptcy Rules.* The current Bankruptcy Rules, promulgated by the United States Supreme Court, govern practice and procedure in all bankruptcy courts. In the event of a conflict between the Bankruptcy Code and the Bankruptcy Rules, the Bankruptcy Code governs.

3. *Federal Rules of Civil Procedure.* Although the Federal Rules of Civil Procedure ("FRCP") are not directly applicable to "proceedings in bankruptcy," FRCP 81 (a)(1), the Bankruptcy Rules specifically incorporate many of the FRCP. For example, Bankruptcy Rules 7026 through 7037 incorporate the discovery provisions of FRCP 26 through 37.

4. *Federal Rules of Evidence.* The Federal Rules of Evidence apply in bankruptcy matters. Bankr. R. 9017.

5. *Local Bankruptcy Rules.* Some districts, such as the Central District of California, have adopted local bankruptcy rules which not only cover procedure, but also regulate the practice of professionals (such as counsel) within the district. For example, in the Central District of California, "[a]ttorneys appearing before the Court are required to have read the Bank. Rules and the Local Bankruptcy Rules in their entirety." Local Bankruptcy Rule 102(1)(a).

Litigated disputes in bankruptcy are either adversary pro-



Stephan M. Ray

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Bankruptcy Procedure

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ceedings or contested matters. Litigation that falls into the categories listed in Bankruptcy Rule 7001 are adversary proceedings. Examples include most proceedings to recover money or property, objections to discharge or dischargeability of debts, and proceedings to obtain an injunction or other equitable relief. The litigation model for adversary proceedings roughly parallels non-bankruptcy civil litigation in the district court. In most instances, an adversary proceeding is commenced by filing a complaint with the clerk in the district where the bankruptcy case is pending and paying a \$120.00 filing fee. See Bankr. R. 5005(a), 7003. Bankruptcy Rules 7001 through 7087 apply in all adversary proceedings, and those rules incorporate many familiar provisions of the FRCP. Nevertheless, since the Bankruptcy Rules deviate from FRCP in many important respects, both sources must be consulted.

Any dispute that is not an adversary proceeding is instead a contested matter. Examples of contested matters include: motions for relief from the automatic stay (Bankr. R. 4001(a)); objections to the use, sale or lease of property (Bankr. R. 6004(b)); motions to assume, assign or reject an executory contract (Bankr. R. 6006 (a)); objections to claims (Bankr. R. 3007); and objections to the adequacy of the disclosure statement (Bankr. R. 3017(a)) or to confirmation of the plan of reorganization (Bankr. R. 3020 (b)(1)). Relief is requested by motion, Bankr. R. 9013, and the procedure may be tailored to fit the circumstances. See Bankr. R. 9014. The discovery rules of FRCP 26 through 37 apply in contested matters. *Id.*

One other introductory point worth noting is the concept of notice in bankruptcy matters. Many rights and powers under the Bankruptcy Code may be exercised only "after notice and a hearing." That phrase is vaguely defined to mean "after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances." 11 U.S.C. §102(1)(A). In some circumstances, the moving party may argue that very limited notice and no hearing may be appropriate. Notice issues have obvious due process overtones, and sometimes those issues are hotly litigated. In any event, some matters *require* notice under Bankruptcy Rule 2002, and counsel for a party in interest should consider getting on the special notice list by filing a request under Bankruptcy Rule 2002(g).

Jurisdictional Issues

Jurisdictional issues are important in litigation before any tribunal. Bankruptcy is no exception.

The present jurisdictional framework was established by the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA"). Under BAFJA, jurisdiction over bankruptcy cases and proceedings is vested in the district court. 28 U.S.C. §1334. The grant of jurisdiction is very broad. District courts have original and exclusive jurisdiction over all bankruptcy cases. 28 U.S.C. § 1334(a). District courts also have original but not exclusive jurisdiction over all civil proceedings arising under the bankruptcy laws, or arising in or related to bankruptcy cases. 28 U.S.C. § 1334(b).

Despite this broad grant of jurisdiction, district judges hear relatively few bankruptcy matters. That is because virtually all districts have enacted a procedure for the automatic referral of bankruptcy cases and proceedings to the bankruptcy judges of the district. See 28 U.S.C. § 157 (a). The referral of cases and proceedings to the bankruptcy judges is subject to withdrawal, in whole or in part, upon timely motion "for cause shown." 28 U.S.C. § 157(d). Withdrawal is mandatory if the proceeding

requires consideration of both bankruptcy law and other laws of the United States regulating organizations or activities affecting interstate commerce. *Id.* A motion to withdraw the reference, which is heard by a district judge, requires a \$60 filing fee. Bankr. R. 5011(a).

Notwithstanding the broad grant of jurisdiction, upon timely motion, a court may abstain from hearing a proceeding. Abstention is permissive in the interest of justice, comity with state courts, or respect for state law. 28 U.S.C. § 1334(c)(1). Abstention is mandatory if the cause of action arises under state law, it can be timely adjudicated in state court, and there would be no federal jurisdiction absent bankruptcy law. 28 U.S.C. § 1334(c)(2). Motions to abstain are heard by a bankruptcy judge, who files a report and recommendation with the district court. Bankr. R. 5011(b). The district court reviews the report and recommendation *de novo* and enters a final order.

Claims that are pending in another tribunal may be removed to the district court for the district where the civil action is pending. 28 U.S.C. § 1452(a). The procedure for removal, which is quite detailed and contains relatively short deadlines, is contained in Bankruptcy Rule 9027. Once removed to the district court, the claim is automatically referred to the bankruptcy court. *Cf.* 28 U.S.C. § 157(a). Any party may move to remand the removed claim "on any equitable ground." 28 U.S.C. § 1452(b). Motions to remand are heard by the bankruptcy judge, who files a report

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and recommendation with the district court. Bankr. R. 9027(e). The district court reviews that matter *de novo* and enters a final order.

Upon timely motion, the venue of a case or a proceeding may be transferred to another district "in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412; Bankr. R. 1014 (cases), 7078 (proceedings). Although neither the Bankruptcy Code nor Bankruptcy Rules explicitly addresses this point, some courts have held that venue motions may be heard and decided by bankruptcy judges.

Perhaps no jurisdictional issue has spawned more litigation than the distinction in 28 U.S.C. § 157 between "core" and "non-core" proceedings. Bankruptcy judges may enter final judgments in core proceedings. In non-core proceedings, however, bankruptcy judges propose findings of fact and conclusions of law to the district court, and the district court reviews the record *de novo* before entering the final judgment. The parties may, of course, consent to the final entry of judgment by the bankruptcy judge in a non-core matter. Indeed, the complaint and response to the complaint must state whether the proceeding is core or non-core, and if non-core, whether the party does or does not consent to the entry of final judgment by the bankruptcy judge. Bankr. R. 7008(a), 7012(b).

One other jurisdictional point worth noting relates to jury trials. A recent article in the *ABTL Report* discussed the issue of trial in bankruptcy. See Bailey, *The Right to a Jury Trial After Granfinanciera*, *ABTL Report* Vol. XII, No. 2 (April 1990). Since then, there have been some interesting developments. First, in *Langenkamp v. Culp*, — U.S. —, 1990 U.S. LEXIS 5745 (Nov. 13, 1990), the Supreme Court held that: if a creditor files a proof of claim against a bankruptcy estate, that creditor loses its Seventh Amendment right to a jury trial with respect to the trustee's preference or fraudulent transfer action. Second, in *Taxel v. Electronic Sports Research (In re Cinematronics, Inc.)*, — F.2d —, 1990 U.S. App. LEXIS 18370 (9th Cir. Oct. 22, 1990), the Ninth Circuit held that (1) the defendant had a Seventh Amendment right to a jury trial on certain non-core state law claims, and (2) the bankruptcy court cannot conduct a jury trial in a non-core proceeding. Although the Bankruptcy Rules do not contain a procedure for demanding a jury trial where such a right exists, a party requesting a jury trial should probably follow the procedure set forth in FRCP 38 (b) (which has been adopted by the Central District of California in Local Bankruptcy Rule 103 (12)).

Discovery Devices

There are several effective discovery devices in the bankruptcy context. Those devices include: (1) review of certain financial information filed by the debtor, (2) examination of the debtor at the first meeting of creditors, (3) Bankruptcy Rule 2004 examinations, and (4) traditional discovery under the *FRCP*. Each device is discussed below.

An initial source of discovery is the schedules of assets and liabilities and the statement of financial affairs filed by the debtor under Bankruptcy Rule 1007. Those financial documents will disclose, among other things, the debtor's assets and liabilities, the location of the debtor's books and records, the dates and recipients of financial statements, the identities of insiders (including officers and directors), and transferees of certain assets. Unless the deadline is extended for cause, this material must be filed with the court within 15 days after the commencement of a voluntary case (or 15 days after entry of the order for relief in an involuntary case).

Examining the debtor at the first meeting of creditors under 11 U.S.C. § 341(a) serves as a second source of discovery. The meeting is administered by a representative of the United States

Trustee. The debtor is placed under oath, and may be asked a broad range of questions, similar in scope to that allowed under Bankruptcy Rule 2004 (discussed below). If, however, the examination is lengthy, the questioner will be asked to take a Bankruptcy Rule 2004 examination at a later date.

A third, and highly effective, discovery device is the Bankruptcy Rule 2004 examination. Bankruptcy Rule 2004 permits any party in interest to move for an order permitting the examination of any entity (*i.e.*, third parties as well as the debtor). A Bankruptcy Rule 2004 examination may relate to the "acts, conduct or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Bankr. R. 2004 (b). In chapter 11 and 13 cases, the scope is even broader, and includes "the operation of any business and the desirability of its continuance . . . and any other matter relevant to the case or to the formulation of a plan." *Id.*

Local Bankruptcy Rule 111(7)(c) sets forth a detailed procedure regulating Bankruptcy Rule 2004 practice in the Central District of California. A Bankruptcy Rule 2004 examination is conducted under oath just like a deposition. The attendance of witnesses and production of documents at an examination may be compelled by subpoena. See Bankr. R. 2004(c), 9016. Moreover, if the debtor is a witness, attendance may be compelled anywhere in the United States without a subpoena. Bankr. R. 2004(d). "Debtor" is defined in Bankruptcy Rule 9001(5) to include, if designated by the court, officers, directors, controlling shareholders, general partners, or other persons in control.

Bankruptcy Rule 2004 is a powerful pre-litigation discovery device, and can be very effective in investigating the merits of a potential claim prior to initiating an adversary proceeding or a contested matter. However, if an adversary proceeding or a contested matter is pending, the parties must use the narrower discovery rules in Bankruptcy Rules 7026 through 7037 instead of Bankruptcy Rule 2004. See 8 *Collier on Bankruptcy* ¶ 2004.03[1] (15th ed. 1990).

A fourth discovery device is traditional discovery under FRCP 26 through 37 made applicable by Bankruptcy Rules 7026 through 7037. The discovery rules apply in both adversary proceedings and in contested matters. See Bankr. R. 9014.

A final point on discovery worth noting is that the usual privileges apply in bankruptcy, with an important twist suggested by *Commodity Futures Trading Comm'n. v. Weintraub*, 471 U.S. 343 (1985), which held that, in the context of a bankruptcy case, a corporation's attorney/client privilege passes to the court-appointed trustee. In any event, a party may move to quash discovery or obtain a protective order in an appropriate case.

Common Types of Bankruptcy Litigation

Certain types of litigation are more common than others in bankruptcy cases. Many publications discuss bankruptcy litigation issues in great detail, including the venerable *Collier on Bankruptcy* (15th ed. 1990). It is far beyond the scope of this short article to duplicate that discussion. Nevertheless, it might be helpful to identify a few common types of bankruptcy litigation and note some of the procedural rules applicable to each type.

1. *Automatic Stay Litigation*: The automatic stay (11 U.S.C. § 362), which is self-executing upon the filing of a bankruptcy petition, plays a large role in most bankruptcy cases. The procedure for seeking relief from the automatic stay is governed by 11 U.S.C. § 362(e)-(g), Bankruptcy Rule 4001(a), and Local Bankruptcy Rule 112 for the Central District of California. Essentially, a party seeking relief from the stay must file a motion,

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