



## THE SOUTHERN DISTRICT OF FLORIDA'S JUDICIAL EDUCATION INITIATIVE -FLORIDA CIRCUIT COURT JUDGES AND BANKRUPTCY LAW

By Guest Contributor Steven Newburgh, Esq.



On August 6, 2019, The Hon. Mindy A. Mora and I were honored to serve as faculty for the 2019 Annual Education Program at the Florida Conference of Circuit Judges in Naples, Florida. The Florida state court judges were treated to an engaging presentation, if I may say so myself, focused mainly on issues encountered in foreclosure proceedings, with questions from the audience of judges. Many of the judges attending had never heard of a “Two-Year Bar Order” or knew that Florida Statute § 702.12, made effective October 1, 2018, may result in a debtor losing the right to raise affirmative defenses in a foreclosure proceeding pending in state court where the debtor/defendant previously filed a statement of intention in a bankruptcy proceeding signifying “surrender” of that same property. Given that codification of the Failla decision (*Failla v. Citibank, N.A. (In re Failla)*, 838 F.3d 1170 (11th Cir. 2016) through Fla. Stat. § 702.12 was largely the product of contributions by a task force chaired by Judge Mora established by the Business Law Section of The Florida Bar, our Florida judges had an opportunity to explore this statute with one of its authors.

Judge Mora and I were invited to serve as faculty at the Naples Conference by 15th Judicial Circuit Court Judge, Meenu Sasser, following a similar presentation given by Judge Mora and me to the 15th Judicial Circuit’s judges. Judge Sasser and the state court judges recognized the interconnection between the state courts and the bankruptcy courts, and, therefore, the importance of providing Florida’s state court judiciary with a knowledge base to address issues that arise every day in their courtrooms and which implicate the Code and the rules under which it functions. Unfortunately, Judge Sasser passed away before the Naples Conference. Judge Sasser was the first Asian-American state court judge in Florida, was an ardent supporter of judicial education and was involved in many state-wide projects to provide continuing education to the state court judges. Judge Sasser was highly revered by both Bench and Bar; In December of 2017, The Palm Beach County Bar Association reported that for the third consecutive year, Judge Sasser received the highest number of positive responses in the Bar Association’s annual Judicial Survey.

This recent presentation in Naples by Judge Mora and me is part of the Bankruptcy Court’s District-wide initiative to provide meaningful bankruptcy law and procedure education to Florida state court judges. Over the course of the last year, many of the bankruptcy judges in the Southern District of Florida conducted workshops and seminars for the Florida state court judges in Broward, Miami-Dade, and Palm Beach counties. Those workshops will continue, next year, and will be offered periodically in the future.

Questions most commonly asked by state court judges involve the automatic stay and the universe of section 362’s subsections, such as the effect of a bankruptcy filing on proceedings involving joint tortfeasors, the impact of the stay on co-defendants, and how bankruptcy impacts divorce proceedings. Questions from the judges also included dischargeability issues encountered in criminal proceedings, such as the exact wording of restitution orders and how that wording may affect an order of restitution and questions relating to the bankruptcy discharge itself (requiring explanation of the discharge injunction and a discussion of concurrent jurisdiction).

The bankruptcy judges and practitioners of the Southern District of Florida will continue to provide the state court judges within our District meaningful and practical workshops and other educational programs to assist the state court judiciary when faced with legal and procedural issues relating to bankruptcy.