



## CHIEF JUDGE'S CORNER

BY: CHIEF JUDGE LAUREL MYERSON ISICOFF

By the time you read this our new bankruptcy judge may be sworn in; if not she will get started soon. The Court will send out an email blast when the new judge gets started together with a short bio. Judge Hyman will continue to serve on recall and will be available for judicial settlement conferences in the Southern District of Florida. Judge Mark has expressed his willingness to serve a third 14-year term and has advised the Eleventh Circuit. Members of the bar and the public are invited to submit written comments for consideration by the Court of Appeals concerning the reappointment of Judge Mark—see public notice posted on the court’s website. Comments must be received in the Circuit Executive’s Office no later than **April 3, 2018**.

The judges decided to form a standing Lawyers Advisory Committee to (a) to receive requests from the United States Bankruptcy Court for the Southern District of Florida (the “Court”) to consider issues relating to, arising from, and/or affecting the practice of law before the Court; (b) to recommend to the Court changes in bankruptcy practice and/or procedure throughout the district; (c) to act as a liaison between the Court and bankruptcy law practitioners throughout the district; (d) to develop, implement, and maintain various bankruptcy related programs in the district, as requested by the Court; and (e) to consider or initiate any matter related to bankruptcy that it deems appropriate. The 15 member committee is made up of attorneys from around the district and is a cross-section of consumer and business lawyers, debtor and creditor representatives, trustees from chapter 7, 12 and 13, as well as a representative from the office of the U.S. Trustee.

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### Bankruptcy Cases Filed From 1/1/18 to 2/28/18:

**Total Filed: 2,406**

- Chapter 7 : 1,271
- Chapter 9 : 0
- Chapter 11 : 30
- Chapter 12 : 0
- Chapter 13 : 1,102
- Chapter 15 : 3

Additional filing statistics are available on the court website [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) under the “Court Information” tab at the top of page.

Select: “[Bankruptcy Case Filing Statistics](#)”

### US BANKRUPTCY COURT, SDFL RECENT ADMINISTRATIVE ORDERS AND PUBLIC NOTICES

[Administrative Order 2018-01](#) In re: Amendment of Section (C)(1) of Interim Local Rule 3070-1

[Administrative Order 2018-02](#) In re: Adoption of "Procedures for Referrals by the Court of Certain Suspected Bankruptcy Crimes" and clarification of Status of Administrative Order 2017-03.

[Administrative Order 2018-03](#) In re: Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters.

[Administrative Order 2018-04](#) In re: Adoption of Interim Local Rule 2016-1(B)(1)

Please see [Public Notice by the Eleventh Circuit Court of Appeals concerning the reappointment of Judge Robert A Mark](#). Comments to be submitted to Mr. James P. Gerstenlauer, Circuit Executive, Eleventh Circuit Court of Appeals, 56 Forsyth Street, NW, Atlanta, GA 30303, no later than April 3, 2018.



**CHIEF JUDGE'S CORNER** (continued from page 1)

The Standing Committee on Pro Bono continues to serve the Court as well to advise the Court on ways to improve pro bono services through the entire district, which is made up of nine counties. The Local Rules Committee will continue as an ad hoc committee, which will be chaired by our new judge. We thank Judge Kimball for all of his hard work chairing this committee for the past 10 years.

If you are interested in serving on a committee, please let me know on which committee you would like to serve, and when a slot becomes available we will already know of your interest. The LAC membership will rotate every three years in staggered terms meaning next year and the year after there may be openings since years 1 and 2 we will have to have shortened terms for some of the members. The Pro Bono Committee is still looking for members from some of our northernmost counties. The Local Rules Committee will be set up sometime after our new judge has settled in.

Bankruptcy and Congress collide again. Senators Cornyn (R. Tx.) and Warren (D. Ma.) have introduced a bill that would require companies to file bankruptcy in the venue in which their primary place of business is located. The bill has gone to the Senate Judiciary Committee. No bill has been introduced yet in the House of Representatives. As you know, many companies headquartered in Florida, and other states around the country, have filed their very large Chapter 11 cases in either Delaware or in the Southern District of New York, based solely on the company's state of incorporation or a small affiliate filing. Senator Coons of Delaware has suggested that bankruptcy judges outside of Delaware are not competent to handle large chapter 11 cases. . . . If you have a position on this bill please consider reaching out to your senator or representative.

Finally, at least for now, the Southern District of Florida has become the third court in the United States to adopt the Judicial Insolvency Network Conference ("JIN") Guidelines For Communication And Cooperation Between Courts In Cross-Border Insolvency Matters. The Southern District of Florida, together with the Southern District of New York and the District of Delaware (each of whom previously adopted the JIN Guidelines) collectively have the most Chapter 15 cases filed in the United States. I want to thank Greg Grossman of Sequor Law for bringing these guidelines to the Court's attention.

Please check out the Pro Bono Corner for some exciting news about pro bono opportunities. Always make a difference!

**Pro Bono Corner** (continued from page 2)

So there you have it. No excuses. If you work for a bank, if you are retired or you are a law professor and you aren't admitted to the Florida Bar, if you don't want to call around to find a case that suits you, if you have 30 minutes available to answer some legal questions - what may have been beyond your reach (even if only in your mind) is now available to you. Make a difference in this world. It will not only change the life of the person you help, it will change your life too.

And for those of you who ARE admitted to the Florida Bar, always remember your oath - "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed".



## FROM THE JUDGES' CHAMBERS



### JUDGE KIMBALL'S ADVICE ON DRAFTING MOTIONS AND OTHER REQUESTS FOR RELIEF

Don't you find it annoying when you cannot tell how the Court has ruled and why until you have read all of a lengthy order or opinion? Isn't it a waste of your time to have to re-read the entire order after you know the court's conclusion, so you can make better sense of the analysis? I have the same reaction to many longer motions and other requests for relief. In preparing for a typical motion calendar, I read between 40 and 70 requests for relief. In many of those documents, it is not clear what is requested or the legal basis for the relief sought until the final paragraph. Even after reading the entire document, I sometimes cannot tell specifically what the filer wants or why they think they are entitled to it. Many times, the only hint at the relief requested is the title of the motion. And this is followed by many paragraphs describing the parties, detailed background facts (often including many allegations not relevant to the relief requested), and a lengthy legal analysis before the writer provides any clue as to what is requested or its basis in the Bankruptcy Code or other applicable law. Then I need to go back and re-read the document from the beginning in order to understand why much of the text is there at all.

Documents written with this structure waste the court's time and do nothing to assist the filer in obtaining the relief requested. What do I recommend? In the first paragraph, state the identity or role of your client, the specific relief requested, and the reasons that support your request including the legal basis if not apparent. For example, "Client, the debtor's landlord, seeks relief from stay in this chapter 7 case to evict the debtor because the debtor has failed to pay any rent since three months before the filing of this bankruptcy case." Or "Client, the debtor's principal secured creditor, objects to confirmation of the chapter 11 plan because the plan assigns a below market interest rate to Client's secured claim, thus not providing present value, the plan is not feasible as the debtor's projections are based on unreasonable assumptions in light of past performance, and the plan violates the absolute priority rule as equity holders will retain their interests, the class of unsecured creditors has not accepted, and unsecured creditors are not paid in full on the effective date, among other objections." Or "Debtor objects to the claim of her spouse's former lender on the grounds that the claim, which is based in a theory of fraudulent transfer, was specifically released in a general release given to the debtor after the claim arose, and the claim is barred by the applicable Florida statute of limitations, among other objections."

With an appropriate introduction, I can then read the remainder of the document knowing what the filer is seeking and why. When writing a lengthy order or opinion, I almost always put such a summary at the beginning. But I do not draft the summary until after the order or opinion is nearly in final form. Then I go back and read the entire draft again to eliminate text that is not necessary to the decision. I recommend that lawyers do the same thing. Write out your complete motion or other request for relief, with all of the factual allegations and legal analysis. Then write a summary paragraph for the beginning. And finally, with that summary in mind, re-read the document and remove components that are not necessary to what you are seeking. By removing the noise from your document, you present a cleaner argument, making it easier for the court to understand what you want and why.



## FROM THE JUDGES' CHAMBERS



### **PRACTICE TIPS FOR EVIDENTIARY HEARINGS** **By: Latriece Jones, Law Clerk to Chief Judge Laurel Isicoff**

I am sure you all have read Judge Isicoff's "TEN THINGS I LIKE ABOUT YOU"; so let us focus on what it means in the context of preparing for trial.

1. Do not ignore the order.

Prior to your evidentiary hearing, the court will enter an order specially setting an evidentiary hearing. It is very important that you read the order because it will tell you when the evidentiary hearing will take place, deadlines and what you must do or file prior to the scheduled evidentiary hearing. If you do not obey the order, the court could impose sanctions or restrict your ability to use exhibits or call witnesses.

2. Calendar deadlines as soon as you get the order and notify the court of any issues relating to deadlines.

The order specially setting an evidentiary hearing will contain multiple deadlines. Calendar those deadlines as soon as you get the order! In the absence of an order excusing or modifying deadlines, the deadlines **MUST** be complied with. So, if there is an issue with a deadline the attorney must first reach out to opposing counsel to see if there is agreement on modifying the deadlines and second, agreement or not, you must seek authority from the court by filing a motion.

3. Do not wait until the last minute.

Local Rule 9070-1(B)(2) requires parties to bring a copy of their exhibits to chambers in electronic Portable Document Format (PDF) and stored on a USB flash drive or compact disc. As outlined in the order specially setting an evidentiary hearing, the USB or compact disc should be delivered to chambers at least one full business day prior to the evidentiary hearing. This gives the court's IT staff time to conduct a security check and to import the files into the court's computer network. Therefore, you should not wait until the day of the evidentiary hearing to drop off your USB or compact disk.

Rumor has it that the court may allow parties to exchange exhibits electronically if they agree. Let us keep our fingers crossed.

4. Confer with opposing counsel.

By now, you should know that every lawyer must meet and confer with opposing counsel. If you are unaware of this obligation, reread Local Rule 9073-1(d) and Fed. R. Bankr. P. 7037. It is important that you confer with opposing counsel to avoid unnecessary litigation and wasting of resources. If possible, you must try to resolve matters without filing a motion. This will save you and your client time and money. It will also save court time.

### **Bankruptcy Filings Fall 0.7% – Smallest 12-Month Decline Since 2010**

Bankruptcy filings in the 12-month period ending December 31, 2017, fell just 0.7 percent, compared with bankruptcy cases filed in calendar year 2016. According to newly released data, 789,020 cases were filed in 2017, compared with 794,960 in the previous year.

The percentage decline is the smallest for a 12-month period since bankruptcy filings reached a peak in 2010. The number of bankruptcy filings is the lowest for any calendar year since 2006, and the seventh consecutive calendar year that filings have fallen. For more information <http://www.uscourts.gov/news/2018/01/24/bankruptcy-filings-fall-07-smallest-12-month-decline-2010>.



## FROM THE JUDGES' CHAMBERS



### KEEPING THE RECORD STRAIGHT

**By: Susan Gutierrez, Courtroom Deputy to the Honorable A. Jay Cristol**

On an all too frequent basis Judge Cristol's courtroom deputy and chambers staff receive a phone call, email, or visit to chambers, requesting the Court to reschedule or continue a hearing due to an attorney's unavailability, the need for extra time to prepare, or a scheduling conflict with the date selected by the Court. Not as frequently, but with the same result, Court staff are asked to shorten notice of a motion already set for hearing. While the Court would like to accommodate these requests, there is a reason why the Court doesn't simply re-set the matter. The purpose of the case docket is to maintain a record of what occurs in a case. For this reason, attorneys are required to file a motion to continue a hearing, or a motion to shorten time, setting forth the justification for a continuance or rescheduling of a hearing. This practice protects the integrity of the Court record and ensures the accuracy of the docket.

Local Rule 5071-I regarding continuances states:

*Requests for continuances of scheduled hearings shall be in the form of a motion, and must (A) state with particularity the grounds for the motion; (B) indicate whether a continuance previously has been granted and whether the opposing party consents; (C) certify that the client consents to the continuance; and (D) be filed at the earliest practical opportunity prior to the hearing.*

### OUR JUDGES' FUN FACTS

**By: Jacqueline Antillon, Courtroom Deputy to the Honorable Robert A. Mark**

Many appearing before the bankruptcy judges in the Southern District of Florida, see somber (but "very stylish") black robes, the commanding posture from the bench, and the pounding of the gavel that accompanies serious decision making. So it may surprise some to learn that once their judicial decisions are made, these judges sometimes like to hang up their robes, seek adventure and have fun. Courthouse Beacon News asked and our judges shared the following fun facts about their lives:

#### **MIAMI-DADE JUDGES**

##### **Judge Laurel M. Isicoff:**

Was a swimmer in high school and college  
Her mother was a Broadway star  
She loves biking

##### **Judge A. Jay Cristol:**

Is a keen traveler and has visited all seven continents (Africa, Antarctica, Asia, Australia, Europe, North America and South America)  
Recites poetry by memory, has written and published opinions in verse  
Practice quirk: He finds the word "hereby" antiquated and unnecessary and does not like it included in orders submitted for his signature

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**OUR JUDGES' FUN FACTS** (continued from page 6)**Judge Robert A. Mark:**

Avid runner! He has participated in the Boston, Disney, New York and Chicago marathons. During his junior year in college in London, he participated in a march on Parliament in London to protest the shooting of 28 civilians by British soldiers in an incident called "Bloody Sunday". (Like the U2 song) When he was in college he worked as a handyman (I know, it's hard to believe).

**FT. LAUDERDALE JUDGES****Judge John K. Olson:**

Fluent in French (oh la la!)  
Member of the Burgundy Wine Club/TasteVin  
Once tended bar for Julia Child (American chef, author, and television personality)

**Judge Raymond B. Ray:**

Superhero status. He helped save a neighbor's son from a lion attack back in 1974

**PALM BEACH JUDGES****Judge Paul G. Hyman:**

He met his wife Kelly in a valet parking line coming off a BBA function honoring Judge Cristol  
While in college, he was a cook and a waiter in a steakhouse  
He often goes paddle boarding with Judge Kimball

**Judge Erik P. Kimball:**

Has read "Walden" by Henry David Thoreau more than a dozen times.  
Judge Kimball lost his first argument before a bankruptcy judge. Memorably, now retired Judge Queenan, one of the most respected bankruptcy judges of his time, said "Mr. Kimball", I'm afraid I don't follow your argument." Things did not improve after that.  
Likes silly putty, he buys it in bulk on Amazon. There is always a red Silly Putty egg on the bench. Along with a Magic 8 Ball, a Lego British Judge and the world's only "Louis Vuitton" gavel.

Although each of our judges is unique in accomplishments and interest, they share a zest for life, which includes a commitment to the bench and helping others. For them, as for each of us, life is an adventure, people we meet and the timeless precious memories made along the way and as Trent Shelton reminds us, "At the end of the day all that matters is love and memories so make sure you give it and make sure you make them."



## PUBLIC ACCESS TO CM/ECF IN THIS COURT: TWO INTERNET ADDRESSES, ONE OF THEM IS A SHORTCUT

By: Ellen Haas

Many e-filers use the handy link (highlighted in the image below) from the [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) website to access the CM/ECF Document Electronic Filing System. However, if the [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) site is down, users will not have access to the link on the homepage. Often they assume that CM/ECF access for this court is also “down” and contact the court for update status.



We don't mind the calls, but did you know there is a separate website address, <https://ecf.flsb.uscourts.gov>, that provides you direct access as shown in the image below:



Knowing there is an alternative link for accessing the document filing system directly and using it as your initial means of CM/ECF access in this court will save time and, if the [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) court site is down but CM/ECF site is up, avoid confusion. To summarize:

Typing [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) into the internet address bar provides leads to the court home page which contains detailed court information, including a link to access this court's CM/ECF e-filing website.

Typing <https://ecf.flsb.uscourts.gov> into the internet address bar provides direct access this court's CM/ECF E-filing website without first going to the Court's [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov). Because this link will work when the [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) website of the court is down, it is suggested that you create a desktop icon to use to directly access CM/ECF in this court. If you need help in setting up this icon, your office's IT staff may be able to assist you in setting up a shortcut icon or bookmark.





## WIFI TIPS AND TRICKS WHEN ON PUBLIC NETWORKS.

By: Tony Diaz

- ◆ **Use the Right Networks (and Avoid the Bad Ones):** Not every public Wi-Fi network is created equal. Try to seek out a Wi-Fi network provided by one of the coffee shops, stores or retailers in the airport. Opt for those instead of "Joe's Network" or unknown Wi-Fi networks. That will provide the device "some" level of security as well as the possibility of improved performance.
- ◆ **Ask to Connect:** You can set most devices to ask before they connect to a network, rather than just automatically connecting to the strongest or nearest open network. Never assume the network you used in one place is as safe as one with the same name in another place. Anyone with the right tools could "spoof" a Wi-Fi network and broadcast the name (called the SSID). If the device asks first, you have a chance to make a decision about whether it's safe to connect or not.
- ◆ **Use a VPN:** This should go without saying. You need a virtual private network (VPN) when you're on a public network. A VPN creates a private tunnel between your laptop or smartphone and the VPN server on the other end, encrypting your traffic from snoops. The VPN even tunnels the traffic through your ISP or the operator of the hotspot itself.
- ◆ **Avoid Personal Data in Hotspots:** This is more a behavioral tip than a technical one. If at all possible, avoid doing more serious tasks like bill paying, accessing your bank account, or using your credit card when connected to public Wi-Fi. Save those transactions for when you're connected safely to your home network. You're a lot less likely to get targeted by bad actors since you already keep that one secure.
- ◆ **Avoid Using Your Passwords:** We all have many passwords to remember. You probably have to enter a few even while you are on public Wi-Fi. But if you have been compromised, and some hacker is sniffing the airwaves and pulling down data, anything you type and send through the internet could be equally compromised. That's why you should use a password manager. We at the courts use LastPass. They store all your passwords and are encrypted, even via their apps. If you must use passwords, try to make sure they are on sites where you have two-factor authentication set up.
- ◆ **Disable File Sharing:** When you connect to a network with a PC whether Windows or Mac, the goal is typically to share some services such as files and/or printing ability. If you leave that sharing open at a hotspot and connect to the wrong thing, you could be giving bad guys easy access. Disable it before you head out.
- ◆ **Use HTTPS and SSL:** Many websites use the HTTPS protocol to support SSL (Secure Socket Layer) to make your connection to them more secure. This ensures at least some encrypted communications. Many websites only use HTTPS links now. It is simply a more secure option. Most online retailers and financial institutions use SSL on their websites.
- ◆ **Keep Your OS and Apps Updated:** Operating system (OS) updates are annoying, yet necessary. Even if you are a Mac/Apple or iPhone user, security can still be compromised. OS updates usually are serious and often fix serious security holes. Don't forget your other mobile apps, either. App updates may also fix serious security holes, especially the browser apps, but anything that goes online is vulnerable.
- ◆ **Use a Firewall:** You may rely on the firewall in your router at home, but it should be paired up with the software firewall on your desktop PC. While the VPN is sufficient for most issues we face, most users will be much more secure using a firewall in addition to VPN. Some Operating Systems come with built-in firewalls (Windows 10) that can be activated by the user. Firewalls can add that extra layer of protection against hacks, programs, and checks against a whitelist database of allowable uses and site.
- ◆ **Enable two-factor authentication:** It is good practice to enable two-factor authentication on services that support it, such as Gmail, Twitter, and Facebook. This way, even if someone does manage to sniff out your password when on public Wi-Fi, you have an added layer of protection.



## OBTAINING AN APOSTILLE FOR A U.S. BANKRUPTCY COURT DOCUMENT

By: Jacqueline Antillon

Apostille, a word of French origin, is a certification method for authenticating official documents of one country for use for legal purposes in another country.

Recognizing the need for a unified international method of document certification, the Hague Conference on Private International Law (HCC) drafted and adopted the Convention Abolishing the Requirement of Legalization for Foreign Public Documents (The Apostille Treaty). This treaty specifies the method through which a document issued in one of the signatory countries can be certified for legal purposes in all the other signatory countries through use of an apostille.

The text of the Apostille Treaty can be found on the HCCH website at the following link: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>

Hague Convention member countries and nonmember countries who are contracting parties to the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents can be determined by reviewing signatory status information under each country listed on the HCCH website at the following links:

<https://www.hcch.net/en/states/hcch-members> (HCCH member countries)

<https://www.hcch.net/en/states/other-connected-states> (other contracting countries)

The United States, a member of the Hague Convention since 1961, became a contracting party when it signed the Apostille Treaty in October 1981. Requests for apostilles for documents from records in the United States are processed at the applicable federal, state or local government agency where the document is maintained as part of the public record. Examples of documents for which an apostille may be sought include marriage, birth or death certificates, diplomas, divorce decrees, passports, court documents, driver's licenses, police records and powers of attorney.

### How is an apostille obtained for US Bankruptcy Court records?

In the United States, apostilles for bankruptcy court records, unlike summonses or subpoenas which may be issued under the signature of a bankruptcy clerk, may only be issued under the signature of a district court clerk. However, prior to issuance of an apostille by the district court, the bankruptcy document must be certified by the bankruptcy clerk. The signature of the bankruptcy clerk contained on the certification must then, itself, be certified by a district court clerk in the apostille.

The Administrative Office of the U.S. Courts maintains an apostille form with the Hague Convention required format and other apostille certification related forms on their website at the following link:

<http://www.uscourts.gov/services-forms/forms?k=apostille&c=All&=Apply>

Each apostille certificate is issued with an individual number which is recorded in the form. In addition, the apostille certificate must contain the document's country of origin, place of certification, date, name of person signing the document, the capacity of the individual who signed the document, and the seal or stamp of the district court. Apostilles may be issued only for documents generated within the court. Besides the court record, documents may also include those generated by court personnel as an official act, such as local rules, administrative orders, court plans, and attorney admission certificates. The document for which the apostille is being requested must be certified before the apostille can be issued.

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**OBTAINING AN APOSTILLE FOR A U.S. BANKRUPTCY COURT DOCUMENT** (continued from page 10)


The U.S. District Court is required to maintain both AO Form 391 signature card on every district court clerk authorized to issue an apostille and AO Form 392, which is an index card maintained with information from each apostille issued. AO Form 393 "Statement of Effect of Apostille" contains the following text:

**STATEMENT OF EFFECT OF APOSTILLE**

*Apostilles certify only the authenticity of the signature of the official who signed the document, the capacity in which that official acted, and where appropriate, the identity of the seal or stamp which the document bears. An apostille does not imply that the contents of the document are correct, nor that they have the approval of the United States Courts Clerk*

As noted above, if an apostille is being sought for a document maintained at the bankruptcy court, it must first be certified by the bankruptcy court before the district court may issue the apostille. The certificate AO Form 390 consists of ten numbered fields and no alteration is permitted, including the requirement that the certificate must include in French, the words, "Convention de La Haye du 5 octobre 1961".

**US COURTS APOSTILLE FORM:**

 **AO 390**

**APOSTILLE**  
(Convention de La Haye du 5 octobre 1961)

1. Country: United States of America  
This public document

2. has been  
signed by \_\_\_\_\_

3. acting in  
the capacity of \_\_\_\_\_

4. bears the seal/stamp \_\_\_\_\_

**CERTIFIED**

5. at \_\_\_\_\_ 6. the \_\_\_\_\_

7. by \_\_\_\_\_

8. No. \_\_\_\_\_

9. Seal/Stamp \_\_\_\_\_ 10. Signature:  
\_\_\_\_\_

**What fees are collected by the U.S. Courts for issuing an apostille?**

The U.S. District Court, SDFL will collect a fee in accordance with the Judicial Conference Schedule of Fees in district courts, pursuant to 28 U.S.C. § 1914, District Court Miscellaneous Fees Schedule item one (currently \$47). The fee for the apostille is in addition to any fee imposed for copying and certifying the underlying documents which, when obtained from the bankruptcy court, is payable to the bankruptcy court.



## FREQUENTLY ASKED QUESTIONS: CREDIT REPORTING BUREAU DISPUTES

By: Maggie Ferere

Debtors frequently contact bankruptcy court clerk's office staff with inquiries regarding disputes they are having with credit bureaus regarding information in their credit reports. Most requests for assistance directed at the clerk by debtors involve allegations of inaccurate or outdated information, concerns about the bankruptcy court's role regarding privacy or accuracy, and requests that the court verify information in their bankruptcy case records and assist in removing disputed information from their credit reports.

Some of the questions reflect debtors' misunderstanding of the effect that voluntarily filing bankruptcy will have on their credit reports. Many incorrectly believe that an order of discharge or a dismissal of their case will result in removal of bankruptcy filing information as if the case was never filed. It is important that those contemplating filing for bankruptcy protection fully understand both the positive and negative impacts. A bankruptcy case may remain on a credit report for up to ten years, regardless of its final disposition. The Federal Trade Commission provides information on this topic on their website at the following link:

<https://www.consumer.ftc.gov/articles/0084-debt-relief-or-bankruptcy>

Some of the questions are regarding debtor concerns about misinformation related to a bankruptcy filing that is appearing on a credit report.

Below are some common inquiries and this clerk's office responses:

### **Q. Does this court provide report information about my case to credit reporting agencies?**

No. Because most court records, with some exceptions, are publicly available, anyone can access information contained in case records filed in the U.S. Bankruptcy Courts. Since 1999, many case files are maintained electronically and available through the internet-based Public Access to Court Electronic Records (PACER) service. Information on credit reports can be obtained from these official court records, as well as from other sources, including third-party vendors that sell the information they collect from public records to the credit reporting agencies.

### **Q. The credit reporting agency claims that information I am disputing was obtained from bankruptcy court records or the credit reporting agency report has failed to reflect that a discharge order was entered in my bankruptcy case.**

Many credit bureaus tell parties disputing information in their credit reports to contact the furnisher of the information and to inquire what their procedure is for verifying the information. As a result, the clerk receives correspondence asking for verification of the disputed information and questioning whether the court verifies directly with the credit reporting agencies. Although the information may claim to have been obtained from the court's public records, this information was not provided to the credit bureau by the court. Instead, it may have been provided by a third party, including a vendor who supplies this information to the credit bureau. Since the bankruptcy court did not provide the information to the credit bureau, the clerk can only provide information to the debtor on how to access information in the official bankruptcy court records and, if necessary, obtain copies of documents, such as a discharge order, or certifications regarding whether a case was filed. Information on reviewing open and closed cases and forms for obtaining certifications regarding cases filed or copies of documents is available in this court's "Clerk's Instructions for Obtaining Copies of Court Records". This document is available on our website:

<http://www.flsc.uscourts.gov/clerks-instructions-obtaining-copies-court-records>.

The website of the Federal Trade Commission <https://www.ftc.gov/> provides information on Fair Credit Reporting Act, including the following:

Summary of Your Rights under the FCRA: <https://www.ftc.gov/sites/default/files/documents/one-stops/credit-reporting/pdf-0096-fair-credit-reporting-act.pdf>

How to dispute errors on credit reports: <https://www.consumer.ftc.gov/topics/credit-and-loans>

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## ISSUANCE OF WRITS OF EXECUTION AND WRITS OF GARNISHMENT

By: Maria Romaguera

A writ authorizes a party to enforce a judgment against another party. In this court, writ of execution and writ of garnishment are issued in accordance with Local Rule 7069-1.

A writ of execution directs and authorizes the U.S. Marshal to seize property belonging to the judgment debtor and sell the property with the proceeds used to satisfy the judgment. In this court, a writ of execution may only be issued to the U.S. Marshal, not to a state, county or city sheriff.

A writ of garnishment is similar to a writ of execution but deals with money or property which is owed to or belongs to the judgment debtor but is under the control of a third party. The writ of garnishment freezes the asset in the hands of the third party and prohibits the release of the asset to the judgment debtor. The most common garnishments are wage garnishments and bank account garnishments. State law governs most garnishments in this court.

A writ can be issued in a closed case without reopening or collecting an archive retrieval fee as long as a certified copy of the judgment is provided. If a certified copy of the judgment is not provided, an archive retrieval fee is required.

If issuance of a writ is sought in this court for a judgment entered in another district, the judgment must be registered as a miscellaneous proceeding in this district prior to or at the time a writ of execution or garnishment is sought. Under Local Rule 7060-1 (B), a judgment may be registered by filing a copy of the judgment (including any bill of costs entered), accompanied by the miscellaneous proceeding fee and the Administrative Office of the U.S. Courts Director's Form "Certification of Judgment for Registration in Another District", or a certified copy of an order allowing the judgment to be registered in this district.

### PROCEDURE FOR SEEKING A WRIT OF EXECUTION

Under Local Rule 7069-1(C), the party seeking the issuance of a writ of execution must file a Motion for Writ of Execution, accompanied by a certified copy of the judgment (including any bill of costs entered) and Local Form "Writ of Execution to the United States Marshal" for the clerk to issue.

### PROCEDURE FOR SEEKING A WRIT OF GARNISHMENT

Under Local Rule 7069-1(D), the party seeking the issuance of a writ of garnishment against the person or corporation in possession of the property (the garnishee) must file a motion for writ of garnishment, accompanied by a certified copy of the judgment or order and a writ of garnishment for the clerk of court to issue. If garnishment is sought against an individual, include Local Form "Notice Pursuant to Florida Statute 77.041 To Defendant of Right Against Garnishment of Wages, Money and Other Property". If the writ is being sought pursuant to Florida Statute §77.0305 (continuing writ of garnishment against salary or wages) or Florida Statutes §77.031 (issuance of writ before judgment), the filing of the writ must be accompanied by a motion and a proposed order.

The following notice must accompany service of the writ: *"Under Florida Statutes §77.28, upon issuance of any writ of garnishment, the party applying for it shall pay \$100 to the garnishee on the garnishee's demand at any time after the service of the writ, for the payment or part payment of his or her attorney's fees which the garnishee expends or agrees to expend in obtaining representation in response to the writ." In addition to service of other garnishment papers, a copy of this rule shall be served on the defendant."*

Upon receipt of the above, the clerk will issue the writ and return the original writ of garnishment along with the certified copy of the judgment and the Local Form "Notice Pursuant to Florida Statute 77.041 To Defendant of Right Against Garnishment of Wages, Money and Other Property" (if applicable).

Responses contesting the garnishment and objections to a "Claim of Exemption and Request for Hearing" filed by defendants will be set for hearing in accordance with Local Rule 9073-1.

(continued on page 17)



## AMERICAN UNIVERSITY'S HISTORICAL BANKRUPTCY PROJECT UNEARTHES "TELL TALE" BANKRUPTCY DATA

By: Debbie Lewis

Nearly 17 years ago, an archivist doing research amidst paper documents stored at the National Archives discovered a bankruptcy petition filed by Edgar Allen Poe. Despite the careful preservation of Poe's case documents, it took over 150 years for history to learn that this famous American author of macabre stories, including *The Tell-Tale Heart*, petitioned the US District Court, Eastern Pennsylvania in 1842 for relief from his debts ranging in amounts from \$4.00 to \$169.10. No longer hidden, images of Poe's petition (including a list of his creditors) can be viewed in digital format at this link at the National Archives website. <https://www.archives.gov/publications/prologue/2015/fall/poe-bankruptcy.html>

Poe's bankruptcy papers, along with thousands of other bankruptcy cases have been preserved over the years at temporary federal records depositories spread across the United States at regional federal records center depositories and permanently at the National Archives. Although most of the filers were not famous, their case data is of interest to many, including academic and genealogical researchers. However, because most of these records are archived in their original paper format, are not stored in one central location, and contain data that is difficult to locate, those attempting to retrieve historical bankruptcy filing data face time, financial and other logistical obstacles.

Recognizing that researchers and policymakers studying the causes and consequences of bankruptcy can only readily download detailed information about just a few hundred bankrupt households and virtually no bankrupt businesses, the Department of Economics at the American University College of Arts and Sciences established the Historical Bankruptcy Project. The project's stated intent is to "stimulate interdisciplinary research on the causes and consequences of bankruptcy and on the history of credit markets more generally". Some of the issues that this data could help researchers more fully understand include: why bankruptcy rates have risen; relationships between the business cycles, financial crisis and bankruptcy; relationship between long-run economic growth and bankruptcy; and whether there are differences between demographic groups.

The project has assembled a team of modern-day miners, including student research assistants, who are unearthing cases filed under the bankruptcy laws of 1898 and 1978 and constructing a data set by photographing key documents from a representative sample of cases available through a partnership with The National Archives. This data set being extracted from public records still contains personal identifying information and therefore will be maintained under existing privacy laws and distributed for use through the Inter-university Consortium for Political and Social Research (ICPSR). A second version of the data set will be stripped of privacy restricted identifiers which will enable the data to be more easily accessible for research. Under the agreement with American University, The National Archives plans to make the photographic data available to the public through its Online Public Access website.

The Historical Research Project anticipates future scholars will continue to add to their data set by including additional new cases and other correlating information extracted from other regulated but research accessible sources, such as tax, social security, and census data. As a result, the historical bankruptcy data set will have valuable academic possibilities in solving problems far beyond academia, including for studying policy proposals and for identifying target populations for financial education by consumer advocates.

The goal of The Historical Research Project is to extract a one percent sample of cases, which is approximately 315,000 case files. According to the project's website status, as of September 5, 2017, 25,300 cases have been digitized. Research has already been published based on some of the data already digitized. Because the project relies on sponsors to continue to fund its work, the pace of the project depends on funding. Past contributors have included the National Conference of Bankruptcy Judges Endowment for Education, as well as foundations and other academic institutions.

For more information on the Historical Bankruptcy Project, visit its website <http://www.american.edu/cas/economics/bankrupt/> or contact Project Director, Prof. Mary Eschelbach Hansen: [mhansen@american.edu](mailto:mhansen@american.edu)



## FREE BANKRUPTCY CLINICS

**FREE PRO SE CLINICS AVAILABLE AT THE LOCATIONS AND TIMES BELOW!** Each clinic features a 45 minute video providing an overview of the procedures for filing bankruptcy, followed by Question & Answer Sessions staffed by pro bono attorneys who are available to give general advice on bankruptcy matters. They do **NOT** represent you and do **NOT** provide you with legal advice regarding your particular circumstances. You are responsible for responding to any pleadings and for protecting your own legal rights. This is a **FREE** service and the attorneys are not there to attempt to acquire you as clients, or to ask you to pay them for advice or future services.

**SPONSORED BY:** Dade Legal Aid Put Something Back Pro Bono Project, Legal Aid Society of Palm Beach, Inc., Florida Rural Legal Services, Inc. , The American College of Bankruptcy Foundation & The Bankruptcy Bar Association of the Southern District of Florida

### \*BANKRUPTCY COURT – MIAMI DIVISION: 301 NORTH MIAMI AVENUE, TRAINING ROOM

Each session will be held on a Friday from 12 p.m. – 2:00 p.m. on the following dates

April 6, 2018	July 6, 2018	October 5, 2018
May 4, 2018	August 3, 2018	November 2, 2018
June 8, 2018	September 7, 2018	December 7, 2018

### \*BANKRUPTCY COURT - FORT LAUDERDALE DIVISION: 299 EAST BROWARD BOULEVARD, ROOM 112

Each session will be held on a Friday from 12 p.m. – 2:00 p.m. on the following dates

April 20, 2018	May 18, 2018	June 22, 2018
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### \*BANKRUPTCY COURT - WEST PALM BEACH DIVISION: 1515 NORTH FLAGLER DRIVE, 8TH FLOOR IN DESIGNATED COURTROOM

**Courtroom B:** The following 2018 sessions will be held on Tuesdays from 12 p.m. – 1:30 p.m.

April 17, 2018	July 17, 2018	October 16, 2018
May 15, 2018	August 14, 2018	November 6, 2018
June 12, 2018	September 18, 2018	December 11, 2018

**STUART/PORT SAINT LUCIE/INDIAN RIVER: PETER & JULIE CUMMINGS LIBRARY, DETERLIZZI ROOM; 2551 MATHESON AVENUE, PALM CITY, FL 34990** “Sponsored by Martin County Bankruptcy Committee and Martin County Library System’s “Lawyers in the Library” Program – For information call 772-419-0057”. The following sessions are on Thursdays from 6:00 p.m. – 8:00 p.m.:

April 5, 2018	July 12, 2018	October 4, 2018
May 10, 2018	August 9, 2018	November 8, 2018
June 7, 2018	September 7, 2018	December 6, 2018

**TREASURE COAST BANKRUPTCY CLINICS (INDIAN RIVER, SAINT LUCIE, MARTIN, OKEECHOBEE) SEATING IS LIMITED PLEASE CALL FLORIDA RURAL LEGAL SERVICES FOR MORE INFORMATION AND TO REGISTER 772-466-4766 EXT. 7016** The following 2018 sessions are on Wednesdays from 2:00 p.m. — 4:00 p.m. except in July.

April 4, 2018	July 5, 2018	October 3, 2018
May 2, 2018	August 1, 2018	November 7, 2018
June 6, 2018	September 5, 2018	December 5, 2018

\*You may **NOT** bring cell phones or electronic devices into the courthouse or you will be denied entry. Cell phones and electronic devices will not be stored for you.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Miami:	(Karen Ladis)	<a href="mailto:kladis@dadelegalaid.org">kladis@dadelegalaid.org</a>
Fort Lauderdale:	(Kimberly Salamone)	<a href="mailto:ksalamone@ntmlawfirm.com">ksalamone@ntmlawfirm.com</a>
West Palm Beach:	(Rilyn Carnahan)	<a href="mailto:rilyn.carnahan@gmlaw.com">rilyn.carnahan@gmlaw.com</a>
	(Steven S. Newburgh)	<a href="mailto:snewburgh@mclaughlinstern.com">snewburgh@mclaughlinstern.com</a>
Stuart/Port Saint Lucie:	(Jon Martin)	<a href="mailto:lmbklaw@gmail.com">lmbklaw@gmail.com</a>
Okeechobee/Indian River:	(Carolyn Fabrizio)	<a href="mailto:carolyn.fabrizio@frls.org">carolyn.fabrizio@frls.org</a>



**USBC/SDFL TRIVIA**

By: Lorraine Adam

**Test your USBC/SDFL knowledge by selecting the answer from the following numbers:**

179 1987 245 50 4 1993 19 2005 133 2

1. The amount collected for filing a chapter 7 case changed in April 2006 to this amount. \_\_\_\_\_
2. The Clerk of Court is responsible for all court operations. How many have held this office for the USBC/SDFL? \_\_\_\_
3. This number represents the total number of chapter 11 cases filed with the USBC/SDFL in 2017. \_\_\_\_\_
4. The year the USBC/SDFL went live on PACER. \_\_\_\_\_
5. This is the number of chapter 7 panel trustees for the USBC/SDFL. \_\_\_\_\_
6. The number of attorneys that made the pro bono honor roll in 2014. \_\_\_\_\_
7. This number represents the current size limitation (in megabytes) that CM/ECF allows for a filed document. \_\_\_\_
8. This is the number of chapter 13 panel trustees for USBC/SDFL. \_\_\_\_\_
9. This is the year the first chapter 12 case was filed in the USBC/SDFL. \_\_\_\_\_
10. The West Palm Beach division of the USBC/SDFL went from being a one-person office to being fully staffed in this year. \_\_\_\_\_

**ANSWERS TO USBC/SDFL TRIVIA:**

1. \$245 On April 9, 2006 the statutory fee for filing a chapter 7 bankruptcy case increased by \$25.00 to \$245.00 and the statutory fee for filing a chapter 13 bankruptcy case increased by \$85.00 to \$235.00.
2. 4 The first Clerk of Court was David Bird. Karen Eddy and Katherine Gould-Feldman followed. Joseph Falzone is the current Clerk of Court.
3. 179 Chapter 11 case filings. The month of July was the highest in 2017 with 22 chapter 11 cases being filed. For additional case filing statistics, please visit our website at [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)
4. 2005 The SDFL joined the nationwide web service on October 17, 2005.
5. 19 There are currently 19 chapter 7 panel trustees serving Dade, Broward and Palm Beach counties.
6. 133 The pro bono honor roll started in 2014. The list of honorees has increased in 2017 to 184 honorees. To view the honor roll members, please visit our website at [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)
7. 50 Each saved PDF image, including attachments, has a 50 MB size limit.
8. 2 Nancy K. Neidich and Robin R. Weiner are the current standing chapter 13 trustees serving Dade, Broward and Palm Beach counties.
9. 1987 On January 29, 1987, the first chapter 12 case was filed and was assigned to Judge Mark.
10. 1993 The West Palm Beach division currently has 11 employees in the Clerk's Office.





### Frequently Asked Questions: Credit Reporting Bureau Disputes (continued from page 12)

**Q. The official bankruptcy court case records indicate that I filed a bankruptcy case which I have not. What do I do?** If you believe you are the victim of bankruptcy fraud, including someone using your personal information to file a case in the bankruptcy court without your authorization, you may contact the Office of the US Trustee <https://www.justice.gov/ust/report-suspected-bankruptcy-fraud> for assistance.

**Q. Despite my efforts to get information updated or corrected, a creditor continues to report inaccurate information to credit bureaus, what can I do?** The clerk's office cannot provide legal advice. If you feel a creditor is violating your bankruptcy discharge, consult your attorney. If you don't have an attorney, review this court's information for pro se parties on the court website in addition to the links provided above to the website of the Federal Trade Commission. <http://www.flsb.uscourts.gov/dont-have-lawyer>

The Federal Trade Commission also provides information on its website for consumers on how to avoid becoming the victim of credit repair scams which often promise a "new credit identity" — that is, a fresh start for your credit history" which they cannot provide. <https://www.consumer.ftc.gov/articles/0225-credit-repair-scams>

### WRITS (continued from page 13)

The clerk shall automatically dissolve the writ and notify the parties of the dissolution by mail upon failure of the plaintiff to timely contest the defendant's claim of exemption.

#### Forms/Rule Links

[http://www.flsb.uscourts.gov/sites/flsb/files/documents/forms/Writ\\_of\\_Execution\\_to\\_the\\_United\\_States\\_Marshall\\_%28LF-57%29.pdf](http://www.flsb.uscourts.gov/sites/flsb/files/documents/forms/Writ_of_Execution_to_the_United_States_Marshall_%28LF-57%29.pdf)

<http://www.uscourts.gov/forms/bankruptcy-forms/certification-judgment-registration-another-district-0>

[http://www.flsb.uscourts.gov/sites/flsb/files/documents/forms/Notice\\_to\\_Defendant\\_of\\_Right\\_Against\\_Garnishment\\_of\\_Wages\\_Money\\_and\\_Other\\_Property\\_%28LF-73%29.pdf](http://www.flsb.uscourts.gov/sites/flsb/files/documents/forms/Notice_to_Defendant_of_Right_Against_Garnishment_of_Wages_Money_and_Other_Property_%28LF-73%29.pdf)

Local Rule 7069-1 <http://www.flsb.uscourts.gov/local-rule/execution>

### UPCOMING COURT HOLIDAY CLOSINGS

**Monday, May 28 Memorial Day**

**Wednesday, July 4 Independence Day**

### COURT MISSION STATEMENT

*To promote public trust and confidence in the administration of bankruptcy cases:*

- *through easy access to comprehensible, accurate information about the court, its procedures, and records;*
- *by the efficient, respectful, and dignified conduct of business at all levels of the court—clerk's office, chambers and courtroom;*
- *through adjudication of bankruptcy cases by a fair and impartial tribunal that is designed to provide relief to the honest debtor, equitable distribution of available assets to creditors, and preservation of jobs and value through successful business reorganizations.*

### CONTACT "COURTHOUSE BEACON NEWS" PUBLICATION STAFF

If you have any comments regarding this issue or want to suggest ideas for future articles, please contact "Courthouse Beacon News" staff at the following email address:  
[Debbie\\_Lewis@flsb.uscourts.gov](mailto:Debbie_Lewis@flsb.uscourts.gov).

Please do not use the above email address to file or send papers to the court or to ask questions about court procedure or status of a particular case. Contact the clerk's office at any of the following numbers for assistance in these matters.

Visit the court website [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) for local filing information.

Thank you.

Miami: (305) 714-1800

Ft. Lauderdale: (954) 769-5700

West Palm Beach: (561) 514-4100

**Please Note:**

**Clerk's office staff is not permitted to give legal advice.**