BANKRUPTCY BUZZ

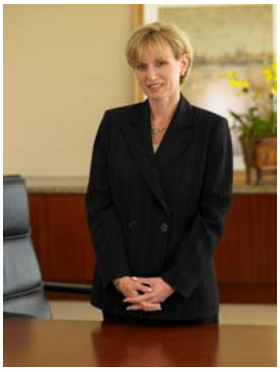
LOCAL NEWS AND INFORMATION

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF FLORIDA

AUGUST 2012

LAWYERS AND REAFFS – WHY YOU MUST SHOW UP

by Judge Laurel M. Isicoff*



Last year the judges of the Bankruptcy Court for the Southern District of Florida approved enactment of new Local Rule 4008-1(D) which requires that "an attorney who files a petition on behalf of a debtor must represent the debtor during the negotiation and filing of any reaffirmation agreements, and appear at any hearings on reaffirmation agreements." Thus, whether or not, as part of your retainer agreement, you charge or agree to a charge, for representation of the debtor during the reaffirmation process, you must provide that representation. That representation includes appearing at any hearing set by the court to consider approval of the reaffirmation whether or not you signed the agreement. In fact, if you choose not to sign the agreement (as opposed to signing it with provisos which I have seen some attorneys do), the reaffirmation will be set as a pro se reaffirmation hearing (as required by the Bankruptcy Code) and you will be required to appear.

Even if you do sign the reaffirmation agreement, approval of the agreement may be set for hearing. Each judge has his or her criteria for determining whether a presumption of undue hardship necessitates a hearing. For example I set for hearing all reaffirmation agreements that contain variable interest rates unless there is an affirmative representation in the agreement that the debtor can make the payments even if the interest goes up, and the maximum interest rate is stated in the motion. Also, because the reaffirmation agreement requires an explanation of how the debtor will make payments notwithstanding the presumption of undue hardship, if that section is left blank, then in almost every instance I will set the reaffirmation for hearing so that I may get the explanation.

Preparing and filing the petition and schedules, attending the first meeting of creditors, and helping your client with the reaffirmation process are all fundamental aspects of representing an individual debtor in a bankruptcy. Because reaffirmation is a voluntary partial waiver of discharge it is of vital importance that you fully inform your client of his or her rights and obligations and the consequences of reaffirming or not reaffirming. Since you will be providing this service no matter what, save yourself and your client unnecessary trips to court. Make sure that you sign the agreement and that your client has provided the necessary explanations. If the reaffirmation agreement involves a variable rate loan, provide the maximum interest rate and an explanation why your client can make the payments no matter how high they go or why that shouldn't be an issue.

**A bio of Judge Isicoff appeared in the March 2011 issue of Bankruptcy Buzz. To view it, access Bankruptcy Buzz archives on the court website.*

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Bankruptcy Cases Filed From 1/1/12 to 7/30/12:

Chapter 7 :	13,084
• Chapter 9 :	0
• Chapter 11 :	174
• Chapter 12 :	1
• Chapter 13 :	5,354
• Chapter 15 :	0

Total Cases Filed: 18,613

Additional filing statistics are available on the court website home page under this tab: **Case Information**

DECEMBER 2012 AMENDMENTS TO THE FEDERAL BANKRUPTCY RULES

Amendments to the Bankruptcy Rules were approved by the Supreme Court and were transmitted to Congress. The amendments will take effect on December 1, 2012, unless Congress takes action to reject, modify, or defer them. To view the amendments and related documents, visit the United States Courts website at this link:

http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/PendingRules.aspx

The amendments include:

Bankruptcy Rule 1007: This amendment is a technical and conforming amendment needed as a result of an inconsistency created by an amendment to Rule 1007(a) that went into effect on December 1, 2010. The proposed amendment eliminates the current inclusion in Rule 1007(c) of a time limit for filing the list of creditors in an involuntary bankruptcy case. That time limit in the current Rule 1007(c) is inconsistent with the limit in Rule 1007(a)(2), which was amended on December 1, 2010, to reduce the period to file the list of creditors from 14 to seven days. The proposed amendment to Rule 1007(c) eliminates the redundant reference to Rule 1007(a)(2) and its creation of a conflicting time limit.

Bankruptcy Rule 2015: This amendment corrects a reference to 11 U.S.C. § 704 of the Bankruptcy Code. Subdivision (a)(3) is amended to correct the reference to § 704. The 2005 amendments to the Code expanded § 704 and created subsections within it. The provision that was previously § 704(8) became § 704(a)(8). The other change to (a)(3) is stylistic.

Bankruptcy Rule 3001: Amendments include:

The requirement for the attachment of a writing on which a claim is based was changed to require that a copy, rather than the original or a duplicate, of the writing be provided.

A requirement that a statement be filed with the proof of claim providing additional information for claims based on an open-end or revolving consumer credit agreement.

A party in interest may obtain the writing on which an open-end or revolving consumer credit claim is based by requesting in writing that documentation from the holder of the claim. The holder of the claim must provide the documentation within 30 days after the request is sent.

Bankruptcy Rule 7054: This amendment increases the time for the clerk to notify a party of taxation of costs (increased from one day's notice to 14 days to allow more time for a party to respond) and the time to object to the clerks action and seek court review (increased from 5 to 7 days).

Bankruptcy Rule 7056: This amendment establishes a default deadline to file a summary judgment motion. The rule provides that a summary judgment motion to be filed 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a local rule or court order sets a different deadline. *Note: This court's standard form "Order Setting Filing and Disclosure Requirements for Pretrial and Trial" requires motions to dismiss and motions for summary judgment to be filed and served not later than 10 days before the pretrial conference.*

By: Debbie Lewis

ELECTRONICALLY FILE YOUR PROOF OF CLAIM ON THE COURT WEBSITE

A *Bankruptcy Buzz* newsletter article in October 2011, featured a helpful new option for creditors in cases before this court - electronic filing of proofs of claim via our website. There are many benefits to using this program to file your claim including:

*Easy *
No filing fees
*Saves a postage stamp *
* Form is always the current version *
*Receipt and claim number are immediately provided *
*No login and password is required - anyone can use the program *
*The added creditor's name and address will help ensure correct noticing *
*The filer enters noticing data - no handwriting to decipher which ensures accuracy *

The information that is entered in the onscreen electronic fillable form will automatically create an Official Bankruptcy "Proof of Claim" form. Additionally, the program allows filers the option to attach documents (in PDF format only) that support the claim. Filers are required to enter an address where notices are to be sent, and, in addition, they may check a box to indicate if a "payment address" differs from the noticing address (*see figure 1 below*). After the filer reviews the claim information on-screen and submits it for filing, the claim becomes part of the official court record. All electronic recipients for that specific case (e.g., trustee) are notified, and the filer then has the option to view, save and/or print a copy bearing the entry date and claim number.

STEPS TO ELECTRONICALLY FILE A CLAIM:

Visit the court website at: www.flsb.uscourts.gov select **"Electronic Filing of Proof of Claim" then select "Electronic Proof of Claim Form".** The *first screen* that appears requires the bankruptcy case number and the creditor name. A drop down menu is provided to select whether the claim is being filed by a creditor or the debtor. To finish, read and acknowledge the redaction policy and click **"Next"** and the *second screen* displays a choice to select a creditor already listed or select "creditor not listed" to indicate a new name > ***last screen*** allows you to tab through the form to fill in descriptive information. When done > click **Submit Claim.** A confirmation page will display indicating the assigned claim number confirming that the claim has been filed with the court. This display will also contain a hyperlink that will allow the claim to be viewed, saved and/or printed.

FIGURE 1

Since offering this new claims filing feature back on August 1, 2011, a total of 10,155 proofs of claim have been electronically filed through the court's web page.

By: Lorraine Adam

SEPARATE MOTIONS ARE REQUIRED WHEN SEEKING CERTAIN ALTERNATIVE OR MULTIPLE REQUESTS FOR RELIEF

Local Rule 9013-1(D)(1)(b) requires separate motions when requesting relief under more than one negative notice rule, and when requesting relief on negative notice and relief for which negative notice is not permitted.

Motions filed with the court are reviewed to determine compliance with local requirements. Motions that do not comply with filing requirements are noted in the court docket by a red-lettered "Notice to Filer of Apparent Filing Deficiency" entry which may also include a deadline for filer to take corrective action. One example of relief types that may not be combined in a single motion is a "Motion to Approve Compromise and Objection." The requested relief "to Approve" may be available under negative notice but it may not be combined with an "Objection" to another party's previously filed motion.

When motions combining alternative or multiple relief requests are appropriate, each relief type requested in the motion should also appear in both the title of the motion and the "Wherefore" clause of the motion. Additionally, (if applicable) the docket text should be edited so each relief request is clearly identified in the final docket text.

Proposed orders submitted for motions where combined requests for relief are permissible MUST address each type of relief requested in the motion.

By: Dawn Leonard

REDUCTION OF CM/ECF EVENTS – A PROJECT UPDATE

The April 2012 *Bankruptcy Buzz* sought input from CM/ECF users regarding an initiative to streamline the e-filing process. In sum, the clerk's office is considering removal of selected motion events from our program that are either used infrequently or do not generally serve their intended purpose.

The input received supports use of generic events in which the e-filer types the exact title of a PDF image into the docket text. The obvious benefit for doing so is that the title of the motion will more closely match the docket entry. When addressing the downside of typing more data into the system, attorneys and their staff are advised to "Copy and Paste" text directly into the docket text screen. This eliminates extra typing, reduces typographical errors, and this function is compatible with most word processing and PDF programs.

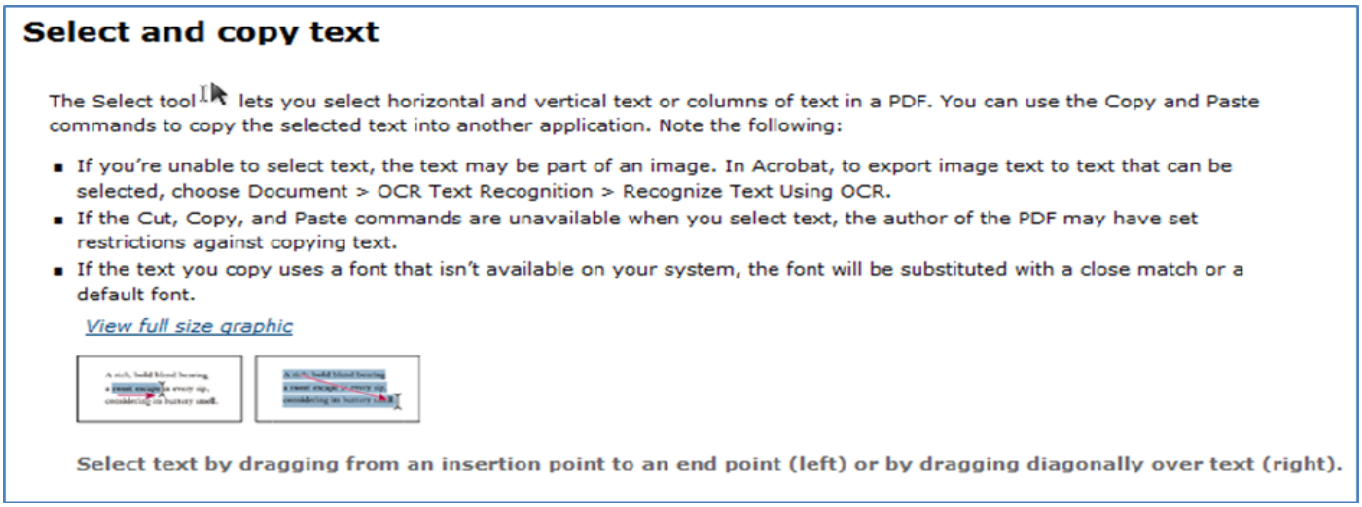

Figure 1: The above snapshot of the Select Tool is from Adobe Acrobat 9 Pro.

If you would like more information on the status of this project or wish to ask about our CM/ECF program, please feel free to send an email to Cameron_Cradic@flsb.uscourts.gov or call Cameron Cradic at (561) 514-4107.

By: Cameron Cradic

U.S. PRESIDENTS WHO FACED FINANCIAL DIFFICULTY

By: Jacqueline Antillon

Presidents are well known as leaders, for their wisdom, for being patriotic, for their vision, courage, integrity and power. But seldom do we associate the following words with these great leaders: "poor, insolvent, financial hardship or even bankrupt". Yet, these great men who once ruled the greatest nation on Earth were indebted before, during or after their terms in office. Who exactly faced such severe destitution?

Thomas Jefferson, 3rd President (1801-1809) One of our founding fathers and the principal drafter of the Declaration of Independence, Thomas Jefferson had many components that contributed to his debts. Jefferson owed money to various creditors throughout his life, ventured into unsuccessful business deals and even inherited debt from his father-in-law. Jefferson was also known as living an audacious lifestyle and was known to have expensive tastes. His main source of income was his beloved estate, "Monticello". By the time he died, he was indebted $107,000. Jefferson was proud of reducing the national debt, however in his own personal finances he was not so lucky. (monticello.org)

James Madison, 4th President (1809-1817) Just like his predecessor, Madison suffered similar difficulties. His stepson, a gambler, racked up debts. Madison was obligated and forced to sell half of his "Montpelier" plantation. James Madison also contributed to the United States Constitution and Bill of Rights. James Madison retired from office at the age of 65 and was referred to as the "Father of the Constitution". (totallyhistory.com/james-madison/)

James Monroe, 5th President (1817-1825) James Monroe was the last of our founding fathers. Unfortunately at the end of his life he ran his plantation to the ground and petitioned Congress to absolve some of his debts. Congress granted him $30,000, but in the end it was not sufficient and he was forced to sell his home in Paris and his "Ash Lawn" estate. John Quincy Adams wrote "Mr. Monroe is a very remarkable instance of a man whose life has been a continued series of the most extraordinary good fortune, who has never met with any known disaster, has gone through a splendid career of public service, has received more pecuniary reward from the public than any other man since the existence of the nation, and is now dying, at the age of seventy-two, in wretchedness and beggary." (millercenter.org/president/monroe)

William Henry Harrison 9th President (1841) William Henry Harrison's presidency was short lived. During the cold month of March he delivered in the rain one of the longest inaugural speeches ever, lasting an entire hour and forty minutes. He became ill shortly thereafter and died of pneumonia one month into his term. He was the first president to die in office. Before he was elected as president, he served as Ambassador to Colombia and was forced to manage his farm from overseas. When he returned to the states, he learned that bad weather destroyed his crops and his creditors were all demanding payment. On top of his obligations, his sons also contributed a considerable amount to his mounting debts. Upon returning, he spent most of his time trying to get finances in order, and was forced to sell most of his land. By the time he became president, he was still in debt. His untimely death may have been the only thing that hindered him from being insolvent. (americanhistory.about.com/od/williamhenryharrison/p/pwmharrison.htm)

Abraham Lincoln, 16th President (1861-1865) Most historians would agree that Abraham Lincoln "honest Abe" is considered the greatest president of the United States because of his leadership during the American Civil War. But before Abe Lincoln was elected president in 1860, he was known as a poor, ambitious young man. Early on in life he was in financial ruin. When he was in his 20's he bought a general store with a friend/business partner, an investment he would regret. The store went bankrupt and poor Abe was left to absorb the debt on his own, as his business associate had died. His creditors took him to court and he lost the last of his property, a horse and some surveying equipment. Later in life, he became an attorney and eventually was able to come out of poverty. In the end, Abraham Lincoln is measured by his most lasting accomplishments, the preservation of the Union, the vindication of democracy, and the death of slavery. (millercenter.org/president/lincoln)

Ulysses Simpson Grant, 18th President (1869-1877) Ulysses S. Grant was the general during the civil war that led the union army against the confederacy. Grant's career was celebrated and though he never earned a lot of money, he often lived well beyond his means. After his presidency, he and his wife traveled the world, dining with dignitaries and staying in lavish hotels. His son, Buck, convinced him to become a financial partner with an associate of his. The financial firm of Ward and Grant went bankrupt after Ferdinand Ward, his business partner, mismanaged and embezzled his assets. He was only able to save his family from further ruin by selling his civil war memoirs for nearly half a million dollars, a contract he negotiated with his friend, Mark Twain. (whitehouse.gov/ulyssessgrant)

(continued on page 6)

NEWS FROM THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Extension of Temporary Bankruptcy Judgeships

On May 25, President Barack Obama signed into law H.R. 4967, the Temporary Bankruptcy Judgeships Extension Act of 2012. This law extends 29 existing temporary judgeships for an additional five years. In 2005, new bankruptcy judgeships were authorized or extended as temporary judgeships as part of the Bankruptcy Abuse and Prevention Act (BAPCPA).

To view a list of the affected districts and temporary judgeships:
http://www.uscourts.gov/uscourts/News/TTB/2012-05/docs/Temporary_Bankruptcy_Judgeships_In_Legislation-112th_Cong.pdf

Chapter 11 Bankruptcy Filing Fees to Increase

In order to offset mandatory costs associated with the Temporary Bankruptcy Judgeship legislation, the statutory filing fee for a chapter 11 case will increase by $167 effective November 21, 2012.

Therefore, the total fee for filing a new chapter 11 case will increase to $1,213 (statutory fee of $1,167 under 28 U.S.C. §1930 (a)(3), plus the administrative fee of $46 under Item 8 of the Bankruptcy Court Miscellaneous Fee Schedule).

All Federal Courts Now Accepting Electronic Filing

The nationwide implementation initiative of the judiciary's Case Management Electronic Case Files (CM/ECF) system that began over a decade ago, is now complete. As of May 2012, every federal appellate, district, and bankruptcy court is now accepting electronic filings through the CM/ECF system. Click here to obtain the complete list of court sites:
http://www.uscourts.gov/FederalCourts/CMECF/Courts.aspx

Return to Sender? Centralized Processing to Save A Million

Effective October 15, 2012, the Bankruptcy Noticing Center (BNC) begins accepting, processing and securely disposing of returned mail. This new procedure will save an estimated $1.25 million per year in addition to staff processing time. To read more about this go to: http://news.uscourts.gov/return-sender-centralized-processing-save-million

("U.S. Presidents" continued from page 5)

William McKinley, 25th President (1897-1901) William McKinley spent most of his life in financial stability and the great depression of 1893 bankrupted an investment he had made with a friend in a tin plate company. McKinley had co-signed a loan for a friend, who later defaulted, and as a co-signer he was responsible for the repayment of the loan, close to $130,000. In order to pay off his debts, he solicited some of his wealthy friends to help him manage his estate and sell of his property. In the end the generosity of his family and friends helped saved his family's home and money. McKinley's administration was mostly known for its foreign policy. (millercenter.org/presidentmckinley)

Harry S. Truman, 33rd President (1945-1953) Harry Truman was vice president for only 82 days before President Theodore Roosevelt's sudden death. Truman played an intricate role in forming the United Nations even though he had little experience regarding domestic and foreign affairs. Throughout his lifetime, Harry S. Truman was poor and experienced one of the saddest presidential hardships. He borrowed against his mere inheritance and invested in zinc mining. Sadly the investment failed. Truman was faced with performing many odd jobs in order to make ends meet. He faced severe financial disaster when his $30,000 investment in a clothing store went bankrupt; however, Truman himself never declared bankruptcy. He continued to work and pay his debts and was still indebted when he was elected senator. It was his presidency that inspired the doubling of the presidential salary. In 1965, President Lyndon Johnson signed into law Medicare for Social Security recipients and Medicaid for the poor, and oddly enough, former President Truman and his wife were the first recipients. (newworldencyclopedia.org/entry/Harry_S.Truman)

FREE BANKRUPTCY CLINIC

Dade Legal Aid/Put Something Back Pro Bono Project, Legal Aid Society of Palm Beach, Inc., American College of Bankruptcy & The Bankruptcy Bar Association of the Southern District of Florida Present Free Pro Se Clinics at the Bankruptcy Courthouse On the Following Dates and Times:

Miami Division: 51 SW 1 Avenue, Room 1510*

Friday, August 17th 12 p.m. – 2 p.m.
Friday, September 14th 12 p.m. – 2 p.m.
Friday, October 12th 12 p.m. – 2 p.m.
Friday, November 16th 12 p.m. – 2 p.m.
Friday, December 14th 12 p.m. – 2 p.m.

* In Miami, you may bring a cell phone to the pro se clinic.

Fort Lauderdale Division: 299 East Broward Boulevard, Courtroom 301**

Friday, August 17th 12 p.m. – 1:30 p.m
Friday, September 7th 12 p.m. – 1:30 p.m.
Friday, October 5th 12 p.m. – 1:30 p.m.
Friday November 2nd 12 p.m. – 1:30 p.m.
Friday, December 7th 12 p.m. – 1:30 p.m.

West Palm Beach Division: 1515 North Flagler Drive, 8th Floor, Courtroom B**

Wednesday August 8th 11:30 a.m. – 1 p.m.
Tuesday September 4th 11:30 a.m. – 1 p.m.
Tuesday October 9th 11:30 a.m. – 1 p.m.
Tuesday November 20th 11:30 a.m. – 1 p.m.
Tuesday December 11th 11:30 a.m. – 1 p.m.

** In Fort Lauderdale and West Palm Beach, you cannot bring a cell phone or other electronic device to the courthouse or you will be denied entry. Please note that cell phones and electronic devices will not be stored for you.

At the clinic, there will be a 45 minute video presentation outlining procedures for filing bankruptcy. Next, there will be a question and answer session. Then, you may meet with a bankruptcy attorney to discuss your case and get advice on general bankruptcy matters. Please note that the project/volunteers do NOT represent you and take no responsibility for your case. You are responsible for responding to any pleadings and for protecting your own legal rights.

FOR FURTHER INFORMATION, PLEASE CONTACT:

MIAMI: amiranda@dadelegalaid.org

FORT LAUDERDALE: kimberly.salamone@ntmlawfirm.com

WEST PALM BEACH: erosen@rosenwinig.com

Word Search

Find the mortgage-related words in English, Spanish and French

mortgage	hipoteca	hypotheque
supplement	suplemento	completer
fees	honorarios	honoraires
expenses	gastos	depenses
charges	cargos	frais
arrears	atrasos	arrerages

S	B	C	R	W	K	M	L	R	P	I	H	R	Y	A
J	U	L	F	G	Z	D	T	D	X	X	O	E	E	T
E	Y	P	Q	K	Q	V	G	Z	G	K	N	T	X	R
O	G	B	P	I	A	E	I	M	S	A	O	E	P	A
U	S	U	P	L	E	M	E	N	T	O	R	L	E	S
I	D	I	W	W	E	S	L	S	V	H	A	P	N	O
F	P	J	B	U	E	M	E	F	Y	M	R	M	S	S
M	O	R	T	G	A	G	E	P	S	W	I	O	E	E
S	S	E	R	I	A	R	O	N	O	H	O	C	S	S
E	O	A	L	R	O	T	L	J	T	I	S	W	S	N
B	H	G	E	H	H	A	C	E	T	O	P	I	H	E
C	A	R	R	E	A	R	S	O	T	S	A	G	M	P
B	R	Q	Q	A	G	F	E	E	S	R	P	U	O	E
A	G	U	U	D	C	C	J	I	F	V	C	G	I	D
H	E	V	E	Q	I	B	T	I	K	P	R	Z	G	W

By: Hebe Montygierd, Lucie Fleurimond and Lorraine Adam

UPCOMING COURT HOLIDAY CLOSING DATES

Labor Day : 09/03/12
Veterans Day: 11/12/12
Christmas Day: 12/25/12
Columbus Day: 10/08/12
Thanksgiving Day: 11/22/12
New Year's Day: 1/1/13

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 BANKRUPTCY BUZZ PUBLICATION STAFF

If you have any comments regarding this issue or want to suggest ideas for future articles, please contact "Bankruptcy Buzz" staff at the following email address 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 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.