



CHIEF JUDGE'S CORNER — Changes are Coming

By: Hon. Laurel M. Isicoff

Wow. When I first wrote this article a couple of weeks ago, none of us had any idea how much our world would change so quickly. The entire country, if not most of the world, is slowing down, and in some instances, shutting down, to stem the flow of the COVID-19 pandemic. The bankruptcy court has been working hard to make sure that while we all go through these challenges, the work of the Court continues. Through the efforts of our clerk of court, Joe Falzone, our deputy chief, Jose Rodriguez, our dedicated IT staff led by Tony Diaz, and the rest of our incredible court family, we are doing everything we can do stay open. In this publication we have an entire section dedicated to the procedures we have put into place. Please make sure to refer to the Bankruptcy Court website frequently for updates. In the meantime stay safe – wash your hands and practice social distancing. I know it is difficult, but this too shall pass.

In other news . . . A great deal has been going on in the last couple of months. We said our final farewells to Judge Olson (only in his active judicial role – I am hopeful and expecting we will get to see more of Judge Olson in a less official capacity). The Bankruptcy Bar Association of the Southern District of Florida hosted a beautiful farewell dinner at the Riverside Hotel in Fort Lauderdale. At the well-attended evening MC'd by Patricia Redmond, Judge Olson's former law partner and friend, we heard some . . . interesting stories from Bill Rochelle of ABI, John Genovese of Genovese, Joblove and Battista, and concluding with regular Supreme Court advocate and longtime Judge Olson friend – Eric Brunstad. Of course Judge Olson responded; his farewell remarks were warm, insightful and inspiring – just like Judge Olson.

We then all got ready for the big launch of the [Small Business Recovery Act](#) that went into effect on February 19. Led by Joe Falzone and Judge Scott Grossman, the Southern District of Florida worked hard to get forms, rules, CM/ECF, and users ready for the big day. . . . But, we did not get our first Subchapter V filing until February 25. I guess everyone was waiting to see what would happen. The BBA and other groups have been putting on SBRA programs around the District. We have also posted a great deal of material on the [bankruptcy court website](#). Everyone should take advantage of these programs and this information. SBRA tip of the day – make sure if you select Subchapter V that your client's financial information is up to date. You only have 90 days to get your plan filed and that won't work if you spend the first 85 days trying to create financial records.

We celebrated the investiture of Judge Scott Grossman on February 20, 2020. The ceremony was very special – beginning with an excellent Pledge of

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Bankruptcy Cases Filed From 01/01/20 to 03/31/20

TOTAL FILED:	4,182
• Chapter 7	2,284
• Chapter 9	0
• Chapter 11	37
• Chapter 12	0
• Chapter 13	1,857
• Chapter 15	4

Additional filing statistics are available on the court website www.flsb.uscourts.gov under the "Court Information" tab at the top of page.

Select: "[Case Filing Statistics](#)"

**CORONAVIRUS INFORMATION FOR THE PUBLIC**

Along with the rest of the country, the United States Bankruptcy Court, Southern District of Florida [Miami, Fort Lauderdale and West Palm Beach divisions] is taking the outbreak of Coronavirus very seriously and is continually monitoring the situation locally. Our court will take whatever steps are necessary in ensuring reduced risk of any potential spread of this virus. Below are some of the steps taken. Please visit the court website: www.flsb.uscourts.gov for future updates and notifications.

- On March 9, the U.S. District Court, SDFL, adopted a “Courthouse Entry Protocol”, which screens visitors and denies entrance to courthouse buildings to those whose answers to the screening questions indicate a high risk potential to spread Coronavirus 19 (COVID-19). Information and instructions regarding this mandatory entry protocol is posted in the lobby of each courthouse facility. The notice is available at the following links in three languages: [[English](#)] [[Spanish](#)] [[Creole](#)] **PLEASE NOTE: On 3/25/2020, Administrative Order 2020-07 “In re: I) Temporary Closing Clerk’s Office Intake to the Public; and II) Expanding Filing Options for Self-Represented Parties During COVID-19 Outbreak” was entered with regard to filing in the United States Bankruptcy Court, Southern District of Florida only.**
- In federal buildings where the court and clerk’s offices are located, the U.S. General Services Administration (GSA) has placed hand sanitizer dispensers in all public areas. Staff, including courtroom and intake deputies, have hand sanitizing wipes that are available to anyone from the public who wishes to use them.
- The free public Pro Se Workshops that were previously scheduled and noticed have been cancelled until further notice.
- The Office of the United States Trustee in this district has announced that all in-person chapter 7, 12, 13, and all chapter 11 initial debtor interviews (including subchapter V cases) scheduled after March 17, 2020, will be conducted by telephone conference. The Clerk of Court will renote all 341 meetings that have been postponed after March 17. All renoted and new 341 meeting of creditor notices will now contain a telephone conference line and participant passcode for the case-appointed trustee or the U.S. Trustee’s Office. Appropriate notice will be provided to parties in accordance with bankruptcy law and rules. For more details, see Public Notice from the Office of the United States Trustee.

[Notice from the Office of the United States Trustee Regarding Section 341 Meetings \(3/17/2020\)](#)

- The Court has entered [Administrative Order 2020-05 “In Re: Order Regarding Certain Deadlines”](#) which establishes certain deadlines in cases where the US Trustee has rescheduled in-person section 341 meetings in chapter 7, 12, and 13 cases. The Court has also entered [Administrative Order 2020-06 “In re: I\) Suspension of Local Rule 5005-4\(C\) and II\) Establishment of Procedures For Admission of Direct Evidence Through Declarations or Affidavits”](#) which provides e-filers an additional option regarding signatures on documents and establishes a process for admission of direct evidence through declarations or affidavits.
- In order to limit transmission of COVID-19, this Court is operating with minimal staff. Additionally, until further notice or unless directed otherwise, the Court will ONLY hold telephonic hearings in all pending cases. All trials and evidentiary hearings will be rescheduled, except for evidentiary hearings typically held shortly after the filing of chapter 11 cases. Any motions to impose or extend the automatic stay will go forward by telephone. All previously noticed non-evidentiary hearings will take place as scheduled, but all parties MUST appear by telephone. Individuals not represented by counsel will be permitted to use these telephonic services FREE of charge. Amended pricing is now available for other users. All attorneys shall advise their clients NOT to appear at the courthouse. Information regarding names of telephonic service providers and contact information for each judge and information regarding pricing in this court is posted in the following notices:

[Updated Public Notice Regarding Status of Court Operations During COVID-19 Outbreak \(3/20/2020\)](#)

[Amended Pricing for CourtCall Services During COVID-19 \(3/17/2020\)](#)

- The U.S. District Court has entered Administrative Order 2020-18, In Re: “Coronavirus Public Emergency—Order Concerning Jury Trials and Other Proceedings” available at the following link:

[Coronavirus Public Emergency Order Concerning Jury Trials and Other Proceedings \(3/13/2020\)](#)

Please visit the following U.S. Federal and Florida state websites for updated information about Coronavirus:

Center for Disease Control: www.coronavirus.gov

Florida Department of Health websites for Miami-Dade, Broward and Palm Beach counties:

<http://miamidade.floridahealth.gov>

<http://broward.floridahealth.gov>

<http://palmbeach.floridahealth.gov>

**Chief Judge's Corner — Changes are Coming** (continued from page 1)

Allegiance led by Stella and Millie Grossman, and concluding with an uplifting benediction by Rabbi Norm Lipson. We then all gathered at the Tower Club for a beautiful reception hosted by the BBA. I want to thank again, Jose Rodriguez, our Deputy Clerk of Court and Cathy Wade, District Court administrator, for their hard work putting together Judge Grossman's special day.

The Eleventh Circuit has selected Judge Olson's successor. Hopefully he or she will be seated by mid-May. The formal investiture will probably be scheduled some time in the Fall. We are looking forward to having our new colleague join us in Fort Lauderdale. Until Judge Olson's successor is seated, Judge Hyman is handling the Broward division cases with Judge Grossman. Thank you again Judge Hyman.

Remember, check the Court website for any updated information. I look forward to seeing you all in court again soon!

RECENT COURT NOTICES AND ADMINISTRATIVE ORDERS**U.S. Bankruptcy Court - FLS**

- [AO 2020-01](#) Amendment of Section (A)(4) of Local Rule 5005-1
[AO 2020-02](#) Adoption of Interim SBRA Bankruptcy Rules
[AO 2020-03](#) Adoption of Interim Local Rule 3003-1. Filing Proof of Claim or Interest in Chapter 11 Cases
[AO 2020-04](#) Order Granting Relief From Discharge Injunction to Enter Into Agreement to Refinance or Modify Debt Secured by lien on Homestead
[AO 2020-05](#) Order Regarding Certain Deadlines
[AO 2020-06](#) In re: I) Suspension of Local Rule 5005-4(C) and II) Establishment of Procedures For Admission of Direct Evidence Through Declarations or Affidavits
[AO 2020-07](#) Administrative Order 2020-07 Re: I) Temporarily Closing Clerk's Office Intake to the Public; and II) Expanding Filing Options for Self-Represented Parties During COVID-19 Outbreak
[GO 2020-01](#) Assignment of New Cases and Adversary Proceedings, and Reassignment of Pending Cases to Honorable Paul G. Hyman, Jr., Pending Appointment of New Bankruptcy Judge

U.S. District Court - FLS

- [AO 2020-23](#) In re: Coronavirus Public Emergency - CARES Act
[AO 2020-9](#) In re: Order Establishing New Fee For Attorneys Seeking Pro Hac Vice Appearance in the District and Bankruptcy Courts of the Southern District of Florida.

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE CHANGE, EFFECTIVE JANUARY 1, 2020

Pursuant to its authority under sections 1913, 1914, 1926, 1930, and 1932 of Title 28, United States Code, the Judicial Conference of the United States, at its September 17, 2019 session, amended the Electronic Public Access Fee Schedule for the appellate, district, and bankruptcy courts, the United States Court of Federal Claims, and the Judicial Panel on Multidistrict Litigation. The fee schedule was amended to increase the quarterly threshold for waiving Public Access to Court Electronic Records (PACER) fees from \$15 to \$30. As a result, PACER users will not be charged a fee for usage that does not exceed \$30 in a given quarterly billing cycle.

This change to the quarterly waiver threshold takes effect on January 1, 2020, and will be reflected in a PACER user's quarterly bill received in April 2020.



FROM THE JUDGES' CHAMBERS



SUGGESTIONS FOR PRACTICE FROM JUDGE KIMBALL

The following suggestions for practice apply only in cases assigned to Judge Kimball. Other members of the Court may have different views.

It is rarely useful to file a motion for reconsideration.

In more than 11 years as a Bankruptcy Judge, I remember only two motions for reconsideration that I granted. In one case, my original order failed to address an argument made in a single sentence, in the middle of a paragraph, in a lengthy reply brief. The argument was in fact dispositive with regard to one count of the complaint and opposing counsel was unable to rebut the argument on rehearing. In the other case, the plaintiff offered a substantially changed proposed amended complaint and I permitted the amendment. In my experience, a motion for reconsideration serves no purpose other than to advise opposing counsel of the arguments you might present on appeal and give the Court a chance to explain why those arguments will be unsuccessful.

Motions to extend or impose the automatic stay should be filed with the petition.

In individual cases where, as a result of prior filed cases, the automatic stay will terminate after 30 days or does not come into effect, do not wait until the last moment and ask for an emergency hearing so that the Court may rule within 30 days after the petition date. File such motions with the petition or immediately thereafter. Remember that the debtor has the burden under sections 362(c)(3) and (c)(4). Include with the motion an affidavit by the debtor aimed at meeting that burden. The debtor should attend the hearing in person, particularly if the 30 day deadline is about to expire. Otherwise, it may be impossible for the Court to rule on the motion within the 30 day period as required by the Code.

Motions to extend deadlines to challenge exemptions, dischargeability, and the discharge may be denied if the movant fails to diligently pursue discovery as soon as practicable.

In most cases, a party in interest must object to a claimed exemption within 30 days after the meeting of creditors. Fed. R. Bankr. P. 4003(b). In chapter 7 and chapter 13 cases, a request to except a debt from discharge under section 523(c), or a request to deny discharge, must be filed within 60 days after the date first set for the meeting of creditors. Fed. R. Bankr. P. 4004(a) and 4007(c). The Court may extend these deadlines for cause. If a party in interest fails to diligently pursue appropriate discovery prior to asking for such an extension, the Court may deny the request for extension. Do not wait for completion of the meeting of creditors to begin discovery, particularly if the meeting of creditors is continued from its original date, unless it would be impracticable to pursue discovery until after the meeting of creditors. But this is rare. Parties in interest who may wish to challenge a claimed exemption, seek to except a particular debt from discharge, or seek denial of discharge, should take action immediately after they obtain notice of the case and diligently pursue their claims. Even if the debtor agrees to informal discovery, serve formal discovery on the debtor and other relevant parties.

Avoid incorporation by reference, from other documents or even within a document.

In filings of all types, avoid incorporating by reference another document filed in this Court or elsewhere, or even another section of the same document. Language presented elsewhere is rarely directly applicable without modification.

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FROM THE JUDGES' CHAMBERS

**SUGGESTIONS FOR PRACTICE FROM JUDGE KIMBALL** (continued from page 4)

If it is, then simply repeat the text in the appropriate place. Never incorporate by reference in an attempt to avoid a page limit; the entire document may be stricken. Do not incorporate by reference a complaint filed elsewhere in a complaint seeking to except a debt from discharge. While allegations presented in the non-bankruptcy complaint may be sufficient to support the existence of a claim, they are rarely sufficient to satisfy the requirements of sections 523(a)(2), (a)(4), or (a)(6). Draft a completely new complaint for purposes of filing in this Court, copying only those allegations that are useful in proving the case.

In the first paragraph of each filed document, tell the Court what you want, indicate the law supporting the relief, and highlight relevant facts.

I read many documents where the relief requested is not apparent for several pages. In the first paragraph of each filed document, state the relief requested, give the legal basis for that relief (such as a citation to the Bankruptcy Code and Rules or reference to a theory of common law), and summarize the relevant facts supporting the requested relief.

**IMPLEMENTATION OF SUBCHAPTER V OF CHAPTER 11
UNDER THE SMALL BUSINESS REORGANIZATION ACT OF 2019 (SBRA)**

On February 19, 2020, the Small Business Reorganization Act of 2019 (SBRA) took effect. As of the date of publication of this newsletter, four chapter 11 small business debtors have elected to proceed under subchapter V.

The SBRA creates a new subchapter V under chapter 11 for the reorganization of small business debtors. It does not repeal existing chapter 11 provisions regarding small business debtors, but instead creates an alternative procedure that small business debtors may elect to use.

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has promulgated Interim Rules and Form Amendments to the Federal Rules of Bankruptcy Procedure as a result of the passage of the Small Business Reorganization Act. The Interim Bankruptcy Rules were adopted in this Court under [Administrative Order 2020-02 "In re: Adoption of Interim SBRA Bankruptcy Rules"](#).

Amended Official Forms 101, 201, 309E (renumbered 309E1), 309F (renumbered as 309F1), 314 (use Local Form LF-33), 315, and 425A, and new Official Forms 309E2, and 309F2 became effective February 19, 2020. For changes in the Bankruptcy Forms please visit: <https://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments/pending-changes-bankruptcy-forms>.

The United States Courts and the Federal Judicial Center have made available the following SBRA educational resources at: <https://www.fjc.gov/publications/small-business-reorganization-act> (Federal Judicial Center website with online video of panel discussion on SBRA moderated by Judge A. Thomas Small (Ret.) (Bankr. E.D.N.C.) and the following downloadable files: 1) Small Business Reorganization Act of 2019 (Legislation), 2) Revised Testimony of A. Thomas Small on Behalf of the National Bankruptcy Conference, and 3) Legislative History.

A "Guide to the Small Business Reorganization Act of 2019" by U.S. Bankruptcy Judge Paul W. Bonapfel Northern District of Georgia is available at the following link: http://www.gamb.uscourts.gov/USCourts/sites/default/files/pdf/SBRA_Guide.pdf

On pages 12 through 15, an article titled "The Small Business Reorganization Act—a New Bankruptcy Law for Small Businesses" has been reprinted with the permission of the Daily Business Review and the author Zach Shelomith.



PRO BONO CORNER



By: **PETER W. KELLY, ESQ.**
P.W. KELLY ASSOCIATES, P.A.
FLSB PRO BONO COMMITTEE MEMBER

A UNIQUE OPPORTUNITY: THE PRO SE HELPDESK

I want to let you all know about a unique opportunity for bankruptcy attorneys here in the Southern District of Florida. We have been experimenting successfully over the last year with operating a pop-up helpdesk program at the bankruptcy courthouses. This program is designed to assist pro se parties attending hearings in active cases, as well as to improve pro se awareness of and enrollment in available pro bono programs. Over time, we have come to refer to the project as the Pro Se Helpdesk.

Effectiveness and Overall Benefits

This program is still in its infancy, however it has already proven to be an effective compliment and addition to existing pro bono programs. Throughout the past year, volunteer attorneys at the Helpdesk have assisted dozens of pro se parties. These volunteer efforts frequently allow pro se parties to participate in hearings in their cases with greater efficiency and with focus on relevant issues pending before the Court. An unrepresented party's interactions with the Helpdesk also improve firsthand awareness and encourage participation with existing pro bono resources that may assist with their cases on an ongoing basis.

In addition to the immediate assistance provided to pro se parties themselves, the benefits of the program extend to virtually everyone else in the courtroom. While the Helpdesk cannot help every unrepresented party, we have observed a general impact in the form of reduced hearing length, reduced need for unnecessary hearing continuances, reduced burden on judicial and court staff resources, and assistance to trustees with their administration of cases.

Opportunities to Assist with This Project

For attorneys looking to volunteer and provide pro bono assistance, this program is a special one. There is no requirement for a volunteer to take on the responsibility of an entire case file, and commitments to serve at the Helpdesk can be as little as an hour at a time. Consequently, the program offers a recurring volunteer opportunity for attorneys who might otherwise be precluded from traditional pro bono representation due to time constraints or legal and business conflicts of their particular practice.

Occasionally, a volunteer attorney seeking to gain courtroom experience may also be able to build up some quality time at the podium when assisting with the Helpdesk. During a hearing, opportunities can arise for Helpdesk attorneys to appear before the Court with the pro se party in order to help with explanation of issues or to simply assist with language translation for unrepresented individuals who do not speak English.

We are working to expand volunteer attorney participation with the Helpdesk, as well as frequency and geography of the program. I urge you to get involved. Please reach out to me if you are interested in assisting as a volunteer at the Helpdesk, to help coordinate with scheduling, or if you have any suggestions or comments for development program.

Interactions at the Helpdesk – What to Expect as a Volunteer Attorney

The vast majority of parties attending hearings in bankruptcy without counsel are individual debtors. Most have little to no experience with legal proceedings and arrive at the courthouse extremely nervous about the process. We have

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PRO BONO CORNER (continued from page 6)



By: **PETER W. KELLY, ESQ.**
P.W. KELLY ASSOCIATES, P.A.
FLSB PRO BONO COMMITTEE MEMBER

all observed the tendency for this circumstance to contribute to disorganization within the courtroom hearing process, exhaust time on the Court's calendar to wade into often unnecessary or irrelevant information and discussion, and generally add to overall confusion as to material issues before the court for consideration at the instant hearing. However, through our efforts with the Helpdesk thus far, we have found that a small amount of basic coaching from volunteer attorneys can go a long way.

Many pro se parties are receptive to volunteer attorneys who can provide simple information such as verification that the party arrived at the correct time and location for their hearing, the importance of due process and notice to other parties regarding a hearing, and explanations that the Judge should not be interrupted and that any questions from the Judge should be answered directly and honestly.

These principles feel like second nature to practicing attorneys, but it has been profound thus far to observe how grateful and how responsive an unrepresented individual can be when provided this type of general information and counseling in person during a face-to-face discussion. This general courtroom coaching is also applicable regardless of the substance of the scheduled hearing or underlying case. The Helpdesk generally operates in the lobby area or attorney conference rooms outside of the courtroom, and interaction typically involves pro se parties arriving or waiting for their scheduled hearings. The time available assist is often very limited, but discussing these basics can be invaluable.

Background

The Pro Se Helpdesk program was conceived through the work of the Pro Bono Committee of the Southern District Bankruptcy Court, and is modeled in part after similar pro se outreach projects operating in other bankruptcy courthouses around the country, including our neighbors in the Middle District of Florida. Many thanks to the Judiciary and court staff of bankruptcy courts around the country that provided information about their programs and encouraged us to begin and develop ours, as well as everyone here in the Southern District who has assisted with getting this project off the ground!

Presently, the Helpdesk operates on several dates per month and is located predominantly in the Miami courthouse location. However, we are working to expand the geography and frequency of the Helpdesk in the future.



Pro Se Helpdesk volunteer attorneys, left to right, Ariel Sagre, Peter Kelly, and Matthew Bayard

If you have any questions, comments, or if you are an attorney that would like to get involved with the Pro Se Helpdesk program, please feel free to reach out to me. As the program continues to develop, the opportunities (and need) for volunteer involvement will continue to grow, so please stay tuned. I can be reached via email at pkelly@pwkpa.com.



NEW REQUIREMENT FOR CM/ECF USERS TO FILE SEALED DOCUMENTS ELECTRONICALLY

By: Maggie Ferere

Effective February 1, 2020, CM/ECF registered users with full filing privileges must electronically file sealed documents. Administrative Order 2020-01 implemented this requirement by amending Local Rule 5005-1(A)(4) as an interim local rule. Limited filers and parties not registered as CM/ECF filers should continue to submit motions to seal and sealed documents conventionally. These conventionally filed documents will be converted into electronic format and processed as sealed filings by designated clerk's office staff. Interim Local Rule 5005-4(A)(4)(b) requires that sealed documents submitted by conventional filers be accompanied by Local Form 72, Cover Sheet to Accompany Items Conventionally Submitted for Sealing or in Camera Review. This local form was revised on 2/1/20 and is intended only for use by conventional filers.

Detailed, step by step instructions for filing documents under seal are available on our website:

<https://www.flsb.uscourts.gov/news/procedures-filing-documents-under-seal>.

Only the judge, designated court staff, the filer, and any other party as ordered by the court will have access to view sealed documents. Although case specific registered users will receive a Notification of Electronic Filing (NEF) of the sealed document, they will not have access to view the pdf image. Please use caution when saving pdf documents, as the naming convention, i.e., smithsettlement.pdf, will be viewable.

OVERVIEW OF RECENT CHANGES

Motion to Seal: It is important that the correct motion event Seal is selected. Display prompts selected during the filing of the motion will determine whether the motion itself will also be sealed.

Proposed Order: Must be uploaded via the e-Orders program in CM/ECF. NOTE: Use caution when drafting a proposed order to exclude reference to the sealed document itself. If the underlying motion was filed without viewing restrictions (unsealed), the pdf image of the order will also be viewable. Conversely, if the motion is filed as sealed, the image of the order will be as well.

Sealed Document: It is critical that the Sealed Document event be selected when filing a document under seal. If filed concurrently with the motion to seal, this event requires linkage to that motion. If the motion is subsequently denied, the sealed document image will be deleted by designated clerk's office staff. If the sealed document is filed after an order granting the motion to seal, it should be linked to the order.

Unsealing Documents: Sealed documents will remain under seal unless they are unsealed by court order. Upon closing of the case containing sealed documents and absent a prior order, the court will enter an Order Setting Deadline to Unseal Documents setting a compliance deadline. If no timely requests are filed to return the sealed documents to the filer, the sealed document will be unsealed, and the image will be viewable to the public. A timely request to return the sealed document will prompt designated clerk's staff to return the conventionally filed sealed document or delete the pdf image of the electronically filed sealed document. All these actions require a court order.

IMPORTANT: FAILURE TO FILE SEALED DOCUMENTS USING THE DEDICATED CM/ECF EVENTS WILL RESULT IN THE DOCUMENTS BEING PLACED ON THE CASE DOCKET AND VIEWABLE TO THE PUBLIC. To ensure the correct CM/ECF event is selected, all sealed events will display red screens. If you're trying to file something sealed and the screen does not turn red, STOP and begin the filing process again. When in doubt, use the SEARCH feature on the CM/ECF toolbar.

Implementation of electronic filing of sealed documents allows for more efficient processing of court documents. If you have any questions regarding this new process or suggestions for improving a current procedure, please contact us.



MAINTAINING YOUR ECF ACCOUNT

By: Maria Cervino

To make any changes to your ECF account, you must first log in, using your current CM/ECF login credentials.

I. Changing Your ECF Account Password

After logging in, select Utilities>Your Account>Change Your Password. In the password fields, first enter and then re-enter your new password and select “submit”. A message “password successfully changed” should appear to confirm your password change.

II. Changing Address, Telephone and Fax Number Information: (Note: First, Middle and Last Name, and Generation Fields **Cannot** Be Updated)

After logging in, select Utilities>Maintain Your ECF Account. On this screen, you will be able to change address, telephone/fax information. When complete, select “submit” to apply your changes to applicable case records.

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Maintaining Your ECF Account (continued from page 9)

The selection box below will appear. Simply select “submit” [do not uncheck any of the boxes].

Person / Search Open and/or Closed Cases

Searching for existing Party Records

Open cases
 Closed cases

The selection box below will appear and will allow you to apply your address, telephone/fax number changes to: 1) All Cases; 2) Open Cases; 3) Closed Cases; or 4) Specific cases. The default is set to Update ALL cases. Select your preferred option. (you can use clear if you highlighted the wrong option). Select “submit” to apply your selection choice. A message will appear confirming your update was successful.

Searching for existing Attorney Records
Select the cases to be updated

**** Update All ****

**** Update Open ****

**** Update Closed ****

2002-40000-EPK Mary Jane Forrester

2004-01027-RAM Sears Roebuck et al v. Howard Johnson Spa

2004-01073-AJC Bag A Donuts v. Bag A Donuts

2004-01076-AJC Donuts Inc v. Goober

2004-01156-AJC Bon Bons v. Dove Bar

2004-10034-RAM Banana Peel

2004-10034-RAM Banana Peel

III. Changing Email Information and Email Notification Preferences:

After logging in, select “Utilities” on the main menu bar, then under the “Your Account” menu, select “Maintain Your ECF Account”, then select the tab below the address fields titled “Email information:”.

Primary email address Reenter primary email address

Secondary email address Reenter secondary email address

Send the notices specified below

to my primary email address
 to the secondary addresses

Send notices in cases in which I am involved
 Send notices in these additional cases

Send notices for adversary proceedings in which I am directly involved and for their related bankruptcy cases
 Send notices for adversary proceedings in which I am directly involved but not for their related bankruptcy cases
You may receive notices for some bankruptcy cases if it is required by the Clerk of Court.

Send a notice for each filing
 Send a Daily Summary Report

Format notices HTML
 Text

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Maintaining Your ECF Account (continued from page 10)

On this screen you can update existing email addresses and notification preferences in the applicable fields. When changing an existing address or adding a secondary email address you must reenter each address to verify it.

On this screen you can also designate to which email addresses you want activated to receive notices in cases or adversary proceedings in which you are involved. You can also indicate that you want to receive notices for cases in which you are not involved by checking the box "Send notices in these additional cases" and inserting the case number or numbers in the text box.

On this screen you also have the option, by selecting the appropriate radio button, to receive notice of electronic case filing for each case (Send a notice for each filing) or a summary report containing all cases (Send a Daily Summary Report). There is an option to choose in what type of format, HTML or Text you want to receive notices. You also have the option to select "clear" to remove changes you may have made in error. **IMPORTANT: To save your changes, select "Return to Account Screen" which bring you to the "Maintain User Account" screen and then on the "Maintain User Account" screen, you must select "Submit" to save your changes and complete the following two additional steps:**

1) In the case search box (see below), simply select "submit" [do not uncheck any of the boxes].

2) The selection box below will appear and will allow you to apply your address, telephone/fax number changes to: 1) All Cases; 2) Open Cases; 3) Closed Cases; or 4) Specific cases. The default is set to Update ALL cases. Select "submit" to apply your changes. You will then receive a message advising you of the success of your update(s).

TIP: Clear Your Browser Cache

Pages you view on the Internet (including ECF screens and documents) are stored in temporary files for quick viewing. If these temporary files are not deleted on a regular basis, they can create problems including the opening of a second window within ECF when a menu option is selected, inability to use the backspace and delete keys, and old versions of updated documents being displayed. You can tell that you are having cache-related problems when one of the aforementioned problems occurs or when an ECF menu category (e.g., Bankruptcy) remains outlined even though you have selected another menu category (e.g., Reports).

It is recommended that you regularly clear your Internet browser cache and the temporary storage area on your hard drive. You may want to consult with your information technology staff about the best way to accomplish this.



NOTE: THE DAILY BUSINESS REVIEW AND ZACH SHELOMITH, ESQ., HAVE GRANTED THE CLERK OF COURT PERMISSION TO REPRINT THE FOLLOWING ARTICLE IN THE COURTHOUSE BEACON NEWS. IT IS BEING PROVIDED AS ONE SOURCE OF GENERAL INFORMATION ON THE SMALL BUSINESS REORGANIZATION ACT OF 2019 AND IS NEITHER INTENDED TO PROVIDE A COMPLETE OVERVIEW OF SUBCHAPTER V NOR TO REFLECT ANY VIEWPOINTS, POLICIES OR PROCEDURES OF THIS COURT. FOR REPRINT INFORMATION, PLEASE CONTACT THE DAILY BUSINESS REVIEW.

The Small Business Reorganization Act—a New Bankruptcy Law for Sm... <https://www.law.com/dailybusinessreview/2019/10/24/the-small-business...>

dbr DAILY BUSINESS REVIEW

NOT FOR REPRINT

Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/dailybusinessreview/2019/10/24/the-small-business-reorganization-act-a-new-bankruptcy-law-for-small-businesses/>

The Small Business Reorganization Act—a New Bankruptcy Law for Small Businesses

A Chapter 11 bankruptcy is not an easy process. While it can provide breathing room to negotiate with creditors and allow businesses a chance to continue operating, it is expensive, complicated and typically favors larger companies.

By Zach Shelomith | October 24, 2019



Zach Shelomith, Partner, Leiderman Shelomith Alexander + Somodevilla.



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The Small Business Reorganization Act—a New Bankruptcy Law for Sm... <https://www.law.com/dailybusinessreview/2019/10/24/the-small-business...>

A Chapter 11 bankruptcy is not an easy process. While it can provide breathing room to negotiate with creditors and allow businesses a chance to continue operating, it is expensive, complicated and typically favors larger companies. The advantages of Chapter 11 bankruptcy are oftentimes unavailable to small businesses and its owners. The substantial disclosure and reporting requirements alone scare off many potential debtors.

Those small businesses who have taken the plunge and filed Chapter 11 bankruptcy have found success to be elusive. According to a recent study, of the small business debtors that have filed Chapter 11 bankruptcy from 2008 to 2015, only around 27% of those companies successfully confirmed a reorganization plan.

In response to this problem, Congress recently created the Small Business Reorganization Act of 2019, which takes effect on Feb. 19, 2020. The act implements a new subchapter of Chapter 11, called a “small business debtor reorganization,” which addresses many of the difficulties experienced by small business debtors in Chapter 11 cases and makes a successful reorganization more of a possibility for struggling businesses and its owners.

The act applies to debtors that have no more than \$2,725,625 of secured and unsecured debt. It is available to both companies and individuals whose debts primarily arose from commercial or business activities. The act provides for a streamlined reorganization process and contains numerous powerful tools for debtors that are not typically available in Chapter 11. Some of the significant changes include:

Only the debtor may file a plan. Under the act, no creditor or other interested party may file a plan. However, the debtor must file the plan within 90 days after the bankruptcy is filed, with limited exceptions.

No creditors’ committee. In a typical Chapter 11 case, the U.S. trustee may appoint a committee of unsecured creditors, to represent this group of creditors. Under the act, no creditors’ committee is appointed, unless ordered by the court.

No disclosure statement. A disclosure statement, which is similar to a financial prospectus describing the plan, is no longer necessary under the act.



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Appointment of a trustee. Under the act, a trustee with limited duties and powers is appointed in every case. The trustee's role is to facilitate the development of a consensual plan and make distributions under the plan. Unless the court, for cause, orders otherwise, the debtor still runs the business and generally has the same rights as in a typical Chapter 11 case.

Votes are not needed. Perhaps the most radical change imposed by the act is that a debtor now has the ability to confirm a plan without having any creditors vote to accept the plan. Prior to the act, a debtor could not confirm a plan unless at least one impaired class of creditors voted to accept the plan. This requirement alone made many Chapter 11 plans impossible to confirm. Now, if other requirements are met, a plan can be confirmed with no votes at all.

No absolute priority rule. Another hindrance to confirming a typical Chapter 11 plan is the absolute priority rule. The rule essentially provides that if the company is unable to pay its debts in full (and all impaired classes do not vote to accept the plan), then the owners cannot retain their interests under a plan unless they contribute new value to the business. The act does away with the absolute priority rule, allowing business owners a greater opportunity to retain their ownership interests.

Modified cramdown rules. In Chapter 11, in the event that all impaired classes do not vote to accept the plan, certain additional requirements apply to confirm a plan, called a Chapter 11 cramdown. The act modifies the cramdown rules relating to unsecured creditors by requiring that all of the projected disposable income of the debtor to be received in a period of time ranging from three to five years must be applied to payments under the plan (or the value of the property to be distributed must not be less than the projected disposable income). This is a much simpler and straightforward way to confirm a plan when there are insufficient accepting votes.

Benefits to Individuals. The act also provides substantial benefits to individual small business debtors. Many business owners are ineligible for Chapter 13 bankruptcy because of its strict debt limits and are forced to file an individual Chapter 11 case in order to reorganize their financial affairs. Many of the same rules that apply in a typical business Chapter 11 case apply to individuals, as well. The more advantageous procedures under the act will also be available to individuals who meet the



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qualifications. In addition, unlike a typical Chapter 11 case, under the act, an individual debtor will be able to modify certain residential mortgages, if the underlying loan was not used to acquire the residence and was primarily used in connection with the small business of the debtor.

These are just a few of the many benefits that will soon be available for small business debtors. The act also renders many of the existing provisions of Chapter 11 inapplicable for small business debtors who elect to have the new subchapter apply in their case. Struggling businesses should strongly consider these new provisions as a potential remedy to their financial problems. It is important for small business debtors to have experienced counsel that can navigate this new law and bring about a successful reorganization.

Zach Shelomith *is a member of Leiderman Shelomith Alexander + Somodevilla in Fort Lauderdale. He is board certified in business bankruptcy law and consumer bankruptcy law by the American Board of Certification and represents numerous small business debtors in Chapter 11 bankruptcy proceedings.*

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**POP QUIZ ON SUBCHAPTER V OF CHAPTER 11 CASES** (answers on page 17)

By: Lorraine Adam

Question 1: Is a subchapter V case referred to as a small business case?

- A. Yes B. No C. Maybe

Question 2: Any party in a subchapter V case may file a plan.

- A. True B. False C. Only under rare circumstances

Question 3: How does a debtor obtain subchapter V status?

- A. By court order B. Trustee compels debtor C. Debtor elects to have it

Question 4: A status conference is held how many days after the filing of a subchapter V case?

- A. 30 days B. 60 days C. 90 days

Question 5: What is the date subchapter V became effective?

- A. February 19, 2020 B. August 23, 2019 C. October 5, 2005

Question 6: There will be no creditors' committee and no disclosure statement filed in a subchapter V case.

- A. True B. False C. Maybe

Question 7: Generally, what deadline has the court established for filing proofs of claims in subchapter V cases?

- A. 90 days after 341 meeting date (unless court orders otherwise)
B. 70 days after order for relief (unless court orders otherwise)
C. No set deadline, established on a case-by-case basis

Question 8: Which of the following documents is required to be filed by an individual debtor in a small business case under chapter 11 but not by an individual debtor in a subchapter V case under chapter 11?

- A. Statement of Current Monthly Income (OBF B122B)
B. Certification About a Financial Management Course (OBF 423)
C. List of 20 Largest Unsecured Creditors

Question 9: A trustee is appointed to subchapter V cases.

- A. True B. False C. Only under rare circumstances

Question 10: Confirmation of a plan under subchapter V can occur:

- A. Consensually B. Non-consensually C. Either A or B

Question 11: How much money is a subchapter V debtor required to pay the US Trustee for quarterly fees?

- A. \$0.00 B. \$100/month C. Flat rate determined in plan

Question 12: Election to subchapter V can only be done voluntarily by the debtor.

- A. Yes B. No C. Maybe

**ANSWERS TO PAGE 16 POP QUIZ ON SUBCHAPTER V OF CHAPTER 11 CASES**

By: Lorraine Adam

Question 1: (B) No. A small business case is defined by 11 USC § 101(52C) as follows: “The term ‘small business case’ means a case filed under chapter 11 of this title in which the debtor is a small business debtor and has not elected that subchapter V of chapter 11 of this title shall apply.” Therefore, although a debtor in a subchapter V case under chapter 11 is still a small business debtor, the case is not a small business case.

Question 2: (B) False. Pursuant to 11 USC § 1189(a), only the debtor may file a plan under subchapter V.

Question 3: (C) Debtor elects to have it. A small business debtor must elect to proceed under subchapter V (11 USC § 1187(a)).

Question 4: (B) 60 days. Unless otherwise ordered by the court, USC § 1188(a) requires the court to hold a status conference not later than 60 days after entry of the order for relief in a subchapter V case.

Question 5: (A) February 19, 2020. On August 23, 2019, the Small Business Reorganization Act of 2019 (SBRA) was enacted into law. Pursuant to Southern District of Florida Bankruptcy Administrative Order 2020-02, the Interim SBRA Bankruptcy Rules were adopted by this Court to be effective February 19, 2020.

Question 6: (C) Maybe. There will be no creditors’ committee and no disclosure statement, unless the court, for cause orders otherwise (11 USC § 1181(b)).

Question 7: (B) Administrative Order 2020-03 adopts Interim Local Rule 3003-1 which states, in part: Unless otherwise ordered by the court, the deadline for filing a proof of claim or interest shall be 70 days after entry of the order for relief, or in a dismissed case, 70 days after entry of the order reinstating case.

Question 8: (A) See Interim Bankruptcy Rule 1007(b)(5), which states “An individual debtor in a chapter 11 case (unless under subchapter V) shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.”

Question 9: (A) True. The US Trustee shall appoint an individual to serve as trustee (11 USC § 1183(a)). The Office of the US Trustee in the Southern District of Florida has indicated it will appoint a trustee for subchapter V cases from a panel of approved subchapter V trustees.

Question 10: (C) Either A or B. A subchapter V plan may be confirmed either consensually under 11 USC § 1191(a) or non-consensually under 11 USC § 1191(b) .

Question 11: (A) \$0.00. An amendment has been made to 28 § USC 1930(a)(6)(A) to except cases under chapter 11 subchapter V from requiring quarterly payment of US Trustee fees.

Question 12: (A) Yes. A small business chapter 11 debtor makes an election to proceed under subchapter V, thereby making it a voluntary chapter.



FLORIDA SOUTHERN BANKRUPTCY MORTGAGE MODIFICATION MEDIATION STATISTICS

(From April 1, 2013 through March 31, 2020)

	<u>MIA</u>	<u>FTL</u>	<u>WPB</u>	<u>TOTAL</u>
MMM Motion (Attorney Rep.)	7591	5081	2869	15541
MMM Motion (Pro Se)	93	43	26	162
Total Motions Filed	7684	5124	2895	15703
Order Granting MMM Motion	6731	4414	2430	13575
Final Report of Mediator	5677	3515	1882	11074
Mediation Agreement Reached	2494	1687	896	5077

MMM MOTIONS FILED BY MONTH (Attorney Rep. & Pro Se)

	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	
MIAMI													
2013				18	82	106	137	130	173	181	169	141	1137
2014	171	157	184	179	170	164	156	126	198	146	123	137	1911
2015	161	168	189	183	142	165	127	122	127	108	93	93	1678
2016	111	124	79	102	119	110	60	92	99	84	78	74	1132
2017	59	49	59	52	59	56	54	44	48	57	63	39	639
2018	40	48	54	64	57	44	59	65	44	52	39	39	605
2019	57	39	48	41	48	35	31	42	45	45	35	23	489
2020	35	38	24										97
													TOTAL = 7688
FT. LAUDERDALE													
2013				49	92	98	116	144	189	118	97	77	980
2014	91	82	69	108	89	89	106	103	99	100	121	95	1152
2015	96	100	109	89	94	96	82	74	93	89	91	79	1092
2016	86	81	58	61	68	63	46	75	59	43	54	50	744
2017	38	25	38	26	47	42	40	34	33	39	29	26	417
2018	20	21	36	24	33	43	47	61	28	33	26	21	393
2019	34	20	31	24	28	20	20	18	25	19	26	19	284
2020	26	13	25										64
													TOTAL = 5126
WEST PALM BEACH													
2013				9	35	56	91	83	147	63	68	67	619
2014	47	43	64	54	66	74	54	43	83	52	49	44	673
2015	51	57	52	41	47	56	48	39	35	35	33	36	530
2016	46	33	33	32	36	29	29	32	18	13	16	25	342
2017	22	18	21	22	20	10	23	27	18	24	17	13	235
2018	19	8	10	15	21	20	26	25	24	25	13	12	218
2019	22	20	13	28	14	20	27	19	10	31	18	10	232
2020	16	14	18										48
													TOTAL = 2897

UPCOMING COURT HOLIDAY CLOSINGS *

- Monday, May 25 - Memorial Day
- Friday, July 3 - Independence Day
- Monday, September 7 - Labor Day
- Monday, October 12 - Columbus Day

*Any additions to the court closing schedule are announced by General Order and posted on the court website <http://www.flsb.uscourts.gov/general-orders>. Please see [page 2](#) for information regarding office access affected by Coronavirus outbreak.

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- 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.

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Please Note:

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



A Decade in the Making

by: Jacqueline Antillon, Courtroom Deputy to Robert A. Mark

Poof! And just like that, in a blink of an eye 10 years have gone by. It was a memorable decade, so many shared memories along the way! We liked to share some of those happy memories and facts. So a decade has closed and what a decade it was, Instagram was introduced in 2010, selfies gained popularity in 2012, jeggings and Apple products introduced emojis. As we reflect on the past decade, what came, what stayed, what went - one thing we know for sure, we look forward to the next decade, the 20s! We welcome 2020 with open hearts. Here's to another decade in the making! The best is yet to come! "Celebrate endings—for they precede new beginnings".—
Jonathan Lockwood Huie.

Decade of Fun Facts:

- # of Cases Filed: 253,837
- # of Cases Closed: 260,395
- CM/ECF Transactions:
 - # External: 7,126,904
 - # Internal: 4,347,219
- # of Retirements: 31
- # of Marriages: 9
- # of Children: 9
- # of Grandchildren: 31
- # of Mega Lottery Winners: 0
- # of Good Times: Immeasurable

