COURTHOUSE BEACON NEWS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

JANUARY 2025

CHIEF JUDGE'S CORNER:

By: Hon. Erik P. Kimball

ANNOUNCEMENT

I succeeded Judge Isicoff as Chief Judge in October 2023. Although this varies from district to district, in our district the District Court designates the Chief Judge of the Bankruptcy Court. The order of succession is determined by seniority, among other criteria, but the District Court retains ultimate discretion. Typically, the term of a Chief Judge in our district is 7 years, although Judge Hyman served in that role for 10 years.

My judicial colleagues are among the best in the country. We have a superlative Clerk and Chief Deputy Clerk in Joe Falzone and Cameron Cradic. We also have among the best bankruptcy bars in the nation. I was honored to be designated as Chief Judge and remain so.

However, after much thought, I have asked the District Court to designate my successor as Chief Judge effective this coming Fall 2025. I believe I am ideally suited for my role as a Bankruptcy Judge, but not as well suited for Chief Judge. To answer your most likely questions, my family and I remain healthy. I do not intend to retire until I am at least 65. There was no precipitating event. I simply believe that my colleagues who may succeed me are better suited for the role and should have the chance to lead the Court.

EPK PRACTICE POINTERS

The following practice pointers are entirely mine. I have not vetted them with my colleagues, so their views may differ.

<u>Removal is Almost Never a Good Idea</u>

In more than 16 years on the bench, I have retained few matters removed from another court. In most instances, I immediately enter an order to show cause why the matter should not be remanded. I have yet to see a case where removal was a good idea. Most times, the matter removed here is entirely non-core, raising concerns about the ability of the Bankruptcy Court to enter final orders. Worse, many removed matters include claims over which this Court has no subject matter jurisdiction at all. Sometimes it appears that removal is chosen over filing a new adversary proceeding because of interlocutory rulings in the original forum. But this Court is not bound by interlocutory rulings in a removed matter, all of which are subject to reconsideration here. So, what are your options? The matter subject to removal is often stayed as a result of the automatic stay. If it has progressed in a significant way, or involves non-debtor parties as well as the debtor, you might seek relief from the automatic stay to continue litigation in the original forum. Otherwise, after carefully considering the

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Bankruptcy Cases Filed From 01/01/24 to 12/31/24

TOTAL FILED:	13,694
• Chapter 7	7,249
• Chapter 9	0
• Chapter 11	277
• Chapter 12	4
• Chapter 13	6,151
• Chapter 15	13

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"

CHIEF JUDGE'S CORNER: ANNOUNCEMENT (continued from page 1)

nature of the claims, you may file a new adversary proceeding in the bankruptcy case, presenting only those claims appropriately pursued here.

When Amending a Complaint, Add New Counts at the End

It is often confusing to re-number counts in a complaint after the parties and the Court have considered the matter to any extent. It is amazing how many orders I have entered where I must refer to counts in a complaint by tying them to a specific amended complaint, so it is clear what claim I am talking about. If you amend a complaint by adding new counts at the end, then count I will always be count 1, etc.

Use Only Arabic Numerals for Count Numbers in a Complaint

The Roman Empire fell in 476 AD. There is no good reason to use Roman numerals in a complaint. In adversary proceedings over which I preside, at least 10% of complaints include duplicate count numbers. I believe this is in part due to the fact that we are unable to recognize Roman numerals quickly enough to notice the duplication. This results in confusing motions and orders referring to "the first count IV" and the like. Even when you use Arabic numerals, make sure you don't have duplicates.

Do Not File a Motion to Extend the Stay Along with a Motion to Extend Document Deadlines

When considering a motion to extend the automatic stay under Section 362(c), I consider all aspects of the case including the debtor's disclosures in their schedules, statement of financial affairs, and chapter 13 plan (if applicable). It is extremely difficult for me to grant a motion to extend the stay if those disclosures are not provided in a timely way.

Do Not Submit Proposed Orders with a Single Numbered Paragraph

After the words "it is ORDERED and ADJUDGED" or the like, if there is only one item you may eliminate the number (or letter) and simply state what is ordered. For example, " . . . It is ORDERED and ADJUDGED that _____, as trustee, may abandon the _____ pursuant to 11 U.S.C. § 554(a)."

In Chapter 11 Cases of Corporate Entities, Follow the Local Rule on Joint Administration

Local Rule 1015-1 requires that a motion for joint administration be filed in each of the affected cases. If all debtors are corporate entities, once such a motion is filed all parties in interest, including the debtors, must file all documents in the presumed lead case "as though the motion has been granted." So, the correct way to approach a new chapter 11 filing involving corporate entities is to file the various petitions along with the joint administration motion in each case, and then file everything else in the presumed lead case. This will greatly reduce the number of first day filings. Even if you must file separate motions for certain debtors, they should be filed in the presumed lead case docket. Caption all papers as required by Local Rule 9004-2.

State Exactly What Relief You Want in the Wherefore Clause

The Court and parties in interest should never be unclear as to what relief is requested. At a minimum, due process requires that you explicitly state what you want so affected parties can appropriately respond. Yet I am shocked by the number of motions where the Wherefore clause asks only that the Court "grant this Motion" and it is difficult to know what that means. The Court should not have to read tea leaves to rule on a motion. A request for relief may be denied solely because it is unclear what was requested.

Celebrating the Life of the Honorable A. Jay Cristol

The United States Bankruptcy Court for the Southern District of Florida is deeply saddened to announce that the Honorable A. Jay Cristol passed away on October 21, 2024.

Judge Cristol retired on January 13, 2023. Widely recognized as a jurist of broad knowledge and boundless compassion, he served as a United States Bankruptcy Judge with honor and distinction for more than 37 years. Judge Cristol led the court as Chief Judge from 1993 to 1999. He touched the hearts of so many people and will be deeply missed by his friends and colleagues, not just here in Florida but across the United States.

The Family Statement provided by Judge Cristol's loving family is reproduced below:

Chief Judge Emeritus A. Jay Cristol passed away peacefully on the morning of October 21, 2024, at 95 years old. He was preceded in death by his wife, Eleanor Cristol. He is survived by his sons, David and Stephen; his daughters-in-law, Cecilia and Violeta; and his grandchildren Samantha, Rachel, and Daniel.

Judge Cristol was born on September 25, 1929, in Bethlehem, Pennsylvania. He was the only child of Samuel and Mae. He moved with his family to Miami Beach in 1937, where he would spend the majority of his life and career.

Judge Cristol was a graduate of Miami Beach Senior High, and he joined the Navy soon after graduation as an aviation cadet. He earned his Navy Wings of Gold in 1953, flew in the Korean War, and participated in the Order of the Blue Nose ceremony. When he returned to civilian life he continued his naval service as part of the Naval Air Reserve. He went on to join the Judge Advocate General's Corps (JAG) and was later named an honorary professor at the Naval Justice School. He retired as a Captain in 1988, with numerous military decorations including the Meritorious Service Medal, the Navy Commendation Medal, and the Navy Achievement Medal.

Upon his return to civilian life, he earned his B.A. at the University of Miami '58, and his J.D. and LL.B. cum laude at the University of Miami School of Law '59. He later earned his Ph.D. in International Studies at the University of Miami Graduate School of International Studies '97. His Ph.D thesis was published as a book, and after his coursework was completed he continued his research, going so far as to successfully sue the National Security Agency under the Freedom of Information Act. He was a lifelong Cane and taught as an Adjunct Professor of Law at the University of Miami School of Law from 1988 to 2023.

After graduating from law school, he served as a Special Assistant Attorney General of Florida from 1959 to 1965 and as a trustee in bankruptcy from 1977 to 1985. During this time, he was also a senior partner at the commercial law firm of Cristol, Mishan, and Sloto.

On April 17, 1985, Judge Cristol was appointed Judge of the United States Bankruptcy Court for the Southern District of Florida. He went on to serve as the Chief Judge and presided over many high-profile bankruptcy cases, including the Chapter 11 Reorganizations of General Development Corporation and Pan-American Airways.

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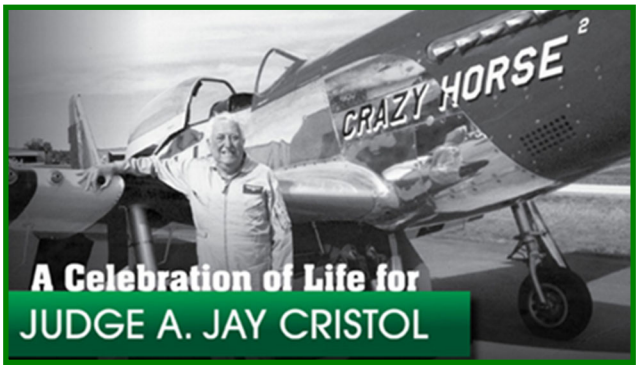
Celebrating the Life of the Honorable A. Jay Cristol (continued from page 3)

Judge Cristol had a strong sense of justice and continuously worked to make the world around him a better place. He was a deeply loved husband, father, grandfather, and friend to all who knew him. He had a huge sense of humor and a kind heart. He believed that the practice of law was an act of service and was deeply devoted to his community and to "doing the right thing." He founded the Eleanor R. Cristol and Judge A. Jay Cristol Bankruptcy Pro Bono Assistance Clinic, providing legal help to those in need. Judge Cristol brought this mindset into his courtroom, where he worked to help people and their families with dignity and compassion.

He was an avid traveler and visited all seven continents. He was a water skier, a recreational pilot, and loved a game of Acey-Deucey. He tried his hand at bullfighting, briefly owned a pet alligator, and was an Eagle Scout. He was an Angel Flight volunteer pilot and helped found an aircraft museum. He had a deep love of poetry, going so far as to publish numerous legal opinions in the form of poems: one, in the style of Dr. Seuss, and another taking after Poe's "the Raven." He was an avid fan of the poetry of Robert W. Service, and would often recite "The Cremation of Sam McGee" to those who would listen.

To bid him a proper farewell, in the (almost) words of Robert W. Service:

There are strange things done, in the midday sun
By the men who preside over court,
The sandy dunes have their secret tunes
That can cut your pleadings short;
The bright sunlight has seen strange sights
But the strangest they ever did see;
Was the dawn on the cay, down by Biscayne bay
We bid farewell to AJC



Join family, friends, and colleagues of the
Honorable A. Jay Cristol, B.A. '58, J.D. '59, Ph.D. '97,
to honor his legacy.

Date: Sunday, February 2, 2025 @ 1:30 - 2:30 p.m.
Reception to follow

Location: **UNIVERSITY OF MIAMI**
SHALALA STUDENT CENTER
Center Ballroom
1330 Miller Drive, Coral Gables, FL

To RSVP click [HERE]

The celebration will also be live-streamed. To join virtually, register using this link.

FROM THE JUDGES' CHAMBERS

Pro Bono Committee of the Court

By: Hon. Mindy A. Mora, U.S. Bankruptcy Judge

The purpose of the Court's pro bono committee is to provide a liaison between pro bono organizations in our divisions and the court. I am pleased to announce that Joe Grant of Lorium Law has agreed to serve as the incoming lay chair of the Pro Bono Committee, and we thank Peter Kelly for his years of service as the former lay chair.

The work of this committee is layered: in addition to providing a liaison with local pro bono organizations, the committee encourages support of Dress for Success, which is a charitable organization that not only facilitates appropriate workplace attire for women looking to improve their income, it also provides training for interviews and workplace behavior. The Committee has prepared a guidebook for working with older pro bono clients which includes available resources for the types of services they may need. That guidebook is available on the Court's website (see Elder Law Handbook For Pro Bono Counsel).

The Committee organizes help desk clinics at the courthouse in Miami and virtually for pro se individuals to obtain a quick consult on discrete issues that come up in a consumer case, and ensure that the needs of financially distressed pro se individuals who wish to work with a lawyer can do so. And that's particularly important when pro se cases make up about 6.5% of our filings.

In the past, these pairings of pro se debtors and pro bono counsel have been made on a one-off basis, based on hand out sheets provided by the clerk's office to pro se debtors, or when a bankruptcy judge observes that a pro se debtor needs assistance and refers the debtor to the division's pro bono coordinator.

But now, an exciting new development is occurring in the Southern District of Florida. Through a joint project of the BBA, and the Bankruptcy Bar Foundation, an online website has gone live this week that will facilitate the matching of available pro bono counsel with pro se debtors. Lawyers can volunteer to provide as little as thirty minutes of their time to consult with a pro se individual in order to work through a difficult issue in their case, or the lawyer can agree to provide additional assistance for a longer period of time if the lawyer chooses. The website is incredibly easy to navigate and allows the lawyer to specify the day and time when he or she is available to consult with a pro se debtor in need of legal assistance. We are very excited by this development in the provision of pro bono services in our district, and we hope that each of you will sign up to fulfill your oath as Florida lawyers to assist pro se individuals who need assistance to navigate the complex world of bankruptcy from someone with the legal acumen to assist them in emerging from the bankruptcy process. The actual website can be found at https://www.bankruptcyproseclinicfls.com. We are grateful for the work that the Middle District of Florida did to set the stage for this online resource through that district's adoption of a similar online resource.

So, in sum, it's easier than ever to provide pro bono services to Florida debtors in need. Please visit the Southern District's website and volunteer whatever time you can afford to fulfill your obligation as a Florida lawyer.

FROM THE JUDGES' CHAMBERS

Admissions by a Party Opponent Usually Saves the Day but not Always

By: Corali Lopez-Castro, U.S. Bankruptcy Judge

The Federal Rules of Evidence can be confusing for even seasoned lawyers, particularly the rules about hearsay. Is a statement hearsay but admissible under an exception? Or, is the statement non-hearsay and, therefore, admissible under another rule? For example, admissions made by a party or a party's agent do not constitute hearsay and are admissible under Federal Rule of Evidence 801(d)(2). To be admissible under Rule 801(d)(2), the statement must be (1) offered against an opposing party and (2):

a. was made by the party in an individual or representative capacity;
b. is one the party manifested that it adopted or believed to be true;
c. was made by a person whom the party authorized to make a statement on the subject;
d. was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
e. was made by the party's coconspirator during and in furtherance of the conspiracy.

Admissions can be oral, written, and even nonverbal such as a nod or shake of the head. There is also no requirement that the statement be against the declarant's interest. "Statements against interest" are hearsay statements that may be admissible if the requirements of Rule 804(b)(3) are met. Admissions are also substantive evidence as opposed to merely impeaching statements, but they are not conclusive. The trier of fact must decide how much weight a particular admission deserves.

A key advantage of introducing statements under Rule 801(d)(2) is that the declarant's availability to testify at trial is irrelevant. This means that statements made by a debtor during a Rule 2004 examination or deposition are admissible as substantive evidence. Counsel can read the statements into evidence or, if the statements were recorded, the audio/video can be played for the judge *even if the debtor is in the courtroom*. This can be particularly effective if the debtor's demeanor during questioning is something that could assist your case. And, it is not just limited to the debtor. Any party's deposition testimony is admissible by an opposing party regardless of whether the deponent is available to testify at trial.

Examples of non-verbal admissions which are frequently relevant in issues tried in bankruptcy court include the debtor's petition, schedules and statement of financial affairs. Statements made in proofs of claim also constitute admissions by the filing party. When a trustee stands in the shoes of the debtor when bringing an action, the trustee may be bound by the debtor's admissions. In contrast, a debtor's admissions will generally not be admissible against a trustee who is standing in the shoes of creditors as, for example, when a trustee seeks to recover fraudulent transfers.

Finally, when preparing for an evidentiary hearing the simple exercise of confirming the evidentiary basis for each exhibit you intend to use at trial will save you a lot of stress. Unfortunately, many lawyers believe that there will be a stipulation as to the admissibility of the exhibits but as the old saying goes - there is no harm in hoping for the best as long as you prepared from the worst – (author – someone very wise!).

FROM THE JUDGES' CHAMBERS

Getting Help with Subchapter V Cases

By: Hon. Scott M. Grossman

By the time you read this, the $7.5 million subchapter V debt may have been reinstated (even if it hasn't, you should still continue reading). If so, that would continue to make available to more potential debtors this efficient and less costly path to reorganize. Creditors usually benefit as well, because when chapter 11 is too expensive for a small debtor, the most likely alternative is liquidation, where creditors usually receive far less, if anything. In the five years since we have had subchapter V, it has worked remarkably well, resulting in many small debtors actually reorganizing, rather than liquidating, selling all their assets, or handing them over to their lenders.

Because small businesses often have a close identity with their principals – and because their cases are by definition "small" – it is not uncommon for potential small business debtors to seek assistance from attorneys who do primarily consumer work. Filing, prosecuting, and confirming a chapter 11 case (even a small one), however, takes a particularly different skill set than that needed to run a productive consumer bankruptcy practice. While I have seen some attorneys who do primarily consumer work successfully file and confirm subchapter V plans, others have at times struggled.

One encouraging trend I have seen recently, though, is consumer attorneys co-counseling with a more experienced chapter 11 lawyer. The first time I saw this arrangement, I was admittedly skeptical. But the attorneys explained to me at the retention hearing that the debtor was originally a client of the consumer attorney. The consumer attorney recognized that subchapter V may be the best strategy for this debtor, but he also wanted to keep his client. The consumer attorney admitted, however, that he did not have a lot of chapter 11 experience, and that his skill set of effectively and efficiently helping consumer debtors resolve their financial problems may not necessarily translate well to the chapter 11 process. So this attorney acknowledged that not only did he need some assistance, but that his client would benefit from associating another experienced chapter 11 attorney (particularly one experienced in subchapter V). With that explanation – but also with the admonishment that I would be closely scrutinizing the fees to ensure no duplication of work – I approved both attorneys as co-counsel for the debtor. Ultimately, the debtor was able to confirm a plan. And after some minor reductions, I approved both attorneys' final fee applications.

Since that time, I have had at least one other similar case. And I again approved the retention of both lawyers. I applaud those consumer attorneys who recognize that subchapter V may be outside of their area of expertise and realize they may need assistance to effectively represent their clients. I also commend those chapter 11 lawyers willing to work with consumer attorneys as co-counsel on these smaller cases. Subchapter V can provide tremendous benefits to eligible small business debtors. Consumer attorneys who might not otherwise be comfortable filing a chapter 11 case should not discount subchapter V as an option for their clients. And if it is the right strategy, consumer lawyers may want to consider co-counseling with a more experienced chapter 11 lawyer, rather than attempting to do it themselves.

FROM THE JUDGES' CHAMBERS

BEWARE THE § 1116(1) and § 1188(c) Deadlines
They Cannot Be Extended, Ever

By: Hon. Peter D. Russin and Catherine Douglas Kretzschmar

For a small business needing to reorganize its financial affairs, Chapter 11 can be prohibitively expensive. The Bankruptcy Code makes the process theoretically simpler and less expensive for small businesses and has for many years. In 2019, recognizing that small business Chapter 11 cases "continue to encounter difficulty in successfully reorganizing," Congress enacted the Small Business Reorganization Act (the "SBRA") to "streamline the bankruptcy process by which small business debtors reorganize and rehabilitate their financial affairs." (H.R. Rep. No. 116-171, at 1 (2019)).

The SBRA instituted Sub V of Chapter 11, permitting qualifying small business debtors "'to file bankruptcy in a timely, cost-effective manner, and hopefully allow[ing] them to remain in business' which 'not only benefits the owners, but employees, suppliers, customers, and others who rely on that business.'" *Id.* (quoting bill sponsor Rep. Ben Cline). Anecdotally, in this Court's experience, the Sub V regime has been enormously successful.

Sub V and small business bankruptcies generally, by their very nature, are intended to be expedited. Sub V provides qualifying debtors with some powerful and cost-saving restructuring tools not otherwise available to Chapter 11 debtors. *In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 340 (Bankr. S.D. Fla. 2020). To balance these special powers, Congress granted creditors in a Sub V a very important protection: the requirement that a Sub V case proceed expeditiously. *Id.* For example, pursuant to § 1189(b), debtors must file a plan within 90 days of the order for relief. This deadline may only be extended "if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable." Congress set a relatively short deadline for debtors to file a plan under Sub V and a high bar to obtain an extension of that deadline. In a non-sub V small business case, once a debtor files a plan it must be confirmed within 45 days under § 1129(e) and that time period may only be extended under very limited circumstances. § 1121(e)(3).

Section 1116(1) provides:

> In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—
>
> (1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—
>
> (A) its most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or
>
> (B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

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FROM THE JUDGES' CHAMBERS

BEWARE THE § 1116(1) and § 1188(c) Deadlines (continued from page 8)

So, in keeping with this framework requiring speed, voluntary small business debtors must be prepared to file the documents required by § 1116(1) on the petition date. The documents should be appended to the petition itself.

Section 1188(c) provides:

> (c) Report. -- Not later than 14 days before the date of the status conference under subsection (a), the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.

Just as with the deadline for the Sub V debtor to quickly file a plan within 90 days, it is required to file its report under §1188(c) at least 14 days before the status conference, which conference must take place within 60 days of the petition date. §1188(a).

So, is there any situation in which the debtor may extend the deadline to file its documents under § 1116(1) or its report under 1188(c)? Funny you should ask. The answer, at least in this Court's view, is a resounding no.

Sections 1116(3) and1188(a) provide clear mechanisms for a debtor to extend the deadline to comply with those subsections. Section 1116(3) allows an extension to file all schedules and statements of financial affairs of up to 30 days and only longer if there are "extraordinary and compelling circumstances." §1116(3). Section 1188(b) allows the court to extend the period of time for holding the status conference only if "the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable." 1188(b).

Sections 1116(1) and 1188(c) include no such language. Congress imposed strict standards to gain an extension of time under § 1116(3) and 1188(b). The lack of such language in § 1116(1) and 1188(c) makes clear that it was Congress's intent not to provide any flexibility for either of those deadlines.

If you were hoping you might find some help from Rule 9006 or **§** 105, you won't. Rule 9006 does not apply to statutory deadlines, and *Law v. Siegel* 571 U.S. 415, 421 (2014) prohibits the application of § 105(a).

Rule 9006(b) allows for the enlargement and extension of certain deadlines when cause is shown. By its plain language, Rule 9006(b) only applies to deadlines set "by these rules or by a notice given thereunder or by order of court." Rule 9006(a) plainly provides that it applies to "any statute that does not specify a method of computing time." However, Rule 9006(b) is noticeably missing the same, or similar language. Instead, it permits modification only of time limitations imposed by other rules or by the court. Rule 9006 simply does not provide the court with any authority to extend the time periods prescribed by statutory provisions and cannot be argued to extend the deadline to file the documents required by § 1116(1) or 1188(c). *See In re Ott*, 343 B.R. 264 (Bankr. D.Colo. 2006) (Finding Rule 9006(b) cannot be used to extend a statutory deadline,

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FROM THE JUDGES' CHAMBERS

BEWARE THE § 1116(1) and § 1188(c) Deadlines (continued from page 9)

even under circumstances of excusable neglect); *In re Tubular Techs., LLC*, 348 B.R. 699, 710 (Bankr. D.S.C. 2006) (same); *In re Damach, Inc.*, 235 B.R. 727, 731 (Bankr. D. Conn. 1999) (same); *In re Federated Food Courts, Inc.*, 222 B.R. 396 (Bankr. N.D. Ga. 1998) (same). Indeed, Rule 9006(b) specifically calls out § 1116(3), and so if Congress had intended to also allow it to apply to § 1116(1) or **§** 1188(c) it would have done so.

Similarly, § 105(a) of the Bankruptcy Code is also unavailable. While § 105(a) grants a bankruptcy court broad authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code, it does not allow the Court to act contrary to its plain language. *Law v. Siegel* at 421. "Whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Id*. (citing *Norwest Bank Worthington v. Ahlers*, 485 U. S. 197, 206 (1988)). Where using § 105(a) to extend a clear statutory deadline would provide relief directly contrary to the text of the Bankruptcy Code, the Court cannot exercise that equitable power. *In re Martinez*, 515 B.R. 383, 386 (Bankr. S.D. Fla. 2014).

The § 1116(1) and § 1188(c) deadlines are indeed strict and there is no way to extend them. But what is the remedy if these documents are filed late? These statutes do not suggest one. Perhaps conversion or dismissal under § 1112(b)(4)(F) due to an "unexcused failure to satisfy timely any filing or reporting requirement..." Perhaps finding the plan is not confirmable under § 1129(a)(2) because the Debtor has not "complie[d] with the applicable provisions of this title."

This Court, at least, is dubious of the notion that the late filing of these documents by a few days would be sufficient "cause" alone to justify dismissal or conversion or a sufficient basis to deny confirmation. But that is a question for another day and certainly one you, as lawyers, have within your power to avoid ever being asked.

BANKRUPTCY JUDGES' PRACTICE POINTERS

Hon. Peter D. Russin:

1. Practice Pointers

For emergency matters, your motion must set forth with particularity, under a separate heading in the text the reason for the exigency and the date by which movant reasonably believes such hearing must be held. See Local Rule 9075-1. Doing so is not only required but expediates the speed with which your matter will be heard. If you just say "as soon as possible" or similar language with no further explanation we have no way of knowing how quickly the matter must be scheduled. We try to react quickly so please help us help you. Notice of course is also critical so you should explain how you intend to notify all interested parties with a right to notice.

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FROM THE JUDGES' CHAMBERS

BANKRUPTCY JUDGES' PRACTICE POINTERS (continued from page 10)

Local Rule 9075-1:

If a motion or other paper requests an emergency hearing, the title of the motion or paper must include the words "Emergency Hearing Requested". Any motion or paper requesting an emergency hearing must set forth with particularity, under a separate heading in the text:

(A) the reason for the exigency and the date by which movant reasonably believes such hearing must be held; and

(B) a certification that the proponent has made a bona fide effort to resolve the matter without hearing.

Emergency hearings shall be held only where direct, immediate and substantial harm will occur to the interest of an entity in property, to the bankruptcy estate, or to the debtor's ability to reorganize if the parties are not able to obtain an immediate resolution of any dispute. The filing party must promptly notify the courtroom deputy or law clerk of the hearing judge, in the manner specified on the hearing judge's homepage on the Court's website maintained at www.flsb.uscourts.gov, that such motion or paper has been filed and the ECF number assigned to such filing. The filing party must send such motion or other paper by email (in addition to any notice of electronic filing generated by the CM/ECF system) promptly after filing to all interested parties for whom an email address is reasonably ascertainable and, for all other parties, by telecopier or other means reasonably calculated to ensure prompt receipt. The requirements of this rule are in addition to the service requirements set forth in the Bankruptcy Rules and these local rules.

Please review and be familiar with the Court's Guidelines for Preparing and Submitting Orders. (https://www.flsb.uscourts.gov/guidelines-preparing-submitting-and-serving-orders).

Hon. Scott M. Grossman:

Consumer – make sure you actually serve your motion and hearing notice (and file a proper COS) for those matters on which you later submit an order after the consent calendar indicating no one showed up in opposition.

Commercial – don't include pages of background on the history of the case unless it is truly relevant to the issue before me.

Hon. Erik P. Kimball:

When preparing a document seeking or opposing relief, and when arguing before the Court, present your thoughts according to the elements of the relief requested. If you are seeking relief, explicitly address each required element and point to evidence in support. If challenging the relief sought, point out where the party requesting relief has failed to satisfy required elements.

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FROM THE JUDGES' CHAMBERS

BANKRUPTCY JUDGES' PRACTICE POINTERS (continued from page 11)

Hon. Laurel M. Isicoff:

1. Meet and confer requires telephone, video or in person meeting. Emails not acceptable.

2. Remember that:

"ATTORNEYS ARE THE FILTER UPON WHICH COURTS RELY TO MAINTAIN THE INTEGRITY OF, AND TRUST IN, OUR JUDICIAL PROCESS."

PEER v. LEWIS, 606 F. 3D 1306 (11TH CIR. 2010)

And so the manner in which you treat each other, your clients, and the Court, the way you dress for court (video or in person), and the way in which you conduct yourself, all are critical elements of that obligation to our judicial system.

3. Always make sure you make time for pro bono.

Hon. Mindy A. Mora:

When you are seeking ex parte relief, please remember to include in your motion the applicable subsection of L.R. 9013-1(C) that authorizes the movant to seek relief on an ex parte basis. And if you are moving for ex parte relief under L.R. 9013-1(C), which authorizes ex parte relief for any appropriate basis, please explain why you believe your request falls under this "any other reason" basis. An example might be a trustee seeking authority to pay a relatively de minimis amount of expenses, like $400 for storage fees. It is also important that the proposed order granting the ex parte motion either restate the basis for ex parte relief, or refer to the relevant paragraphs of the motion that sets forth the basis. That will facilitate our review and entry of ex parte orders, and avoid having to send back a resubmit request. And lawyers, please instruct your paralegals and staff who may be assisting you in submitting these motions and orders what the Court's specific instruction are in this regard!

Hon. Corali Lopez-Castro:

Get the Easy Stuff Right

Every bankruptcy case filed under every chapter has challenges. That is the nature of bankruptcy. If the debtor can get the "easy" stuff right, the case will proceed with the basket of good-will partially filled. What do I mean? Here are some examples that illustrate my point: (1) file your monthly operating reports on a timely basis, (2) file the Chapter 11 Summary with some thought so the Court has a sense of what the case is really about, and (3) communicate with the United States Trustee's office early in the case if you are having trouble opening a debtor-in-possession bank account. If a debtor and counsel can put their best foot forward, it may not "win" the case but it may help the case proceed with less resistance and a higher probability of success.

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FROM THE JUDGES' CHAMBERS

BANKRUPTCY JUDGES' PRACTICE POINTERS (continued from page 12)

Hon. Robert A. Mark:

Practice tip – "Plead don't Whine"!

There is a simple, important, and often overlooked oral advocacy skill: Be prepared to tell the court the specific relief you seek. Here's an example to illustrate the point. A party files a motion to compel seeking to compel the production of documents, or compliance with a prior discovery order, or appearance at a 2004 exam or deposition. The hearing unfolds with movant's counsel passionately complaining, and yes, at times whining, about the respondent's missed deadlines, violations of court orders or unfulfilled promises to produce documents by a date certain or agree to examination dates.

If the allegations are well-founded, I will likely say, "okay counsel, I'm granting your motion. Tell me what you'd like to include in the order." This is a valid question. There are frequently open issues like (1) the deadline you're requesting for response to a discovery request or compliance with a prior order, (2) the timing and place of a deposition or 2004 examination, or (3) the number of days prior to the examination for production of documents you need for the examination. Also, are you requesting sanctions now, and if so, what findings does the order need to include to award sanctions under Rule 37? And what is the amount of the award you seek? You may not get everything you ask for but . . .

PLEASE HAVE AN ANSWER!

Every Day is a New Beginning

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

Philosopher Hercaclitus famously said, "The only constant in life is change." Constant change allows us to reinvent and without a doubt offers new beginnings. Just like how each day the sun sets, and the sun rises, so does the opportunity to start over again. The start of something new can be overwhelming and intimidating. On the other hand, change offers fresh recourses. We are never too old to embrace and accept changes in our life. After all, maybe the universe is offering us the start to a new moment, another window to the endless probabilities to make what was wrong, right. New beginnings can be welcomed or unwelcomed. In the end, interpretation is up to us. We can continue to remain stagnant, or we can change course and become the captain of our ship. Decisions must always be made, even when we are stuck at an impasse or at a crossroad. The challenge can be the start of a new job, a relationship, going back to school, exercising more, eating healthier, but it always starts with a new beginning. Fresh starts serve as an invitation to grow and metamorphose into a better version of ourselves for personal development and self-contemplation. We are constantly growing and evolving, and with that so do fears. We "hope" that something new will invigorate and empower us. Beginnings can be challenging; we do have options, and how we perceive those opportunities can influence the path we take. It is never too late to start again. We may feel old or defeated at times. However, an indomitable spirit cannot be conquered. I learned a long time ago to never allow anyone to diminish a sparkle or steal my thunder. Debbie Downers are a

(Continued on page 14)

Every Day is a New Beginning (continued from page 13)

dime a dozen, but each of us is sensational. Look around you, there is beauty surrounding us. Stop for a moment and gaze at your surroundings and enjoy life. Truly, there are delightful things to behold.

The idea that every day can bring new beginnings should empower and embrace us. Determination and relentlessness are very powerful tools that we each possess. I am not a philosopher or a therapist, but I would rather see the glass half full rather than half empty. We all have struggles, but why let that define me? Or you? Change starts with a positive frame of mind. Yes, it is okay to feel blue, defeated, acknowledge our lows, and seek help when needed. Just like a Phoenix that rises from the ashes, so can we! No one should ignore unpleasant or negative thoughts, but rather embrace those moments and spin negativity into optimism. According to Harvard Health Publishing Medical School, it is best to stay positive during difficult moments. How? By being mindful, sharing kindness, practicing gratitude, and tapping into our inner strength. I tell my children to compare themselves to a baby who is learning how to walk. How many times does a baby fall when learning how to walk, fall, hurt themselves, and cry? Yet seconds later, they get back up again and continue to try until their legs are strong and no longer wobbling, and they take off running. That is my little way of installing hope, strength, and courage into my kids. I let them know that it is okay to make mistakes, we all make them, to not be hard on themselves, and to find the power to get back up, over and over. Do not be afraid to keep getting up and trying new things. As they say, fall a hundred times, get up a thousand times. Life is a rollercoaster ride, with plenty of ups and downs. Psychology Today teaches us that our experiences shape who we are today, that the past also teaches that challenges build resilience, and that we should understand the roles of positive and negative emotions. There are many cliches, and some of them can resonate with each of us: "The beginning is always today," "You are never too old to start over," "Never underestimate the power you have," "Positivity is powerful," and "I know, I can do this." You get it! Never undermine your talents, strength, and ability to succeed. "The potential of greatness lives within all of us." – Wilma Rudolph.

Studies have shown that positive thinking patterns impact our mental and physical health. Positive attributes for maintaining a positive outlook and high energy levels can lower rates of depression. Also, management coping skills help us during anxiety, improve heart health, and ensure a better quality of life. If your negative thoughts are too powerful to discard, analyze your situation and seek medical assistance. There is a vast network to help us cope with life, and hopefully, eventually, allow us to accept every day as a new beginning. Federal employees can tap into an array of benefits, such as Federal Occupational Health (FOH) and WorkLife4You. These services raise awareness on emotional well-being and work-life issues, and they offer a monthly newsletter, webinars, and monthly featured campaigns. They exist to explore different services and benefits.

(https://magellanascend.com/?ccid=hpZiwITni%2FVKNrZqvUQNB6H843mPpM2G6XP9mLkU80g%3D)

Embrace change. What you do with opportunities is yours and yours alone, for every day is a new beginning and a prospect for creating the life you want. You are amazing!!! In my opinion, we need to stop being afraid of what will go wrong and start thinking about what will go right. "Every day is a new beginning." "What is not started today is never finished tomorrow." – Johann Wolfgang von Goethe.

*https://www.health.harvard.edu/blog/staying-positive-during-difficult-times-2020100121047

**https://www.psychologytoday.com/us/blog/the-path-passionate-happiness/202211/the-positive-role-negative-emotions?msockid=24ac8786fa316c8022cc94d2fb366d4a

AMENDMENTS TO THE FEDERAL RULES OF PRACTICE AND PROCEDURE, OFFICIAL & DIRECTOR'S FORMS, AND LOCAL FORM

Congress has taken no action on the proposed amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure and the Federal Rules of Evidence adopted by the Supreme Court and transmitted to Congress on April 2, 2024. Consequently, the following amendments became effective on **December 1, 2024**.

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

- Bankruptcy Restyled Rules Parts I through IX
- Bankruptcy Rules 1007, 4004, 5009, 7001, 9006
- Bankruptcy Rule 8023.1 (new rule)

These amendments, as well as amendments to Appellate Rules 32, 35, 40, and Appendix on Length Limits, Civil Rule 12, and Evidence Rules 613, 801, 804, 1006, and new Rule 107, can be viewed on the PENDING RULES and FORMS Amendments pages of the United States Courts website (www.uscourts.gov). The Congressional Package dated April 2024 contains black-line versions of the Rules and Committee Notes for a quick reference of the changes.

AMENDMENTS TO OFFICIAL/DIRECTOR'S AND LOCAL FORM

- Official Form 410 Proof of Claim
- Director's Form 1040 Adversary Proceeding Cover Sheet
- Director's Form 2000 Required Lists, Schedules, Statements, and Fees
- Director's Form 2630 Bill of Costs [NOTE for cases filed in this Court, use amended (12/1/24) Local Form 41 Bill of Costs]

OFFICIAL FORM 423

- Official Form 423 (*Certification About a Financial Management Course*) will be **ABROGATED** and will no longer be required as proof of completion of a personal financial management course. Rule 1007(b)(7) will require an individual debtor who has completed an instructional course concerning personal financial management to file the certificate of course completion issued by the approved provider (if the provider has not already filed the certificate).

Opportunity For Public Comment On Proposed Amendments To The Federal Rules And Forms

The Judicial Conference Committee on Rules of Practice and Procedures has approved the publication for public comment of the following proposed amendments to existing rules and forms, as well as one new rule:

- **Appellate Rules 29 and 32, Appendix on Length Limits, and Form 4;**
- **Bankruptcy Rules 1007, 3018, 5009, 9006, 9014, 9017, new Rule 7043, and Official Form 410S1; and Evidence Rule 801.**

The proposals and supporting materials are posted on the Judiciary's website at: https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment.

The Public comment period is now open and closes on **February 17, 2025**.

PRO BONO CORNER

BY: STEVEN S. NEWBURGH, ESQ.
(GUEST CONTRIBUTOR)
STANDING MEMBER
FORMER LAY CHAIR,
FLSB PRO BONO COMMITTEE

A Bit of the Background History of Pro Bono Legal Services

As Judge Mora indicates in her article, The Pro Se Help Desk we have all been talking about has finally gone online and is active! Here's the link: https://www.bankruptcyproseclinicfls.com/

Given the nomenclature itself, *Pro Bono*, I'm reminded of my first-year Latin class in high school. There is a lyric-like quality to Latin. It is little wonder that Latin was adapted so effectively by various religions.

Whenever I hear spoken Latin or a choir of voices chanting in Latin, I can sense ancient times and time-honored traditions. Latin reminds me of what we do as lawyers and judges in our State and Federal Courts. Indeed, the practice of law is also a time-honored tradition, in the way it is offered to the public and, when necessary, adjudicated by a judge or jury.

The honor and courtesy that we extend to one another, including all court personnel, especially here in our bankruptcy bar, is something that is time-honored. In other words, even absent regulation, lawyers and other individuals with critical support duties, will generally approach one another as colleagues. Lawyers opposing one another in a contested or adversary matter almost invariably hope to find a middle-ground and settle. Another time-honored tradition is service for the good of the public, or *Pro Bono*. We have come to define *Pro Bono* to suit the programs we must implement to ensure access to relief from debt via Title 11. The American Bar Association Standing Committee on Pro Bono and Public Service suggests:

"When society confers the privilege to practice law on an individual, he or she accepts the responsibility to promote justice and to make justice equally accessible to all people. Thus, all lawyers should aspire to render some legal services without fee or expectation of fee for the good of the public."

The origins of *Pro Bono* service in England and the United States, can trace its roots to fifteenth-century English law. *Pro Bono* legal services were also offered in "America" as far back as 1770; Even before the U.S.A. came into existence! If you recall, John Adams defended the alleged perpetrators of the Boston Massacre, on a *Pro Bono* basis! While a wildly unpopular representation, John Adams took the bull by the horns and undertook what he considered his duty—to represent those who could not afford to hire a lawyer. Indeed, John Adams went on to represent villagers in legal disputes on a *Pro Bono* basis. Ultimately, John Adams became our second President of our United States.

We should each be conscious of the needs of our community and of our Southern District of Florida Bankruptcy Court. Do the best you can, please, to assist in *Pro Bono* representation in our District. We have so many opportunities for you to help and for you to learn.

Help Desk Corner

By: Lorraine Adam

The help desk corner will highlight questions the clerk's office routinely receives by telephone or through the court's website at: https://www.flsb.uscourts.gov/contact-us. Whether you are contacting the Miami, Ft. Lauderdale, or West Palm Beach division, the clerk's office staff are readily available to assist you during court hours of 8:30 am to 4:00 pm.

Miami:	305-714-1800
Ft. Lauderdale:	954-769-5700
West Palm Beach:	561-514-4100

I filed for bankruptcy and need a copy of my discharge, but my case is old. How can I get a copy?

Copies of documents in closed cases which have been sent to the Federal Records Center in Ellenwood, Georgia should be ordered directly from the National Archives and Records Administration by calling 404-736-2900. You will need to provide them with the transfer and box information, which we can provide for you. The first number they will need is your case number. The second number is an accession number, then a location number and, finally, a box number. When you call the Federal Records Center and provide these numbers, they will be able to locate your file and copy anything you may need from it. You will deal with them directly and make arrangements for payment through them as well.

To better understand the bankruptcy process, access our court website at: www.flsb.uscourts.gov. Under the "Don't Have a Lawyer" tab, there is a section called Creditor Resources with links to frequently asked questions. You may also watch a Bankruptcy Basics video which provides an example of a Meeting of Creditors setting. The video is not long and is full of helpful information.

UPCOMING COURT HOLIDAY CLOSINGS *

- Monday, January 20 - Birthday of Martin Luther King, Jr.
- Monday, February 17 - Washington's Birthday
- Monday, May 26 - Memorial 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

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: Dania_Muniz@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.

FLORIDA SOUTHERN BANKRUPTCY MORTGAGE MODIFICATION MEDIATION STATISTICS

(From April 1, 2013 through December 31, 2024)

	MIA	FTL	WPB	TOTAL
MMM Motion (Attorney Rep.)	8559	5717	3343	17619
MMM Motion (*Pro Se*)	107	51	32	190
Total Motions Filed	8666	5768	3375	17809
Order Granting MMM Motion	7631	5082	2881	15594
Final Report of Mediator	6450	4066	2229	12745
Mediation Agreement Reached	2730	1882	1032	5644

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

MIAMI	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2013				18	82	106	137	130	173	181	169	141	1137
2014	171	157	184	179	170	164	156	126	198	146	123	138	1912
2015	161	168	189	183	142	164	127	122	127	108	93	93	1677
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	50	44	52	40	39	591
2019	57	39	48	41	48	35	31	42	45	45	35	23	489
2020	35	38	24	20	31	19	8	14	5	15	9	18	236
2021	18	19	15	22	18	18	14	16	21	16	11	29	217
2022	31	13	22	24	27	32	20	23	24	17	12	29	274
2023	25	20	32	23	20	26	16	12	20	21	8	9	232
2024	12	21	11	10	10	15	7	13	16	10	13	7	145
												TOTAL =	8681

FT. LAUDERDALE	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2013				49	92	98	116	144	189	118	99	77	982
2014	91	82	69	108	89	89	107	61	99	100	121	95	1111
2015	96	101	109	89	94	94	82	74	93	89	91	79	1091
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	46	28	33	26	21	378
2019	34	20	31	24	28	20	20	18	25	19	26	19	284
2020	26	13	25	19	22	17	8	12	5	5	6	8	166
2021	9	21	13	12	8	5	15	9	9	16	15	20	152
2022	16	12	15	17	22	19	21	16	15	7	10	11	181
2023	12	7	20	18	20	6	8	8	10	10	18	16	153
2024	21	9	9	7	7	17	8	10	10	14	9	5	126
												TOTAL =	5785

WEST PALM BEACH	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
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	54	48	39	35	35	33	36	528
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	18	24	25	13	12	211
2019	22	20	13	28	14	20	27	19	10	31	18	10	232
2020	16	14	18	13	10	10	15	5	11	11	7	13	143
2021	4	8	6	4	7	6	7	10	9	5	19	10	95
2022	1	0	12	5	6	16	8	8	12	6	7	5	86
2023	14	7	12	6	8	11	6	4	4	10	4	8	94
2024	7	9	4	10	14	6	9	7	14	7	10	6	103
												TOTAL =	3361