COURTHOUSE BEACON NEWS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

MARCH 2024

CHIEF JUDGE'S CORNER: FIRST ANNUAL DEI LAW CLERK EVENT

By: Hon. Erik P. Kimball

As a Bankruptcy Judge, my hiring decisions are limited to selecting law clerks and, rarely, a Clerk of Court. Bankruptcy Judges may retain two chambers staff in addition to our courtroom deputies. We can choose a law clerk and a judicial assistant or two law clerks. Most of the judges in this district have two law clerks.

In more than 15 years on the bench, I have repeatedly remarked on the lack of diversity in law clerk applicants. Since well before I graduated from law school, graduating classes have been mostly women. Yet our applicant pool is overwhelmingly men. Every other aspect of diversity is also lacking. Lawyers applying for Bankruptcy Court clerkships do not represent the diversity of their own schools, let alone the population that we serve. It is unclear why this is the case. Indeed, a non-scientific poll of our colleagues at the District Court reveals that their applicant pool differs from ours in significant respects, particularly with regard to gender.

Even when my law clerks come from far away law schools and have little prior connection to Florida, they tend to practice here in South Florida after their clerkship. The law clerk I hire today is likely to be your colleague in the bar two years from now. It serves both the Court and the legal community for Bankruptcy Judges to be able to select the best candidates from applicants that better reflect the community we serve.

In an attempt to address the lack of diversity in law clerk applicants to the Bankruptcy Court, the Court's Diversity, Equity, and Inclusion Committee recently hosted its first DEI Law Clerk Event. The Committee reached out to all South Florida law schools to invite law students of every background to attend a mixer and presentation with the goal of educating law students on the benefits of a clerkship. Kozyak, Tropin & Throckmorton provided space for the event, which was attended by more than 20 law students, by 4 current law clerks, by 7 prior law clerks, and by faculty and law school administrators. The following law schools were represented: Florida International University College of Law, the University of Miami School of Law, Nova Southeastern University Shepard Broad College of Law, and St. Thomas University College of Law. The event began with a brief reception which was followed by an informal presentation, in question-and-answer format, during which former law clerks commented on their experiences and the benefits of having been a law clerk and students were able to ask questions. Committee Co-Chair Bernice Lee and I moderated the event.

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Bankruptcy Cases Filed From 01/01/24 to 02/29/24

TOTAL FILED:	2,089
• Chapter 7	1,026
• Chapter 9	0
• Chapter 11	35
• Chapter 12	2
• Chapter 13	1,021
• Chapter 15	5

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: FIRST ANNUAL DEI LAW CLERK EVENT (Continued from page 1)

The DEI Law Clerk Event was extremely well received. The Committee hopes to make this an annual event and to continue outreach in Florida and elsewhere.

FROM THE JUDGES' CHAMBERS

FINANCIAL LITERACY – FILLING A GAP

By: Hon. Laurel M. Isicoff
Tara Trevorrow[1]

In April we will observe "Financial Literacy Month". The Bankruptcy Association of the Southern District of Florida (the "BBA"), the Business Law Section of the Florida Bar (the "BLS"), as well as bankruptcy judges and practitioners around the country have been actively involved in promoting financial literacy for many years. Recently, due to the efforts of many, but with a significant role played by the BLS, financial literacy, or financial wellness, became a Florida high school graduation requirement. In addition, the core curriculum being developed for Florida schools will incorporate elements of financial literacy beginning in elementary school.

But the battle isn't over. While public schools generally will provide financial literacy to its students, there is still a gap and a need to fill. The BBA has been active in continuing to provide financial literacy programs to young adults in junior colleges as well as young adults with special needs who participate in job and life training programs. Additionally, the BLS has partnered with the Florida Institute of Certified Public Accountants (FICPA) to provide Financial Wellness tips to young professionals. The first program, paired with an evening at Top Golf, was a success, inspiring similar programming for future events.

Over the past two years, the BBA has developed new Financial Literacy presentations tailored to specific audiences. Current venues include McFatter Technical College, Broward College, Arc Broward (WorkBar location), and Cutler Bay High School. Thanks to Carlos Sardi's efforts, the BBA has also launched a financial literacy essay contest in the Miami-Dade Public School System that offers scholarship prizes to deserving students. Jessika Graham's recent volunteerism inspired the BBA's next Financial Literacy outreach effort: financial and life skills presentations for children aging out of foster care.

The need for financial skills workshops transcends all ages, education levels, and life experiences. Many of society's most financially vulnerable residents are current and former service members. In an effort to address that need, on November 4, 2023, veterans in Miami-Dade, Fort Lauderdale, and West Palm Beach, together with volunteers from the Southern District of Florida, attended a morning devoted to improving the financial literacy, and therefore the financial well-being, of those veterans. The program, the first of four similar statewide programs, began with a forty-five-minute presentation providing general information about financial literacy. Jim Moon, Chair of the Pro Bono Committee of the Business Law Section of the Florida Bar, Carlos Sardi, President of the Bankruptcy Bar Association of the Southern District of Florida, and former BLS Pro Bono Chair, and Judge Isicoff reviewed basic financial information such as budgeting, saving, credit scores, student loans, and financial benefits and accommodations available to veterans. The presentation was kicked off with a five-minute recorded message by Major General, and Bankruptcy Judge, Charles Walker, who sits

[1]In addition to serving as Judge Mindy Mora's career law clerk, Tara also serves as Chair of the BBA's Financial Literacy Committee and as a Vice Chair of the BLS Financial Literacy Task Force.

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FROM THE JUDGES' CHAMBERS

FINANCIAL LITERACY – FILLING A GAP (Continued from page 3)

in Nashville, Tennessee. The panel presentation was presented live in Miami and was broadcast to the Fort Lauderdale and West Palm Beach locations. The presentation was followed by one-on-one sessions with the volunteers and the veterans; in those one-on-one sessions, volunteers reviewed the individual veteran's financial circumstances and discussed options and objectives. Over 20 veterans and the same number of volunteers participated.

Similar programs were presented on December 9 in Pensacola, spearheaded by Chief Judge Karen Specie, and in Jacksonville spearheaded by Judge Jacob Brown. Tampa, led by Judge Catherine McEwen, will have its financial wellness program later this spring.

If you are interested in participating in any financial literacy programming, please feel free to reach out to either Judge Isicoff or Tara. We are always in need of volunteers.

Curious to learn whether your financial skills are up to date? There are several simple (and free) tests online from sources like the Wall Street Journal, FINRA, and USA Today that are geared towards an adult audience. Other websites like NerdWallet explore compound interest, salary comparison, and the time/value of money. Several of these websites provide simple ideas and resources to encourage productive conversations about money with children and teens. The next time you find yourself waiting in line with a few moments to spare, consider looking up free online Financial Literacy resources. You might discover a topic or concept that can help promote healthy financial discussions with your own family and friends.

FROM THE JUDGES' CHAMBERS

THE NCBJ IS TURNING 100

By: Hon. Laurel M. Isicoff

The NCBJ will be celebrating its 100th Anniversary in 2026. I have the honor of serving as the Chair of the 100th Anniversary Committee. During the course of the next two years, the NCBJ will be providing information through a variety of media about our history, and of course, lots of programming and opportunities to share stories, both virtually and live at our annual meetings in Seattle (2024), Chicago (2025) and San Diego (2026).

We have already started. Judge Deborah Thorne, NDIL, and Judge Kathy Surratt-States, EDMO, on behalf of the NCBJ's DEI Committee, have written two articles about some of our firsts. With their permission, I have included excerpts from those articles[1], designed to whet your appetite for more to come. I also invite any of you who have stories about judges, experiences, practicing under the Bankruptcy Act or anything else you believe would be of interest, and those of you who may have memorabilia that you are willing to share (and perhaps contribute to our Bankruptcy Archive at the Biddle Library), please let me know.

HONORING BLACK HISTORY MONTH

NCBJ will be 100 years in 2026. As we approach that important milestone, the DEI Committee is looking back at our predecessors and plans on sharing monthly stories about some of the "firsts". Because Black History month is February, we are introducing three of the first black bankruptcy judges, many who began as refe rees before becoming "judges" in 1973. We hope this look back at our collective history will not only help us appreciate those that paved the way for those of us sitting today, and the challenges they faced, but that we will also realize the importance of our NCBJ mission to promote diversity on the bench and within the bankruptcy Community.

As we take our initial journey back in history, it is somewhat mind-blowing that the bankruptcy bench only began to integrate long after Major League Baseball (1947, with Jackie Robinson) or Brown v. Board of Education (1954). Although our work to improve the diversity of our bench, bar and other professionals continues, it is worthwhile to remember those who took the first steps.

Judge Harry Hackett was the first appointed as a Bankruptcy Referee in the Eastern District of Michigan on July 1, 1957, where he served for 24 years. Judge Hackett was born in Cedar Bluff, Alabama, graduated from high school in January 1943 and shortly afterward joined the Army. He served in the Philippines and was discharged as a first lieutenant in 1946. After the War, he moved to Detroit and worked as a "building attendant" and driver for the Detroit Street Railways. During those years, he attended night school at Wayne University and in 1953 received a J.D.

Judge Edward Toles was the second black bankruptcy judge, appointed on January 1, 1969, as a Bankruptcy Referee and continued as a Bankruptcy Judge after 1973. Judge Toles served for 17 years in the Northern District of Illinois

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[1]Full copies of the article will appear at a later date on the NCBJ website.

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FROM THE JUDGES' CHAMBERS

THE NCBJ IS TURNING 100 (Continued from page 5)

until his retirement on January 1, 1986. Judge Toles' life was filled with public service and devotion to the law as well as promoting opportunities for black lawyers and judges. In the 1960s he was instrumental in setting up legal aid offices throughout the country for the federal Office of Economic Opportunity. In 1938 he represented three black University of Illinois students who had been denied service in a restaurant. Although the jury did not return a favorable verdict for his clients, the next year the restaurant opened its doors to blacks. In 1939 and 1940, he was an assistant attorney with the United States Housing Authority in Washington, D.C. During World War II, he was a war correspondent for the Chicago Defender, covering black troops in Europe. As a bankruptcy referee and later judge, he heard bankruptcy reorganizations of Meisterbrau Brewery, Xonics and UNR Industries. . . .

Judge Benjamin E. Franklin was the third black Bankruptcy Judge, appointed on February 9, 1976, serving until his death on April 7, 1993, in the District of Kansas. Judge Franklin was in private practice from 1954 to 1957; was an assistant Wyandotte County, KS counselor from 1957-1961; was an assistant U.S. Attorney for Kansas from 1961-1668; was the U.S. Attorney for the District of Kansas from 1968-69; was in private practice from 1969 to the early 1970; and was chief counsel for the Kanas City Kansas Board of Public Utilities in the mid-1970s. In 1968 when he was appointed U.S. Attorney for the District of Kansas, he was one of only two black U.S. Attorneys in the country.

SALUTE TO FEMALE TRAILBLAZERS

March is Women's History Month and as we approach the 100th Anniversary of the NCBJ, we are taking the opportunity to feature several of the "first" women who served as bankruptcy referees and judges. Under the Bankruptcy Act of 1898, district court judges handled bankruptcy matters with the assistance of referees who were appointed for two-year terms and could be removed only for incompetency, misconduct, or neglect of duty. The referees were paid a percentage of funds brought into the estate.

While most referees were white men in the early years of the twentieth century, there were a handful of women referees, characterized in the 1929 Journal of the National Association of Referees in Bankruptcy, as the "fairer sex". As a group they were active in their communities working for women's suffrage, better working conditions for laborers and for universal kindergarten for children. After the early twentieth century, the number of women appointed to the bankruptcy bench was nearly nonexistent until the 1970s. Arline Rossi was appointed to the bench in the Southern District of California in 1959, but no women were appointed in the 1960s, only three during the 1970s, 37 during the 1980s, 33 in the 1990s.

In delving into our history, we discovered three west coast trailblazers. Florence Olson was appointed in 1898, Gertrude K. Durham in 1926 and Felice Cohn in 1926. Mary L. Trescott of Wilkes-Barre, Pennsylvania was appointed in 1921.

As a teenager, Florence Olson, worked for many legislative reforms through the "Oregon System" – citizens working directly on legislative initiatives including popular election of U.S. senators, the right for women to vote and establishment of prohibition and banishment of the death penalty in Oregon. In 1987, Florence was admitted to the Oregon bar and from 1898 until at least 1903, she served as a referee in bankruptcy in Oregon City and Milwaukie. She later practiced law and was known as an insurance law expert. . . .

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FROM THE JUDGES' CHAMBERS

THE NCBJ IS TURNING 100 (Continued from page 6)

Mary Trescott was born in 1861 and according to the Luzerne County Historical Society aspired from a very young age to become a lawyer. She moved to Poughkeepsie, New York after determining that women could not practice in Northeastern Pennsylvania. She graduated from Eastman Business College and began studying the law under lawyer Henry Wilbur Palmer, who later served in Congress. She practiced in New York under the name "M.L. Trescott", but later moved back to Pennsylvania where she was the first woman to appear before the Pennsylvania Supreme Court in 1901. … She was appointed bankruptcy referee for the Middle District of Pennsylvania in 1921. After serving as bankruptcy referee, she ran for office several times and continued to be a trailblazer on many civic issues. She died in 1935.

An excellent student, born in 1878 in Carson City, Nevada, Felice enrolled at the University of Nevada in Reno and then went on to Stanford University. Although she did not graduate, she studied law for several years and was admitted to the bar in 1902. Her practice focused on land issues, patenting mining claims and later was hired by the Federal government as assistant superintendent of public land sales. She continued to work for the government and was admitted to the District Court in San Francisco in 1908. During this time, she was very active in the suffrage movement and was a founding member of the State Equal Franchise Society, and chaired the legislative committee, lobbying to see the successful passage of the resolution she drafted denying the "elective franchise at any election on account of sex." The resolution passed in 1911, but there were still many years until it became law. She was adamant that suffrage work should be non-militant and peaceful and opposed those that thought the movement should be more strident.

She continued to work on land issues in Washington D.C., working for the Department of the Interior and stayed in D.C. long enough to be the fourth woman admitted to the Supreme Court. She returned to Reno, opened her own law office, and was appointed U.S. Referee in Bankruptcy for the District of Nevada in 1926 and served three terms. … She died in 1961.

NCBJ

FROM THE JUDGES' CHAMBERS

Judge Grossman's Public Testimony Before the
American Bankruptcy Institute's Subchapter V Task Force
By: Hon. Scott M. Grossman

Last summer I had the honor and privilege to testify before the American Bankruptcy Institute's Subchapter V Task Force. ABI created the Task Force to study and evaluate case law and statistical data under subchapter V since its enactment. Over approximately four months, the Task Force held seven public hearings, to which they invited bankruptcy judges and practitioners to share their perspectives on discrete topics under Subchapter V. I was invited to provide both written and oral testimony about the Operation and Administration of the Case. Below is my written testimony, which contains statistics about my own cases that were current as of mid-July, 2023.

The Task Force's final report has not yet been released. But because subchapter V's $7.5 million debt limit is set to expire in June 2024, the Task Force issued a preliminary report on December 15, 2023, recommending a permanent extension of this debt limit. If Congress does not further extend (or make permanent) the increased debt limit, then the limit for eligibility under subchapter V will revert to $3,024,725 on June 21, 2024.

AMERICAN BANKRUPTCY INSTITUTE
Subchapter V Task Force
July 28, 2023 Hearing on Operation and Administration of the Case
Written Statement of the Hon. Scott M. Grossman (Bankr. S.D. Fla.)

My name is Scott Grossman, and I am a bankruptcy judge in the Southern District of Florida. I would like to thank ABI and this Task Force for inviting me to speak today, and for undertaking this important study.

Since the effective date of the Small Business Reorganization Act of 2019 (or SBRA) on February 19, 2020, and through July 19, 2023 (a 41-month period), I have had a total 136 chapter 11 cases filed before me, 56 of which have been filed under subchapter V, 26 of which have been small business cases (as that term is defined in Bankruptcy Code section 101(51C)), and 54 of which have been traditional chapter 11 cases. That breaks down to about 41% of my chapter 11 cases being under subchapter V, 19% as small business cases, and 40% as traditional chapter 11s, since the effective date of the SBRA.

Of these 56 subchapter V cases, 41 have concluded and 15 are still pending. Of the 41 cases that have concluded, 29 have concluded in a confirmed plan – a 71% success rate. Of those 29 confirmed subchapter V plans, 22 have been consensual plans under section 1191(a), and 7 have been non-consensual under section 1191(b). Of these 7 non-consensual plans, I can only recall one being truly contested (involving a multi-day evidentiary hearing). The other 6 non-consensual plans were non-consensual due to lack of votes, as best as I can recall. I'll also note that in a few of the non-consensual plans, the debtors nevertheless proposed (and I approved without objection) that pursuant to section 1194(b), the plan or confirmation order "provide otherwise" and allow the debtor to make payments to creditors under the plan, rather than the subchapter V trustee.

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Of the 12 concluded cases that did not end with a confirmed plan, I would nevertheless characterize 6 of those cases as successful because they were dismissed either at the debtor's request (including one after a section 363 sale) or with the debtor's consent, as part of out-of-court resolutions. So if one considers these 6 dismissed cases successes, the success rate for my completed subchapter V cases may be closer to 85%. And on this point I do want to note that while ABI, academics, and others try to compile statistics on subchapter V's success, it is in the category of dismissed cases where it may be more difficult to gather accurate and reliable information on "success," because it has been my experience that dismissal does not necessarily mean a case was not successfully resolved.

Comparing my subchapter V cases to my small business cases shows how successful subchapter V has been in my cases. I have had 24 concluded small business cases since February 19, 2020. Of those 24, only 5 concluded with confirmed plans – about a 21% success rate. Contrast that with my 71% success rate for cases under subchapter V, and you can see why I have found subchapter V so helpful for small business debtors. To that end, with the availability of subchapter V, contrasted with the unforgiving deadlines under sections 1129(e) and 1121(e) and the severe consequences for failure under section 362(n), it continues to baffle me why any debtor that is eligible for subchapter V would choose to file a small business case instead.

Now turning to the specific subjects of today's testimony, I have been asked to offer my insights and perspectives on the operation of subchapter V in practice during the past three years, focusing on the operation and administration of the case. In that regard, I'd like to address two primary topics today: the section 1188 status conferences and confirmation hearings.

First, I will address the status conference required by section 1188(a) to be held within the first 60 days of the case, and the related requirement of section 1188(c) to file a status report not later than 14 days before the status conference. Let me begin by saying that I think one of the things that has made subchapter V so successful is the 90-day plan filing deadline set by section 1189(b). This requirement ensures that the case proceeds to resolution expeditiously and forces all parties to start negotiating immediately. In balancing the extraordinary powers granted to debtors under subchapter V against the interests of creditors, the 90-day plan filing deadline is – in my view – one of the most significant protections for creditors under subchapter V. Moreover, small bankruptcy cases are generally not like fine wine; they do not get better with age. As a small case goes on, it tends to get more expensive – sometimes disproportionately so – and the prospects for a successful reorganization diminish. The 90-day plan filing deadline helps keep everyone's eyes on the prize: prompt resolution of creditors' claims against a small business debtor.

While I think the 90-day plan filing deadline is extremely important, I have not found the 60-day status conference to be terribly useful in most cases, nor have I found the written pre-conference status reports to be very illuminating. I can only think of one case – which everyone knew was going to be heavily litigated – where the section 1188 status conference proved useful. But in that case, we used the status conference

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FROM THE JUDGES' CHAMBERS

Judge Grossman's Public Testimony Before the American Bankruptcy Institute's Subchapter V Task Force (Continued from page 9)

essentially as a pretrial conference, to figure out how and when we were going to try the contested issues that were gating matters for confirmation. In nearly every other case, I have not found the statutory status conference to be very useful. In my experience, most section 1188 status conferences consist of the debtor saying: "we intend on filing a plan by the 90-day deadline," and not much more than that.

This is not to say that I do not find status conferences useful in chapter 11 cases. To the contrary, I do. In cases with first day motions (including many subchapter V cases) I have found the first day hearings to be much more useful than the section 1188 status conferences. It is at the first day hearings where I find out what the case is about, what issues may be encountered, and what the plan is to achieve confirmation of a plan. In fact, in non-subchapter V chapter 11 cases where there are no first day motions, I usually set a status conference myself under section 105(d). An important difference, though, is that I usually set my chapter 11 status conference for early in the case – typically just over 21 days after a case is filed.

In subchapter V, however, section 105(d) specifically does not apply. Section 1181(a) says so. Instead, section 1188 governs status conferences, and requires the court to conduct one within the first 60 days of the case. It also requires a status report to be filed not later than 14 days before the status conference, detailing "the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization." The problem with section 1188, in my view, is that with a report due 14 days before the status conference, to give the debtor adequate time to have something to report and then prepare the report, it is impractical to set the section 1188 status conference within the first three weeks of the case, as I usually do in other chapter 11 cases. For example, if I were to set the section 1188 status conference on day 21 of a case (when I would find it more useful), then the status report would be due by day 7 – just a week after the case was filed. In most instances, however, it is not reasonable to require a debtor to detail the efforts it has undertaken to attain a consensual plan of reorganization only one week into the case. So to me, the requirement to file a status report – and to do so 14 days before the status conference – actually serves as an impediment to the efficacy of the status conference.

My suggestion would be to require the section 1188(a) status conference to be conducted within the first 30 days of a subchapter V case (rather than the first 60 days), and to eliminate the requirement of section 1188 (c) to file a status report. Given the short timeframe to file a plan under subchapter V (which again, I wholeheartedly support), I think a status conference early in the case would be much more useful than one that takes place up to 30 days before the plan filing deadline, when most debtors simply report that they intend to file a timely plan.

I think an early assessment of the case – including the court advising counsel of its expectations – would do more for the efficient prosecution of the case than the section 1188(a) status conference currently does. And if having a status conference earlier necessitates eliminating the written status report requirement, that is fine with me. I frankly haven't found the status reports to be very useful. I'd much rather have the

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FROM THE JUDGES' CHAMBERS

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debtor, major creditors, subchapter V trustee, United States Trustee, and other parties in interest come before the court early in the case to canvass the issues, set expectations, and move the case forward expeditiously (which may include exploring some type of alternative dispute resolution, such as a judicial settlement conference or mediation).

In addition, requiring an earlier status conference would allow courts flexibility to continue the status conference one or more times (perhaps for another 30 days after the initial date), to keep tabs on the case and its progress, and ensure it is moving forward toward confirmation. This would also be a useful tool in light of the fact that under section 1181(a), section 105(d) – specifically section 105(d)(1) – does not apply under subchapter V. Section 105(d)(1) says that the court, on its own motion or on the request of a party in interest, shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case. I think the intent of section 1181(a) was that the section 1188(a) status conference would serve the same purpose. But as drafted – and with its timing requirements – it does not achieve this result in my experience. So my suggestion would be to eliminate the requirement of section 1188(c) to file a status report 14 days before the status conference, and to require the section 1188(a) status conference to be conducted within the first 30 days of the case, rather than the first 60 days, but with the ability to continue it to one or more later dates.

Now I would like to turn to confirmation hearings. As I have stated, I am a big fan of the 90-day plan filing deadline. I am also, however, a fan of the fact that unlike in a small business case where section 1129(e) requires a plan to be confirmed within 45 days after it is filed, there is no deadline to confirm a plan under subchapter V. This has provided tremendous flexibility in my subchapter V cases to address contested and other gating issues in the case, allow time to try contested confirmation hearings, allow time for the parties to go to mediation or a judicial settlement conference, and otherwise facilitate confirmation. At the same time, by requiring a plan to be filed within 90 days, it requires the debtor to promptly make its first offer to creditors. This may not be the final plan, but it will be a start and certainly can be amended. After a debtor files a plan, I typically set a confirmation hearing for about 45 days out. If the parties need more time to work through issues, though, I usually grant continuances of the confirmation hearing to the extent progress is being made in the case, and because a negotiated resolution is usually preferable to a litigated one. I am also mindful of the costs involved in trying a contested confirmation hearing and do consider those potential costs relative to the size of the case, when considering a motion to continue confirmation.

Thus far, no creditor has objected to any continuances of a subchapter V confirmation hearing in any of my cases. Certainly, if a debtor just seeks a continuance without showing progress and a creditor objects, that may be a basis to deny the motion to continue and either force the debtor to move forward with confirmation, invite the creditor to move to dismiss or for stay relief, or at least nudge both sides toward a resolution of their disputes. So far it has not come to that in any of my cases. All have either proceeded to confirmation on the originally scheduled date, or otherwise all requests for continuances have been consensual.

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FROM THE JUDGES' CHAMBERS

Judge Grossman's Public Testimony Before the American Bankruptcy Institute's Subchapter V Task Force (Continued from page 11)

In these circumstances I often look to the subchapter V trustee for their perspective on what is going on in the case, to see if progress is being made, and to inquire whether the parties would benefit from a continuance.

Although I know the topic for this public hearing is on operation and administration of the case, I would like to conclude by briefly voicing my support for making the $7.5 million debt limit permanent. As I have stated, I think subchapter V has been a very helpful addition to the Bankruptcy Code. When first enacted, however, I was concerned that the $2,725,625 debt limit would significantly limit its usefulness. Thankfully, if there was one good thing to come out of the COVID-19 pandemic in the bankruptcy world, it was the temporarily increased debt limit to $7.5 million, which has made subchapter V available to many more debtors. It is certainly my hope that Congress makes this increased debt limit permanent, and perhaps indexes it for inflation as well.

All in all, I think subchapter V works incredibly well, and was a much-needed addition to the Bankruptcy Code. Thank you again for inviting me to speak today. I welcome any questions.

UPCOMING BROWARD COUNTY BAR ASSOCIATION BANKRUPTCY PANEL DISCUSSION

By: Catherine Kretzschmar
Law Clerk to the Honorable Peter D. Russin

The Broward County Bar Association's Bankruptcy Section will host a panel discussion on March 26, 2024, from 11:45 a.m. – 1:30 p.m. at the Federal Courthouse, 299 East Broward Boulevard, Room 308, Fort Lauderdale, Florida. Chad P. Pugatch of Lorium PLLC and Zach B. Shelomith of LSS Law will moderate an interactive discussion of insolvency issues and best practice pointers. Panel participants include the Honorable Scott M. Grossman, the Honorable Peter D. Russin, standing chapter 13 trustee, Robin R. Weiner, subchapter V trustee, Soneet R. Kapila, and chapter 7 panel trustee, Marc P. Barmat. This event provides a unique opportunity for members of the bar to hear from 2 sitting judges and 3 trustees on local issues of the moment and obtain 2.0 general CLE credits. For more information visit www.browardbar.org.

FROM THE JUDGES' CHAMBERS

DISCHARGING STUDENT LOANS IN UNDUE HARDSHIP ADVERSARY PROCEEDING: THE GOVERNMENT IS HELPING!

By: Hon. Robert A. Mark

Robert B. Branson and Tammy Branson, from the BransonLaw, PLLC in Orlando (Guest Contributors)

Reprinted below, with the permission of the authors, is an article about the Justice Department guidelines announced in November 2022. As described, these guidelines make it easier and cheaper for debtors to discharge federal student loans in § 523(a)(8) undue hardship adversary proceedings. The authors, Bob and Tammy Branson, have successfully used the new procedures in the Middle District of Florida.

The new program has also been successfully used by debtors in our district and one of our local Assistant U.S. Attorneys, Raychelle Tasher, has been very helpful. In a recent Judge Grossman proceeding, a pro se debtor obtained an agreed final judgment discharging over $82,000 in student loan debt. *Gilmore v. U.S. Dept. of Educ.,* Adv. No. 23-01184-SMG. My hope is that more debtors will take advantage of these procedures. Here's the article:

2024 Update: New Federal Guidance on Discharging Student Loans In Bankruptcy IS Turning Out To Be A Game Changer

The Justice Department, in partnership with the Department of Education, announced new guidelines in November of 2022. The new guidelines loosened the strict application of the "undue hardship" exception when defending a student loan dischargeability action. This new guidance really is a game changer. Here is a look at some of the data that backs that statement up.

Data from the Department of Justice as of November 2023

- 632 cases were filed in the first 10 months of the new process (November 2022 through September 2023), a significant increase from recent years. The Justice Department and Education Department anticipate that this trend will continue.
- 97% of all borrowers in the cases filed are voluntarily using the new streamlined process.
- The vast majority of borrowers seeking discharge have received full or partial discharges. In 99% of cases where courts have entered orders or judgments to date, the government recommended, and the court agreed to, a full discharge or partial discharge. Two bankruptcy courts — the Northern and Central Districts of California — have adopted procedures recognizing the utility of the new process, aimed at further streamlining the procedures debtors must follow to obtain discharges.

Practically Speaking

Here in Orlando, we had our first successful outcome using the new guidelines in September 2023. We helped Alrena Dale obtain a consent judgment that wiped out $155,000.00 of her student loans. Ms. Dale attended the University of Phoenix to obtain a business master's degree. Ms. Dale tells us that she was promised that the University of Phoenix would help her get a high-paying job. When she graduated, the school did not lift a finger to help her find a job, and she could not obtain a job utilizing her master's degree.

We assisted her with filling out the lengthy 17-page attestation form required by the Department of Justice. Her attestation form reflected that she spends more than she earns. Although it took nine months, the government ultimately recommended the student loans be discharged. On September 6, 2023, the Honorable Judge Lori V. Vaughan of the Middle District of Florida entered the first consent judgment in the Middle District of Florida, finding the loans were discharged.

So, what do we think the government considered?

"Undue Hardship"

The federal statutes do not even define in any detail what "undue hardship" means, and the case law regarding undue hardship has developed to the point that it makes it almost impossible for judges to discharge student loans. Some call the threshold a "certainty of hopelessness."

(Continued on page 14)

FROM THE JUDGES' CHAMBERS

DISCHARGING STUDENT LOANS IN UNDUE HARDSHIP ADVERSARY PROCEEDING: THE GOVERNMENT IS HELPING!

(Continued from page 13)

To make matters more complicated, before this new guidance filing an Adversary Proceeding against the Department of Education in bankruptcy court was very costly. Under the new guidance, there is no discovery, depositions, or lengthy litigation. The costs are drastically less under this new this guidance.

The Department of Justice Attorney Assesses "Undue Hardship?"

In the past, to qualify for a discharge based on "undue hardship" vs. ordinary hardship, most courts required that debtors meet the stringent requirements of a standard called the "Brunner Test." The test is based on three factors: The inability to maintain a minimal standard of living for yourself or your dependents if forced to repay the loan, the unlikelihood of your current financial situation changing, and whether you have made good-faith efforts to repay the loan.

Justice Department attorneys will still use the basics of the Brunner test, but the new guidelines give more specific direction and less stringent requirements as described here:

Present ability to pay: Using IRS standards and information provided by the debtor, the Justice Department Attorney will determine whether the debtor lacks a current ability to pay the loan under its standard repayment agreement, which is ten years. Ms. Dale's student loans were more than ten years.

Future ability to pay: A variety of factors—such as the inability to pay is likely to persist, being 65 or older, disabled, chronic injury, lack of degree, or extended repayment status (over the ten-year period)—are a part of the Justice Department attorney's assessment of whether the debtor's inability to pay is like to persist in the future. Ms Dale was not over 65 years of age but it seems fair to conclude that her financial circumstances will not change significantly in the future. She'll likely only receive minimal raises in the future and typically cost of living will increase and absorb any increases in income.

Good-faith efforts: The Department will focus on objective criteria that reflect reasonable efforts to earn income, manage expenses, repay the loan, and other evidence of good-faith efforts to repay the loan. These can include contacting the loan servicer regarding payment options, such as attempting to negotiate an income-based repayment plan. The good news is that entering an income-based repayment plan is not required. Ms. Dale had stayed in contact with her student loan servicers, she entered into forbearance, and had deferred her student loans. Ms. Dale had not entered into an income driven repayment plan as she did not believe she could afford it.

The government found that Ms. Dale met all three prongs under the new guidance.

The Practical Differences We Think This New Guidance Brings

Two of the most significant practical differences are the lower cost of litigation and lower threshold for meeting the three prongs of the Brunner test. Ms. Dale for example could finally afford to hire our firm to resolve her student loans and under the new guidance she met the three prongs. Before the new process, the cost of a student loan adversary would typically run upwards to $10,000.00 in attorney's fees and it was almost impossible to meet the three prongs. Under this new guidance the attorney's fees are affordable and the loosening of meeting the three prongs can often be met. Although the new process still requires a lawsuit and is not easy to maneuver, the good news is that with competent counsel it can be affordable and successful.

As far as we are concerned, this new process remains a game-changer. Our local Assistant United States Attorney ("AUSA")'s office has been a pleasure to work and learn with. It is incredibly encouraging that these student loan lawsuits can be filed at an affordable cost to debtors that deserve this relief. Ms. Dale thought she would go to her grave owing $155,000.00 in student loans. Now she can sleep at night knowing the student loans have been discharged.

We are very hopeful that our firm and others around the country can now make a difference in discharging student loans. Congress's intent was for debtors to get a fresh start. To date, this has not been the case with student loans. We see this new process as a path forward to that goal.

FROM THE JUDGES' CHAMBERS

Rule 12(b)(1) Dismissal

By: Tara Trevorrow, Judicial Clerk (Hon. Mindy A. Mora)

Sometimes, a simple test is all you want, but it doesn't exist. In the Eleventh Circuit, Rule 12(b)(1) case law meanders, requiring time and patience to piece together[1]. This article is intended to help bankruptcy attorneys streamline their research by providing a three-question test that synthesizes about 75 years of precedential law[2].

Rule 12(b) provides 7 potential bases for dismissal of an adversary proceeding. The first option, Rule 12(b)(1), addresses lack of subject matter jurisdiction. Standing is jurisdictional, so it falls under that subsection[3].

Eleventh Circuit case law immediately splits Rule 12(b)(1) analysis into two paths: facial and factual attacks. The first option, a facial attack, addresses visibly deficient complaints. Facial attacks challenge jurisdictionally impossible or patently frivolous allegations, like a count seeking relief from the bankruptcy court under state criminal statutes[4]. Most experienced bankruptcy attorneys are aware of fatal jurisdictional defects and do not file complaints with one, which makes facial attacks uncommon in adversary proceedings. By and large, most causes of action in the bankruptcy context seek civil relief that impacts the debtor or administration of the estate, and that is usually enough to survive a facial attack[5].

The second option, a factual attack, has broader potential application. Factual attacks undermine causes of action by questioning a core fact necessary for subject matter jurisdiction (including standing). In theory, it sounds easy. In practice, it is not[6].

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[1]Bankruptcy Rule 7012 incorporates and makes Federal Rule of Civil Procedure 12(b) ("Rule 12(b)") relevant to adversary proceedings.

[2]The case list begins with the seminal case of *Bell v. Hood*, 327 U.S. 678 (1946) and ends with the more recent case *Yocum v. Select Portfolio Servicing, Inc.*, No. 23-10714, 2024 WL 490113 (11th Cir. Feb. 8, 2024).

[3]*Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232-33 (11th Cir. 2008).

[4]To be clear, the precise standard derived from *Bell v. Hood* is "wholly insubstantial and frivolous", but application of that standard in the bankruptcy context is strained for several reasons, the foremost of them being that the existence of a bankruptcy case moots the "case or controversy" requirement explored at depth in that line of cases. *See Resnick v. KrunchCash, LLC,* 34 F.4th 1028, 1035; *see also Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1229-30 (11th Cir. 2021) (discussing case or controversy requirement); *Gardner v. Mutz*, 962 F.3d 1329, 1136-37, 1340-41 (11th Cir. 2020 (same)). Concepts like "insubstantial" and "frivolous" do apply, but their context is different due to the unique nature of bankruptcy litigation as ancillary to a (separate, validly existing) federal bankruptcy case.

[5]For facial attacks, the court accepts the complaint allegations as true, just like it would for analysis of a Rule 12(b)(6) motion. *Gardner*, 962 F.2d at 1340.

[6]*Garcia v. Copenhaver, Bell & Assocs., M.D.'s, P.A.*, 104 F.3d 1256, 1260 (11th Cir. 1997) ("[I]t is extremely difficult to dismiss a claim for lack of subject matter jurisdiction.").

(Continued on page 16)

FROM THE JUDGES' CHAMBERS

Rule 12(b)(1) Dismissal (Continued from page 15)

Unlike analysis for Rule 12(b)(6) motions and Rule 12(b)(1) facial attacks, a bankruptcy court will not presume the truthfulness of complaint allegations for a factual challenge. *Bell v. Hood*, 327 U.S. 678 (1946) and a bevy of subsequent Eleventh Circuit cases direct courts to review the record as needed to assess the potency of the attack[7]. Once the court considers facts as part of its analysis, it is venturing into summary judgment territory[8]. The unusual posture of the situation (fact resolution prior to fact discovery) makes Rule 12(b)(1) dismissal tricky.

So, how can attorneys successfully navigate Rule 12(b)(1)'s obstacle course? Thinking through the following three questions could help.

#1 Are the cause(s) of action providing a basis for bankruptcy jurisdiction wholly insubstantial or frivolous?

Case law usually arrives at this inquiry later in the analysis, but it can be addressed first because it covers facial attacks and those are relatively easy to assess. If the plaintiff has fabricated a threadbare federal claim purely to anchor state law causes of action in bankruptcy court, then Rule 12(b)(1) might apply.

The wrench in the works is that 28 U.S.C. §§ 157 and 1334 provide strong potential avenues for subject matter jurisdiction over most bankruptcy-related claims. Although abstention or removal to district court may be strategic alternative options, dismissal will likely require a blatant jurisdictional flaw. This makes sense from a 10,000 foot perspective because a precipitous result could constrict access to the justice system[9].

#2 Does the Rule 12(b)(1) motion challenge facts supporting a claim element?

The answer will probably be yes because most factual disputes are tied to claim elements. (Otherwise, the argument would be a facial attack or serve no litigation purpose.) Older cases debate "direct" versus "indirect" attacks, while cases from the 1990s and 2000s focus more on the extent to which factual elements are or could be inseparable from jurisdiction. Some recent case law relies on *Bell*-era logic[10]. Regardless of the path taken, the final inquiry focuses on the core components or required elements of claims, weighing

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[7]*Williamson v. Tucker,* 645 F.2d 404, 412-13 (5th Cir. 1981) (pre-dates 5th Circuit split) ("[T]here is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.").

[8]*Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990).

[9]*C.f. Bell,* 327 U.S. at 683-84. *See also SME Racks, Inc. v. Sistemas Mecanicos Para Electronica, S.A.*, 382 F.3d 1097, 1101-02 (11th Cir. 2004) (discussing deference to plaintiff's choice of forum as a general premise).

[10]*See. e.g., Resnick*, 34 F. 4th at 1034-35. Note also that one Eleventh Circuit judge has expressed frustration with the *Bell* standard. *Id.* at 1040-42 (J. Newsom, concurring).

(Continued on page 17)

FROM THE JUDGES' CHAMBERS

Rule 12(b)(1) Dismissal (Continued from page 16)

the relative importance of the facts in question to the merits[11].

What this means, in plain English, is that a court within the Eleventh Circuit will consider whether the facts asserted as a basis for dismissal are integral (think "material") to the claims. They usually are, so this question leads directly to the third one, which looks at the strength of the relationship between those facts and the merits.

#3 How integral are the facts alleged as a basis for dismissal to the merits of the claim or lawsuit?

If facts supporting dismissal are intertwined with the merits of a cause of action, then the court must apply a summary judgment standard during its Rule 12(b)(1) analysis[12]. The closeness of that inspection makes preemptive dismissal for subject matter jurisdiction difficult[13].

Arguing case-dispositive facts before both sides have completed discovery inverts the litigation process. At this stage, depositions and other forms of information-gathering have not yet concluded. Many, if not most, facts remain subject to discovery and dispute.

A typical Rule 12(b)(1) inquiry thus ultimately boils down to an assessment of the materiality of the facts asserted as supporting dismissal[14]. When materiality is or may be debatable, principles supporting access to justice may nudge the equities in favor of retention until the close of discovery[15].

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[11]The cases relied upon align (more or less) with whether the Court views the Rule 12(b)(1) motion as a facial attack, or if it deems the attack to be a factual attack (which then requires application of a summary judgment standard, as explained in the third question).

[12]*Lawrence*, 919 F.2d at 1530 ("[W]e adopt a summary judgment standard in evaluating Rule 12(b)(1) motions that also implicate the merits of a claim ...."). *See also Gardner*, 962 F.3d at 1340 (discussing "intertwine[ment]" and stating that the standard is met when "a statute provides the basis for both the subject matter jurisdiction of the federal court and the plaintiff's substantive claim for relief'") (internal citations omitted). The standard described in *Gardner* seems to encompass most Bankruptcy Code-based claims.

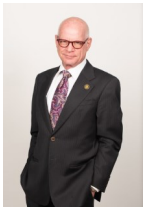
[13]*Garcia*, 104 F.3d at 1260 (describing difficulty of dismissal under Rule 12(b)(1)); *Morrison v. Amway Corp.*, 323 F.3d 920, 925-26 (11th Cir. 2003) ("We have cautioned ... that the district court should only rely on Rule 12(b)(1) if the facts necessary to sustain jurisdiction *do not implicate the merits of plaintiff's cause of action.*") (internal quotation marks omitted, emphasis in original); *Eaton v. Dorchester Dev. Inc.*, 692 F.2d 727, 733 (11th Cir. 1982) ("Where the jurisdictional issues are intertwined with the substantive merits, the jurisdictional issues should be referred to the merits, for it impossible to decide one without the other.") (internal quotation marks and citation omitted).

[14]Recent Eleventh Circuit decisions (*e.g., Rubenstien v. Yehuda*, 38 F.4th 982 (11th Cir. 2022)) that explore Rule 12 (b)(1) concepts like "injury in fact" and "concreteness" do so outside the context of bankruptcy. This article focuses solely upon application of Rule 12(b)(1) to bankruptcy matters governed by 28 U.S.C. §§ 157 and 1334.

[15]*Blanco v. Carigulf Lines,* 632 F.2d 656, 658 (5th Cir. 1980) ("[F]ederal rules entitle plaintiff to elicit material facts regarding jurisdiction through discovery before a claim may be dismissed for lack of jurisdiction."); *Eaton*, 692 F.2d at 734 ("'[W]e we note that the high standard of *Bell* and *Williamson* apparently suggests that this case ought not be dismissed for lack of jurisdiction.').

PRO BONO CORNER

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



On January 25, 2024, Judicial Chair, The Honorable Mindy A. Mora and Lay Chair, Peter Kelly, convened the most recent meeting of our Court's Pro Bono Committee. Consistent with our committee's agenda for each meeting, reports were given from each of our members representing legal aid providers in the Greater Miami, Broward, Palm Beach, and Martin County areas. Our members also include Florida Rural Legal Services for Indian River, St. Lucie, Martin, and Okeechobee counties. Please don't forget that Trish Redmond runs a highly regarded mentorship program that provides law students with hands-on training in bankruptcy practice and procedure. If you have a simple chapter 7 case where participation of Trish's law students might be helpful, please reach out to her or let me know and I'll connect you with Trish.

At our February 2023 committee meeting, we were honored to have participation of the Honorable, Jacob Brown, U.S. Bankruptcy Judge for the Middle District of Florida. Judge Brown has worked with our committee over the past year, exploring ways to implement a Pro Se Help Desk system similar to the FLMB model. In the meantime, Peter Kelly, Joey Grant and I will continue to broadcast our monthly Pro Se Clinics via Zoom. We will likely continue to provide the monthly virtual Pro Se Clinics even assuming we implement the FLMB model for assistance to pro se litigants.

Our January 2024 meeting brought into sharp focus the need for elder care and counseling. Judge Mora is leading the charge in this regard and a subcommittee was duly formed. Based upon the achievements of our Veteran's outreach programs, we expect to realize the same level of success. Should issues arise for your clients in one of these areas, elder care and bankruptcy counseling or veteran's bankruptcy assistance, please contact me at ssn@newburghlaw.net so I can connect you and your client with appropriate additional resources, where needed.

Credit our Chief Clerk of the Court, Joe Falzone, with ensuring that both lawyers and pro se individuals can easily navigate the FLSB website to find valuable information on requirements for filings and a lot more. There are online videos which do a good job of providing prospective filers with a glimpse into the procedural mechanics involved in a chapter 7 filing and in obtaining a discharge. Our Court's website also provides valuable links for pro bono resources, including virtually all legal aid organizations that provide bankruptcy assistance within our District. You can also find the annual calendar for our monthly Pro Se Clinics on the FLSB webpage.

As usual, I conclude Pro Bono Corner with a request that you each contribute to our committee's pro bono mission: To ensure that everyone has access to justice. Please volunteer to take on a pro bono or low-bono case, prosecute a student loan adversary, or represent a pro se creditor. We are open to other offers of assistance… just come up with something you can contribute. Take into consideration that you are in "Pro Bono Corner" right now. There's a reason for that nomenclature. My job is to "corner" you out there (in a non-confrontational manner, of course), and to convince you that you have time and the ability to give.

We have the knowledge and experience needed to provide protection from creditor harassment and to ensure that the honest but unfortunate debtor receives the fresh start promised to them by Title 11. Please reach out to us and offer your help. Thank you!

What's in a Hug?

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

For each of us a hug can express something different. How many times have we said to ourselves, I need a hug? Most of us would agree a hug is so much more than a hug, there's tradition in hugging. Hugs make us feel better, at times it can deliver a strong message that all will be fine, whether you're the hugger or huggee, a hug at times is all we need, all we want! We hug others when we are excited, happy and when we are trying to provide comfort or be comforted. I'm not an expert or studied the science of hugging, but it doesn't take an expert to realize a hug brings us together, it unites us and there something to be said about unity, it can be so therapeutic. I'm a firm believer that much more unites us than tears us apart. There is warmth and love in a hug, a happy moment between those you love, family, friends, your children, a co-worker, or your neighbor and yes even at times a hug from a stranger can have positive effects, (*please always remember to ask permission before you hug someone, some folks do not like to be hugged, always respect someone's space*). In my humble opinion, the world needs more hugs. There was a time not too long that hugging was restricted during Covid, remember virtual hugs? Nah, not the same, but now for the most part, it's back to business, expressing and showing love, appreciation, and compassion onto others thru a simple hug. *Hugs provide positive physical contact. No matter what, a hug unites us, even those awkward hugs from our grandmas or aunts. Hugs help us thru a rough patch, hugs can reunite old friends, a hug connects us on so many levels, it carries fondness, and hope. It lifts our spirits; it has the mighty power to change our mood.

Shall I innumerate what's in a hug? Love, devotion, caring, respect, warmness, friendship, kindness, sympathy, joy, happiness, praise, cheers us, lifts our state of mind, and for many, even for a split second it gives us a sense of safety and yes, a hug could be painful as, goodbye. I could go on, but you get the point! There is so much warmth in a hug, and in a world where coldness rules, a hug could touch many and even transmit worth. Personally, I love hugging those I love, admire, and appreciate. Hugs for many can reduce stress, pain, fear, and according to the **experts support our immune and cardiovascular health. A hug can communicate so much more than words could ever, a silent embrace through touch can express what words can't. As they say, a hug is worth a thousand words and a hug from the right person can completely change your day. Depending on the situation, that hug can communicate, I'm here, you got this, I love you, I'm proud of you, breathe and deliver the medicine someone may need or vice versa, it might just be the medicine we need. When you go home, hug your spouse, kids, your 4-legged furry pet, your neighbor, and if you're reading this at work, ***and acceptable*** to your co-worker, get up and hug your co-worker. I promise, a huge smile from both the hugger and huggee will be in full display like fireworks on the 4th of July. So, what's in a hug? That depends on you, but it fosters nurturing, and trust. Who can't use a little nurturing and trust, all is not lost! Hope is powerful, it can transcend despair and we should never lose sight of hope, mix it in with a hug, and boom, just like that your feel-good endorphins kick in! Hugging is a wonderful way to create bonds, it connects us and at times that's all we need, no words, just a hug. "The best kind of hugs are the ones that make you forget about everything except how amazing you feel at that very moment". – Brigitte Nicole (American singer and songwriter).

*https://www.verywellmind.com/when-you-feel-you-need-a-hug-5216785
**https://www.healthline.com/health/hugging-benefits

Suggestions for Improving efficiency in managing bankruptcy cases.

By: Lucie Fleurimond

To efficiently manage bankruptcy cases, consider the following tips:

- Have a thorough initial consultation with the client to discuss life changing events: recent relocation, marriages, divorce, name changes, losses.
- Verify client's information for current address, accurate social security number and redacted documents.
- Check the docket for case updates before filing documents and query the database to ensure that the client does not have prior cases, unpaid filing fees and any restrictions on filing a new case.
- Having a difficult time with a docket event? Call the clerk's office if unsure of a process or procedures.
- Set a calendar to monitor upcoming deadlines, hearing, meeting, appeal.
- Promptly, address deficiency notices from the clerk's office and when applicable, take necessary actions to remediate the problem.
- Regularly update client's and creditor's information.
- File the Local Form 4 (LF-4) with the new creditor's information listed on a separate sheet of paper.
- Finally, utilize the clerk's website for resources and revised local and bankruptcy rules and forms.
- Contact your merchant, to update or upgrade your office applications and forms.By following these suggestions, you can ensure a smoother case administration from start to finish.

Document Requirements for Filing a Notice of Substitution of Counsel

By: Lorraine Adam

Local Rule 2091-1(B) states:

> "An attorney for a creditor or chapter 7 or 13 debtor seeking to withdraw from representing a client in a case or proceeding at a time when such client is represented by new counsel of record may file a joint notice with counsel seeking to be substituted as counsel of record for the client, in each affected case or proceeding. Such notice shall contain a statement that the client has consented to the substitution or be signed by the client, and be served on all interested parties."

During the clerk's quality control of a filed Notice of Substitution of Counsel, case administrators look for the following details within the PDF image:

- Name of both attorneys with full addresses and contact information.
- A statement that the client has consented to the substitution or signature of the client; and
- Service on all interested parties, including the client.

If these details are missing, the e-filing attorney will receive a *Notice to Filer of Apparent Filing Deficiency* indicating the docket entry does not comply with Local Rule 2091-1. The representation of the party will be returned to the original attorney and the new attorney will be terminated from the case until a compliant document has been filed.

Local Rules can be found on this court's website at: www.flsb.uscourts.gov/local-rules.

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, 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 received something called a "Notice of Chapter 11 Bankruptcy Case" in the mail from a company I used to work for. What am I supposed to do with this?

The notice was sent to you because the company that filed bankruptcy believes they owe you money or a service and listed you as one of its creditors. The notice provides dates that are important to the case. For example, there is a section called "Meeting of Creditors," which is an opportunity for a creditor, like yourself, to appear, address the trustee or U.S. Trustee representative overseeing the case, and ask the debtor questions. If you are unsure what to say, you can listen and observe what is asked of the debtor.

You can obtain bankruptcy case information from PACER (Public Access to Court Electronic Records). PACER is an electronic public access service that allows registered users to obtain online case and docket information from federal appellate, district, and bankruptcy courts. PACER is provided by the Federal Judiciary in keeping with its commitment to providing public access to court information.

To register for a fee-based PACER account, visit: https://www.pacer.uscourts.gov. There is a $.10 per page charge for case information on this system. However, if you accrue less than $30.00 in a particular quarter, the fees are waived for that quarter. You may also contact PACER by calling (800) 676-6856. In the event you wish for the clerk's office to print any court record, fees for copies and/or certifications must be paid at the time of the request. To view the Clerk's Summary of Fees, visit https://www.flsb.uscourts.gov/clerks-summary-fees. You can also stop by any of our divisional offices and use the public terminals to obtain additional information about the bankruptcy case.

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.

FLORIDA SOUTHERN BANKRUPTCY MORTGAGE MODIFICATION MEDIATION STATISTICS

(From April 1, 2013 through February 29, 2024)

	MIA	FTL	WPB	TOTAL
MMM Motion (Attorney Rep.)	8462	5638	3264	17364
MMM Motion (*Pro Se*)	107	51	30	188
Total Motions Filed	8569	5689	3294	17552
Order Granting MMM Motion	7520	4987	2801	15308
Final Report of Mediator	6371	3989	2196	12556
Mediation Agreement Reached	2708	1860	1018	5586

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											
												TOTAL =	8536

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											
												TOTAL =	5659

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											
												TOTAL =	3258

UPCOMING COURT HOLIDAY CLOSINGS *

- Monday, May 27 - Memorial Day
- Thursday, July 4 - Independence Day
- Wednesday, June 19—Juneteenth Independence Day
- Monday, September 2 - Labor 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.