



# BANKRUPTCY BUZZ

LOCAL NEWS AND INFORMATION

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF FLORIDA

NOVEMBER 2012

## LENDERS TAKE NOTE - DO NOT FILE UNNECESSARY NOTICES OF PAYMENT CHANGE

by Judge Robert A. Mark\*

*\*A bio of Judge Mark appeared in the December 2012 issue of Bankruptcy Buzz. To view it, access Bankruptcy Buzz archives on the court website.*



Judge Robert A. Mark

New Federal Rule of Bankruptcy Procedure 3002.1 became effective December 1, 2011. The Rule was added "to aid in the implementation of § 1322(b)(5) which permits a Chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor's plan." Advisory Committee Note (2011). The rule requires holders of mortgages to file notices of payment change if the mortgage is being cured and maintained in the debtor's plan under § 1322(b)(5).

In our Chapter 13 practice in the Southern District of Florida, as well as in other districts, Chapter 13 debtors and their attorneys have been burdened with unnecessary notices of payment change not required

by the rule including, for example, notices of payment change in cases where the debtor is paying the mortgage outside the plan or has restructured the debt in the plan.

On October 29, 2012, Chief Judge Hyman signed Administrative Order 12-02. That Order, effective December 3, 2012, amends and supplements our Local Rule 3070-1(B) to clarify when notices of payment change should or should not be filed. The Order makes it clear that creditors should not file notices of payment change unless the mortgage is being cured and maintained in the debtor's plan under § 1322(b)(5). The Administrative Order provides further that if the claim is not treated in the plan and the debtor is mak-

ing payments directly to the holder of the claim outside of the plan, the holder of the claim may send notices of payment change and escrow notices directly to the debtor, without violating the automatic stay.

In the past, our judges have generally denied debtors' requests for sanctions when creditors filed unnecessary notices of payment change. But lenders beware. New Local Rule subsection 3070-1(B)(4), added by Administrative Order 12-02, provides that "upon motion by the debtor, the court will consider awarding sanctions against a creditor that files notices of payment change that are not required under Bankruptcy Rule 3002-1, and are expressly deemed unnecessary under this rule."



Judge A. Jay Cristol

## CONGRATULATIONS TO JUDGE CRISTOL!

The Eleventh Circuit Court of Appeals unanimously voted to reappoint Judge Cristol for another fourteen year term as a Bankruptcy Judge for the Southern District of Florida. Judge Cristol provided the following comment regarding his reappointment to the Buzz: "I am honored and delighted for the opportunity to continue working with such a fine group of people that make up our bankruptcy court family."

*A bio of Judge Cristol appeared in the April 2012 issue of Bankruptcy Buzz. To view it, access Bankruptcy Buzz archives on the court website.*

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### Bankruptcy Cases Filed From 1/1/12 to 10/31/12: Total Filed: 26,432

- Chapter 7 : 18,653
- Chapter 9 : 0
- Chapter 11 : 263
- Chapter 12 : 4
- Chapter 13 : 7,512
- Chapter 15 : 0

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





## CHIEF JUDGE'S CORNER: UPDATE FROM JUDGE HYMAN



### Loss Mitigation Program:

Based upon input from the Bankruptcy Bar and through the efforts of a loss mitigation mediation working group, the court has unanimously approved the implementation of a Loss Mitigation Mediation Program (LMM) to facilitate mutually agreeable resolutions between lenders and individual debtors whose real property is at risk of loss to foreclosure or surrender. A LMM program may also avoid the need for litigation and reduce costs to debtors and lenders. We anticipate that the program will be up and running by early Spring 2013. Stay tuned for more details.

### Transition to Digital Court Reporting (DCR):

In 2013, the bankruptcy court for the Southern District of Florida will be transitioning to digital court reporting. By September 2013, we expect to have all of our courtrooms equipped with the necessary hardware and software that will enable the court to electronically record trials, hearings and all other proceedings. Official transcripts from any digital audio recording may be purchased only from court-designated transcription companies at the prescribed rate. A CD containing the audio file of a hearing may be purchased directly from the clerk's office (service fee will apply). The court will keep you posted as we complete the various stages of this project.

### Self-calendaring for Chapter 7 Cases:

The clerk's office recently upgraded the court's primary calendaring application to a web-based program that will now provide the functionality to extend self-calendaring to chapter 7 cases. Currently, the court only permits self-calendaring for chapter 13 non-emergency matters. As you may recall, self-calendaring allows E-filing attorneys to select an available hearing date and time from the assigned judge's calendar when a motion is electronically filed in CM/ECF. Upon the completion of the filing, the Notice of Electronic Filing [NEF] screen will include a link to a court-generated notice of hearing form containing the selected date and time which can be printed locally and served on all required parties. We will implement self-calendaring for chapter 7 cases filed and/or pending in our West Palm Beach division prior to activating it for Miami and Ft. Lauderdale division cases. We anticipate having this new functionality available early next year.

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

*(To keep current with all the latest federal court news and information—visit [www.uscourts.gov](http://www.uscourts.gov))*

### BANKRUPTCY FILINGS DOWN IN FISCAL YEAR 2012

Bankruptcy cases filed in federal courts for fiscal year 2012, the 12-month period ending September 30, 2012, totaled 1,261,140, down 14 percent from the 1,467,221 bankruptcy cases filed in FY 2011, according to statistics released today by the Administrative Office of the U.S. Courts.

To read the full story and review additional statistics at this link: <http://news.uscourts.gov/bankruptcy-filings-down-fiscal-year-2012>



### REQUIREMENTS FOR FILING AN ADVERSARY PROCEEDING

All adversary complaints must clearly identify; a) the name of each plaintiff and defendant, b) contain a brief cause of action, c) include all applicable U.S. statute(s) for each nature of suit, and d) include a Corporate Ownership Statement as required by Bankruptcy Rule 7007.1.

Specifically regarding the cause of action, the complaint must contain at least one primary nature of suit and identify a demand amount if applicable. For electronically filed complaints, up to five natures of suit may be selected from drop-down menus, and each **MUST** be identified in the PDF image. For conventionally filed complaints, select each nature(s) of suit on the Adversary Proceeding Cover Sheet (Official Form B104) that appears in the complaint. Accurate data entry or cover sheet selection is required because information is displayed in the docket sheet and in docket entry #1.

Fees must be paid timely, or an affidavit to defer fees must be filed concurrently with the complaint, or the complaint will be dismissed pursuant to Local Rule 7041-1(A).

The clerk's office will immediately enter a Summons and Notice of Pretrial/Trial, as well as an Order Setting Filing and Disclosure Requirements for Pretrial and Trial.

The plaintiff's responsibility is to serve the complaint, summons, and order upon each defendant, and file a Certificate of Service that substantially complies with page 3 of the issued summons within two business days after service [see Local Rule 2002-1(F)]. E-filers must upload this document using the CM/ECF event Adversary > Other > Summons Service Executed. Regarding the content of the Certificate of Service, the document must specify the manner of service and contain an address for every defendant served.

A defendant has 30 days in which to file their answer (federal agencies have 35 days). Any request for issuance of an alias summons must comply with Local Rule 7004-2(B).

By Cameron Cradic

### RECENT CLERK'S OFFICE NOTICES POSTED ON COURT WEBSITE

[Notice of Entry of GO 12-01 \(Holiday closing schedule\)](#)

[Notice of Entry of AO 12-02 : "In re: Order Amending Interim Local Rule 3070-1"](#)

[Notice of Amendments to Bankruptcy Rules and Forms](#)

[Notice Increasing Chapter 11 Filing Fee Effective 11/21/2012](#)

[12-09-07 Public Notice Maintaining Current Contact Information In CMECF](#)



## “FILING AGENT”(“FA”) USER DESIGNATIONS ARE NOW AVAILABLE FOR ASSOCIATION WITH ACCOUNTS OF CM/ECF REGISTERED USERS

A new user type called “Filing Agent”(“FA”) is now available for association with accounts of CM/ECF registered users who are in law firms and trustees’ offices. Activation of the “Filing Agent” feature will enable a registered user to link several filing agents to that registered user’s main ECF filing account. It will also permit a designated Filing Agent to be linked to several registered user accounts in that office. When a filing agent files on behalf of a registered user, the docket text will display the name of the registered user for whom the agent is filing the document. The “Filing Agent” user type will replace all secondary (^) accounts, which will be disabled as of January 2013.

The registered user determines what level of authority a specific filing agent will be permitted when logged on to file under the registered user’s account. When a “Filing Agent” logs in, the FA is required to select the registered user under which the agent will be filing documents. When the filing agent selects a specific registered user, the preset permissions for that agent under that registered user will be activated and will remain activated until the FA selects a different registered user to file on behalf of and who may have granted different permissions for that FA than the prior registered user. The filing agent’s permissions will mirror the registered user unless the registered user has placed restrictions on activity which could include the ability to pay filing fees or upload proposed orders.

**Instructions for Filing Agent Access:** When a filing agent has been granted access to file on behalf of more than one registered CM/ECF user, the FA must select a registered user from the list at the login screen. The selection may be changed at any time without logging out. The name of the registered user will display below the menu bar. The [Change user](#) button (See figure A below) allows the filing agent to change registered users for whom the FA will be filing. Clicking on this option displays all registered users associated with that filing agent, and clicking on a name on the list changes the registered user for whom the FA will be filing documents.



Figure A

**Record of Filing Agent Activity:** Entries made by a filing agent will reflect the name of the registered user under which the agent is filing and will not indicate that the entry was actually made by a filing agent. However, since transactions by filing agents are logged, they can be accessed by court staff and registered users, in addition to the filing agent. Registered users can review activity by a designated filing agent. The filing agent’s name will only appear on the [Transaction Log](#). Registered users with more than one filing agent can access the [User](#) filter option appearing on the Transaction Log report to review each agents transactions on the registered user’s behalf. An additional [Filing agent](#) sort option appears when filing agents are activated. (See Figure B)

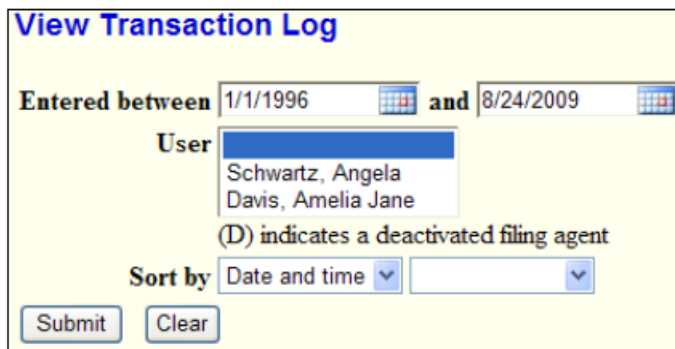


Figure B

(Continued on page 5)

**FILING AGENT USER DESIGNATIONS (CONTINUED FROM PAGE 4)**

**Maintenance of Filing Agent Account Designations:** The registered user is responsible for establishing and maintaining access authorizations for filing agents. Filing agent maintenance is available for attorneys and trustees on the More User Information option of the Maintain User Account utility screen. (See Figure C) Filing agents cannot access their own access permissions. Maintenance options include designating associations of agents with the registered user and indicating whether the agent should receive electronic notices. The ability to modify access and email information has been removed from the agent's [Maintain Your ECF Account](#) page and can only be modified by the registered user or court staff. Password changes may only be performed by the registered user or court staff.

Figure C

The screenshot shows a web form titled "More User Information for Isabelle E Green". It contains several sections:

- Login Information:** A "Login" field with the value "IEGreen" and a "Password" field with asterisks. A note below the password field reads: "[minimum 8; upper- & lower-case letters; include digit or special character]".
- Last login:** 08-09-2010 11:26
- Current login:** 08-10-2010 11:07
- Create date:** 03/01/2007
- Update date:** 08/10/2010
- Registered Y**
- Internet Payment Y**
- Groups Attorney**
- Filing agents:** A section with the instruction "Uncheck the box to remove a filing agent." It lists two agents: "Adams, Jessica" and "Bobeck, Lisa Ann [office 1, 123 Main Street, Suite 2, Floor 4, Metropolis, CO 12345, (123) 456-7890]". Both have checked boxes next to their names.
- Find filing agent:** A search input field with a magnifying glass icon.
- Agents previously removed from this account:** A link to view removed agents.
- Buttons:** "Return to Account screen" and "Clear".

A search of filing agents by last name is also available. This report generates a listing of all filing agents matching the search criteria. If the selected name does not appear, the agent can be added by selecting [Create a new filing agent](#).

An agent may be activated, deactivated or reactivated by the registered user but filing agents cannot be permanently deleted. Only a registered user must also change a filing agent's password. A panel listing all deactivated filing agents that were formerly associated with the registered user is also available. All actions to activate, modify, deactivate, or reactivate a filing agent account are recorded in the System Transaction and [Transaction Log](#) reports.

Instructions on creating, modifying, deactivating, or reactivating filing agents are available on the court website [www.flb.uscourts.gov](http://www.flb.uscourts.gov).

By Maggie Ferere



### FILING FEES FOR REOPENING CASES

This court's Local Rule 5010-1 addresses requirements for reopening cases, including whether or not a reopening fee is required under the "Bankruptcy Court Miscellaneous Fee Schedule". This schedule, which is prescribed by the Judicial Conference of the United States Courts, is authorized by 28 U.S.C. § 1930(b). Because the fee is for the motion to reopen, the Judicial Conference prohibits refunding the fee if the court denies the motion.

As set forth under Local Rule 5010-1(A), a reopening filing fee is required at the time a motion to reopen a case is filed, EXCEPT when any of the following apply:

- The motion is filed to correct an administrative error or for actions affecting the discharge of debtor. To qualify for the administrative error exemption, either the clerk or the court itself must have made the error. Examples of actions affecting the discharge of the debtor include: when one or more of the debtors' creditors are violating the discharge injunction by continuing their collection attempts notwithstanding the debtor's discharge; when a creditor is asserting it holds a non-dischargeable debt and either the debtor or that creditor wants the bankruptcy court to rule on it. In this court, under Local Rule 5010-1(B), a chapter 7 debtor in a no asset case seeking to add omitted creditor(s) is also not required to pay a reopening fee if the debtor timely files an adversary proceeding to determine dischargeability of the added creditor(s). (See Local Form "Order Reopening Case to Add Omitted Creditor(s)").
- The motion is filed by a trustee and contains a request for deferral of payment of the fee until assets are recovered from the estate.
- The motion is seeking to shorten a "with prejudice" period provision of a prior order of dismissal.
- The motion is seeking to reopen an individual debtor's chapter 11 case which was closed after confirmation but prior to entry of discharge.

The clerk's office is frequently asked if a fee is required to reopen a case if the debtor failed to file their "Certificate of Debtor Education" (aka, Certification of Completion of Personal Financial Management Course), or any other local forms required for issuance of a discharge which resulted in the case having been closed without entry of a discharge. The answer is that a fee is due at the time the motion is filed, please reference Local Rule 5010-1(G) and (H).

Additional details regarding reopening fees are set forth in the Administrative Office of the U.S. Court's "[Bankruptcy Fee Compendium III](#)" which is posted on this court's website under the "Filing and Fee Information Tab," and then select the link "Fee Information". Current reopening fees are:

CHAPTER	REOPENING FEE
7	\$260
11 (non railroad)	\$1,167
12	\$200
13	\$235
15	\$1,000

By Cameron Cradic

**FREE BANKRUPTCY CLINIC**

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

**Miami Division: 51 SW 1 Avenue, Room 1510\***

Friday, November 16th 12 p.m. – 2 p.m.

Friday, December 14th 12 p.m. – 2 p.m.

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

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

Friday, December 7th 12 p.m. – 1:30 p.m.

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

Tuesday November 20th 11:30 a.m. – 1 p.m.

Tuesday December 11th 11:30 a.m. – 1 p.m.

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

At the clinic, there will be a 45 minute video presentation outlining procedures for filing bankruptcy.

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

FOR FURTHER INFORMATION, PLEASE CONTACT:

MIAMI: [amiranda@dadelegalaid.org](mailto:amiranda@dadelegalaid.org)

FORT LAUDERDALE: [kimberly.salamone@ntmlawfirm.com](mailto:kimberly.salamone@ntmlawfirm.com)

WEST PALM BEACH: [erosen@rosenwinig.com](mailto:erosen@rosenwinig.com)





**Bankruptcy Unscramble**

by Lorraine Adam

Unscramble the six scrambled words below. Then take the circled letters from each unscrambled word and arrange them to find the two words that complete the following sentence:

One of the court's requirements for a pro se petition is that it must be \_\_\_\_\_

Hint: The image below gives you a clue to solving the two missing words.

oohpt ○ □ □ □ □	niiideattfcio ○ □ ○ □ □ □ □ □ ○ □ ○ □ □ □	tnioiept ○ □ □ □ ○ □ □ □
tcnurer ○ □ ○ □ ○ □ □	nigfil ○ □ □ □ □ □	eurmnteeiqr ○ □ □ ○ □ □ □ □ ○ □ □



Image by Jay Corrales

ANSWERS

One requirement for a pro se petition must be: Picture Perfect

oohpt = photo	niiideattfcio = identification	eurmnteeiqr = requirement	tnioiept = petition	nigfil = filing
tcnurer = current				

**UPCOMING COURT HOLIDAY CLOSING DATES**

Veterans Day: 11/12/12  
 Thanksgiving Day and Day After: 11/22/12 and 11/23/12  
 Christmas Eve and Christmas Day: 12/24/12 and 12/25/12  
 New Year's Day: 1/1/13  
 Birthday of Martin Luther King, Jr.: 1/17/13  
 Washington's Birthday: 2/21/13

**COURT MISSION STATEMENT**

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

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

**CONTACT BANKRUPTCY BUZZ PUBLICATION STAFF**

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

Please do not use the above email address to file or send papers to the court or to ask questions about court procedure or status of a particular case. Contact the clerk's office at any of the following numbers for assistance in these matters. Visit the court website [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) for local filing information.

Thank you.

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

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