



## CHANGES ARE COMING TO THE SOUTHERN DISTRICT OF FLORIDA BY: CHIEF JUDGE LAUREL MYERSON ISICOFF

As you all know, Judge Paul Hyman will be retiring on January 3, 2018 after serving on the bench for 24 years. The Eleventh Circuit has identified Judge Hyman's successor, but the identity of the new judge will not be released until her FBI background is completed. Yes, "her". So, this much I can tell you - I will no longer be able to refer collectively to my six colleagues in the Southern District as "my brethren". I know many of you joined us after the View From the Bench on November 3 to honor Judge Hyman. For those of you unable to come, the Palm Beach Federal Bar Association will be honoring Judge Hyman on December 15.

We also have a new court website redesign. Our Clerk of Court, Joe Falzone, Dailin Pena, our training specialist, and our incredible court IT staff, have worked very hard putting this together. Tremendous thanks also goes to the Pro Bono Website Task Force - Ido Alexander, Jessika Graham, Hayley Harrison, Zach Shelomith, our Clerk of Court Joe Falzone and our Deputy Clerk of Court, Jose Rodriguez. Our task force looked at every bankruptcy court website in the country in order to make sure our website was user friendly and helpful. We are always looking to improve however, and welcome your comments and suggestions.

As you know, two of our seven positions are temporary positions, meaning that we cannot fill the first two vacancies in our court that occur after the expiration of those temporary judgeships. I am happy to report that, at least for now, all seven of our judicial positions are staying in place. On October 26, 2017, the President signed into law the Bankruptcy Judgeships Bill of 2017. Pursuant to

(Continued on page 3)

### INSIDE THIS ISSUE

|  |        |
|--|--------|
| <b>PRO BONO CORNER</b>                                       | 2      |
| <b>FROM THE JUDGES' CHAMBERS (UPDATES, CASE NOTES, TIPS)</b> | 4 - 10 |
| <b>COURT WEBSITE UPDATED</b>                                 | 11     |
| <b>COURT NEWSLETTER RENAMED</b>                              | 11     |
| <b>TOP TEN IT SECURITY TIPS</b>                              | 12     |
| <b>HOW TO FLATTEN FILLABLE PDF FORMS</b>                     | 13     |
| <b>FREE BANKRUPTCY CLINICS SCHEDULE</b>                      | 14     |
| <b>LAND OF THE FREE</b>                                      | 15     |
| <b>SEAL VS REDACT</b>  | 16     |

### Bankruptcy Cases Filed From 1/1/17 to 11/30/17: Total Filed: 14,443

- Chapter 7 : 7,697
- Chapter 9 : 0
- Chapter 11 : 163
- Chapter 12 : 2
- Chapter 13 : 6,572
- Chapter 15 : 9

Additional filing statistics are available on the court website [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) under the "Court Information" tab at the top of page.

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

### AMENDMENTS TO THE FEDERAL RULES AND FORMS EFFECTIVE 12/1/17

The federal rules and forms were amended and are effective December 1, 2017. Amendments to the bankruptcy rules and forms can be reviewed at the following links on the U.S. Courts website [www.uscourts.gov](http://www.uscourts.gov):

[http://www.uscourts.gov/sites/default/files/2017-04-27-congressional\\_package\\_rev\\_4-25\\_final\\_final\\_with\\_signed\\_letters\\_and\\_orders\\_0.pdf](http://www.uscourts.gov/sites/default/files/2017-04-27-congressional_package_rev_4-25_final_final_with_signed_letters_and_orders_0.pdf)

<http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments/pending-changes-bankruptcy-forms>

In conjunction with the federal rules amendments, the Court has entered Administrative Order 17-04 "Adoption of Interim Local Rules 1019-1(j)(1), 1073-1(B)(3)(a), 3002-1(B), and 9013-1(D)(3)". The court had previously entered Administrative Order 17-2 "Proposed Amended Local Form "Chapter 13 Plan" and Opportunity for Public Comment" which adopts Local Form "Chapter 13 Plan". In addition, local form versions of national forms used in this court, including 341 meeting notices, were revised to adopt corresponding 12/1/17 amendments.



## PRO BONO CORNER



**By: Chief Judge Laurel Myerson Isicoff**

By the time you read this Pro Bono Week will be over and we will have celebrated our volunteers at our Pro Bono Recognition lunch on November 3. Of course, as we all know, pro bono isn't a week; it's a lifelong commitment to providing access to justice for all.

Pro Bono Week started off with a bang. Steven Newburgh, Leslie Cloyd, Kim Salamone and Kelly Roberts put together a terrific presentation - "Demystifying Bankruptcy Pro Bono". We had approximately thirty-five attendees. The event culminated with a lunch panel discussion moderated by me, and our surprise panelist - Judge Mark. Look for encore presentations in Fort Lauderdale and West Palm Beach later in the year.

As in the past, the Bankruptcy Bar Association set up volunteer sign up tables and once again we had many attorneys volunteer to take some kind of a pro bono case. If you haven't signed up and you want to participate in some way, click on the Pro Bono logo on the court website for a description of the different opportunities and the different providers through which volunteer bankruptcy opportunities are available.

Our Pro Bono Week celebrations concluded with our Pro Bono Recognition event on November 3. At that event, I had the honor of presenting the first Bankruptcy Chief Judge's Pro Bono Award to Steven Newburgh. Steven is a partner at McLaughlin & Stern, LLP but many of you know him as the West Palm Beach Division Bankruptcy Bar Association Pro Bono Chair. Steven's extensive resume would take up more space than I have been allocated so I will just share this from one of the many nominations we received on Steven's behalf - "Mr. Newburgh has made significant accomplishments in improving access to justice before our court. He is the primary person responsible for allocating pro bono matters in the Northern part of our district. Mr. Newburgh is in fact the person whose name we provide to un-represented parties in court. He has worked tirelessly in this role. Mr. Newburgh has repeatedly shown his devotion to the effort. Not only does he swiftly attempt to address the needs of un-represented parties, but he often volunteers his own services to assist them. It is not unusual to see Mr. Newburgh accompany an un-represented party out of the courtroom so that he may consult with them. In addition, Mr. Newburgh regularly weighs in on



Chief Judge Isicoff presents Steven Newburgh, Esq. with Pro Bono Award

(continued on page 3)



## **CHANGES ARE COMING TO THE SOUTHERN DISTRICT OF FLORIDA (continued from page 1)**

that bill our two temporary judgeships (as well as twelve others) are now extended to October 26, 2022. Congress had previously extended the expiration of our two positions, along with five others deemed "critical", to May 25, 2018. Without that extension, we would not have been able to fill Judge Hyman's position when he retired. I want to thank the Bankruptcy Bar Association of the Southern District of Florida for their letters to all the members of the Senate and House Judiciary Committees in support of our judgeships.

Bankruptcy case filings continue to decline but the decline has slowed down considerably and case filings are expected to climb due to a combination of natural disasters, medical debt and increasing consumer debt, as well as low grade commercial debt maturing in the next two years. The Southern District of Florida continues to be the court with the third highest number of Chapter 15 cases in the country (the Southern District of New York and the District of Delaware have the highest number of Chapter 15 cases overall).

There is also lots to report on pro bono, but you will have to go read the "Pro Bono Corner" to get those updates.

We look forward to an exciting new year. We will miss Judge Hyman but rumor has it we will be seeing him around.

## **PRO BONO CORNER (continued from page 2)**

district wide concerns to express the needs of the un- and under-represented, including in connection with changes to our local rules and forms."

Not everyone can do as much as Steven, but everyone can do something. Surely all of you can give at least three hours every other month to staff a pro se clinic? Or maybe you can mentor an attorney new to bankruptcy who has taken a pro bono case - that won't take more than a couple of hours of your time. Or take a chapter 7 case.

The Pro Bono Task Force Low Bono committee also drafted guidelines for accepting cases on a reduced fee basis - those guidelines are available on the court website. Low Bono applies to chapter 7 and chapter 13 cases. Let one of the BBA pro bono chairs - Steven Newburgh, Leslie Cloyd, Eric Silver or Jessika Graham - know if you are interested.

You can also find volunteer opportunities other than bankruptcy cases on the Florida Pro Bono Matters website - [www.floridaprobono.org/probonomatters](http://www.floridaprobono.org/probonomatters). This website, updated by legal service organizations three times a day, lists case details of all types including immigration issues, family law issues, medical disability, elder law and dependency. Take a peek at the website; you will be impressed.

For those of you who have already taken a pro bono case - thank you. For those of you who have not yet taken the plunge - just do SOMETHING. It will make you feel great. Remember the last lines of the oath you took when you became a member of the Florida Bar:

**"I will never reject, from any consideration personal to myself,  
the cause of the defenseless or oppressed"**



## FROM THE JUDGES' CHAMBERS: STAFFING & TECHNOLOGY

### **JUDGE ROBERT A. MARK SHARES STAFFING UPDATES FROM HIS CHAMBERS**

After working with me as my Calendar Clerk / Courtroom Deputy since I was appointed in 1990 and, after over 40 years of service to our Court, Elaine Howlan retired in July. Elaine is happily settling into her new home in Cumming, Georgia, less than a half hour drive from each of her kids and her nearly three-year-old granddaughter, Kennedy.

Jackie Antillon has taken over for Elaine and it has been an easy and smooth transition. Jackie started with the Court in 1987 and was most recently a Senior Case Manager. In the first several years of my tenure, each judge had his own docketing team and Jackie was the "Captain" of our skilled and efficient RAM Team. For court trivia buffs, other RAM Team veterans include Dawn Leonard, Maria Romaguera, Nelly Garcia and Marva Reynolds.

I am also delighted to welcome back Corinne Aftimos as my law clerk. Corinne clerked for me from 2009 to 2012 and agreed to return when Luis Casas left in August to join Akerman's bankruptcy group. The team remains strong with my Judicial Assistant, Marcy Gatell, still running the show. All we need are some new and interesting big cases!

### **JUDGE ERIK P. KIMBALL PROVIDES INFORMATION ON NEW COURTROOM TECHNOLOGY IN WEST PALM BEACH**

The Court recently updated the audio and video technology in both courtrooms in West Palm Beach. The goals were to facilitate quality recording for the Court's official record (used to produce certified transcripts of proceedings before the Court) and to assist counsel and parties in presenting evidence by electronic means. It is now much easier to present electronic evidence using the monitors in the courtroom. The system is compliant with HDMI, making it possible to connect nearly any device, including laptops, Android tablets and iPads, and even mobile phones, usually without any need for configuration. If your device does not have an HDMI port, you may need to acquire an appropriate adapter. In addition, counsel and parties can connect to a separate Wi-Fi receiver for purposes of screen mirroring, with some configuration which may require downloading an app. New monitors on the courtroom walls, at the podium, on counsel tables and at the witness box permit display of documents in high definition, making it much easier to read documents presented electronically. If it is necessary to display physical documentary evidence, there is a new document camera built into the podium that is easily controlled from a panel on the podium. In addition, the podium itself has been enlarged to provide more area for laptops and binders during trial. The Court's local rules already require evidence to be delivered to the Court at trial in electronic form. The Court strongly encourages counsel to use electronic presentation methods during trial as well. If you would like to test the system prior to a trial or evidentiary hearing, please contact either courtroom deputy in West Palm Beach and we will be glad to arrange a time.



## FROM THE JUDGES' CHAMBERS - CASE NOTES

### **Judge Kimball Rules That A Debtor's Deposit Into Its Own Unrestricted Deposit Account Is Not A Transfer For Purposes Of Fraudulent Transfer Analysis**

In a decision entered July 27, 2017, Judge Kimball ruled that when a debtor deposits its own assets into its own unrestricted bank account, the deposit is not a "transfer" within the meaning of section 101(54) of the Bankruptcy Code and parallel Florida statutes, and so it cannot be the subject of a fraudulent transfer action under those statutes. The decision can be found at ECF No. 43 in Adv. Proc. No. 16-01755.

The chapter 7 trustee for several substantively consolidated estates filed adversary complaints against three banks

(continued on page 9)

### **Judge Hyman Comments On The Southeast Banking Corporation Case**

When I was sworn in, almost 24 years ago, one of the first hearings I conducted was in the Southeast Banking Corporation case. 5,259 docket entries later, the case was closed. During the 24 years since I conducted that first hearing, creditors were paid \$470 million, which consisted of 100% of creditors' prepetition claims plus an additional \$63 million in post-petition interest. This unprecedented payment to creditors in a bank liquidation case was a result of aggressive pursuit of claims against the FDIC by Southeast's Trustees, Bill Brandt and Jeff Beck working with their attorneys at Greenberg Traurig. In addition, the Trustees also had to oversee the liquidation of numerous parcels of real estate and the sale of a collection of over 2,000 pieces of art. Despite the complexity of the case, there were very few contested matters—a testament to the professionalism of all the attorneys involved in the case. I congratulate the Trustees, their attorneys, and of course, the Court staff who put in many hours helping manage this case.

### **Valuing Mixed-Use Property In A Chapter 11 Case** **By: Jordan Wiegele, Law Clerk To The Honorable Paul G. Hyman, Jr.**

In a chapter 11 case, it is clear that under 11 U.S.C. § 1123(b)(5), a debtor may not modify the rights of a secured creditor which holds a claim secured only by a security interest in real property that is used solely as the debtor's principal residence. The same clarity does not exist, however, when the real property at issue is mixed-use property—when the real property is both the debtor's principal residence and some kind of income-producing property or other non-residential property.

(continued on page 7)

### **Is It Really Too Late? A Surrender Election Does Not Last Forever** **By: Latriece Jones, Law Clerk to the Honorable Chief Judge Laurel Isisoff**

In *In re Kurzban*, 2017 WL 3141915 (Bankr. S.D. Fla 2017) the creditor sought to reopen a bankruptcy case seven years after the debtors received their bankruptcy discharge. The creditor's basis for wanting the bankruptcy case reopened was that the debtors indicated in their schedules that they would surrender certain real property that secured the debt owed to the creditor and the subject of a pending foreclosure action. The debtors received their discharge without surrendering the property. However, the creditor dismissed its foreclosure action and

(continued on page 7)





## FROM THE JUDGES' CHAMBERS - PRACTICE TIPS

### THE DEVIL IS IN THE DETAILS

By: Judge Cristol's Chambers

Frequently, proposed orders are submitted for entry with minor or significant errors that require chambers staff to return the orders to the attorney practitioners for correction and re-submission. Not only is this an inefficient practice, it is a poor reflection of a practitioner's professionalism and attention to detail. Although law firms allow legal assistants and paralegals to prepare and submit orders, practitioners should be mindful to always check a proposed order for errors before submitting same.

Common errors which required editing or re-submission include:

- Incorrect Court division in case style
- Incorrect case number or judge designation
- Incorrect court paper number reference
- Incorrect courtroom number or court address in orders continuing hearing
- Omission of courtroom number or court address in orders continuing hearing
- Non-use of Local Forms
- Formatting errors, i.e. insufficient top margin for electronic signature
- Wage Deduction Orders not signed by counsel and debtor

### YOU LOST; NOW, WHAT?

By: Alexandra M. Wolff, Esq.

Law Clerk to the Honorable Judge Raymond Ray

After spending hours preparing and arguing your case, the judge denied your motion. Now, your client is upset – and so are you. You may think that your choices are limited to filing either a motion to reconsider or a notice of appeal; however, you can do both. When you file certain types of motions to reconsider within fourteen days of the order, your time to file a notice of appeal is tolled. Filing a motion to reconsider can afford your client more time to weigh whether to appeal, but that does not mean your motion is a mere placeholder.

The most common mistake litigants make when filing a motion to reconsider is failing to apply the correct

(continued on page 8)

### TIPS FOR DEBTORS FILING WITHOUT AN ATTORNEY

By: Michael Bolling

Law Clerk to the Honorable John K. Olson

Proceeding in bankruptcy without an attorney can be a frightening and intimidating experience. However, there are resources for individuals considering filing for bankruptcy without an attorney, such as the free pro se clinics offered in Miami, Fort Lauderdale, and West Palm Beach. Each clinic features a 45 minute video overview of the procedures for filing for bankruptcy, followed by a question and answer session staffed by pro bono attorneys. While the pro bono attorneys at the free pro se clinics do not represent you or provide you with specific legal advice, they are available to give general advice on bankruptcy matters. These free clinics could be an important first step in deciding whether to file for bankruptcy, with or without an attorney. Please see our website at [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) for more information regarding dates and times for these important pro se clinics.

(continued on page 8)

**FROM THE JUDGES' CHAMBERS - CASE NOTES (continued)****Valuing Mixed-Use Property In A Chapter 11 Case (continued from page 5)**

Bankruptcy courts around the country have not reached a consensus on how to treat mixed-use property under § 1123(b)(5), and the Eleventh Circuit Court of Appeals has not addressed the issue. Courts generally take one of three approaches: (1) a bright-line test allowing modification of a lien if the collateral is the debtor's primary residence and is also used to produce income; (2) a bright-line test prohibiting modification of a lien if the collateral is real property that is also the debtor's primary residence, without regard to any other use of the property; and (3) a case-by-case approach.

From a practical standpoint, all three approaches have some merit. However, the question of how to treat mixed-use property under § 1123(b)(5) is a question of statutory interpretation. Thus, before considering the practical applications of any of the approaches, courts must engage in a statutory analysis, applying the traditional canons of statutory interpretation.

That is precisely what the Court did in *In re Hock*, Case No. 14-32157-BKC-PGH (Aug. 15, 2017). In a detailed analysis, the Court found, among other things, that the plain language of the statute is clear and unambiguous and that if Congress had meant to apply the anti-modification provision to claims secured only by real property used only or exclusively as the debtor's principal residence, Congress could easily have stated that a chapter 11 debtor may modify the rights of holders of secured claims, "other than a claim secured only by a security interest in real property that is exclusively the debtor's principal residence." Accordingly, the Court in *In re Hock* prohibited the debtors from modifying the rights of the secured creditor as the secured creditor's claim was secured only by a security interest in real property that was the debtors' principal residence—even though the real property was also used by the debtors to produce income.

**Is It Really Too Late? A Surrender Election Does Not Last Forever (continued from page 5)**

entered into loan modification negotiations with the debtors. Years after the foreclosure action was dismissed and after the loan modification proved unsuccessful, the creditor filed a new foreclosure action which the debtors were contesting. The creditor sought to reopen the bankruptcy case to seek a bankruptcy court order compelling the debtors to stop fighting the foreclosure.

The creditor relied on the Eleventh Circuit's ruling in *Failla v. Citibank, N.A.*, 838 F. 3d 1170 (11th Cir. 2016) which held that a debtor who indicates in a bankruptcy case an intent to surrender property that is involved in a foreclosure proceeding is precluded from taking any action that would interfere with the secured creditor's right to obtain legal title or possession of the property. Judge Isicoff held that the ruling in *Failla* was inapplicable because the creditor dismissed the foreclosure action pending at the time of the bankruptcy case and thereafter entered into a loan modification procedure with the debtors. Judge Isicoff wrote "[a] debtor's decision to surrender may be binding in a foreclosure action pending, or ripe for filing, at the time of the bankruptcy case in which the intent to surrender is made, but it certainly is not binding in a subsequent foreclosure action, which action, under applicable non-bankruptcy law, can only relate to defaults that did not even exist at the time the decision to surrender was made."

**FROM THE JUDGES' CHAMBERS - PRACTICE TIPS (continued)****YOU LOST; NOW, WHAT? (continued from page 6)**

standard, leaving the court to apply the correct standard and interpret the motion. If you file a motion to reconsider within 14 days of the order, then your motion should cite Fed. R. Civ. P. 59(e) (incorporated by Fed. R. Bankr. P. 9023) and use the “newly-discovered evidence or the demonstration of manifest errors of law or fact” standard. Alternatively, you may file under Fed. R. Civ. P. 60(b) (incorporated by Fed. R. Bankr. P. 9024) at any time and rely upon one of the six reasons for relief listed in that rule (including mistake, excusable neglect, etc.). (Note: If you file the Rule 60(b) motion within 14 days of the order, then it will toll the time to file an appeal.) Motions to reconsider are difficult to win because they are an “extraordinary remedy,” but using the correct standard can augment your chances of success.

Authority: Rease v. Harvey, 376 F. App'x 920, 921 (11th Cir. 2010) (citing Griffin v. Swim-Tech Corp., 722 F.2d 677, 680 (11th Cir. 1984)) (relief is an “extraordinary remedy”). Lopez v. AT & T, Corp., 457 F. App'x 872, 875 (11th Cir. 2012) (citing Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007)) (standard for Rule 59(e) Motion). Fed. R. Bankr. P. 8002(b) (rules for extending time to file an appeal upon filing a motion to reconsider), 9023 (incorporating Rule 59 and stating that such a motion must be filed within 14 days), 9024 (incorporating Rule 60).

**TIPS FOR DEBTORS FILING WITHOUT AN ATTORNEY (continued from page 6)**

If you do end up filing for bankruptcy without an attorney, YOU are responsible for protecting your own legal rights. The Bankruptcy Noticing Center will send you all notices and orders required to be served by the clerk of the bankruptcy court regarding your case via U.S. Mail. Be sure to diligently check your mail and carefully review all notices that you receive. If your address changes, you must immediately notify the court in writing. These important documents could alert you to requirements to file information with the clerk's office, dates and times for your meeting of creditors and other hearings, and other significant matters that may affect your legal rights. You may file a “Debtor's Request to Receive Notices Electronically Under DeBN Program (Local Form 80) to receive court served notices and orders via e-mail, but you will continue to receive documents served by all other parties via U.S. mail or in person pursuant to court rules.

If you want something to happen in your bankruptcy case, you can file a motion and deliver it to the bankruptcy clerk's office in person or via U.S. Mail. The Judge will then grant, deny, or set your motion for hearing. Keep in mind that Federal Rule of Bankruptcy Procedure 9003 prohibits “ex parte contacts,” which means that you are prohibited from directly contacting the judge or the judge's chambers concerning matters affecting your bankruptcy case. All communication regarding your case should be submitted to the bankruptcy clerk's office.



**FROM THE JUDGES' CHAMBERS - CASE NOTES (continued)****Judge Kimball Case Note (continued from page 5)**

seeking various relief including avoidance of fraudulent transfers under the actual fraud and constructive fraud provisions of section 548 and section 544, incorporating Florida Statutes. The debtors' principal operated a fraudulent scheme, taking more than \$12 million from investors, and causing the debtors to deposit the "investments" in their own bank accounts. Then the debtors' principal caused the debtors to transfer funds among themselves and to make payments and transfers to and on behalf of himself and his family. In the trustee's adversary proceedings, the transfers the trustee sought to avoid were the debtors' deposits of their own assets into their own unrestricted bank accounts. The trustee argued that the banks were initial transferees of the debtors' funds, that the transfers could be avoided, and that the trustee was entitled to judgment against each bank in the total amount of all deposits made by the debtors to the relevant bank during the four year period prior to the commencement of bankruptcy. Not surprisingly, the debtors had left the relevant accounts empty or slightly overdrawn.

Each of the three bank defendants filed motions to dismiss. Among other things, the defendants argued that a debtor's deposit of its own funds into its own unrestricted bank account is not a "transfer" for purposes of fraudulent transfer analysis. The defendants also argued that they were "mere conduits" and could not be subject to transferee liability under section 550.

Under the Bankruptcy Code and Florida law, a transfer involves the disposing of or parting with property or an interest in property. Judge Kimball ruled that when a depositor places its own funds in an unrestricted bank account, the depositor is not truly disposing of or parting with the funds as contemplated by the definition of the term "transfer." For all practical purposes, the depositor to a traditional demand deposit account retains complete autonomy over the funds, with the unfettered ability to withdraw them, transfer them to other accounts, use them to write checks, or use them to make wire or other electronic payments. Though recognizing the technical debtor-creditor relationship that forms when one makes a deposit with a bank, Judge Kimball followed a line of cases holding that, at least for purposes of fraudulent transfer analysis, the special rights of a depositor vis-a-vis the bank take precedence over the technical legal relationship. One such case is the recent decision *Ivey v. First Citizens Bank & Trust Co. (In re Whitley)*, 848 F.3d 205 (4th Cir. Jan. 31, 2017), in which the Fourth Circuit held that "when a debtor deposits or receives a wire transfer of funds into his own unrestricted checking account in the regular course of business, he has not transferred those funds to the bank that operates the account [because] the debtor is still free to access those funds at will . . . ." *In re Whitley*, 848 F.3d at 208. A petition for writ of certiorari was filed in *In re Whitley*, and is currently pending before the Supreme Court of the United States, on the issue of whether the definition of "transfer" under section 101 (54) includes a debtor's deposit into his own bank account.

The trustee pointed to the legislative history of section 101(54), which states that the term includes "[a] deposit in a bank account or similar account." S. Rep. No. 95-989, at 27 (1987). According to Judge Kimball, the Senate Report merely provides support for the breadth of the concept of transfer, to include deposits into bank accounts when that act is otherwise within the scope of the term. When a debtor deposits funds into an account of another, or into an account where the debtor's interests are limited, for example, such a deposit may be a transfer. However, a debtor's regular deposits into the debtor's own unrestricted bank accounts are not transfers within the meaning of section 101 (54) or Florida law. Because all of the transfers alleged in the trustee's complaints involved deposits by the debtors of their own funds into their own unrestricted bank accounts, Judge Kimball ruled that the complaints failed to describe any "transfers" that were avoidable under applicable law.

(continued on page 10)

**FROM THE JUDGES' CHAMBERS - CASE NOTES (continued)****Judge Kimball Case Note (continued from page 9)**

Even if the deposits constituted “transfers,” Judge Kimball ruled that the fraudulent transfer claims were also due to be dismissed because the banks were not “transferees” under section 550(a)(1) but rather “mere conduits” under Eleventh Circuit precedent. The “mere conduit” defense is an equitable exception crafted by the Eleventh Circuit to protect recipients of fraudulently transferred funds from liability when those recipients cannot legally exercise control over those assets and so should not be held responsible for merely holding and/or disposing of the assets for the benefit of the debtor or another. To establish the mere conduit defense, a defendant must show both that it did not have legal control over the assets that it received and that the defendant acted in good faith and as an innocent participant in the fraudulent transfer. There was no dispute that the defendants lacked control over the debtors’ monies since the debtors maintained complete autonomy over their bank accounts. Regarding the element of good faith, Judge Kimball ruled that when the fraudulent transfer defendant is a banking institution that conducts routine banking services and the transfer in question is a deposit into the debtor’s own demand deposit account, lack of good faith may only be proven by showing that the defendant actually knew that the debtor was acting in an illegal manner. Judge Kimball found that the complaints failed to show that the banks had actual knowledge of the illegal acts of the debtors’ principal and, therefore, the banks were not “transferees” from whom the trustee could recover under section 550.

Such a ruling at the motion to dismiss stage is significant as the mere conduit defense is an affirmative defense to be proven by the defendant. In general, plaintiffs need not anticipate defenses in their complaints. However, Judge Kimball ruled that the court could consider the application of the affirmative defense in resolving the motions to dismiss because the complaint affirmatively and clearly showed the applicability of the defense. Because other claims presented by the trustee necessitated a showing that the defendants had actual knowledge of the illegal acts of the debtors’ principal, and the complaints failed to meet that standard, Judge Kimball ruled that it was appropriate to dismiss the fraudulent transfer claims as a result of the mere conduit defense.

Because the trustee failed to request leave to amend the complaints, Judge Kimball dismissed each of the complaints with prejudice.

Judge Kimball addressed a number of other aspects of the case in this decision. Members of the bar are encouraged to read the full decision for a complete understanding of the case.

**US BANKRUPTCY COURT, SDFL RECENT ORDERS ENTERED  
FOR ACCESS TO THESE ORDERS VISIT [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)**

- AO 2017-04 Adoption of Interim Local Rules 1019-1(J)(1), 1073-1(B)(3)(a), 3002-1(B), and 9013-1(D)(3)
- AO 2017-03 Order Establishing Procedures For Referrals of Certain Suspected Bankruptcy Crimes
- AO 2017-02 Proposed Amended Local Form “Chapter 13 Plan” and Opportunity for Public Comment
- AO 2017-01 Adoption of Interim Local Rule 1073-1



## **NEW COURT WEBSITE REDESIGN WILL LAUNCH DECEMBER 4, 2017**

Coming soon! On Monday, December 4, 2017 the court will launch a redesigned website. Pivotal information for doing business with the court can be viewed and obtained through a variety of easy-to-navigate and interactive tools. The website redesign was initiated to make more court information available, make it easier to explore and search, and to make it both mobile-friendly and interactive for our customers.

The website makes your visit more efficient through the following new enhancements:

- Various custom searches to save time
- Forms and latest news by categories for easier research
- Collapsible content for less scrolling (especially on mobile devices)
- Interactive pages such as the Bankruptcy Timeline and various educational videos
- Relevant statistical information (3 year snapshot and archived data for further research)
- Information customized by user (debtor, creditor, trustee, attorney, self-represented)

The mobile-friendly interface lets you access the needed information at your convenience, whether in the office or on the go, from a smart phone or tablet device.

## **GOODBYE “BANKRUPTCY BUZZ” - HELLO “COURTHOUSE BEACON NEWS”**



The Court held an in-house contest to rename the court newsletter by asking staff to submit ideas for a new name and logo. Twenty-eight entries were submitted for in-house voting to select the top five, which ended up as the top six, due to a tie. These top voted six entries were reviewed by the Judges and the Clerk of Court. Courthouse Beacon News, submitted by Cameron Cradic was selected as the new court newsletter name. Bankruptcy Buzz will live on in archives with its history of twenty-one issues over the last seven years. Courthouse Beacon News debuts with this December 2017 issue.



## TOP TEN IT SECURITY TIPS

By: Tony Diaz

- ◆ **Patch your computer's System Setup functions so that software and operating system updates are automatic.** An un-patched machine is more likely to have software vulnerabilities that can be exploited.
- ◆ **Install protective software.** Anti-Virus, Firewall and Malware blockers are available for Windows, Mac, and Linux. When installed, the software should be set to scan your files and update your virus definitions on a regular basis.
- ◆ **Choose strong passwords.** Strong passwords use a combination of letters, numbers, and special characters to create a mental image or an acronym that is easy for you to remember. Create a different password for each important account, and change passwords regularly.
- ◆ **Back up on a regular basis.** Regular, scheduled backups can protect you from the unexpected. Keep a few months' worth of backups and make sure the files can be retrieved if needed. Learn how to back up your system.
- ◆ **Control access to your machine.** Don't leave your computer in an unsecured area, or unattended and logged on, especially in public places. This includes cubicles and Quickstations. The physical security of your machine is just as important as its technical security.
- ◆ **Use email and the internet safely.** Ignore unsolicited emails, and be wary of attachments, links, and forms in emails that come from people you don't know, or which seem "phishy." Avoid untrustworthy (often free) downloads from freeware or shareware sites. Learn more about spam filtering.
- ◆ **Use secure connections.** When connected to the internet, your data can be vulnerable while in transit. Use remote connectivity and secure file transfer options when logged in to your system.
- ◆ **Protect sensitive data.** Reduce the risk of identity theft. Securely remove sensitive data files from your hard drive, which is also recommended when recycling or re-purposing your computers. Use the encryption tools built into your operating system to protect sensitive files.
- ◆ **Use desktop firewalls.** Mac and Windows computers have basic desktop firewalls as part of their operating systems. When set up properly, these firewalls protect your computer files from being scanned.
- ◆ **Most importantly, stay informed.** Stay current with the latest developments for your operating systems.



## FILLABLE PDF FORMS MUST BE FLATTENED BEFORE FILING - HERE'S HOW TO DO IT

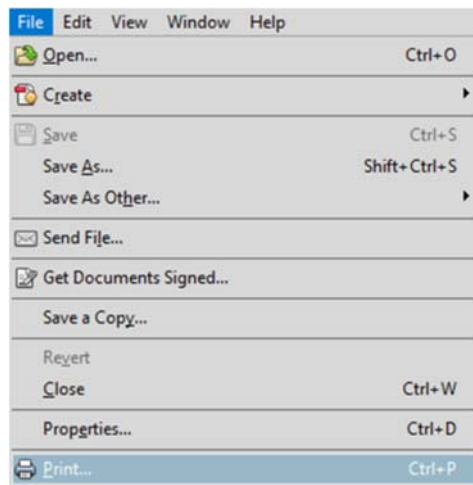
By Maria Cervino

Most Official Bankruptcy Forms and several local forms are available in a fillable PDF format. The advantage of using a fillable form is that it can be filled-in electronically and printed, saved or automatically sent by email. Additionally, you can rest assured your electronic form will look and print exactly as it should across various computer platforms. Conversely, a disadvantage of using a fillable form is that it remains fillable unless it is "flattened" to remove the interactive features. What this means is that images, text boxes and other fields become integrated into the PDF. Flattening **prevents** other users from manipulating or editing the form information, especially if the form is electronically filed in CM/ECF. **ALL** electronically filed interactive forms must be "flattened" to ensure that they do not contain fillable/modifiable fields.

### How to "flatten" a fillable PDF file.

Using Adobe Acrobat, follow the steps below to "**flatten**" a fillable PDF form:

1. Select File, then select Print



2. Change the Printer name to **Adobe PDF** by clicking on the drop down arrow and selecting Adobe PDF



3. Click Print
4. Specify desired location and file name to save document, then select SAVE
5. The "**flattened**" PDF may now be electronically filed in CM/ECF



## FREE BANKRUPTCY CLINICS

**FREE PRO SE CLINICS AVAILABLE AT THE LOCATIONS AND TIMES BELOW!** Each clinic features a 45 minute video providing an overview of the procedures for filing bankruptcy, followed by Question & Answer Sessions staffed by pro bono attorneys who are available to give general advice on bankruptcy matters. They do **NOT** represent you and do **NOT** provide you with legal advice regarding your particular circumstances. You are responsible for responding to any pleadings and for protecting your own legal rights. This is a **FREE** service and the attorneys are not there to attempt to acquire you as clients, or to ask you to pay them for advice or future services.

**SPONSORED BY:** Dade Legal Aid Put Something Back Pro Bono Project, Legal Aid Society of Palm Beach, Inc., Florida Rural Legal Services, Inc., The American College of Bankruptcy Foundation & The Bankruptcy Bar Association of the Southern District of Florida

### \*BANKRUPTCY COURT – MIAMI DIVISION: 301 NORTH MIAMI AVENUE, TRAINING ROOM

Each session will be held on a Friday from 12 p.m. – 2:00 p.m. on the following dates

|                  |                   |                  |
|------------------|-------------------|------------------|
| December 8, 2017 | May 4, 2018       | October 5, 2018  |
| January 12, 2018 | June 8, 2018      | November 2, 2018 |
| February 9, 2018 | July 6, 2018      | December 7, 2018 |
| March 9, 2018    | August 3, 2018    |                  |
| April 6, 2018    | September 7, 2018 |                  |

### \*BANKRUPTCY COURT - FORT LAUDERDALE DIVISION: 299 EAST BROWARD BOULEVARD, ROOM 112

Each session will be held on a Friday from 12 p.m. – 2:00 p.m. on the following dates

|                   |                   |                |               |
|-------------------|-------------------|----------------|---------------|
| December 15, 2017 | February 16, 2018 | April 20, 2018 | June 22, 2018 |
| January 19, 2018  | March 16, 2018    | May 18, 2018   |               |

### \*BANKRUPTCY COURT - WEST PALM BEACH DIVISION: 1515 NORTH FLAGLER DRIVE, 8TH FLOOR IN DESIGNATED COURTROOM

**Courtroom A:** Wednesday, December 6, 2017 from 12:00 p.m.—1:30 p.m.

**Courtroom B:** The following 2018 sessions will be held on Tuesdays from 12 p.m. – 1:30 p.m.

|                   |                |                    |                   |
|-------------------|----------------|--------------------|-------------------|
| January 16, 2018  | April 17, 2018 | July 17, 2018      | October 16, 2018  |
| February 13, 2018 | May 15, 2018   | August 14, 2018    | November 6, 2018  |
| March 13, 2018    | June 12, 2018  | September 18, 2018 | December 11, 2018 |

**STUART/PORT SAINT LUCIE/INDIAN RIVER: PETER & JULIE CUMMINGS LIBRARY, DETERLIZZI ROOM; 2551 MATHE-SON AVENUE, PALM CITY, FL 34990** “Sponsored by Martin County Bankruptcy Committee and Martin County Library System’s “Lawyers in the Library” Program – For information call 772-419-0057”. The following sessions are on Thursdays from 6:00 p.m. – 8:00 p.m.:

|                  |                |                   |
|------------------|----------------|-------------------|
| January 11, 2018 | May 10, 2018   | September 7, 2018 |
| February 8, 2018 | June 7, 2018   | October 4, 2018   |
| March 8, 2018    | July 12, 2018  | November 8, 2018  |
| April 5, 2018    | August 9, 2018 | December 6, 2018  |

**TREASURE COAST BANKRUPTCY CLINICS (INDIAN RIVER, SAINT LUCIE, MARTIN, OKEECHOBEE) SEATING IS LIMITED PLEASE CALL FLORIDA RURAL LEGAL SERVICES FOR MORE INFORMATION AND TO REGISTER 772-466-4766 EXT. 7016**  
The following 2018 sessions are on Wednesdays from 2:00 p.m. — 4:00 p.m. except in July.

|                  |               |                   |                  |
|------------------|---------------|-------------------|------------------|
| January 3, 2018  | April 4, 2018 | July 5, 2018      | October 3, 2018  |
| February 7, 2018 | May 2, 2018   | August 1, 2018    | November 7, 2018 |
| March 7, 2018    | June 6, 2018  | September 5, 2018 | December 5, 2018 |

\*You may **NOT** bring cell phones or electronic devices into the courthouse or you will be denied entry. Cell phones and electronic devices will not be stored for you.

FOR FURTHER INFORMATION, PLEASE CONTACT:

|                          |                      |                               |
|--------------------------|----------------------|-------------------------------|
| Miami:                   | (Karen Ladis)        | kladis@dadelegalaid.org       |
| Fort Lauderdale:         | (Kimberly Salamone)  | ksalamone@ntmlawfirm.com      |
| West Palm Beach:         | (Rilyn Carnahan)     | rilyn.carnahan@gmlaw.com      |
|                          | (Steven S. Newburgh) | snewburgh@mclaughlinstern.com |
| Stuart/Port Saint Lucie: | (Jon Martin)         | lmbklaw@gmail.com             |
| Okeechobee/Indian River: | (Carolyn Fabrizio)   | carolyn.fabrizio@frls.org     |





## LAND OF THE FREE

By: Maggie Ferere

“Land of the free”? Oh yes, my friends, the USA is definitely the land of the free. This was not more meaningfully reinforced to me than when I was invited to participate in a Naturalization Ceremony before the Honorable William P. Dimitrouleas on August 18, 2017.

Every couple of months in the Fort Lauderdale division of the Southern District of Florida, dozens of smiling immigrants are welcomed into a courtroom to take the most important oath they may ever take in their entire lives.

The U.S. District court routinely prepares for this prestigious event and things usually go very smoothly. However, the day before the ceremony, notification was given that the color guard from the local American Legion post would be unable to participate in the ceremony. It was suggested that court employees fill in to carry the flags at the ceremony. My bankruptcy clerk’s office coworker Lorenzo Rodriguez and I, along with Andre Wong from the district court clerk’s office, felt excited and honored when we were invited to participate in what turned out to be a memorable event for us all.

The naturalization ceremony began with the opening of the court and seating of the Judge. Lorenzo, Andre and I entered the courtroom and proudly presented the colors. Judge Dimitrouleas introduced us to the petitioners by name as three Federal employees who had taken the oath they were about to take and how proud we were to be working for a nation that had opened their arms so freely to us: Andre from China, Lorenzo from Cuba, and me from Haiti. After the National Anthem played, the petitioners approved for citizenship were presented by the Hearing Examiner from the U.S. Citizenship and Immigration Services and the judge administered the following Oath of Renunciation and Allegiance to them.

*I hereby declare on oath that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen;*

*that I will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic;*

*that I will bear true faith and allegiance to the same;*

*that I will bear arms on behalf of the United States when required by law;*

*that I will perform noncombatant service in the armed forces of the United States when required by law;*

*that I will perform work of national importance under civilian direction when required by law; and*

*that I take this obligation freely without any mental reservation or purpose of evasion.*

*So help me God.*



The pledge of allegiance followed, then the retiring of the colors. A member of the bar welcomed the new citizens with a brief speech and the judge’s closing remarks ended the ceremony. I proudly took my oath of United States citizenship on February 22, 1984 and I remember that day like it was last week.

This experience was truly a privilege. Whether you are a naturalized citizen or a citizen by birth, congratulations. We all live in the greatest country in the world.





**SEALED VS. REDACT DOCUMENT REQUESTS**

By: Lorraine Adam

The July 2014 issue of the court newsletter detailed how to obtain an order to file documents under seal. A Motion to Redact requires an order as well, but this type of motion also requires a fee and is processed in a different manner. The following explanation provides clarity as to which event to select within CM/ECF.

| SEAL   | REDACT  |
|--|---|
| <p>11 USC § 107(b) gives the court authority to seal a document in order to:</p> <ul style="list-style-type: none"> <li>(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information;</li> <li>or</li> <li>(2) <u>protect</u> a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.</li> </ul> <p>While transparency is key to a court docket, once the court approves the filing of the document under seal, the docket entry has only and no content description OR public image.</p> | <p>FRBP 9037 requires an <u>efiler</u> to <u>redact</u> four items that require privacy protection:</p> <ul style="list-style-type: none"> <li>(1) Social security Number(s);</li> <li>(2) Name(s) of minor children;</li> <li>(3) Date(s) of birth; and/or</li> <li>(4) Financial account number(s).</li> </ul> <p>The responsibility for redaction rests with the filer. If any of the above fails to be redacted, Local Rule 5005-1(A)(3) directs the filer to file an ex parte motion, <u>accompanied by the required filing fee</u>, and simultaneously file an amended redacted document as a corrective measure.</p> |

To test your knowledge of when to seal or when to redact, review the scenarios below and decide which motion is appropriate: Seal or Redact.

1. An Amended Statement of Social Security Number was e-filed using the event: Amended Document. \_\_\_\_\_
2. Debtors listed the full names of their children (ages 2 and 4) on Schedule J. \_\_\_\_\_
3. Payment advices are filed with the debtor’s full social security number on the pay stubs attached to Local Form 10. \_\_\_\_\_
4. A Proof of Claim was filed with exposed financial account numbers. \_\_\_\_\_
5. Divorce settlement papers are attached to a Motion to Deconsolidate that include the full name and date of birth of a minor child. \_\_\_\_\_



### ANSWERS TO SEAL VS. REDACT QUIZ ON PAGE SIXTEEN

1. An Amended Statement of Social Security Number was e-filed using the event Amended Document, but that event discloses the document's content. Therefore, a Motion to Redact is needed as a corrective measure. The correct entry should have been Statement of Social Security Number since this event restricts the PDF image from public view.
2. Debtors listed the full names of their children (ages 2 and 4) on Schedule J. The dependent information required on Schedule J requests the relationship and age, not the names. Therefore, a Motion to Redact is appropriate as a corrective measure. When refileing Schedule J, dependents are to be listed as "son" or "daughter", and may include other dependent relative relationships.
3. Payment advices are filed with the debtor's full social security number on the pay stubs attached to Local Form 10. A Motion to Redact is appropriate as a corrective measure since a social security number is one of the four items an e-filer is responsible for redacting.
4. A Proof of Claim was filed with exposed financial account numbers. A Motion to Redact is appropriate as a corrective measure since financial account numbers are one of the four items an e-filer is responsible for redacting.
5. Divorce settlement papers are attached to a Motion to Deconsolidate that include the full name and date of birth of a minor child. A Motion to Redact is appropriate as a corrective measure since names of minor children are one of the four items an e-filer is responsible for redacting.

### UPCOMING COURT HOLIDAY CLOSINGS

Christmas: Friday, December 22, 2017 the court will close at 2 pm \*

Christmas Day - Monday, December, 25, 2017

Day After Christmas, Tuesday, December 26, 2017\*

New Year's Day - Monday, January 1, 2018

Birthday of Martin Luther King Jr. - Monday, January 15, 2018

Washington's Birthday - Monday, February 19, 2018

\*(See this Court's General Order 17-04)

### 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:  
[Debbie\\_Lewis@flsb.uscourts.gov](mailto: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.**