

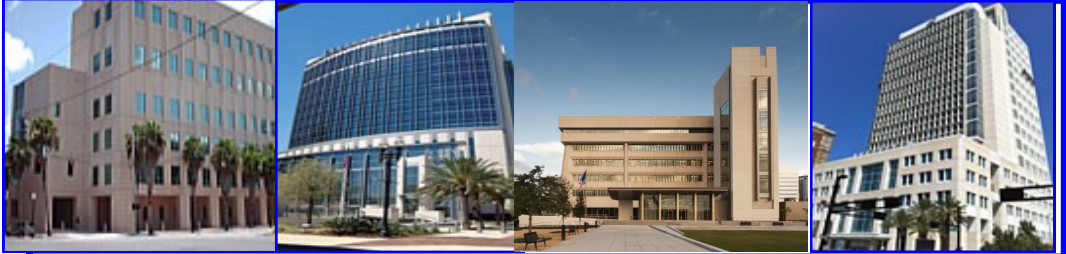
THE COURT CONNECTION

**United States Bankruptcy Court
Middle District of Florida
Jacksonville, Orlando, and Tampa/Fort Myers Divisions**

MISSION STATEMENT
Our Court serves the public by processing and deciding bankruptcy cases with fairness, impartiality, and excellence, while treating everyone with dignity, integrity, and respect.

July 2013

The Court Connection



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Stay Tuned....a Story of How Change Happens



By: Chief Judge Karen S. Jennemann

As Chief Judge, I have focused on ways to unify the procedures and practices we follow throughout the District. Uniformity helps our staff administer cases, helps attorneys and their staff provide good legal advice to their clients, and helps litigants understand the rules of the games.

The most common type of motion parties file is the Motion for Relief from Stay. During the last six months (January – June, 2013), parties filed 5,857 stay motions. Thinking it made sense to try to tackle a procedure that affected so many parties, I asked our change guru, **Raymond Waguespack**, to identify our current practices. He, in turn worked with **Ed Comey**, Judge Williamson’s cracker-jack law clerk, to explain how we process a typical stay motion.

Is anyone surprised that we found at least 12 different procedures for how one simple motion is treated? The differences depended on the judge, the division, the bankruptcy chapter, and, sometimes, whether a case manager had received an e-mail outlining a new procedure years ago. Each different procedure was logical and, somehow, our incredible staff kept everything moving along smoothly. It was obvious however that everyone would benefit if we could adopt one set of rules.

My next question to Raymond and Ed was to identify the “*best practice.*”

“And that is how change happens. One gesture. One person. One moment at a time.”

-- Libba Bray

“Change is inevitable. Progress is optional.”

-- Tony Robbins

“Your life does not get better by chance, it gets better by change.”

-- Jim Rohn

Chief Judge Article (continued):

What makes the most sense in light of the three criteria we use: Is the procedure fair? Is it as simple as possible? Is it necessary? They responded that the procedures were so very different more input from attorneys was needed across the district as to what practices they preferred.

Luckily, we have an active, district-wide **Steering Committee** led by the intrepid **Elena Ketchum**. She gathered her troops with the charge to recommend uniform district-wide stay procedures. They, in turn, also sought input from attorneys throughout the district. With the help of our survey wizard, **Jill Norris**, the Steering Committee crafted a survey that was sent to every attorney with a current CM/ECF password.

The Committee reviewed and discussed the hundreds of survey responses they received. Attorneys from throughout the District and from all practice types shared their opinion as to what stay procedures they preferred. Their opinions were considered by the Steering Committee and were provided to the Bankruptcy Judges.

After much deliberation and thought, on June 7, 2013, the Steering Committee made eight recommendations as to the stay procedures we should implement on a district-wide basis. On June 21, the Bankruptcy Judges met and accepted most of the recommendations. We are still working on a couple of items but, by and large, we are well on our way to having a district-wide set of procedures applicable to all stay motions.

I am pleased to announce that, as a result of everyone's collaborative efforts and input, starting August 1, 2013:

- We will allow negative notice on all motions for stay relief filed in Chapter 7 and 13 cases. (Remember in Orlando and Tampa motions often are not needed if the Chapter 13 Plan surrenders collateral or payments are made outside the Chapter 13 Plan.)
- Accompanying affidavits or verifications are no longer required although the movants are still permitted to submit them if they would like to establish standing or other factual issues.
- Parties must file a separate motion seeking stay relief from a co-debtor.
- If a motion is filed without permissive negative notice (or in a Chapter 11 case), the Court or, in the near future, the moving party will notice a preliminary non-evidentiary hearing on the motion.

Chief Judge Article (continued):

- The Court will not require the use of any specified form motions or orders. The Judges however are working to finalize sample “approved” motions and orders that the parties voluntarily can use in all divisions. The forms are optional.
- The Court also is developing a list of deficiencies we will monitor and procedures parties will need to take to address the problems without requiring movants to repay filing fees for deficient motions.
- The Court will grant requests to waive the 14 day delay period until an order becomes effective if: (1) the Motion seeks the relief, and (2) the Motion either attaches an affirmative consent from the debtor (not just a lack of response to a Motion served by negative notice) OR the Motion involves stay relief affecting Real Property.

If you are interested in reading more details, a copy of the Steering Committee’s Memorandum is available on my page on the Court website.

Our Clerk, **LeeAnn Bennett**, now is busy gathering information about our stay hearings to see if we can address the request of the Steering Committee to set standard hearing times for stay relief motions. We also are finalizing a few other details and working with staff to draft and implement these new procedures. We will keep you advised as we finalize and post our sample motions and orders and as we decide about standardized hearing dates. Once we finish our work, we will ask the **Local Rules Lawyers’ Advisory Committee** to formalize the procedure into a new local rule.

With the help of many people, by year-end we will have one single district-wide stay procedure. Stay tuned as we finalize the details.

I encourage you to share your thoughts on future projects. The Steering Committee now is drafting a survey on reaffirmation procedures. You will get a copy in the near future. Let us know what you prefer because this is how change happens in the Middle District of Florida.



****ATTENTION CM/ECF USERS******NEW FILING AGENT TOOL in CM/ECF**

The Bankruptcy Courts for the Middle District of Florida will implement filing agents in CM/ECF on August 1, 2013. A filing agent is a person, such as a paralegal or legal assistant, designated by an attorney to file documents and pleadings on an attorney's behalf. Filing agents are not "normal" agents and their names will not be listed on the docket. The attorney or trustee's name will show instead.

A learning module on filing agents can be found on the Court's website using the following link:

http://pacer.flmb.uscourts.gov/cmecf/training/filing_agents_attorneys_trustees.swf

The module demonstrates the different features of the filing agent tool in CM/ECF, including activation, updating individual user permissions, and deactivation.

The Court hopes that allowing Filing Agents direct access to CM-ECF will reduce the need for attorneys to change their passwords as staff leave their offices.

NEW EXPENSE REIMBURSEMENT GUIDELINES

The noticing procedures have changed in the Middle District. Because attorneys now incur a greater expense in serving most of the Court's orders, the Court has received several inquiries about its policy on expense reimbursements. Consistent with Bankruptcy Rule 2016 and Local Rule 2016-1(e), the Middle District has developed guidelines to assist professionals who submit employment and expense applications to the Court. The EXPENSE REIMBURSEMENT GUIDELINES follow and can also be found by clicking on the following link:

http://www.flmb.uscourts.gov/information/documents/expense_reimbursement_guidelines.pdf

UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA

www.flmb.uscourts.gov

EXPENSE REIMBURSEMENT GUIDELINES

Consistent with Local Rule 2016-1(e) and Bankruptcy Rule 2016, this expense reimbursement guideline is intended to serve as a guide to professionals who submit employment and expense applications to the Court. Reimbursement for expenses is confined to the actual and reasonable expenses that are necessary to perform the assignment. Any application for reimbursement must be supported by documentations as appropriate.

Factors relevant to a determination that the expense is proper include the following:

1. **Reasonable and Economical.** Whether the expense is reasonable and economical. (For example, first class and other luxurious travel mode or accommodations will normally be objectionable).
2. **Standard Practices.** Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant. The Court will consider the customary practice of the firm in charging or not charging non-bankruptcy clients for particular expense items. The practice should remain consistent regardless of the client. The Court recognizes that there will be differences in billing practices among professionals.
3. **Documentation.** Whether the applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (*e.g.* type of travel, type of fare, rate, destination), and the method of computation.
4. **Unusual Items.** Whether the applicant has explained unusual items in greater detail.
5. **Proration.** Whether the applicant has prorated expenses where appropriate between the estate and other cases (*e.g.*, travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.
6. **Actual Cost.** Whether expenses incurred by the applicant to third parties are limited to the actual amount billed to, or paid by, the applicant on behalf of the estate.

Expense Reimbursement Guidelines (continued):**Types of Reimbursable Travel and Expenses**

- Common carrier fees (coach), rental car fees (small and mid-size vehicles only), mileage calculated using the Internal Revenue Service's current optional standard mileage rate, tolls, and parking costs.
- Ground transportation such as taxis, buses, and subways.
- Tips to porters and baggage handlers.
- Meals and gratuities.
- Lodging.
- The actual cost of office supplies, facsimile, and copy services.
 - ◇ Internal photocopy expenses must be reasonable, not to exceed \$0.15 per page.
 - ◇ External photocopy expenses are reimburseable at cost.
 - ◇ Facsimiles should not exceed \$1.00 per page received.
- Postage.
- Messenger services, where necessity is shown.
- Computerized research (with supporting documentation, identified by client and matter).

Expenses Not Subject to Reimbursement

- Personal hotel expenses, such as movie rentals or gym fees.
- Alcohol and entertainment expenses.
- Repairs and maintenance work for personal vehicles.
- Office overhead expenses not particularly attributable to an individual client or case (such as word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges).
- Paralegal services (although not reimbursed as an expense, may be compensated as a paraprofessional under 11 U.S.C. § 330).
- Other professional services incurred without approval. A professional employed under 11 U.S.C. § 327 may not employ, and charge as an expense, another professional (i.e., special litigation counsel employing an expert witness) unless the employment is approved by the Court *prior* to rendering the employment.

REFLECTIONS ON THE 11TH CIRCUIT CONFERENCE

By: Tammy Branson, Branson Law



The 11th Circuit Court of Appeals Conference was held in Savannah, Georgia this year. It was a marvelous conference. Chief Judge Dubina received the distinguished American Inns of Court Circuit Professionalism Awards for the 11th Circuit. The award is given every two years to a lawyer or Judge whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standard of the legal profession and the rule of law.



Judge Dubina began his career in 1983 as a United States Magistrate Judge in the Middle District of Alabama. In 1986, President Ronald Reagan appointed Judge Dubina to the District Court Bench. In 1990, President Bush appointed Judge Dubina to the Eleventh Circuit, and, in 2009, he became the seventh Chief Judge of the United States Court of Appeals for the Eleventh Circuit. No one else in the federal judiciary has served in all three roles as a magistrate judge, district court judge, and court of appeals judge.

Aside from his highly regarded professional career, colleagues shared that Judge Dubina is a very caring man. One example was given by Eleventh Circuit Judge Ed Carnes: Some years ago, I had occasion to ask one of my colleagues for her permission to modify an opinion that we had been working on. She and another judge of our court were in Miami sitting on a panel, and I called her at their hotel. Toward the end of the conversation, she asked if the only reason I had called was the matter involving the opinion, and I said yes. She asked if there was anything else I wanted to inquire about, and I said no. She then reminded me that a hurricane was roaring ashore in Miami, told me that she and the other judge were trapped in the hotel with the windows boarded up and the wind howling (I had mistakenly thought the loud noise was a vacuum cleaner in the room) and they were frightened. She was more than a little upset at my apparent lack of concern about the safety and well-being of two of my colleagues. She also told me that Judge Dubina, who was in Montgomery, Alabama, just as I was, had called down there several times because he was concerned about them. Although the Miami airport was closed, he had offered to fly down to Florida, as close as he could get to Miami, rent a car, and drive down into the path of the hurricane to rescue them. In response to that, I told her the truth, which is that when it came to being a caring, concerned, compassionate person, I just couldn't compete with Joel Dubina and I didn't know many people who could. She quickly replied, "I know that if they crossed you and Joel, they'd get a normal human being."

The Conference also included guest speakers United States Supreme Court Justice Clarence Thomas, Canadian Supreme Court Justice Rosie Abella, the author of *Midnight in the Garden of Good and Evil*, John Berendt, and the author of *Praying for Sheetrock*, Melissa Faye Green. It was exciting to hear Justice Thomas and Justice Abella debate the differences in American and Canadian law and Justice Thomas' view on bankruptcy.

We were fortunate to have all of the Middle District and Magistrate Judges present along with so many distinguished Judges from the 11th Circuit. The conference was incredibly informative, mentally stimulating, and very entertaining.

FROM RESCUE TO THERAPY DOG

By: Charles R. Sterbach, Assistant U. S. Trustee

In the spring of 2009, I agreed to donate time at a local “no-kill” shelter that had too few volunteers and too many dogs abandoned or surrendered because of a poor economy. The shelter was home to over 200 dogs, and needed help preparing them for rescue/adoption. Sometimes my work required teaching dogs basic commands; sometimes providing a little grooming; and sometimes spending just a little one-on-one time with a new arrival. (Dogs are usually stressed out when they first arrive, but they calm down after a few weeks of regular food, exercise and TLC.) After a half-day training and indoctrination session, I was free to explore the kennels to get an idea of the kinds of dogs I would be working with. The first dog in the first kennel of the first wing of the shelter was Dancer, a 3-year old male black and white Siberian Husky. He had been found the previous December roaming the streets, and tested positive for heartworms. The shelter staff named him “Dancer”. (Apparently, all strays turned in that week received their names according to Santa’s reindeer in Clement Clarke Moore’s “’Twas the Night Before Christmas”.) My first meeting with Dancer did not go well. He was a little suspicious and reserved, but things improved quickly with the introduction of salmon dog treats.

I started working on a weekly basis with Dancer, who proved to have a good grasp of basic obedience commands when the mood struck him. His unknown original owner did well. Dancer cleaned up pretty well as he began the risky treatment for heartworms. He also exhibited excellent social skills. Whenever potential adoptive families came to the shelter, Dancer was on his best behavior, especially when young children were present. But there was no serious interest in adoption, and the vet staff started allowing him out of the kennel to wander around their offices because he was so gentle.

Even though I had never owned a Husky, I started wondering if Dancer would fit in at my house. Keep in mind: I was not looking to adopt a dog. My wife and I already had two young dogs, who were a handful and significantly smaller. She was absolutely against adding a third dog, especially a large dog. But the first time my wife met Dancer when she came to pick me up at the shelter, he made a spectacular first impression. He flipped a switch, and he was “on”. He ignored the guy with the salmon treats, followed her around the shelter, and demanded to her attention. Next thing I knew, I had an early Father’s Day present from my wife. All three dogs became a family instantly. He quickly became a favorite in the neighborhood, especially with young children. Because of his gentle demeanor, I wondered if Dancer could be trained for therapy work.

Therapy dogs typically visit hospitals, nursing homes, schools and other venues. They interact with patients, residents, and students, and often have a positive impact on people struggling with chronic depression, stress, loneliness, learning disabilities and other medical conditions. Recently 30 therapy dog teams have been organized and scheduled at LAX airport to roam the terminals and greet passengers stressed out by long lines and flight delays.

A good initial evaluation led to Dancer’s introduction to a local tester/observer for Therapy Dogs, Inc. in Orlando. And soon he started a training program at the Winter Park VA Hospital. In addition to close observation by the tester over a four week period, his test included a four-page list of basic commands, dexterity drills, measuring his reactions to tail/ear yanking, sudden loud noises and police sirens, and aggressive movements from strangers. Dancer not only passed his test on the first attempt, we quickly found ourselves as the newest therapy dog team in Winter Park.



We now have a schedule of 2 or 3 weekend visits each month that include church events, assisted living facilities, a Ronald McDonald House, rescue and adoption events at Lake Eola, and the Winter Park Public Library “Paws to Read” Program. In 2012, we worked in conjunction with the Central Florida SPCA Pet Visitation Program, which had about 20 therapy teams. This year we are enjoying even more venues with the Be An Angel Therapy Dog Ministries, which has over 100 teams in Central Florida. He can’t jump into the back of my SUV fast enough on Saturday mornings. The pictures with this article show Dancer at work. Kids from ages 8 to 80 seem to enjoy his visits. They rarely remember my name, but they always know Dancer.



Winter Park Public Library “Paws to Read”

Dancer recently completed some advanced obedience training, which will provide us with more opportunities and venues. The work has been rewarding, and the feedback has been universally positive. But there is a selfish side to this too. Huskies need a lot of exercise. They are always looking for physical and mental stimulation. At the end of the day, a tired Husky is a happy Husky.

Therapy dogs come in all shapes and sizes, all ages and breeds. If you have a dog that may be a good candidate for therapy dog work, or you have an interest in being part of a therapy dog team, please look me up in the U. S. Trustee Office, Suite 1100.

“Dogs, for a reason that can only be described as divine, have the ability to forgive, let go of the past, and live each day joyously. It’s something the rest of us strive for.”

-- Jennifer Skill from
The Divinity of Dogs: True Stories of Miracles Inspired by Man’s Best Friend

Dear POINT AND CLICK:

Q: I filed a Motion for Relief from Stay and paid the filing fee associated with the Motion. I received an Order Abating the Motion from the Court because the negative notice legend did not contain the proper amount of time for responses to be filed. When I tried to file an amended motion to correct the negative notice, I was charged another filing fee. Why was I charged another fee when I paid it with the initial motion?

A: Here is how to avoid an additional filing fee when amending a motion:

When filing an Amended Motion for Relief from Stay, select Bankruptcy – Motions/Applications/Objections. Be sure to select the first available event “Amended Motion for Relief from Stay.”

You will be required to type in the property description in the open text box.

Select the option “Filing Fee was paid with the Original Motion” to avoid assessment of an additional filing fee with the Motion.

Continue through the form making the applicable negative notice selection. Check the box next to “Refer to existing event(s)?” and choose “Motion,” which will then bring up all motions, objections and applications that have been filed in the case. Select the *original* motion that was filed. Read the docket entry that appears in the yellow box to make sure it is correct before submitting the docket entry.

WHAT TO EXPECT WHEN EXPECTING A *HURRICANE!*

Let’s face it. Hurricanes and tropical storms are a real and constant threat for Floridians. The hurricane season in the Atlantic runs from June 1st to November 30th, and The National Oceanic and Atmospheric Administration (NOAA) predicts somewhere between 13 and 20 named storms in 2013. By being prepared and understanding the Court’s emergency procedures, you can anticipate the effect a hurricane can have on your bankruptcy proceedings.

The Bankruptcy Court for the Middle District of Florida implemented a Continuity of Operations Plan (COOP) designed to ensure that our Court will be able to continue operation of their essential functions under a broad range of emergency situations, including national security threats, inclement weather, hurricanes, and other natural disasters.

When a storm or emergency event affects the community, Court personnel are notified by automated phone announcements containing instructions and important information. Key individuals form an “emergency team” tasked with responding to the emergency on behalf of the Court. Depending on the nature of the emergency, emergency team members may be required work from an affected courthouse, relocate to other courthouses or divisional spaces, or telework to perform essential court functions.

During an emergency event like a hurricane the Court will communicate emergency information and instructions to the public, Court personnel, external stakeholders, and parties in interest using a variety of methods, including CM/ECF messaging, Court notices, news media, the Clerk’s office main number, and the Court’s website. Be sure to check these resources to stay updated on all storm-related information that may affect the Bankruptcy Court in the event a hurricane blows through.

TECH TIPS

By: Richard Arendt, Assistant Systems Manager

Using Social Media (Facebook, Path, Twitter, YouTube, etc.):

Social media allows for quick and unfiltered comments representing a person and how they perceive events, people, and situations. Social media has made communication instantaneous among friends and groups.

However, users of social media should proceed with caution before commenting or posting information. Below are some tips to prevent using bad judgment when using social media.

Think twice before you post, tweet, or blog:

Occasionally, a person's mind is carried away by emotions which lead to posting of personal/private information on the internet. Keep in mind that not all things should be posted.

Internet postings (text, photos, or videos) remain accessible long after they are forgotten by the user. There's no such thing as a "private" social media site. Search engines can turn up posts years after the publication date. Comments can be forwarded or copied. Do not post anything on the Internet that you would not want to read on the front page of a newspaper. Think before you click on the Post button.

Respect your audience:

Always respect the dignity of others and post meaningful, respectful comments. If you ever feel angry or impassioned about a subject, refrain from posting until you are calm and level-headed. Show proper consideration for others' privacy and for topics that may be considered objectionable or inflammatory—such as politics or religion.

Court's policy on social media:

Internet postings of Court related content on social networking websites (Facebook, Twitter, blogs, etc.) by Court staff are prohibited. These postings, while perhaps done innocently, are available for the world to view and can be embarrassing for the Court. Statements posted on Facebook pertaining to the Court, Court matters, or cases could essentially flag the poster's page for monitoring by various sources (the media, bloggers, interested parties, and lawyers). While the employee may think the information will not be made public because it was in the private part of his or her Facebook page, a friend who has access can easily, and inadvertently, make the information public.

BANKRUPTCY CLE CREDITS NOW ONLINE AND TAKING ORDERS

The United States Bankruptcy Court for the Middle District of Florida is proud to announce the latest addition to its website: FREE Continuing Learning Education (CLE) credits.

The online, self-paced presentations are approximately one hour long and available on the Court's website under "CLE Attorney Credits." The presentations are free and accessible to attorneys registered in the Middle District seven days a week. They cover a variety of bankruptcy topics, including presentations at brown bag lunches, bar presentations, and court-sponsored events.

Current presentations include:

- "Making Orders Orderly" May 17, 2013
- "Problems with Pro Se Debtors: Common Abuses of the Bankruptcy System" February 15, 2013
- "Rededication Ceremony of the George C. Young U.S. Federal Building and Courthouse (Non-CLE Credit) February 8, 2013
- "Servicing and Noticing Issues in Bankruptcy Cases" November 30, 2012
- "Hodge Podge for \$400 – No Jeopardy if you Follow Best Practices" November 28, 2012
- "Duties and Dollars" September 7, 2012

To view a video presentation, an attorney registered in the Middle District must enter a CM/ECF login ID at the top of the screen. PC users can view the presentations using Windows Media Player. Apple users will be required to view the presentations using QuickTime. Additional information and instructions on using these media formats can be found at the bottom of the CLE presentations page. Questions or problems should be submitted through the online help form.

After a presentation has been viewed the attorney will receive a code to obtain CLE credits from the Florida Bar. There is no limit to the number of CLE credits an attorney may obtain online.

Members of the Middle District bankruptcy community and bar associations are encouraged to notify the Court of upcoming events that would be candidates to record and add to the website for CLE credit. To recommend a presentation for taping, attorneys should contact the Court's IT Administrator through the contact form at the bottom of the webpage. Taped presentations will be made available on the Court's website approximately one week after taping.

"Intellectual
Growth should
commence at birth
and cease only at
death".

-- Albert Einstein

Same-Sex Marriage and Bankruptcy, Estate Planning, and Tax Law: The Consequences of the *Hollingsworth v. Perry* and *United States v. Windsor* Rulings

By John B. Dorris and Mariane L. Dorris—Latham, Shuker, Eden & Beadine LLP

In 1996, President Bill Clinton signed into law the Defense of Marriage Act (“DOMA”). The Act was passed largely as a reaction against the belief same-sex marriage may be recognized by the Hawaiian Courts. Hawaii did not recognize same-sex marriage in 1996, but DOMA was in place to begin almost seventeen years of Federal law defining marriage as a union between a man and a woman. The recent Supreme Court decision in *United States v. Windsor* recognized the animus underpinning its passage declaring Section Three, which defined marriage as solely between a man and a woman, a violation of due process, federalism, and equal protection.



In anticipation of the Supreme Court’s rulings, on May 17, 2013, the Central Florida Gay and Lesbian Law Association and the Diversity Committee of the Central Florida Bankruptcy Law Association hosted a Panel Discussion titled *Is Separate the Indubitable Equivalent of Equal?* The presenters discussed the potential impact of the then upcoming Supreme Court rulings in *Hollingsworth v. Perry* (California's Proposition 8), and *United States v. Windsor* on bankruptcy, estate planning, and tax law. The distinguished Panel included U.S. Bankruptcy Judge John K. Olson, S.D. Florida, who had filed two amicus briefs in the *Windsor* matter; W. Thomas Dyer,

Esq., founder and publisher of the *Watermark*, a Central Florida LGBT publication; Mary B. Meeks, Esq., co-author of the 2013 Florida Senate Bill, SB 196, or "Families First Act," which would create a statewide domestic partner registry in Florida; and estate planning and transfer tax specialist Mary Merrell Bailey, Esq., CPA, M.B.A., who specializes in the needs of unmarried couples and the elderly. Civil litigator, and diversity and inclusion advocate, Larry D. Smith, Esq., served as the Panel Moderator.

The Panel began the discussion with a review of California’s Proposition 8, the Defense of Marriage Act, and the *Hollingsworth* and *Windsor* cases. The discussion included personal narratives about how DOMA affected the Panelists individually. For example, in 2010, Judge Olson married his husband in Massachusetts, and in November of that year submitted the necessary forms to participate in the Judicial Survivors’ Annuities System (“JSAS”) listing his husband as the beneficiary. The Administrative Office of the United States Courts initially accepted the premiums, yet ultimately rejected Judge Olson’s enrollment and returned the collected premiums declaring DOMA “preclude[s] survivors of same-sex marriages from qualifying for a JSAS annuity.”

The Panel further provided an historical overview of the complicated, and often byzantine, steps same-sex couples undergo when planning their estates in order to replicate the same outcomes legally married couples already enjoy. Multi-jurisdictional considerations further complicate estate planning and tax issues for same-sex couples when state legislation and city or county ordinances overlap depending upon where the property is located and the couple’s place of domicile.

The *Windsor* decision now requires the Federal government to recognize legally married same-sex couples. Approximately one-third of the U.S. population lives in a State recognizing same-sex marriage. Recognition of marriage is implicated in approximately 1,100 different Federal regulations and provisions.

Same-Sex Marriage and Bankruptcy Article (Continued):

However, complicating the patchwork of rules and regulations is the method to determine whether a couple is legally married. The “rule of celebration” and the “rule of domicile” have very different implications. The rule of celebration recognizes a marriage if lawfully performed and recognized at the place of marriage. Edith Windsor, for example, married her spouse in Toronto, a jurisdiction recognizing same-sex marriage.

The rule of domicile, however, will only recognize a marriage if the couple are domiciled in a state that recognizes same-sex marriage. Edith Windsor married in Toronto, but she lived in New York. At the time, New York did not perform same-sex marriages, but would recognize marriages lawfully performed in other jurisdictions. If Edith Windsor had moved to Florida, her marriage would not be recognized because Florida’s Constitution specifically rejects same-sex marriage. If Edith Windsor, now widowed, were to remarry in New York, then move to Florida with her new spouse, any Federal agency using the rule of domicile would not recognize her new marriage. To address this issue, members of Congress have introduced the Respect for Marriage Act (H.R. 2523, S. 1236), which would require the Federal government to adhere to the rule of celebration.

Bankruptcy law is a combination of both state and federal law. How will *Windsor* change the practice? One can look to California to see the earliest indicators. Married same-sex couples have filed joint petitions to discharge or restructure their debts. Before *Windsor*, the U.S. Trustee’s office often challenged these joint petitions arguing the right to file a petition stems from Federal law, Federal law under DOMA does not recognize same-sex marriage, and therefore same-sex couples cannot file a joint petition. In *In re Balas*, 449 B.R. 567 (Bankr. C.D. Cal. 2011), the Court overruled the Trustee’s objection and further indicated that within said district same-sex couples can file joint petitions. In the wake of *Windsor*, it remains unclear whether the U.S. Trustee’s office will object to same-sex couples filing joint petitions if living in non-recognizing states.

Under 11 U.S.C. § 101, the term “spouse” is used approximately twenty times, yet the term is never specifically defined nor alludes to the “celebration” or “domicile” distinction. After *Windsor*, in states like New York, legally married same-sex couples are spouses. While it is unclear whether same-sex couples can file joint petitions in those states not recognizing their marriage, filing a joint petition is one of many potential issues Bankruptcy Courts and practitioners in Florida may encounter. For example, if a same-sex couple holds real property as tenants by the entirety (“TBE”) located in another state, does the Bankruptcy Court recognize TBE if Florida would not? Could a Bankruptcy Court in Florida recognize real property located in Florida as being held in TBE if the requisite unities were satisfied despite Florida’s ban on same-sex marriages?

Over the next twelve months the distinction between celebration and domicile will become clearer as agencies formalize their policies. The Central Florida Gay and Lesbian Law Association and the Diversity Committee of the Central Florida Bankruptcy Law Association will convene a follow-up Panel Discussion in June 2014 to discuss how the *Hollingsworth* and *Windsor* rulings changed bankruptcy, estate planning, and tax law. It is very likely the fields will see significant changes as these issues become solidified.

MEDIATION RULE (LOCAL RULE 9019-2) REVISED TO REFLECT THE DEVELOPMENT OF THE MEDIATION PROCESS IN THE MIDDLE DISTRICT

By: Bradley M. Saxton
Winderweedle, Haines, Ward & Woodman, P.A.

Effective July 1, 2013, Local Rule 9019-2 has been overhauled to provide guidance to the process for conducting mediations in bankruptcy cases within the Middle District. This new rule is a significant enhancement of the former rule and brings the process of mediations in bankruptcy more in line with the developments of the practice of mediation in Florida, as governed by the framework of statutes and rules applicable to mediations in state court. The revised rule is intended to guide the Courts, attorneys, and mediators engaged in the ever expanding use of mediation as an alternative dispute resolution process.

Background

The former Local Rule 9019-2 was originally promulgated in 1989 and amended in 1993 and 1997. Since that time, the use of mediation has exploded in Florida state and federal courts and within the bankruptcy courts. In Florida, statutes and rules have been enacted to govern the mediation process. The Florida Rules of Civil Procedure pertaining to mediation were substantially revised in 2000. The Florida Supreme Court has established the Dispute Resolution Center (DRC) and the Supreme Court Committee on ADR Rules and Policy. The DRC and the Committee have promulgated rules and policies which govern mediations and which define the process and clarify the role of a mediator. For instance, the Florida Supreme Court has adopted a comprehensive set of Rules for Certified and Court-Appointed Mediators (the “Supreme Court Rules”), which establish procedures for conducting the mediation session and standards for qualification, training, certification, professional conduct, and discipline of mediators. The certification requirements include a 40 hour training course, participation in supervised mediations, and 16 hours of continuing education every two years. According to the DRC website, as of August 2012, there were 6,360 individuals certified as mediators in the areas of county, circuit, family, dependency, and appellate certification. Since 1994, the Mediator Ethics Advisory Committee (MEAC) has issued over 170 separate advisory opinions to guide mediators in the fulfillment of their ethical obligations.

In light of these developments at the state court level, the former rule 9019-2 which addressed mediation in bankruptcy was significantly outdated. The former rule suffered from a number of deficiencies characterized by several provisions that seemed to conflict with a primary goal of mediation, the parties’ right to self-determination. For example, the rule authorized the mediator to unilaterally schedule the mediation session and set a deadline for the parties to “act upon a settlement or upon mediated recommendation.” [sic] Other provisions required the mediator to take actions, conflicting with the role of the mediator as an impartial, neutral facilitator. For example, the former rule obligated the mediator to file a report to the bankruptcy court “showing compliance or non-compliance by the parties with the mediation order and the results of the mediation.” Apparently, to comply with this requirement, the mediator would be required to police the activities of the parties following the mediation and potentially make a judgment call with respect to whether a party breached the settlement. Another provision suggested the mediator could provide a written settlement recommendation to the parties. The former rule also provided a cumbersome procedure for mediators to be qualified, and required the clerk to maintain a register of qualified mediators. Thus, it was clear that the former rule needed a facelift.

The Work of the Sub-Committee

The Sub-Committee studied local rules applicable in other jurisdictions, specifically our sister bankruptcy

Mediation Article by Brad Saxton (continued):

courts in the Northern District of Florida and the Southern District of Florida, as well as the District Courts within Florida and the Delaware Bankruptcy Court, to assess how other courts have dealt with local rules on mediation practice. The Sub-Committee also studied the mediation rules, statutes, and mediator ethics opinions applicable at the state level in Florida, which is a national leader in the development of mediation.

The Sub-Committee intended to create a set of rules applicable to mediations in bankruptcy cases that are consistent with the policies, rules, and ethical obligations formulated by the Supreme Court and the DRC, while deviating where necessary to adapt to the specific needs of the bankruptcy practice.

The Sub-Committee ultimately drafted a completely revised rule. The recommended rule was modeled after Local Rule 16.3 of the United States District Court for the Northern District of Florida, which has been adopted in its entirety by the Bankruptcy Court for the Northern District of Florida as its Local Rule 7016-1. The Sub-Committee deviated from Rule 16.3 in several respects, recommended additional provisions, and provided commentary with respect to its recommendations. The Sub-Committee presented its proposed rule to the Honorable Caryl Delano, chair of the Court's Local Rules Committee in February, 2013. The Judges of the Bankruptcy Court for the Middle District, in consultation with the Local Rules Advisory Committee, debated the proposal, made modifications, and following a public comment period, promulgated the new Rule 9019-2.

The New Rule 9019-2

The following are some of the significant provisions of new Local Rule 9019-2:

- Subsection (a) includes a definitional section which is intended to be consistent with current mediation practice. Importantly, this subsection also imposes an affirmative duty on the mediator, at the conclusion of the mediation, to file a report to Court which (1) identifies the parties in attendance at the mediation, and (2) informs the Court if an agreement was reached in whole or in part, or that the mediation was terminated without the parties coming to an agreement.
- Subsection (c)(1) addresses qualification of mediators. This subsection allows the parties to the dispute to select a mediator of their choosing. A mediator is not required to be certified by the Supreme Court of Florida. However, subsection (d) provides that all mediators who mediate in cases pending in the Middle District, whether they are certified or not by the Supreme Court of Florida, shall be governed by the standards of professional conduct and ethical rules adopted by the Supreme Court of Florida for circuit court mediators.
- Subsection (c)(2) addresses conflicts of interest. This subsection recognizes the unique nature of potential conflicts that can arise in bankruptcy cases. The mediator is required to disclose all actual or potential conflicts of interest involving the parties participating in the mediation process. The Rule provides that the parties can waive an actual or potential conflict of interest on the part of the mediator provided that the mediator concludes in good faith that the mediator's impartiality will not be compromised. The Rule specifically states, "[t]he unique nature of bankruptcy cases favors the parties' ability to waive conflicts and supersedes the concept of non-waivable conflicts." The Advisory Committee notes to the new Rule contain a specific reference to subsection (c)(2) by acknowledging that "the parties' ability to waive a mediator's actual or potential conflict of interest in bankruptcy

Mediation Rule by Brad Saxton (continued):

- cases differs from the Rules for Certified Court Appointed Mediators adopted by the Florida Supreme Court, Rules 10.100 et. seq., in the opinions of the Mediator Ethics Advisory Committee.”
- Subsection (f) addresses mediator compensation. This subsection conforms with current practice by providing that the compensation of the mediator is determined by the agreement of the parties, unless a court order directs otherwise. Similarly, unless a court order directs otherwise, the costs of the mediator services shall be borne equally by the parties. Additionally, this subsection addresses the payment of the mediator’s fees by a Chapter 11 Trustee or debtor-in-possession by providing that payment of the mediator’s charges from the Chapter 11 Trustee or debtor-in-possession shall be authorized without the necessity of filing a fee application.
- Subsection (g) address confidentiality with respect to mediations. Interestingly, Rule 16.3 of the Local Rules of the District Court for the Northern District of Florida does not contain a specific reference to confidentiality. As referenced in the Advisory Committee notes to the new Rule, the confidentiality provisions are adapted in significant part from Florida’s Mediation Confidentiality and Privilege Act, §44.401-44.405, Florida Statutes. Practitioners and mediators should specifically be aware of the provisions of this subsection. Notably, as reflected in the Advisory Committee notes, while the specific civil remedies’ provisions contained in the Florida Statutes are not incorporated within the Rule, parties are reminded that violations of the confidentiality provisions may be sanctionable under Local Rule 9011-3.
- Subsection (j) acknowledges that there may be a need for special procedures in specific circumstances that come before the court such as residential mortgage modification mediations, the new Rule simply provides that the court may establish separate procedural orders to address these areas. Practitioners should be aware that Administrative Order FLMB 2013-3 specifically describes the requirements for mediators to become qualified with respect to residential mortgage mediations. Additionally, parties involved in residential mortgage mediations should review the court’s website for updated information with respect to that process.
- Subsection (k) is short but very significant. Some of the provisions contained in this subsection were the most hotly debated by the Sub-Committee and could be the topic of entire articles themselves. The former rule contained a requirement that the mediator report to the court if parties were not mediating “in good faith”. The procedures applicable to mediations in state court do not impose such an obligation on the mediator. Within the mediation community and the DRC, there has been much debate regarding whether to Include a good faith requirement within mediations. The concern that has prevailed is that imposing the good faith requirement places the mediator in a position of making a factual determination regarding the parties’ conduct, which then impacts the mediator’s impartiality and neutrality. The new Rule addresses the good faith requirement by stating that, “[p]arties are encouraged to participate in the mediation in a good faith attempt to resolve the issues between them.” There is no requirement for the mediator to report a lack of good faith. Thus, the issue is left to the parties.

Mediation Article by Brad Saxton (continued):

- Subsection (k) also provides that parties to the mediation are required to attend the mediation in person unless authorized by the court or the mediator to attend by telephone. This raises some concern that the mediator could be called to make a decision as to whether or not a person could attend by phone, when the other party is objecting to the telephonic appearance of the other side. The mediator and the parties will have to discuss this issue to try to reach resolution and it may be that one party would need to obtain a court order if it could not be resolved.
- Subsection (k) further provides that parties who are not individuals shall participate in mediations through the presence of a representative with full authority to settle the matter that is the subject of the mediation. The existence of a party with full settlement authority is another hotly contested issue in the mediation community. When the issue arises of whether a party has “full authority to settle” or whether a party is acting “in good faith”, these issues tend to consume the mediation process themselves and inhibit settlement. Ultimately, there is no easy answer in a process that has, at its foundation, the parties’ right to self determination, while assisted by a neutral, impartial party who is not intended to provide advice or counsel, or make decisions, but whose job it is to facilitate settlement. If these issues cannot be resolved by the parties, the court may need to intervene. However, importantly, if such a dispute does come before the court, subsection (g)(6) of the confidentiality provisions appropriately provides that the mediator shall not be required to disclose any mediation communications.

Conclusion

The Judges of the Bankruptcy Court for the Middle District of Florida have promulgated new Rule 9019-2 which should help bring the mediation process in Bankruptcy Court up to date and in conformity with the developments in mediation within the Florida state courts, with appropriate deviations specific to the bankruptcy practice. Practitioners and mediators should carefully review the new Rule, and should also be aware that mediators in bankruptcy cases are governed by the standards of professional conduct and ethical rules adopted by the Supreme Court of Florida for circuit court mediators.

MEMORANDUM

From: Hon. Caryl E. Delano
Judicial Liaison to Local Rules Advisory Committee

To: Interested Parties

Subject: Amendments to Local Rules

Date: May 31, 2013

The Bankruptcy Judges of the Middle District of Florida have approved the following new and amended Local Rules, effective July 1, 2013. A brief summary of the revisions is set forth below. However, the new and amended Local Rules should be reviewed in their entirety.

- [L.R. 1001-2](#) **Case Management and Electronic Case Filing System – CM/ECF**
(Revised to reflect current CM/ECF practices and electronic filing procedures, to provide instructions for PACER and CM/ECF access and the electronic filing of proofs of claims and ballots)
- [L.R. 1007-1](#) **Lists, Schedules, Statements, and Other Required Documents**
(Revised to specify that a list of creditors or master mailing matrix must be filed with bankruptcy petitions; See L.R. 1007-2 below)
- [L.R. 1007-2](#) **Mailing – List or Matrix**
(Revised to clarify that only debtors who are not represented by an attorney are required to file a master mailing matrix with their petitions. Attorneys are required to file petitions via CM/ECF, which generates the required matrixes)
- [L.R. 1009-1](#) **Amendments to Lists & Schedules**
(Revised to require that amendments to Schedules A and B shall set forth both the assets added and the assets deleted by the amendment)
- [L.R. 1015-1](#) **Joint Administration of Cases**
(Revised to provide that Chapter 11 Monthly Operating Reports be filed in the lead case of jointly administered cases and for the severance of jointly administered cases)
- [L.R. 2002-1](#) **Notice to Creditors and Other Interested Parties**
(Revised to limit notice in Chapter 7 cases, after the claims bar date, to those creditors who have filed proofs of claim, consistent with Fed. R. Bankr. P. 2002(h))
- [L.R. 2002-4](#) **Negative Notice Procedure**
(Revised to refer parties to the Permissive Use of Negative Notice List posted on the Court's website and to update the negative notice legend to reflect that the response time runs from the date of service rather than the date of docketing of the paper being served using negative notice procedures)
- [L.R. 2081-1](#) **Chapter 11 – General**
(Revised to require that Chapter 11 debtors file their Case Management Summary in advance of filing any motion in the case; outlines the matters that the Court may wish to address if an Initial Status Conference is scheduled)
- [L.R. 2091-1](#) **Attorneys – Withdrawals and Substitutions**
(Revised to establish procedures for the withdrawals of attorneys)
- [L.R. 2092-1](#) **Appearances by Law Students**
(New rule establishes procedures by which supervised law students may appear before the Court)

Judge Delano's Local Rules Memo (continued):**[L.R. 3018-1](#) **Ballots – Voting on Plans****

(Revised to reflect the Court's current practices for the filing of ballots electronically via CM/ECF and via the Chapter 11 eBallot hyperlink located on the Court's website)

[L.R. 3021-1](#) **Disposition of Unclaimed or Undistributable Funds in a Chapter 11 Liquidating Plan**

(New rule permits liquidating Chapter 11 plans to provide that unclaimed and undistributable funds be redistributed to other creditors or donated to a non-profit organization)

[L.R. 3022-1](#) **Final Report/Decree (Ch. 11)**

(Revised to provide for the administrative closure of individual Chapter 11 cases)

[L.R. 5005-2](#) **Filing of Petition and Other Papers**

(Revised to reflect current CM/ECF procedures)

[L.R. 8001-1](#) **Notice of Appeal**

(Revised to state that the appeal cover sheet is available on the Court's website)

[L.R. 8007-1](#) **Completion of Record – Appeal**

(Supersedes abrogated L.R. 8006-1 and revised to reflect the District Court's implementation of CM/ECF)

[L.R. 9011-4](#) **Signatures**

(Revised to eliminate the previously required Declaration Under Penalty of Perjury and to clarify the filing procedure when a proof of service is executed by a non-attorney)

[L.R. 9019-2](#) **Alternative Dispute Resolution (ADR); Mediation**

(Revised to modify the rule to reflect the development of the mediation process in the Middle District)

The Bankruptcy Judges would like to thank the current and former members of the Local Rules Advisory Committee and the attorney members of the Mediation Rule Sub-Committee for their assistance in the drafting, review, and finalization of these new Local Rules.

Local Rules Advisory Committee:

Roberta Colton, Esq., Chair
Donald Kirk, Esq.
Betsy Cox, Esq.
Richard Webber, Esq.
Gregory Champeau, Esq.
Raymond Waguespack

Mediation Rule Sub-Committee:

Brad Saxton, Esq., Chair
Doug Neway, Esq.
Robert Glenn, Esq.
Mike Horan, Esq.
Paul Molle, Esq.

Lake County Lawyers To Start a Monthly Pro Bono Walk-In Bankruptcy Clinic

Sam Pennington, a lawyer practicing in Tavares, saw the need for local lawyers to provide more *pro bono* bankruptcy services in Lake County. He took up the challenge and, on July 12, 2013, he hosted eight of his colleagues, Chief Judge Jennemann, and Sandra T. Hobbs, the Pro Bono Coordinator for Community Legal Services of Mid-Florida, Inc. at his office to discuss ways to meet the bankruptcy needs of unrepresented residents of Lake County.



Pictured Back Row (from left to right): Joel Gross, Hunter Goff, Frank Remsen, Jimmy Crawford, Merideth Nagel, Mark Cressman, James Feuerstein

Pictured Front Row (left to right): Sandra Hobbs (Pro Bono Coordinator for Community Legal Services of Mid-Florida, Inc.), Chief Judge Jennemann, Mike Golub, and Sam Pennington

Everyone attending enthusiastically supported finding a way to give Lake County more *pro bono* bankruptcy services. The lawyers each agreed to accept referrals on a case-by-case basis. They also agreed to start a monthly Bankruptcy Walk-In Clinic on the fourth Monday of each month, starting in August 2013. Because Lake County is long and narrow, one month the attorneys will conduct the Clinic in Tavares at the offices of Community Legal Services. The next month they will hold the Clinic at a public community room in Clermont. Sandra Hobbs will attend every Clinic to qualify participants either for *pro bono* service or, if they exceed the income eligibility, to give the attorneys a chance to consult with the potential client as they would in their office. The expectation is that everyone will get the legal advice they need. Community Legal Services of Mid-Florida will help with logistics and publicity. Attorneys will earn *pro bono* credit for every hour they work on a referred case or participate in the Clinic.

Everyone wins in this situation. All it took was for one man to recognize a need and to gather a group of equally, public-service minded lawyers.

Thanks to all who are working to make the Middle District of Florida a model for volunteerism and *pro bono* work!

“I am only one, but still I am one. I cannot do everything, but still I can do something; and because I cannot do everything, I will not refuse to do something that I can do”.

-- Helen Keller

FLORIDA BANKRUPTCY CASE LAW UPDATE

June, 2013 (covering cases from Florida Bankruptcy Courts, Florida District Courts, the Eleventh Circuit Court of Appeals, and the United States Supreme Court)

Editors: Bradley M. Saxton, C. Andrew Roy

About the Bankruptcy Case Digest Database: The Case Digest Database is a database of over 4,500 cases by the Florida bankruptcy judges (including select bankruptcy related opinions from the Florida District Courts and the Eleventh Circuit) and is annually updated in connection with the View from the Bench Bankruptcy Program produced by the Business Law Section of The Florida Bar. It was originally compiled by the Honorable Michael G. Williamson, and now is updated annually by Judge Williamson, his judicial assistant, Mary Maddox, and a committee of volunteers chaired by Bradley M. Saxton.

The Case Digest Database can be found by clicking the Case Digest Database link under the “Areas of Interest” section on the front page of the Middle District of Florida Bankruptcy Court website at or by clicking on the following link: <http://pacer.flmb.uscourts.gov/judges/benchsearch.asp>.

Every future issue of the Court Connection will include summaries of a few of the most recent cases that you may find interesting.

Cases of interest include:

In re Bullock v. BankChampaign, N.A

133 S. Ct. 1754 (May 13, 2013)

Debtor served as the trustee of family trusts, from which he borrowed money for various purposes and then paid the money back to the trusts with interest. In a dischargeability action by successor trustee against the debtor, the debtor’s obligations to the trusts were deemed nondischargeable because they arose from the debtor’s defalcation while serving as a fiduciary of the trusts. After the district court and circuit court affirmed, the Supreme Court held that, for purposes of dischargeability, defalcation requires a state of mind of knowledge or gross recklessness of the fiduciary in acting contrary to the duties required of the fiduciary. The Court remanded the case for further proceedings, if necessary, consistent with its ruling on the scienter issue.

In re Desmarais

2013 WL 1831884 (11th Cir. May 1, 2013) (designated unpublished)

The Eleventh Circuit upheld a finding of nondischargeability under section 523(a)(6) where the underlying contractual indebtedness resulted in a fraudulent transfer judgment.

Fisher Island Ltd. V. Fisher Island Investments, Inc.

2013 WL 1831728 (11th Cir. May 1, 2013) (designated unpublished)

The Eleventh Circuit affirmed the district court’s holding that a party who is not an “aggrieved party” lacks standing to appeal a court’s decision. Additionally, the untimely notice of appeal was properly dismissed as the party failed to meet the standard for excusable neglect.

In re Northlake Foods, Inc.

--- F.3d ---, 2013 WL 1859118 (11th Cir. May 6, 2013)

The Eleventh Circuit upheld judgment on the pleadings in favor of the defendant in fraudulent transfer case. The challenged transfer involved \$94,429 paid to the shareholder of the debtor corporation pursuant to a shareholder agreement. The court held that the shareholder agreement constituted reasonably equivalent value.

Florida Case Law Update (Continued):***In re Aurora Capital, Inc.* and *In re Palm Beach Finance Partners, L.P.* (2 opinions)**

In a trilogy of similar cases, District Court Judge Kenneth Marra addresses the *Stern v. Marshall* issue and concludes (1) that *Stern* does not mandate the withdrawal of the reference in the early stages of a case, (2) that nothing in *Stern* limits the bankruptcy court from issuing reports and recommendations in cases properly referred, and (3) that if a bankruptcy court errs in rendering a final judgment, the district court will simply treat the “decision” as a report and recommendation.

Gatto v. Gatto (In re Gatto)

2013 WL 1881756 (M.D. Fla. May 6, 2013) (Dalton, J.)

Despite a provision in a property settlement agreement stating that the debtor-husband’s obligations under the agreement were not dischargeable, the property settlement agreement was dischargeable because the debtor’s obligations were not in the nature of alimony, maintenance, or support as required for section 523 (a)(5) to apply.

Belmont Wine Exchange, LLC v. Nascarella (In re Nascarella)

--- B.R. ----, 2013 WL 1968500 (Bankr. M.D. Fla. May 10, 2013) (Williamson, J.)

A purchaser of wine, who was allegedly defrauded by the debtor, could not rely on its state court default judgment for fraud against the debtor for purposes of summary judgment in a dischargeability action under section 523(a)(2)(A). Collateral estoppel did not apply because the state court fraud complaint did not specifically allege misrepresentation by the debtor. In addition, any misrepresentation by the debtor’s son could not be imputed to the debtor for purposes of the dischargeability action.



NEWS FROM THE JACKSONVILLE BANKRUPTCY BAR ASSOCIATION



2013-2014 JBBA Officers and Directors

President: Jason A. Burgess
Vice President: Robert Heekin
Chairman: J. Ellsworth Summers
Treasurer: Kevin Paysinger
Secretary: Katherine Fackler

Directors: Dan Blanks; Douglas Neway;
Edward P. Jackson; James
Eidson; and John Freeman

Jacksonville Bankruptcy Bar Association Annual Seminar August 23, 2013

Registration and Continental Breakfast
begins at 8:30 a.m.



Sawgrass Marriott Resort and Spa Ponte Vedra Beach, FL

7.0 CLER Credits have been applied for
(6.0 hours General and 1.0 hour Ethics)

Materials: If you are unable to attend the Seminar
but wish to purchase the materials, you may do so
by sending your request along with \$50 to:

Jason A. Burgess
118 West Adams Street, Suite 900
Jacksonville, Florida 32202



NEWS FROM THE JACKSONVILLE BANKRUPTCY BAR ASSOCIATION

JBBA Annual Seminar Schedule:

- 8:30 Registration and Continental Breakfast
- 8:40—8:50 President's Remarks—Jason A. Burgess
- 8:50—10:45 Current Events Analysis Of A Wide Variety Of Topics Currently Coming Up All Over The District And Nationwide
Speakers: Hon. Karen S. Jennemann, Hon. Paul M. Glenn, Hon. Jerry A. Funk, Hon. Michael G. Williamson, Hon. Catherine P. Mcewen, and Hon. Cynthia C. Jackson
Moderators: David E. Otero & Jason B. Burnett
- 10:45—10:55 Break
- 10:55—11:55 Deciding What Chapter For Individuals/Businesses To File If Any
Speakers: Hon. Michael G. Williamson, Robert A. Heekin, Jr., Michael S. Waskiewicz, and Kevin B. Paysinger

11:55—1:20 Lunch Break

BUSINESS BREAKOUT SESSIONS:

- 1:20—2:15 Facts, Fantasies, and Findings Of Fact (Part I)
Speakers: Hon. Paul M. Glenn, Daniel F. Blanks, J. Ellsworth Summers, Jr., Jeff W. Warren, and Franklind D. Lea
- 2:30—3:25 Facts, Fantasies, and Findings of Fact (Part II)
- 3:40—4:35 Adequate Protection, Cash Collateral, And The Dreaded APR!
Speakers: Hon. Paul M. Glenn, Hon. Catherine P. Mcewen, David S. Jennis, and Robert D. Wilcox

CONSUMER BREAKOUT SESSIONS:

- 1:20—2:15 Taxes and Bankruptcy
Speakers: Edward P. Jackson and Andrew Jackson
- 2:30—3:25 Divorce and Bankruptcy (Breaking Up Is Hard To Do)
Speakers: Earl "Chip" Parker, Jr., Gregory S. Gilbert, Seth A. Schwartz, and Robert A. Heekin, Jr.
- 3:40—4:35 Limiting Representation In Consumer Cases
- 4:50—6:00 Reception



NEWS FROM THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION



Harley Riedel presenting this year's Alexander L. Paskay award at the TBBBA Annual Dinner to Mark Robens on June 6, 2013.

2013-2014 TBBBA Officers & Directors

President:	Stephanie Biernacki Anthony
Vice-President:	Edward Peterson
Secretary:	Kelley Petry
Treasurer:	Adam Alpert
Outgoing Chair:	Keith Appleby
Board Members:	Jake Blanchard, Cindy Burnette, Lori Vaughan, Katie Hinton, Suzy Tate, Scott Stichter, Tim Sierra, Stephanie Lieb, and Patrick Mosley

NEWS FROM THE SOUTHWEST FLORIDA BANKRUPTCY PROFESSIONALS ASSOCIATION

There will not be a meeting in September as that is when we will have the 2nd Annual Alexander L. Paskay Memorial Diner, f/k/a The Judicial Appreciation Dinner, which will be held on September 19th at the Edison Restaurant. At that time, Attorney David Fineman will be sworn in as the new President of the SWFBPA and Attorney Paul Giordano will move up from Secretary to Vice President, and a new Secretary will be elected and sworn in as well. We will also be awarding the annual Alexander L. Paskay Professionalism Award to the attorney selected in the upcoming August nomination and election.

NEWS FROM THE CENTRAL FLORIDA BANKRUPTCY LAW ASSOCIATION**Central Florida Bankruptcy Law Association**

By: C. Andrew Roy, Esquire

Education is a familiar theme in the law. We see it in our obligatory CLEs; we experience it in our everyday research and writing; and we exercise it in our attempts at enlightened conversation with colleagues over cocktails. No matter what form it takes, education is a fundamental building block for the continued success of our legal system. In the spirit of supporting education, this quarter's report from the Central Florida Bankruptcy Law Association (CFBLA) focuses on CFBLA's efforts to enhance education in the bankruptcy discipline.

On June 20, CFBLA awarded FAMU law student, Michael Harrison, a \$1,000 scholarship as the Spring 2013 book award recipient for his outstanding academic performance in the FAMU bankruptcy class. The Honorable Arthur B. Briskman teaches the bankruptcy class at FAMU, which offers students not only first-hand knowledge from a sitting bankruptcy judge, but also gives them the opportunity to gain valuable practical experience. Indeed, bankruptcy students can enhance their counseling and advocacy skills by assisting with the CFLBA Pro Se Clinic and becoming legal interns with local law firms. CFBLA chose to support this program in the hopes that it will continue to grow into an established source of learned bankruptcy practitioners. If you would like more information about legal interns, please contact Kelly Crumbaker, kbcumbaker@gmail.com.

Beyond supporting the education of future practitioners, CFBLA also continues to provide substantial educational opportunities for current practitioners. CFBLA hosted its annual seminar on May 10 themed "Bankruptcy Revitalized," which provided insight into various topics ranging from the new proposed order procedure to bar orders and subject matter jurisdiction. In the morning joint session, attendees learned about contested matters, e-discovery, and proposed orders. At an informative lunch session, Executive Director of the American Bankruptcy Institute, Sam Gerdano, presented poignant information on legislative updates and pertinent statistics regarding debt in the United States. Finally, the afternoon concurrent sessions allowed attendees to tailor their seminar experience by choosing between topics relevant to consumer and commercial bankruptcy practice. The seminar, typically held in the fall, was well-attended by practitioners, staff, and students alike. Planning for the 2014 seminar is underway and will also take place in the spring.

In addition to its Annual Seminar, CFBLA also provides its members with monthly luncheons, which usually have CLE presentations about a topic relevant to bankruptcy practice. For instance, the June luncheon featured Michael Markham who presented on asset protection, including ways to defeat certain asset protection strategies. Future monthly lunches will feature other significant topics, including mediation, initial debtor interviews, transitional restructuring, and will also feature the perspectives of The Honorable Cynthia J. Jackson as well as the Orlando Division law clerks.

In an effort to further the education of individuals who file bankruptcy pro se, CFBLA continues to bolster the services of its Pro Se Clinic. As discussed in the Court's previous newsletter, the Pro Se Clinic has successfully assisted numerous individuals in their pro se bankruptcy cases. To provide greater service to pro se individuals, and thus better serve the Court and the community, CFBLA offered a training session for pro se volunteers on June 14, which was well-attended by both consumer and commercial practitioners wishing to pledge their time and skills to the Clinic. Another training session is scheduled for July 22. The Clinic is always in need of volunteers, so if you are interested in attending the training session or

volunteering, please contact Kelly Crumbaker, kbcumbaker@gmail.com or visit our website www.cfbla.org.

Finally, to foster more camaraderie amongst the bankruptcy bar and other bar organizations, CFBLA co-hosted a happy hour with the Hispanic Bar Association of Central Florida on July 11 at 5:30pm at The Fifth downtown. The event was well attended.

Enrichment and empowerment through education are important to the success of our legal system, and CFBLA will continue to support that goal through its programming. If you are interested in learning more about CFLBA and its activities, please feel free to contact Kelly Crumbaker at kbcumbaker@gmail.com or Justin Luna at jluna@lseblaw.com.



Pictured from left to right: CFBLA President, Justin Luna, FAMU College of Law Dean LeRoy Pernell and Michael Harrison, recipient of the Spring 2013 book award

Bankruptcy Pro Se Assistance Clinic **By: Kelly Crumbaker**

On July 30th the Bankruptcy Pro Se Assistance Clinic in Orlando will celebrate its first anniversary. Since opening our doors, we have received over 1400 requests for assistance and have consulted with nearly 300 pro se individuals. Our success is attributed to the 93 bankruptcy attorneys that have generously donated their time and talent in support of this program. We are proud to serve the Court and the community by helping unrepresented debtors and creditors. Judge Briskman emphasized the significance of the Clinic when he said “it is the most important thing we are doing as a Court and a profession.”

To learn more about the Pro Se Assistance Clinic in Orlando and to become a volunteer, visit our website www.cfbla.org or contact Kelly Crumbaker kbcumbaker@gmail.com.



Opening Day, July 30, 2012. Pictured from left to right: Bob Branson, Kelly Crumbaker, Tram Harper, Tammy Branson, Justin Luna, Andrew Roy, and Brad Saxton

Orlando Bankruptcy Court Staff, members from the Central Florida Bankruptcy Law Association and the Bankruptcy Section of the Orange County Bar Association joined together for the Annual Orlando Corporate 5k Run/Walk on April 18, 2013 in Downtown Orlando.



PROFESSIONAL SKILLS SEMINARS IN ATLANTA, GEORGIA HOSTED BY THE ASSOCIATION OF BANKRUPTCY JUDICIAL ASSISTANTS (AJBA)

Bankruptcy is a sophisticated and technical area of the law, and certification in the field helps to promote and maintain the highest professional standards. The Bankruptcy Certification Program aids in professional development for judicial assistants, paralegals, legal secretaries, and other non-lawyers and provides an opportunity to become certified in the field.

The Association of Bankruptcy Judicial Assistants will host two Professional Skills Seminars this fall in Atlanta, Georgia at the Atlanta Hilton, 255 Courtland Street, NE. Presentations will be made by federal judges, clerks of court, law professors, circuit court librarians, and other members of the federal court system.

The first seminar is a Bankruptcy Certification Training Seminar and Examination for judicial assistants, paralegals, and legal secretaries. Participants can attend training without taking the exam, however, they cannot become certified until they take and pass the exam.

Bankruptcy Certification Program & Examination: October 28 – October 29, 2013

Register here—www.abja.org/2013Conference/2013%20Atlanta%20CBA%20Flyer.pdf

Monday, October 28, 2013
8:00am – 5:00pm
Grammar Usage & Writing,
Legal Research, Ethics

Tuesday, October 29, 2013
8:00am – 3:30pm
U.S. Bankruptcy Code and Rules,
CBA Examination

Registration deadline is October 1, 2013. Registration fee is \$250 and includes all materials, a study guide, and refreshments. The Certified Bankruptcy Assistant (CBA) examination fee is an additional \$149

Two-Day Professional Skills Seminar: October 31 – November 1, 2013

Register here—<http://www.abja.org/2013Conference/2013%20Atlanta%202%20day%20Advanced%20Flyer.pdf>

CBA's are required to obtain at least 6 CEU credits every two years. This advanced skills seminar covers a variety of topics in bankruptcy law and offers up to 12 CEU credits.

Professional Skills Seminar - Session 1
(6 CEU credits)
Thursday, October 31, 2013
8:00am – 4:15pm
Topics: Claims filing and Noticing, the Bankruptcy Appeals Process, and Alternative Structures for Bankruptcy Appeals

Professional Skills Seminar - Session 2
(6 CEU credits)
Friday, November 1, 2013
8:00am – 4:00 pm
Topics: Chapter 11 Procedures, Dealing with Difficult People, Bluebook Skills and Proofreading, Dischargeability Matters, Preventing Workplace Harassment

More registration information for these seminars can be found on the ABA website or by contacting Martie Kantor at martie.kantor@flnb.uscourts.gov.



Judges Corner

**Judge Jackson's Investiture Ceremony
June 21, 2013 at 3:00 pm**



Pictured from left to right: Judge Briskman, Chief Judge Jennemann, Kathy Deetz, and Judge Jackson

Cynthia Carson Jackson Sworn In As Bankruptcy Judge At Jacksonville Investiture Ceremony

By: Ed Philpot, Law Clerk to the Honorable Cynthia C. Jackson

Cynthia Carson Jackson was officially sworn in and took her place on the bench of the United States Bankruptcy Court for the Middle District of Florida at an investiture ceremony in Jacksonville on June 21, 2013. Chief Judge Karen S. Jennemann presided at the ceremony, and Judge Gerald B. Tjoflat of the United States Court of Appeals for the Eleventh Circuit administered the oath. Judge Jackson's husband, Dale, held the family bibles—one from her father, former Jacksonville Sheriff Dale Carson and one from her mother, Dr. Doris Carson. Her children, Trace, Courtney and Lilly robed their newly-invested mother.



The speakers at the ceremony praised Judge Jackson's good nature, history of keen lawyering, and passion for public service. "[H]er intelligence, her integrity, her high regard for the concept of equal justice under the law, and her years of experience as a lawyer in private practice, should assure the citizens of the Middle District of Florida that she will be a success as a bankruptcy judge," Chief Judge Joel F. Dubina remarked. Judge A. Jay Cristol also emphasized that her "compassion for the little person, the downtrodden person, is a blessing to the bench and bar of the Middle District as well as to the unfortunate honest debtor that will come to her for help."

After being welcomed to the bench, Judge Jackson expressed gratitude and excitement for her new job succinctly: "This is definitely a dream of a lifetime."

Nearly 300 friends, family, and guests attended the investiture, held in the ceremonial courtroom at the Brian Simpson United States Courthouse. Along with the entire bench of the U.S. Bankruptcy Court for the Middle District of Florida, the attendees included Chief Judge Joel F. Dubina of the U.S. Court of Appeals for the Eleventh Circuit, Chief Judge Anne C. Conway of the U.S. District Court for the Middle District of Florida, several district court judges, magistrate judges, and Judge A. Jay Cristol of the U.S. Bankruptcy Court for the Southern District of Florida.

A Jacksonville native and lifelong resident, Judge Jackson practiced bankruptcy and debtor-creditor law with the firm Smith Hulsey & Busey for 29 years. In that position, she worked on a range of cases, from "mega" reorganizations like *Prime Motor Inns* and *Winn-Dixie*, to pro bono consumer chapter 7 and chapter 13 cases. She takes the seat of Judge Arthur B. Briskman, who retired last year.

Judge Jackson earned her Juris Doctor from the University of Florida in 1984, and her undergraduate degree from Florida State University in 1981. She also attended school at Tulane University and in Coventry, England.



Pictured from left to right: Judge Cristol and Judge Jackson at dinner the night before the Investiture.

Court Committee Updates

IT Committee

By: **Scott Lumkins**

The IT Committee had an unusually slow month in June. We were called upon to test just two events during the month. They are as follows:

- 1) **The Objection to Claims and Related Order Events.** We tested the events to ensure that the word “Omnibus” and “Amended” appeared in the docket in the right places. When the docket event was completed we gave our findings to Raymond Waguespack for further handling.
- 2) **The Reaffirmation Event.** The event used to ask if the case was filed prior to 10/17/2005, the date BAPCPA was enacted. That question has been eliminated.

Procedures Committee I

By: **Christiane Thomas**

Our committee has been working on amendments to schedules. We recently met in Orlando and compared each Court’s procedures. We have come up with a common procedure that we think will work for everyone. The procedure will be submitted to the Review Committee. We have also started working on motions to extend the automatic stay, motions to impose automatic stay, and motions for orders confirming that the automatic stay is terminated under §362(c) and (j).

Procedures Committee II

By: **Anel Merritt**

The Procedures Committee Team II warmly welcomed Dana, case manager on the Judge Williamson Team to our group. She will bring a wealth of knowledge and experience to our team. We also bid a sad farewell to Lexie. We wish her much success in her new position as Courtroom Administrator to Judge Jackson and her added duties.

Our committee has submitted procedures for Chapter 7 and 13 case opening to the Procedures Review Committee. We recently met in Orlando to begin work on unifying and simplifying the Objection to Claim of Exception procedures.

Procedures Committee III

By: **Mary Henry**

We completed and submitted a proposal on consolidating Chapter 7 discharge criteria for the Divisions in early April. The Review Committee is reviewing the proposal at this time.

The Committee met on June 20th in Orlando for the in-person committee meetings. We continued work on Chapter 13 discharge criteria for each Division. We came up with a proposal and submitted it to Raymond. We will be meeting in the near future to finish this procedure proposal.

We have also been working on our next subject -- Chapter 13 hardship discharges --and will discuss that in our next meeting.

Procedures Review Committee

By: Susan Carter

The Procedure Review Committee has been busy reviewing a number of procedures. Initial review of the following procedures has been completed and resubmitted to the respective procedure committee for further action: Chapter 7 Electronic Case Opening, Chapter 7 Paper Case Opening, Chapter 13 Paper Case Opening, Objection to Claims, Chapter 7 Discharges.

Michael Schumpert, Sara Mason, Tina Mason and Susan Carter met in person at the Orlando Courthouse on June 20 and began writing the procedure on Presumption of Abuse. This procedure is in the final reviewing stages. The next procedure for discussion is the procedure for Electronic Chapter 13 Case Openings, which was provided to the Review Committee on June 26.

Training Committee

By: Ann Iannarelli

The Training Committee is working to implement the courses outlined in the Strategic Training Plan. The following programs were offered in April, May and June:

- 1) **Structured Writing:** This course focused on analyzing, organizing and presenting text so it can be quickly read and understood. It is an ideal method for writing policies and procedures,
- 2) **FERS Retirement and Benefits:** Review of the Federal Employee Retirement System, which included eligibility for FERS, Social Security and TSP,
- 3) **COOP** - District wide review of the Continuity of Operations Plan, and
- 4) **Presentation Skills Workshop:** Explored techniques for organizing and delivering presentations.

Website Committee

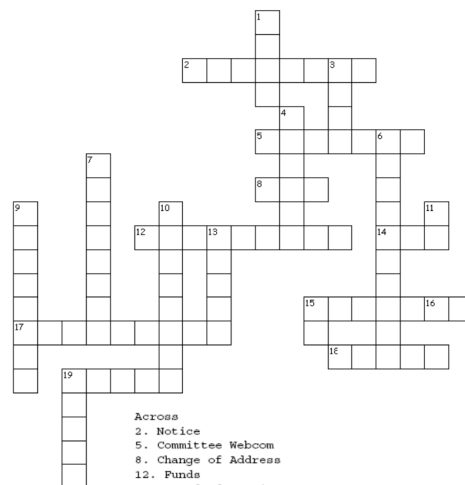
By: Sarah Weiner

The Website Committee attended an “in person” meeting in Orlando, Wednesday, June 12, 2013, for a full day of productive discussions about the Court’s external website. The day included a visit from Chief Judge Jennemann and a great conversation with the Clerk, Lee Ann Bennett and Operations Manager Raymond Waguespack about the Court’s intranet web pages. The committee also discussed the upcoming website survey, which provides a chance for the Court’s website viewers to give their thoughts. Please take advantage of this great opportunity!

The committee also enjoyed a specialty crossword puzzle using answers from the current Court website home page, www.flmb.uscourts.gov/. Look under “Areas of Interest” for a few helpful hints. The next issue will contain the answers. Good luck and stay tuned!

Website Committee Crossword Puzzle

Created by [Puzzlemaker](http://Puzzlemaker.com) at DiscoveryEducation.com

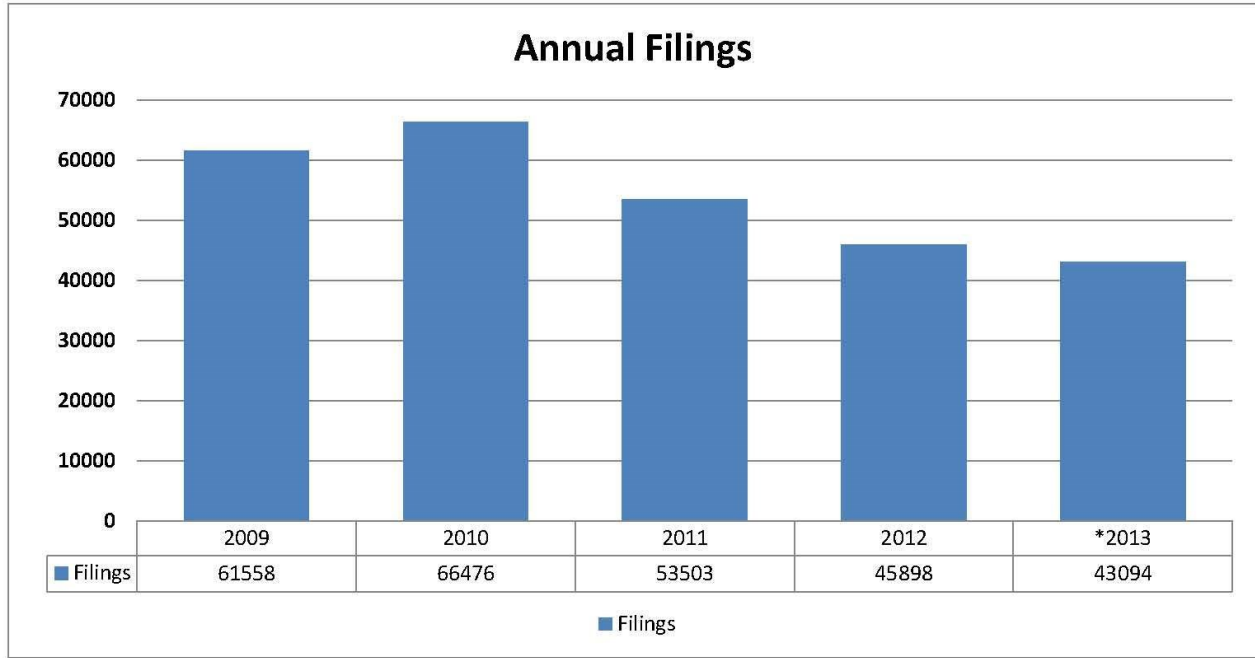


Across
 2. Notice
 5. Committee Webcom
 8. Change of Address
 12. Funds
 14. Proof of Service
 15. Schedules
 17. Support
 18. Public Access Court Electronic Records
 19. Calendar

Down
 1. Motion for Relief from
 3. Voice Case Information System
 4. Act
 6. Appearance
 7. Outside Website
 9. Index
 10. Inside Website
 11. Trustee
 13. Rules
 15. Adversary Proceeding
 16. Orders
 19. Case Management Electronic Case Filing

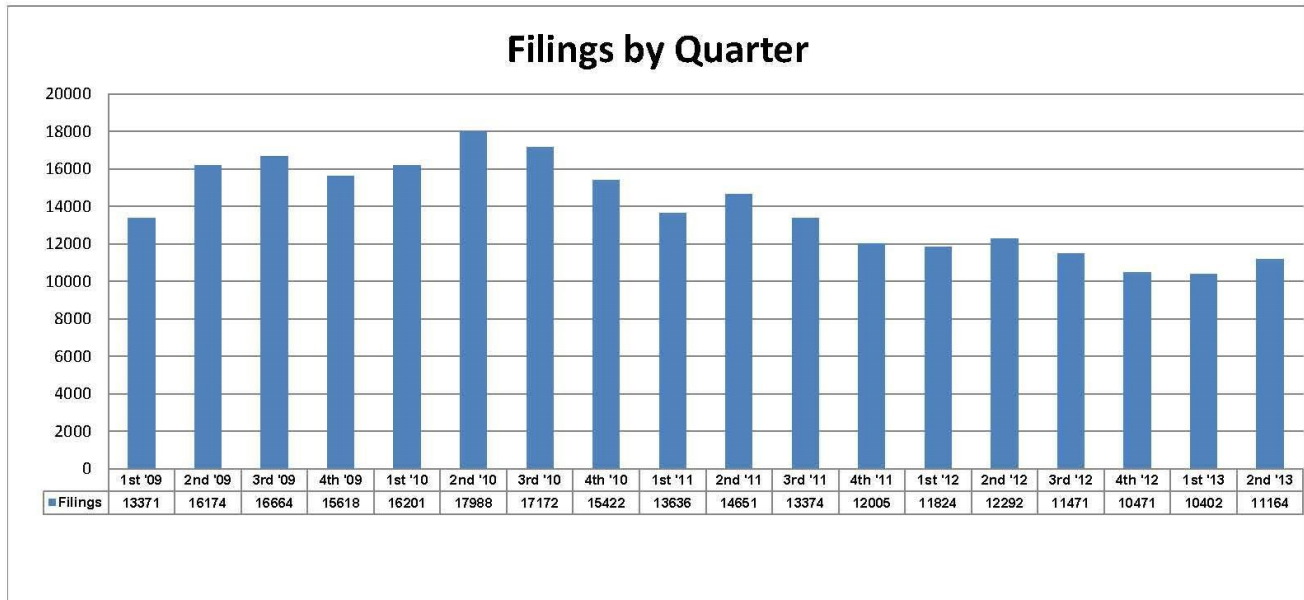
QUARTERLY STATISTICS AS OF JUNE 30, 2013, FOR THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF FLORIDA

United States Bankruptcy Court - Middle District of Florida
 Updated July 17, 2013 Meeting Data and Information
 Statistics as of June 30, 2013



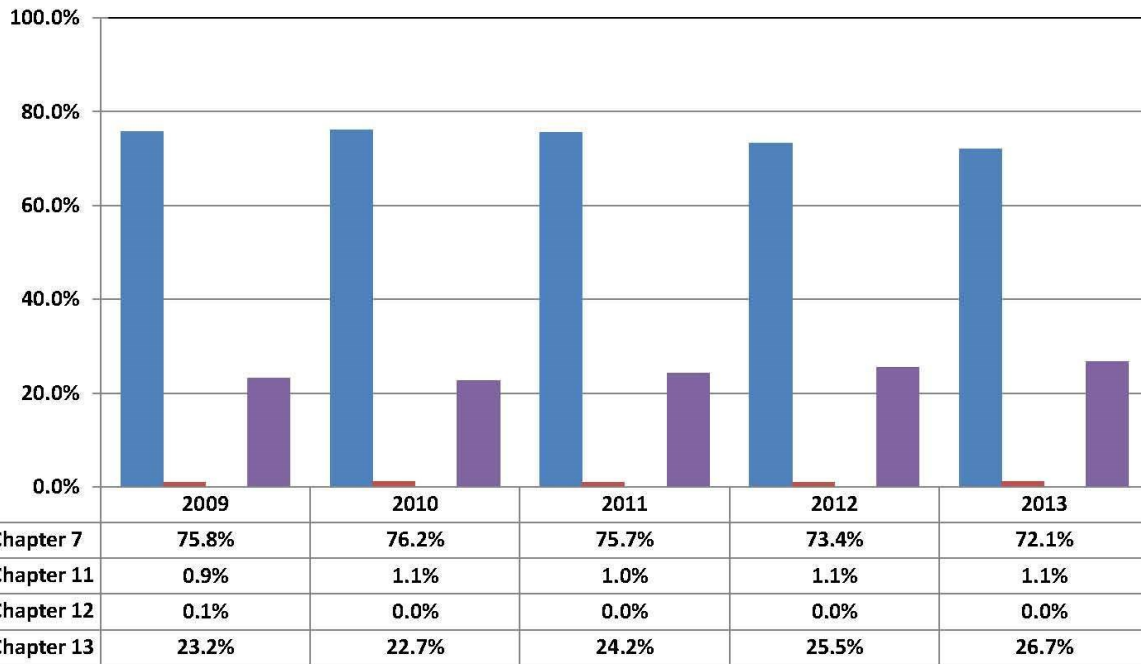
Year	Annual Filings	vs. 2009	vs. Prior Yr.
2009	61558		
2010	66476	8%	8%
2011	53503	-13%	-20%
2012	45898	-25%	-14%
*2013	43094	-30%	-6%

* Projected Filings

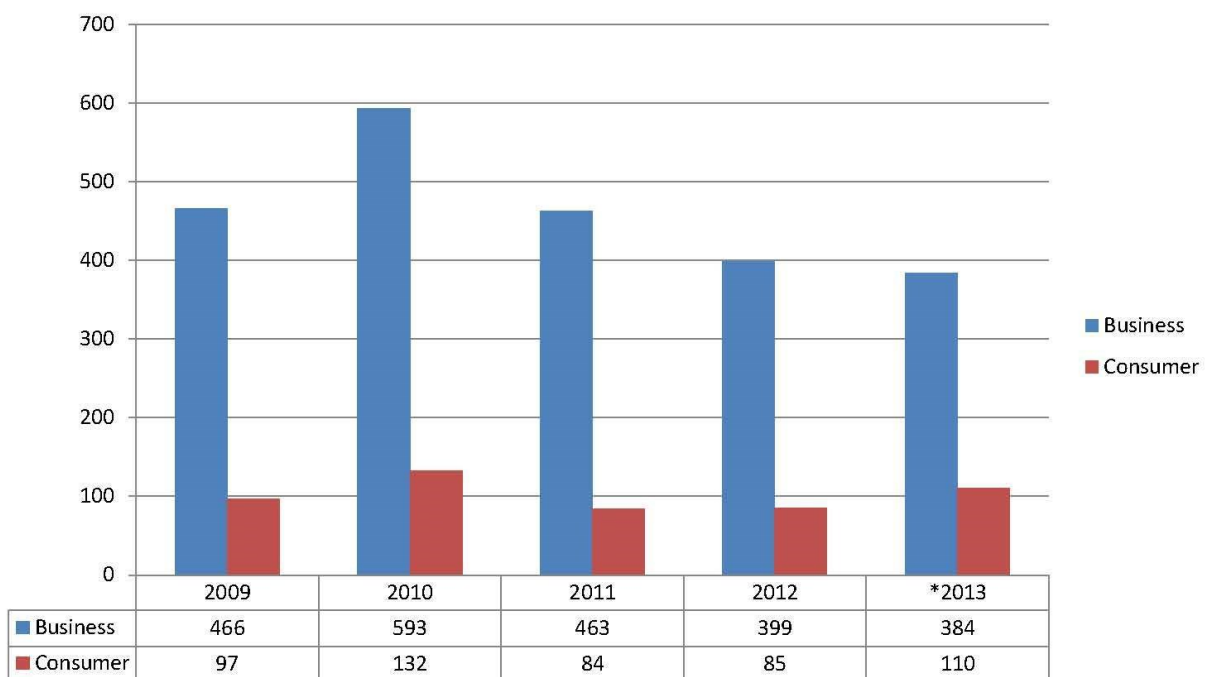


QUARTERLY STATISTICS AS OF JUNE 30, 2013, FOR THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF FLORIDA

Filings by % of Chapter Type

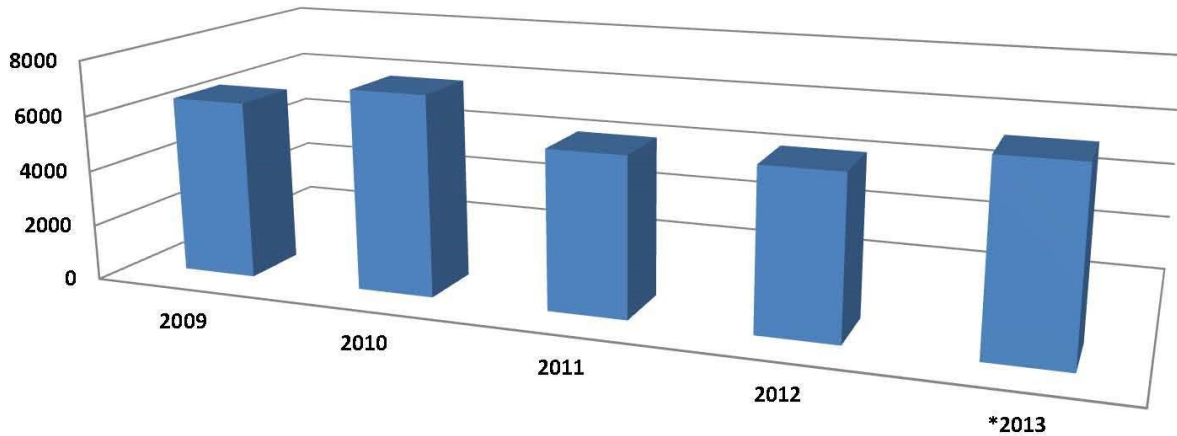


Chapter 11 Filings



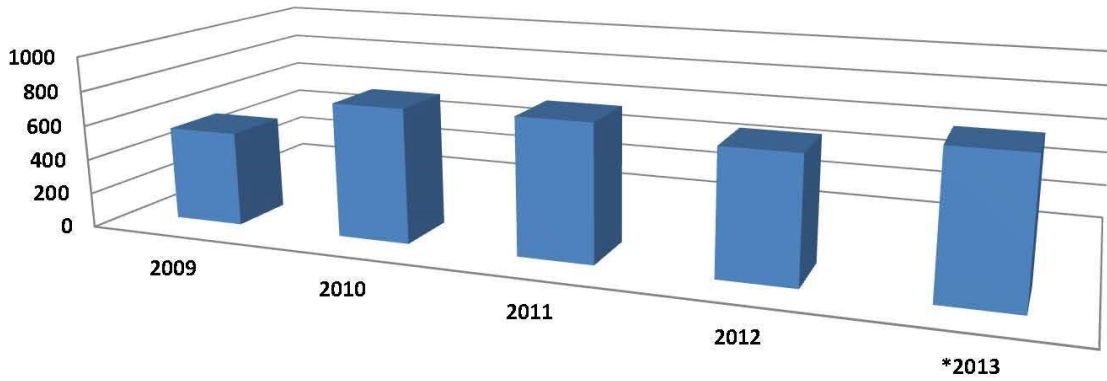
**QUARTERLY STATISTICS AS OF JUNE 30, 2013, FOR THE
UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF FLORIDA**

Pro Se Filings



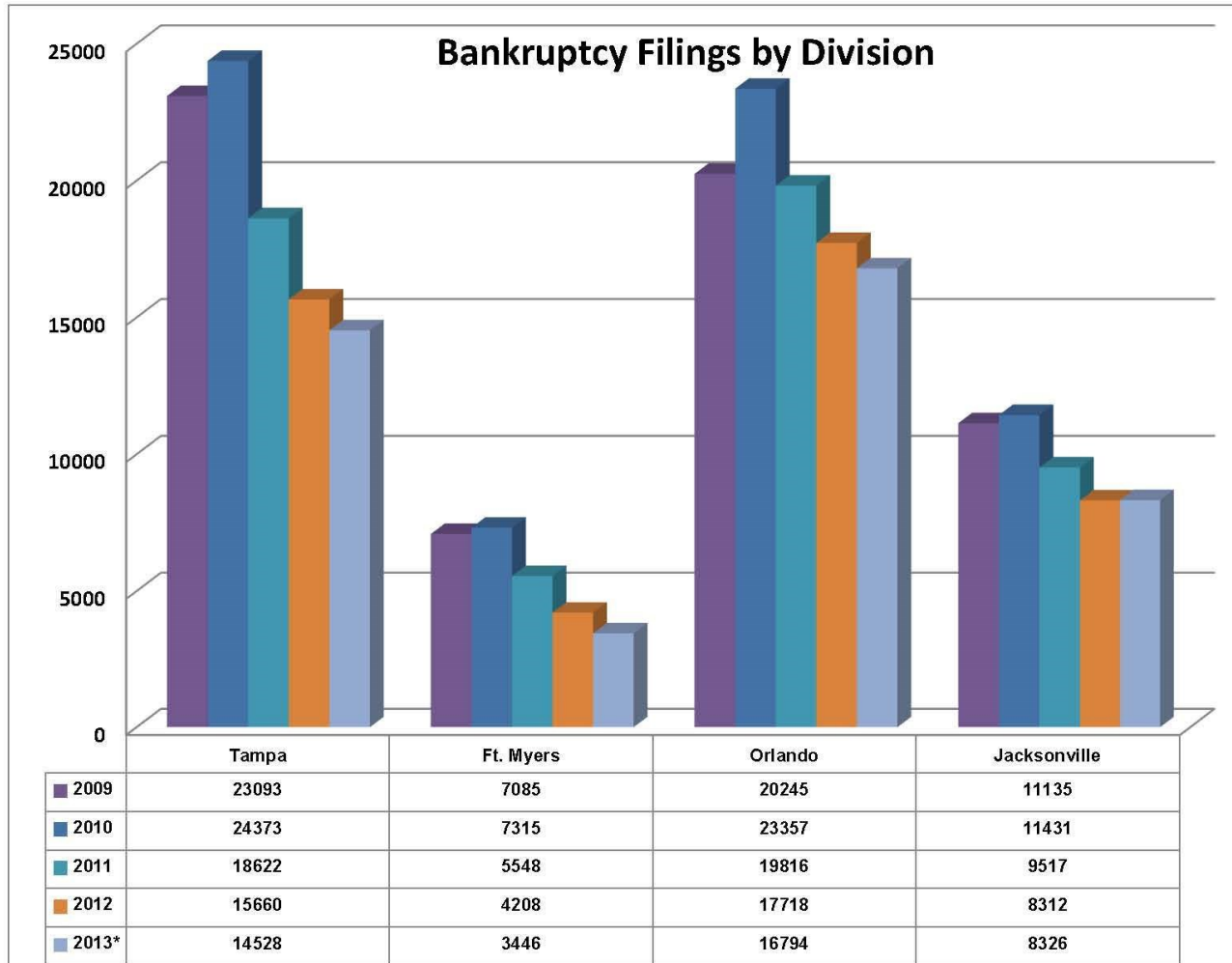
	2009	2010	2011	2012	*2013
■ Pro Se	6413	7201	5682	5737	6646
% of All Filings	10%	11%	11%	12%	15%

In Forma Pauperis Filings

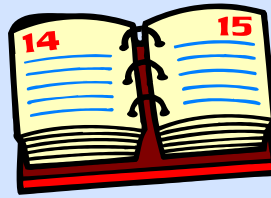


	2009	2010	2011	2012	*2013
■ IFP Granted	544	771	781	711	806
% of All Filings	1%	1%	1%	2%	2%

**QUARTERLY STATISTICS AS OF JUNE 30, 2013, FOR THE
UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF FLORIDA**



Note: Previous quarterly reports incorrectly reflected total cases filed by including adversary proceedings. Chapter 11 and Pro se filings chart counts have been corrected due to a programming error.

*****HAPPENINGS AROUND THE MIDDLE DISTRICT*******FT. MYERS**

July 16 @ noon Monthly Luncheon
 August 22 @ noon Monthly Luncheon
 September 19 @ 5:30 pm 2nd Annual Alexander Paskay Memorial Dinner , New Officer Induction Ceremony, and
 Presentation of the Alexander L. Paskay Professionalism Award — Edison Restaurant

JACKSONVILLE

August 23 JBBA Annual Seminar at the Sawgrass Marriott

ORLANDO

July 18 @ noon CFBLA Monthly Luncheon @ GrayRobinson
 July 25 @ 4:00 pm CFBLA Pro Se Assistant Clinic Volunteer Appreciation Party
 August 15 @ noon CFBLA Monthly Luncheon @ GrayRobinson
 September 13 @ noon Brown Bag Luncheon—Speakers from Orlando Chapter 13 Office (Mortgage Modification
 Mediation: The Duties and Responsibilities of Debtors' Counsel)
 September 19 @ noon CFBLA Monthly Luncheon @ GrayRobinson
 October 17 @ noon CFBLA Monthly Luncheon @ GrayRobinson
 November 12 @ noon CFBLA Monthly Luncheon @ GrayRobinson

TAMPA

August 27 @ noon Judge Mentoring Program @ USBC 5th Floor Training Room (Topic TBA)
 September 10 @ noon TBBBA Monthly Luncheon
 November 6 @ 2:00 pm 2nd Annual Bench Bar Conference
 November 19 @ noon TENTATIVE DATE—JBBBA Monthly Lunch
 November 20 @ noon Judge Mentoring Program @ USBC 5th Floor Training Room (Topic TBA)

OTHER**IMPORTANT DATES**

August 30-September 2 BLS Retreat—Boca Raton Resort and Convention Center
 October 29-November 2 NCBJ Annual Meeting
 November 7 View from the Bench Seminar at Tampa, FL
 November 8 View from the Bench Seminar at Miami, FL
 January 23-25 BLS Midyear Meeting—Orlando, FL
 March 13-15, 2014 ABI/Stetson Seminar—Tampa, FL
 June 24-28, 2014 Florida Bar Annual Meeting

**United States
Bankruptcy Court**

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articles by January 1, April 1,
July 1, and October 1 to:**

Kim Osment

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[www.flmb.uscourts.gov **]**