

Giving Back

By: Sheryl Loesch, Clerk of Court

I cannot believe that more than a year has passed since I became the Clerk of Court. It has been a fun and rewarding year for me.

Of all the wonderful attributes I have discovered about our Court, one attribute that stands out to me is the kind and giving spirit of the judges and staff. Seeing this spirit memorialized in the Court's Mission Statement is one thing; however, seeing it modeled by our people regularly is exemplary. Community service and concern for others is seen at every level of our court. It is easy to "talk the talk" but it is more important to "walk the talk." The Middle District of Florida Bankruptcy Court "walks the talk."

I want to share one of my passions in the spirit of giving back. In my early years serving as the Clerk in the District Court, I was asked by a clerk colleague to assist on a rule of law project in Egypt. I assisted a team from the Department of Justice, tasked with reviewing the serious backlog of cases that country experienced. Although I had traveled internationally before on vacation, this was by far the most "foreign feeling" country I had visited. I remember being both excited and nervous. This was my first time traveling to assist on a rule of law project.



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Since my first trip to Egypt all those many years ago, I have been on numerous trips abroad and have seen the dire situations courts face, especially in developing parts of the world. I quickly learned what we take for granted, many courts only dream of. It is a humbling experience.

After participating on several rule of law project teams and also participating in hosting foreign delegations of court personnel from other countries, a few of my colleagues and I realized there was a need for a follow up resource in order to help the court personnel in these countries stay engaged with those of us in the United States. This contact allowed us to continue to be a resource and sounding board to help them. Our government funds many rule of law projects throughout the world, however, once the project term ends and the project team leaves the country, the local court personnel left behind need a way to stay in communication with other court colleagues in both the United States and in other countries with independent judicial systems. It was this need that caused several of us to form a new association we called the International Association for Court Administration, or “IACA” for short. IACA was officially formed back in September 2004 because of the vision of several of my colleagues. We planned to hold our first conference in Ljubljana, Slovenia. This was truly a leap of faith as we had no idea if anyone would attend! To our relief, the first conference was a huge success with over 150 judges and court personnel in attendance from over 30 countries.

Here is a picture of the group attending the President’s Reception at the first conference in Slovenia:



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Over the years, IACA continued to thrive and grow. It lived up to the adage, “If you build it, they will come.” The following global conferences were held:

2006 – Verona, Italy
2008 – Dublin, Ireland
2009 – Istanbul, Turkey
2012 – The Hague, Netherlands
2013 – Dubai, UAE
2014 – Sydney, Australia
2015 – The Hague, Netherlands
2016 – Washington, DC, United States

A conference is scheduled for this September in Iguazu Falls, Brazil. I have recently been elected as the incoming President-Elect of IACA and will assume this role at the conference in September. If you are interested in learning more about IACA, feel free to visit the IACA website at www.iaca.ws.

Whether it is involvement in putting on a conference or serving on a team on a rule of law project in a specific country, I have always felt I have received far more than I have given. In many places I have been, the court systems are in dire need of both organization and skilled management. Sadly, the problem lies in the long established culture of corruption in some countries. Salaries tend to be very low so payoffs are common. I always try to approach these trips with an open mind, with every hope that some small tidbit of advice or sharing some of our procedures will prove helpful to the court at some point in time, even if it is years down the road. It is personally rewarding to see the expressions of enthusiasm and hope on the faces of judges and court personnel in countries who need our help.

The Middle District of Florida Bankruptcy Court is a special court. It is a court with heart. It is a court with a giving spirit. It is a family. I am so proud to now be a member of this family.

Upcoming Bar Events

Fort Myers

August 30 and
September 27
@ noon SWFBPA Meetings
Location: Federal Courthouse Building, 2nd floor, Jury
Assembly Room

October 25 7th Annual Alexander L. Paskay Memorial Dinner
Location: The Edison

Orlando

August 9 CFLBA New Member Reception
Location: Judge Jackson's chambers

August 31,
September 28 &
October 26
@ noon OCBA Bankruptcy Committee Meetings
Location: OCBA Center

October 3 CFBLA Clerks' Appreciation Luncheon

Tampa

September 11 &
October 9 @ noon TBBBA CLE Luncheons
Location: University Club

November 10 Florida Bar Business Law Section View from the Bench Seminar
Opening Reception
Location: The Vault

November 11 Florida Bar Business Law Section View from the Bench Seminar
Location: Stetson University College of Law, Tampa Campus

Jacksonville

August 17 JBBA 26th Annual Seminar
Location: Sawgrass Marriott, Ponte Vedra Beach

Other Events of Note

October 16-19 ABJA CBA Program and Professional Skills Seminar –
Indianapolis, Indiana

October 28-31 NCBJ Annual Conference – San Antonio, Texas

Jacksonville Bankruptcy Bar Association Annual Seminar August 17 – Sawgrass Marriott, Ponte Vedra Beach

The Jacksonville Bankruptcy Bar Association cordially invites you to attend its Twenty-Sixth Annual Bankruptcy Seminar. This conference brings together leading jurists, experts, and bankruptcy practitioners. For more information or to register, please contact Allison Abbot at allison.abbott@nelsonmullins.com.

Schedule

8:40 am – President’s Remarks

John J. Freeman, Douglas W. Neway, Chapter 13 Standing Trustee

8:45 am – Recent Case Updates

Analysis of a Wide Variety of Hot Topics Across the District and Nationwide

Honorable Michael G. Williamson

Honorable Jerry A. Funk

Honorable Paul M. Glenn

Honorable Catherine P. McEwen

Honorable Caryl E. Delano

Honorable Cynthia C. Jackson

Moderators:

David E. Otero, Akerman LLP

Jason B. Burnett, GrayRobinson, P.A.

10:55 am – Ethical Considerations:

Representing the Next Friend, Holder of Power of Attorney, and More

Stephanie C. Lieb, Trenam Law

Sarah A. Mannion, Candyce M. King, P.A.

11:55 am – 1:45 pm Lunch Break

Breakout Sessions:

1:45 pm – 3:00 pm

Consumer Track - Lease Agreements and Contracts in Chapter 13

Jason A. Burgess, The Law Offices of Jason A. Burgess, P.A.

Melanie J. Sacks, Law Offices of Sacks & Sacks, P.A.

Gregory S. Gilbert, Parker & Dufresne, P.A.

Commercial Track - Untraditional Loans in Bankruptcy

Mark S. Mitchell, Rogers Towers, P.A.

William B. McDaniel, Lansing Roy, P.A.

Breakout Sessions:

3:15 pm – 4:30 pm

Consumer Track - Exemption Planning & Practice

Edward P. Jackson, Edward P. Jackson, P.A.

Katheryn E. Hancock, The Hancock Law Firm, P.A.

Robert J. Corcoran, Jr., Law Firm of Robert J. Corcoran, P.A.

Commercial Track - Intersection of Arbitration and Bankruptcy Law

Michael S. Waskiewicz, Burr & Forman LLP

Taylor J. King, Law Office of Mickler & Mickler, LLP

Todd M. Davis, Davis Law Firm

4:30 pm – 6:00 pm - Reception

Law Day 2018

By Tony Constantini

The school was West Riverside Elementary. Lawyers went to four different art classes for fourth and fifth graders, over the course of four days. The Law Day theme this year was the separation of powers doctrine so we talked to the kids about the concept, and how the intent is to have branches act as a check on the other branches. Our goal was to expose the students to the concept and to get them thinking about it and asking their own questions. Then, the kids drew posters representing/depicting the relationship of the three branches of government....which is a tough thing to conceptualize no matter what your age.



We then put the posters on poster-board and displayed them in the state courthouse for a week. We included ballots and a ballot box, and asked for people to cast votes for their favorite posters. The top three fourth graders and top three fifth graders received a gift card (1st place was \$20, 2nd was \$15, and \$10 for third). The fourth graders received their awards on May 23rd and the fifth graders were given their awards on May 25th during their end-of-the-year awards ceremony. The gift cards were paid for by the Jacksonville Bar Association.

Law Day was started in 1958 as a day to recognize the role that the federal constitution

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and the law play in our society. It is recognized every year on May 1st and each year has a different central theme. The Jacksonville Bar Association holds a Law Day luncheon each year and plans and conducts other activities in the lead up to the annual luncheon. The poster contest is one of these events, and I think it's been done for the last 6 or 7 years. I was the subcommittee chair for the poster contest.

Tampa Bay Bankruptcy Bar Association News

By: Lori V. Vaughan, Esq., President

The Tampa Bay Bankruptcy Bar Association is celebrating its 30-year anniversary. The TBBBA was founded in 1988 with Don Stichter serving as its first president. Stay tuned for some fun events to commemorate this milestone.

TBBBA held its annual dinner on June 6, 2018, where the new officers and directors were inducted. Russ Blain of Stichter, Riedel, Blain & Postler was awarded the Douglas P. McClurg Professionalism Award. This award is presented to an attorney who has exemplified over a period of years the traits of outstanding effectiveness in the presentation of matters to the Bankruptcy Court, a reputation for thorough preparation, civility and courtesy to opposing counsel, appropriate courtroom demeanor, ethical conduct and professionalism at the highest level, and long term service to the bankruptcy bar. It is the highest award of the Association.



Don Stichter, Harley Riedel, and Russ Blain (L to R)

The Annual Golf Tournament was held on April 27, 2018 and was another fun and exciting event. The United States Trustee hosted a Nuts & Bolts of Consumer Bankruptcy Practice on June 29. This half-day seminar covered “best practices” in representing consumer debtors in the Middle District of Florida.

TBBBA’s monthly CLE Luncheons will start up again in September with the first program being held at noon on September 11 at the University Club in downtown Tampa. Check out our website at www.tbbba.com for more fun and informative upcoming events.

MAKE ME SMILE MOMENT

Submitted by Judge McEwen

Actually there were 30 such moments. That's because some 30 business and consumer creditor lawyers attended Judge McEwen's Quarterly Mentoring Session on July 6th to learn how to staff the Tampa courthouse clinic operated by the Tampa Bay Bankruptcy Bar Association. Bearing the title "No Excuses: Learn How to Staff Our Pro Bono Clinic, a Seminar for Business Lawyers," the program taught the attendees how to handle the legal services most frequently requested by pro se litigants who visit the clinic. Clinic pros Mike Barnett and Wendy DePaul taught the details, while big firm business lawyer Jeff Warren gave comfort about potential conflicts and ghost writing issues by discussing the new, relaxed Rule of Professional Conduct on conflicts and clinics and how to properly disclose the legal assistance to avoid a ghost writing violation.

If you missed the program, there are still "No Excuses" for not volunteering because the program was videotaped and is (or soon will be) available to CM/ECF users (and you get one hour of free CLE). An added bonus was Chief Judge Williamson's warm "thank you" to the attendees -- in his casual Friday running clothes. So that's really 31 moments!

TAMPA PRO SE CLINIC HONOR ROLL

The judges are pleased to recognize and enthusiastically thank the following pro se clinic volunteers for the second quarter of 2018. We note in particular that Robert DeLeon and Mike Barnett logged double digits individually. And the Stichter firm's "team" logged double digits. We are also pleased to welcome James Elliott to the group.

Trivia question: How many lawyers willing to give up just one hour of time does it take to staff the clinic in a given month? See answer below.

Attorney	Total Hours
Barnett, Michael	11
Case, Kenneth	6
Dammer, Samantha	5
DeLeon, Robert	13
Elliott, James	1
Fogarty, Dan (SRBP)	1
Geller, Robert	4
Hart, Barbara (SRBP)	2
Oguntebi, Fehintola	1
Peterson, Ed (SRBP)	1
Petry, Kelley	2
Robens, Mark (SRBP)	3
Sharp, Susan (SRBP)	1
Sierra, Timothy	4
Standley, Harrison	1
Stichter, Scott (SRBP)	2
Vaughan, Lori	1

Answer: 24 or 27, depending on if there are 8 or 9 Mondays and Wednesdays in the month, as the clinic is open three hours a day on Mondays and Wednesdays.

Central Florida Bankruptcy Law Association News

By: Michael A. Nardella, Esq., President

CFBLA just held its successful Annual Seminar on May 17, where Judge Williamson also presented *The State of the District*. At the Seminar, over twenty judges and practitioners spoke on both consumer and commercial topics and, considering the current economy, there were more attendees than we even expected.

On June 21, we were lucky that Judge May volunteered as the keynote speaker for our monthly luncheon. Judge May presented some reflections and thoughtful observations about his career and his time on the bench. We are grateful to him for traveling to Orlando to speak to us.

At the same luncheon we also presented the Book Award to Alice Carmen Burgos who received the highest grade in Bankruptcy at Florida A&M College of Law. Congratulations again to Ms. Burgos, and we look forward to watching her career.

CFBLA also provides its members with a number of CLE and networking opportunities. If you have not already done so, be certain to begin or renew your membership right away. Go to www.cfbla.org and click the membership application link. If you're new to CFBLA check out our website for some great information and how to become a member. In fact, new members of CFBLA will also be invited to a reception hosted in Judge Jackson's chambers on August 9.

Upcoming Events:

July 19: General Membership Luncheon at GrayRobinson in Downtown Orlando.
Guest Speaker: Justin Luna - *Ethics in the Social Media World*

October 3: Clerk's Appreciation Luncheon

**PROCEDURE MANUAL COMMITTEE UPDATE:
FLMB’S RESOURCE HUB—THE SOURCE**

By: Danielle L. Merola, Law Clerk to Hon. Karen S. Jennemann

The quarterly update to the Source will occur in July and will again primarily focus on the Procedure Manual. We will add eleven new procedures. Some procedures come from the documents listed under “Other District Wide Forms,” and others are brand new. We will also update existing procedures.

New procedures will include: Amended Complaint, Motion for Summary Judgment, Auditor Reports, Involuntary Cases, Motion for Refund of Filing Fee, Motion to Determine Adequate Assurance for Payment of Utility Services, and Motion to Reserve Asset from Abandonment.

The Appeal Cover Sheet, Ballot Tabulation, and Notice of Limited Appearance of Additional Counsel and Rule 2016 Statement will be moved from “Other District Wide Forms” into the Procedure Manual as new procedures. Electronic Bankruptcy Noticing will be moved from “Other District Wide Procedures” into the Procedure Manual as a new procedure.

Chapter 11 Local Rule Fee Application Summary, Exhibit List and Cover Sheet, and Order Granting Motion for Refund of Filing Fee will be moved from “Other District Wide Forms” into existing procedures.

Many of our updates to existing procedures came from comments and suggestions we received from external users.

Many thanks to Mr. Steven Fishman from Clearwater who correctly pointed out that our sample Motion to Avoid Lien was not a verified motion (as contemplated by the procedure and local rules). We updated our sample motion to make it verified.

Mr. Fishman alerted the Court to this discrepancy via email and praised the Procedure Manual.

Quote from Mr. Fishman: “When the Court first published the Procedure Manual, I thought I would rarely use it ... I was so wrong. I constantly refer to it and update my motions and orders and procedures. It is a valuable and much appreciated tool.” Thanks for using this tool and helping us make it better!

We update The Source on a quarterly basis. The next update will occur on October 12, 2018. Look out for what to expect in the October update in the next issue of the *Court Connection*.

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Please contact the Procedure Manual Committee with your questions, concerns, or suggestions at: flmb_procedures@flmb.uscourts.gov.

**ABJA CERTIFIED BANKRUPTCY ASSISTANT
AND PROFESSIONAL SKILLS SEMINARS TO BE HELD
OCTOBER 16-19 – INDIANAPOLIS, INDIANA**

By: Laura Stevenson, Judicial Assistant to Hon. Caryl E. Delano

The Association of Bankruptcy Judicial Assistants (“ABJA”) is sponsoring its annual Certified Bankruptcy Assistant Seminar and Exam on October 16 & 17, 2018 and Professional Skills Seminar on October 18 & 19, 2018 at the Crowne Plaza Indianapolis Downtown Union Station.

The Certified Bankruptcy Assistant (“CBA”) program is geared specifically toward legal assistants and paralegals in the bankruptcy field. The two-day certification program includes training workshops and two exams that cover grammar usage and writing, the Bankruptcy Code and Rules, ethics, and research and proper legal citation. The instructors will include Judge Caryl E. Delano.

The ABJA will also offer a Professional Skills seminar on October 18 & 19. If you are already a CBA in need of continuing education credits or a legal assistant or paralegal who is interested in enhancing your professional development, this is your opportunity to join judicial assistants and bankruptcy professionals in learning best practices.

For more information on the CBA or Professional Skills programs, please visit the ABJA’s website, www.abja.org or feel free to contact me at Laura.Stevenson@flmb.uscourts.gov.

News from the District Wide Steering Committee

By: Tim Sierra, Esq.

Comprised of individuals from the Clerk of the Bankruptcy Court, the Office of the United States Trustee, the Chapter 7 panel trustees, the standing Chapter 13 trustees, members of the creditor and debtor bars, Chapter 11 practitioners, and business attorneys in all four divisions of the Middle District of Florida, the Steering Committee meets once a month to discuss topics for the annual Bench Bar Conference. The purpose and goal of the Committee is to find policies and procedures in the district that may be ripe for uniformity.

This year the Committee is looking at ways to increase diversity in the bankruptcy profession, identifying any racial bias in the bankruptcy system, providing pro bono services and the potential liability associated therewith, and Bankruptcy and Local Rules. The Committee will address these issues at the monthly meetings and then present a round table discussion with the judges of the Middle District at the Bench Bar Conference in November on the eve of the View from the Bench seminar.

At the 2017 conference, the Bench Bar looked for ways to search and improve The Source, which is the Court's one stop shop for practitioners found on the Court's website. The genesis of The Source was the Court's internal procedure manual – the Clerk's own method of addressing procedures for run of the mill matters and not so run of the mill ones. If your motion ever got stricken, the internal procedure manual had something to do with it! Now, The Source internal manual is external, and you can use it to your benefit. The procedure manual is very helpful because you can search for a motion, find Code and Rule references, and identify a filing checklist. The Court plans to move all procedures and forms into The Source. It is on the home page of the Court's website at <http://www.flmb.uscourts.gov/thesource/>. If you have suggestions, questions, see an error, notice an inconsistency, or otherwise want to comment on The Source, please contact flmb_procedures@flmb.uscourts.gov.

Chapter 13 was also a major topic as changes to rules for filing claims took effect on December 1 2017. The Committee discussed the impact of the shortened time frame to file proofs of claim and suggested moving the 341 hearing date to 45-50 days after the petition is filed, to allow the first confirmation hearing to be set beyond the claims bar date. The Committee also discussed whether a plan could be confirmed with a pending motion, claim objection, or loan modification and whether a district wide policy could be implemented to expedite confirmation by addressing these issues. The Committee will continue to review Local Rule 7001-1 concerning the time for service in adversary proceedings and will make recommendations to the

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judges. Lastly, the Committee discussed the disclosure of prepetition attorney's fees and the duty to disclose the receipt of a post-petition retainer. The Committee also discussed whether there is a duty to disclose the receipt of compensation from the trustee in a chapter 13 case or the receipt of interim compensation under an interim order. The bottom line is this: DISCLOSE, DISCLOSE, DISCLOSE.

Practitioners who are interested in participating in the Bench Bar Conference or who have comments or suggestions for the upcoming Bench Bar Conference can contact the Steering Committee's Chairperson, Kelley M. Petry, Esq., at kmpetrypa@aol.com.

WEBSITE COMMITTEE UPDATE

By: Kim Osment, Communications Specialist

The Website Committee welcomed new member Wendy Chatham (Judge Jackson's Courtroom Deputy - ORL) in May 2018. We are excited to have Wendy join the team. The Website Committee continues its work to maintain and update the Court's External and Internal Websites. The recently debuted Featured Updates Box provides website visitors a list of the newest or most recently updated website links. Future external website projects include updates to the Frequently Asked Questions and Locations pages. We are also adding new features to pages on the Internal Website (KEN - <http://intra.flmb.circ11.dcn/flmb/>) and hope to share these new features with Court staff soon. As time permits, please check KEN's center rotator box for interesting monthly news. The Committee's next scheduled meeting is August 22, 2018.

Dear Point and Click:

I have been trying to locate the Court's Local Rules on the website and cannot seem to do so. Can you help?

The Local Rules and many other recourses are available on the Court's website, www.flmb.uscourts.gov. In an effort to make the website more user friendly, we created a central location on the website, The Source, to house the information most frequently used. The Source is located in the center of the screen of our website or through the following link: <http://www.flmb.uscourts.gov/thesource/>. This centralized page contains links to the Court's External Procedures Manual and links to both the Official Forms and Local Forms, the Style Guide, Opinions, Local Rules and Administrative Orders, the Bankruptcy Code and Rules, the Case Digest, Negative Notice and Accompanying Orders Lists, Videos for CLE Credit for Bankruptcy Attorneys, and the Judges' Calendars. A thorough presentation on The Source will be forthcoming in the future.

Visit to Naval Special Warfare Command Submitted by Judge McEwen

As a side trip coincident to a committee meeting of the Judicial Conference of the United States, the judges visited the Naval Special Warfare Command in Coronado, CA to learn about the training of Navy Seals and Navy Special Warfare Combatant-craft Crewmen (SWCCs, pronounced "swiks") and the different firearms they use.



Judge McEwen flanked by a Navy Public Affairs Officer (who is attending law school in his spare time) (L), the Creature from the Black Lagoon (the sign says "So You Wanna Be a Frogman"), and Bankruptcy Judge Mike Romero (R), current president of the National Conference of Bankruptcy Judges.

CASE LAW UPDATE FOR Q3 2018

Submitted by:

Bradley M. Saxton & C. Andrew Roy, Winderweede, Haines, Ward & Woodman, P.A.

Supreme Court Cases

Lamar, Archer & Cofrin, LLP v. Appling

138 S. Ct. 1752 (June 4, 2018)

Applying the plain language of section 523(a)(2)(B), the Court held that “a statement about a single asset can be a ‘statement respecting the debtor’s financial condition,’” and if that statement is not in writing, the debt may be discharged even if the statement is false.

Eleventh Circuit Cases

Weakley v. Eagle Logistics

____ F. 3d____, 2018 WL 3188663 (11th Cir. June 29, 2018)

The Eleventh Circuit held that the District Court properly applied the Slater analysis regarding judicial estoppel by considering all of the facts and circumstances of the case, leading to the conclusion that judicial estoppel would apply when the debtor failed to list two pending civil claims in his bankruptcy schedules.

Cadwell v. Kaufman, Englett & Lynd, PLLC

886 F. 3d 1153 (11th Cir. 2018)

The Eleventh Circuit held that section 526(a)(4) prohibits debtor’s counsel from advising a client to incur additional debt by credit card to pay for the legal services in connection with the case. The court rejected the argument that the prohibition only applies if the advice was given with an “invalid purpose.”

Bankruptcy Court Cases

In re Mongelluzzi

2018 WL 3105066 (Bankr. M.D. Fla. June 20, 2018) (Delano, J.)

Factual issues regarding indirect benefit barred summary judgment on constructive fraudulent transfer claims. Summary judgment granted regarding fraudulent transfer defendant's affirmative defense of good faith.

In re Rand

2018 WL 1801224 (Bankr. M.D. Fla. April 12, 2018) (Jennemann, J.)

The Court denied debtor's discharge under sections 727(a)(3), (a)(4), and (a)(5) where, among other things, the Court found debtor's testimony untruthful and not credible, particularly his assertion that he paid all his bills in cash because he opposed the banking system.

In re Word

2018 WL 1616837 (Bankr. M.D. Fla. Mar. 30, 2018) (Jackson, J.)

Debtor's tax liability for 2010 held non-dischargeable where debtor failed to meet her burden of showing that a return for 2010 was delivered to the IRS.

United States Supreme Court Rules on 11 U.S.C. § 523(a)(2)

By: Filipa Andreia Bento, Orlando Extern

Lamar, Archer & Cofrin, LLP v. Appling (In re Appling), 584 U.S. ____; 201 L. Ed. 2d 102 (2018).

Background

Respondent, R. Scott Appling (Appling), fell behind on his legal bills owed to Petitioner, Lamar, Archer & Cofrin, LLP (Lamar), a law firm Appling hired to represent him.¹ Lamar informed Appling the firm would withdraw from representation and place a lien on its work product if Appling did not pay his bills. Appling told Lamar he was expecting a tax refund he could apply towards the legal fees. Lamar relied on Appling's statement, agreed to continue the representation, and delayed collection of the outstanding fees. Appling and his wife received their tax refund, spent the money on their business, and did not pay Lamar. Lamar sent Appling its final invoice. Lamar sued in Georgia state court and obtained a judgment. Appling and his wife then filed bankruptcy.

Lamar initiated an adversary proceeding against Appling. It argued Appling's debt to Lamar was nondischargeable under 11 U.S.C. § 523(a)(2)(A).² This section bars discharge of debts arising from "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's ... financial condition." Appling then moved to dismiss. He argued his alleged misrepresentations were "statement[s] . . . representing the debtor's . . . financial condition" and so § 523(a)(2)(B) applied. This section requires a statement to be "in writing" for it to be nondischargeable.

The Bankruptcy Court held that a statement about a single asset is not a "statement respecting a debtor's financial condition" and denied Appling's motion to dismiss.³ The District Court affirmed. The Eleventh Circuit Court of Appeals reversed and held that "'statement[s] respecting the debtor's . . . financial condition' may include a statement about a single asset."⁴ The Eleventh Circuit also held that § 523(a)(2)(B) did not bar Appling from discharging his debt to Lamar because Appling's statements about his tax return were not in writing.⁵

¹ *Lamar, Archer & Cofrin, LLP v. Appling (In re Appling)*, 584 U.S. ____; 201 L. Ed. 2d 102 (2018).

² All references to the Bankruptcy Code refer to 11 U.S.C. §§ 101 *et. seq.*

³ *Lamar, Archer & Cofrin, LLP v. Appling (In re Appling)*, 500 B.R. 246, 252 (Bankr. M.D. Ga. 2013).

⁴ *Lamar, Archer & Cofrin, LLP v. Appling (In re Appling)*, 848 F.3d 953, 960 (11th Cir. 2017).

⁵ *Id.*

The United States Supreme Court was tasked with deciding whether a statement about a single asset can be a “statement respecting the debtor’s financial condition.”⁶ The Supreme Court agreed with the Eleventh Circuit’s conclusion and affirmed. Justice Sotomayor delivered the opinion, in which Chief Justice Roberts, and Justices Kennedy, Ginsburg, Breyer, and Kagan joined. Justices Thomas, Alito, and Gorsuch joined as to all but Part III–B.

Holding

The Court held that a debtor’s statement about a single asset can be a “statement respecting the debtor’s financial condition” under § 523(a)(2) of the Bankruptcy Code.⁷

Analysis

The relevant text of § 523(a)(2) was the phrase “statement respecting the debtor’s financial condition.” The key word in dispute was the preposition “respecting,” meaning “in view of; considering; with regard or relation to; regarding; concerning.”⁸

Lamar argued “respecting” is not always used as broadly as the definitions reveal and contends the word “respecting” means “‘about, concerning, with reference to, and as regards’ and implies ‘a more limited scope than relating to.’”⁹ Under Lamar’s formula, a statement about a single asset would not be a statement of the debtor’s overall financial well-being. The Court was not persuaded by Lamar’s attempt to impose a distinction between the definitions; the definitions overlap and are circular.

Appling argued “‘a statement respecting the debtor’s financial condition’ is ‘a statement that has a direct relation to or impact on the balance of all of the debtor’s assets and liabilities or the debtor’s overall financial status.’”¹⁰ The Court agreed with Appling and the United States as *Amicus Curiae* and noted “‘a statement respecting the debtor’s financial condition’ includes ‘a representation about the debtor’s asset that is offered as evidence of ability to pay.’”¹¹

The Court addressed Lamar’s contention that Appling’s construction undermines the purpose of § 523(a)(2). Lamar claimed under Appling’s rule, § 523(a)(2)(B) is given broad reach, rendering little to be protected by § 523(a)(2)(A). The Court noted

⁶ *In re Appling*, 584 U.S. ____.

⁷ *Id.*

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ *Id.* at 7.

¹¹ Brief for United States as *Amicus Curiae* Supporting Petitioners No. 16-1215.

previous decisions considering the application of § 523(a)(2)(A) establish the provision retains significant function when a “statement respecting the debtor’s financial condition” is interpreted to include a statement about a single asset. Section 523(a)(2)(A) has been used to bar the discharge of debts arising from misrepresentations about the value of goods, property, and services and debts from forms of fraud that can be effected without a false representation.¹²

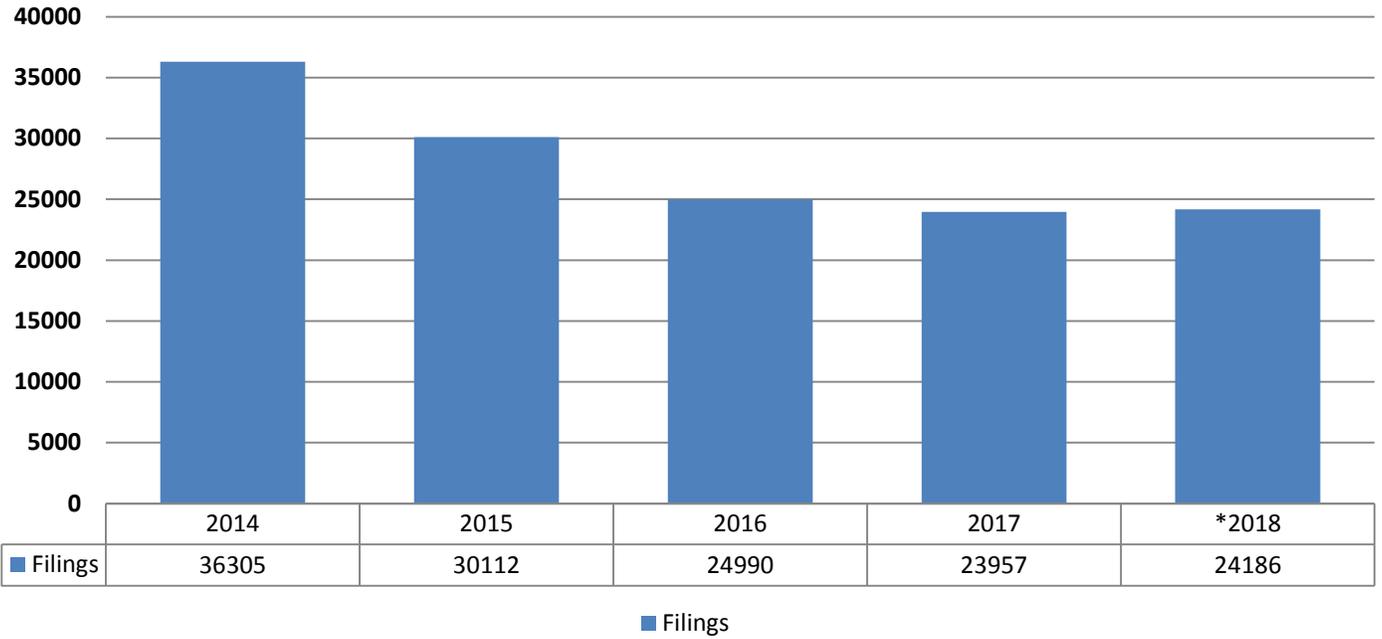
Lamar asserted Appling’s interpretation contradicts the bankruptcy system’s purpose to provide relief to the “honest but unfortunate debtor” because Appling’s rule allows lying debtors to swindle innocent creditors out of debt arising from an oral misrepresentation.

The Court stated § 523(a)(2)’s heightened requirements reflect Congress’s effort to balance the potential misuse of statements representing a debtor’s financial condition and noted creditors can still benefit from the protection of § 523(a)(2)(B) by insisting the debtor’s representations of their financial condition are made in writing.

¹² See *Husky Int’l Electronics, Inc. v. Ritz*, 136 S. Ct. 1581; 194 L. Ed. 2d 655 (2016) (defining the term “actual fraud”); *United States v. Tucker (In re Tucker)*, 539 B.R. 861 (Bankr. D. Idaho 2015) (discussing fraudulent omissions); *SEC v. Bocchino (In re Bocchino)*, 794 F.3d 376 (3d Cir. 2015) (describing history of § 523(a)(2)(A)); *Cohen v. De La Cruz (In re Cohen)*, 106 F.3d 52, 54-55 (3d Cir. 1997) (discussing compensatory and punitive damages in context of § 523(a)(2)(A)).

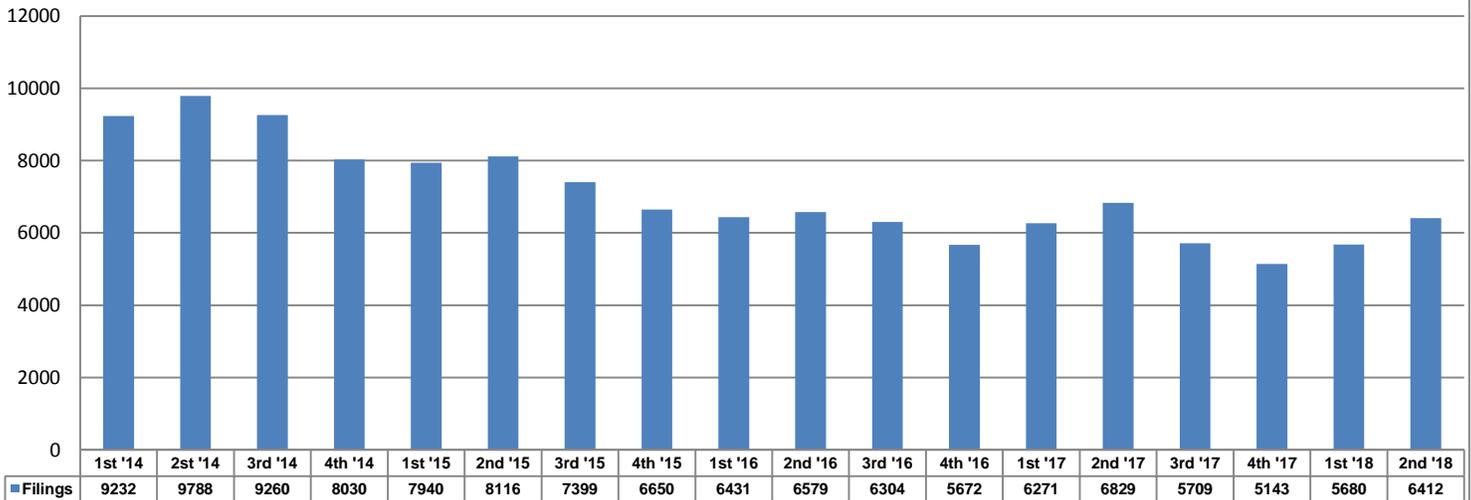
United States Bankruptcy Court - Middle District of Florida
Updated July 13, 2018 Meeting Data and Information
Statistics as of June 30, 2018

Annual Filings

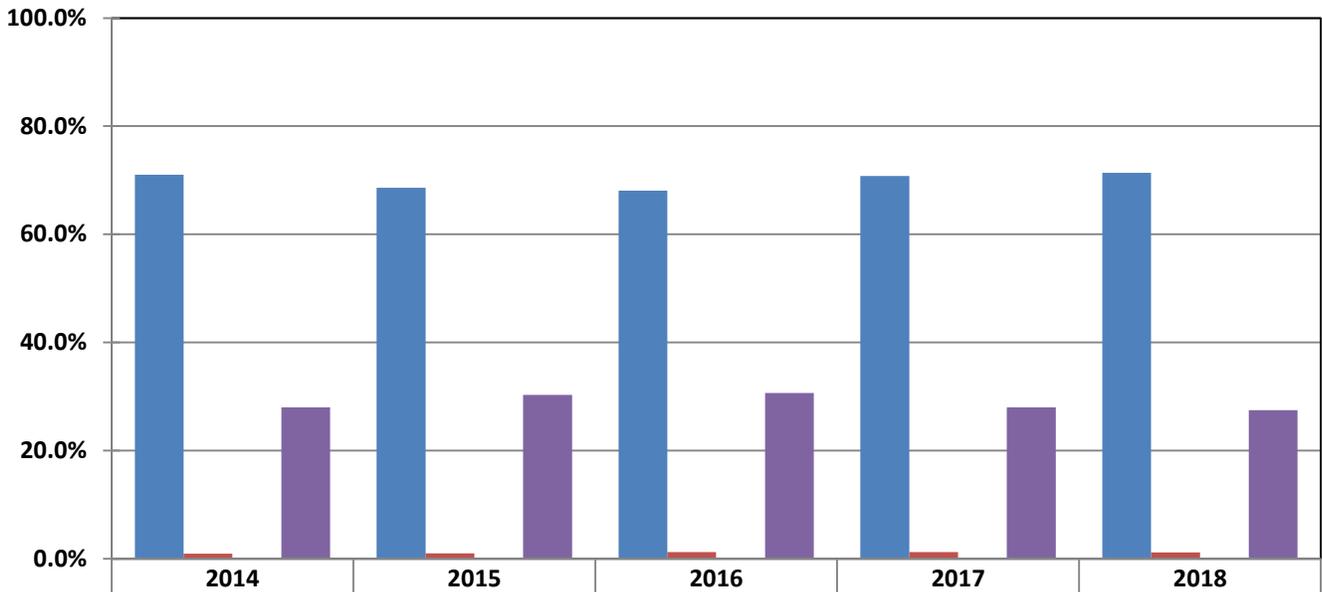


Year	Annual Filings	vs. 2013	vs. Prior Yr.
2014	36305		
2015	30112	-17%	-17%
2016	24990	-31%	-17%
2017	23957	-34%	-4%
*2018	24186	-33%	1%

Filings by Quarter

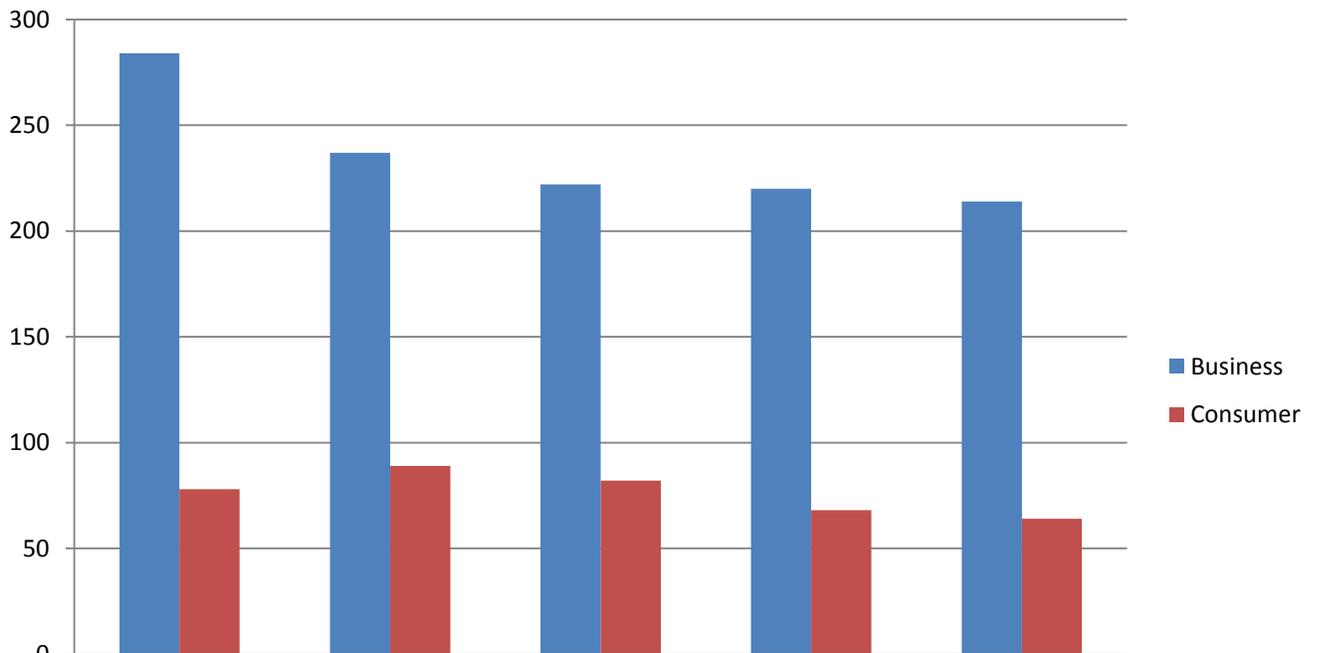


Filings by % of Chapter Type



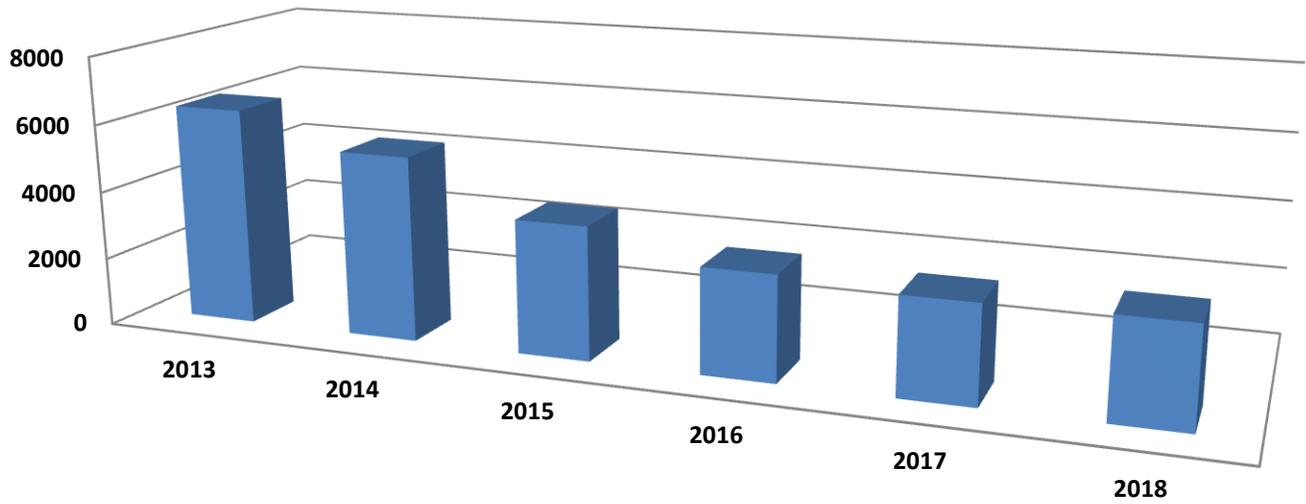
Chapter 7	71.0%	68.6%	68.1%	70.8%	71.4%
Chapter 11	0.9%	1.0%	1.2%	1.2%	1.2%
Chapter 12	0.0%	0.1%	0.0%	0.0%	0.0%
Chapter 13	28.0%	30.3%	30.7%	28.0%	27.5%

Chapter 11 Filings



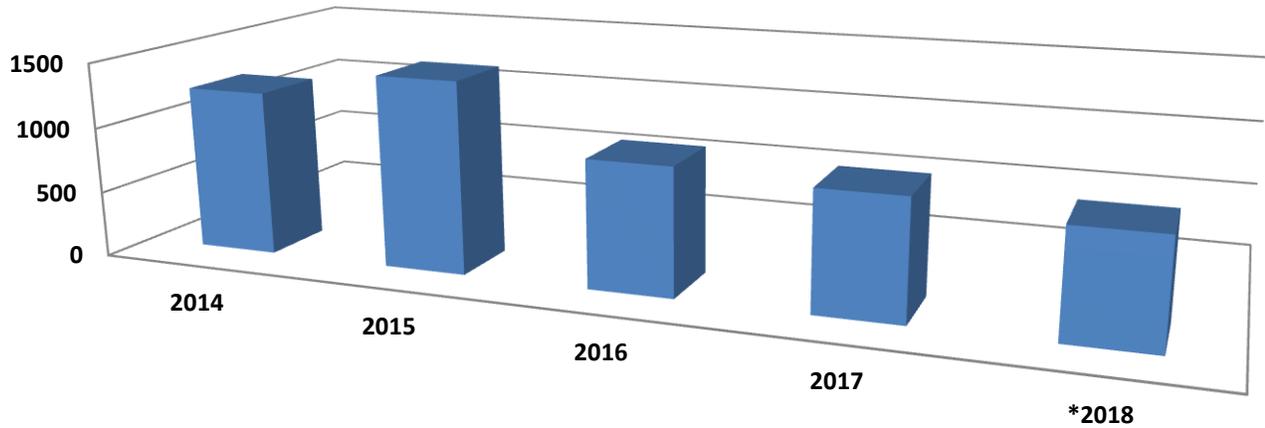
Business	284	237	222	220	214
Consumer	78	89	82	68	64

Pro Se Filings



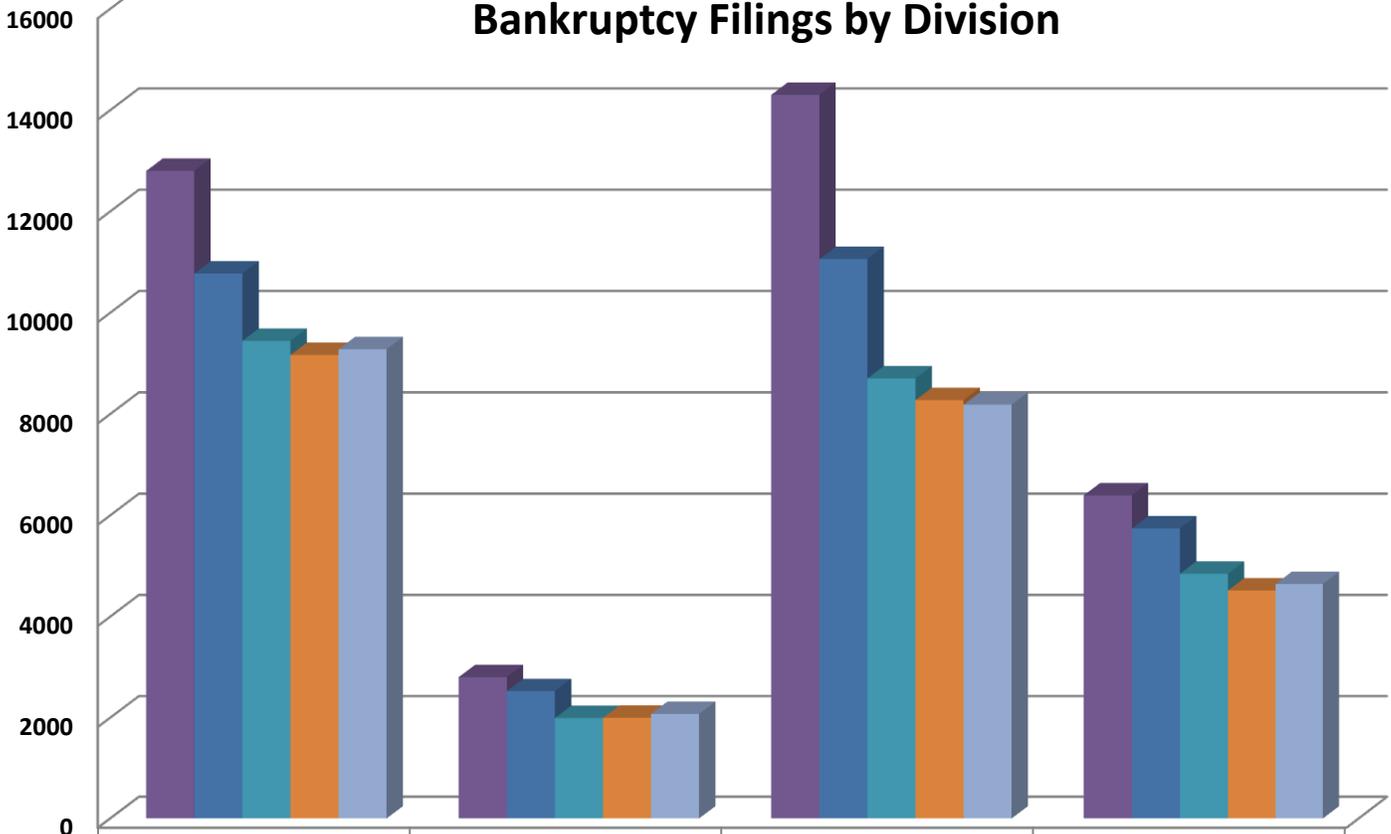
	2013	2014	2015	2016	2017	2018
■ Pro Se	6387	5416	3902	3079	2868	2924
% of All Filings	18%	18%	16%	13%	12%	12%

In Forma Pauperis Filings



	2014	2015	2016	2017	*2018
■ IFP Granted	1256	1456	965	903	808
% of All Filings	3%	5%	4%	4%	3%

Bankruptcy Filings by Division



	Tampa	Ft. Myers	Orlando	Jacksonville
2013	12801	2806	14303	6395
2014	10775	2527	11061	5742
2015	9445	1993	8703	4849
2016	9166	1997	8276	4518
2017	9280	2076	8186	4644

Note: *2018 Counts include reopen cases.
 Order Granting IFP counts have been corrected to include approving language.