



Clerk's News 2017

October 2017

Editors: Jill Dalrymple, Dina Ventura and Cynthia Platt

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New Chapter 13 Local Form Plan

By: Cynthia Platt

New Federal Rule of Bankruptcy Procedure 3015.1 allows for courts to opt out of using the National Form Plan (Official Form 113) if a district adopts a local chapter 13 plan form to be used district-wide. To promote consistency, if a district adopts its own chapter 13 plan form it must include certain features set forth in Fed. R. Bankr. P. 3015.1(b) - (e). One provision to note is that nonstandard plan provisions are effective only if included in a designated section of the national or local form plan. The adoption of a local chapter 13 plan form must be preceded by a public notice period and comment period. The Northern District of New York Board of Bankruptcy Judges voted to opt out of using the National Form Plan. On July 10, 2017, the new Local Form Plan for the district was posted for comment on the court's website under News & Announcements and disseminated via GovDelivery. Comments were received and considered by the Board of Judges. The final version of the Local Form Plan will be posted to the court's website. Use of the new Local Form Plan will be required as of December 1, 2017.

Administrative Order 16-09 Establishes Claims Bar Dates for Cases Converted From Chapter 11 to Chapter 7

By: Kim Lefebvre

On December 15, 2016, Chief Judge Margaret Cangilos-Ruiz entered an administrative order establishing timeframes for the filing of proofs of claims in chapter 7 cases converted from chapter 11. The Clerk is directed to set the proof of claim bar dates for both governmental units and general creditors in the chapter 7 case. The time period for governmental units is dependent upon the status of the bar date set in the chapter 11 for those claimants. The Chief Judge's direction for general creditors follows the mandate of Fed. R. Bankr. P. 3002(c).

The administrative order embodies the unanimous decision of the Northern District of New York Board of Bankruptcy Judges. Please carefully review the Notice of Chapter 7 Bankruptcy Case (Official Form 309D) to ensure you note the deadlines for filing proofs of claims in cases converted from chapter 11 to chapter 7. To review the terms of

Contact Us:

Albany:

US Bankruptcy Court
James T. Foley Courthouse
445 Broadway, Suite 330
Albany, NY 12207

Albany Clerk's Office Phone:
518-257-1661
Albany Help Desk:
518-257-1616

Syracuse:

US Bankruptcy Court
James Hanley Federal Bldg.
100 South Clinton Street
Syracuse, NY 13261

Syracuse Clerk's Office Phone
315-295-1600
Syracuse Help Desk:
315-295-1618

Utica:

US Bankruptcy Court
Alexander Pirnie Federal Bldg.
10 Broad St.
Utica, NY 13501

Utica Clerk's Office Phone:
315-793-8101
Utica Help Desk:
315-266-1118

Website Address:

<http://www.nynb.uscourts.gov>

Administrative Order 16-09, please view at the following link on the court's website:

<http://www.nynb.uscourts.gov/sites/default/files/AdminOrders/AdminOrder16-09.pdf>

Filing a Case for a Debtor without a Social Security Number

By: *Kim Lefebvre*

Fed. R. Bankr. P. 1007(f) requires the debtor to submit a verified statement that sets out the debtor's social security number ("SSN"). This requirement is met by completing Official Form 121 (Statement About Your Social Security Numbers) ("Form 121"). If the debtor has a SSN, the completed Form 121 is not filed with the court but is maintained by the filer.

However, you may represent an individual debtor who does not have a SSN. For example, a Canadian citizen may not have a SSN, but will still meet the residency requirement for filing in the Northern District of New York. They may instead have a Canadian Social Insurance Number ("SIN"). The SIN is also a nine-digit number that, if inadvertently reported as a SSN during filing, will erroneously populate the four-digit SSN field in notices generated by the clerk's office and on the voluntary petition. The Form 121 includes a box to check to indicate the individual debtor **does not** have a SSN.

To open a case in CM/ECF for an individual debtor who does not have a SSN, simply bypass the SSN field. If the debtor **does not** have a SSN, Form 121 should not be filed as part of the petition. Instead, it should be filed as a separate event in CM/ECF. To file Form 121, check the box that indicates the debtor **does not** have a SSN and use the following string of event codes: *Bankruptcy > Other > Statement of No Social Security Number*. Failure to file Form 121 in these cases will result in a Notice of Deficiency, which if not cured, may result in an order to show cause.

The Notice of Case that includes information about the meeting of creditors ordinarily includes the full SSN in accordance with Fed. R. Bankr. P. 2002(a)(1). Following the instructions for filing the Form 121 for a debtor without a SSN will ensure that the Notice of Case is sent without any identification numbers and the last four digits on the docket will present as - XXXX. Note that Fed. R. Bankr. P. 4002(b)(1)(B) directs that a debtor bring to the § 341 meeting evidence of their SSN or a written statement that such documentation does not exist.

Sites of Interest:

Pending Form Changes Effective December 01, 2017

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

Pending Rule Changes:

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

Federal Rules and Policies:

<http://www.uscourts.gov/rules-policies>

United States Trustee Region 2

<https://www.justice.gov/ust-regions-r02>

Electronic Bankruptcy Noticing

<http://ebn.uscourts.gov/>

Loss Mitigation Annual Statistics for the Northern District of New York

By: Elizabeth Vadney

The Loss Mitigation Program was commenced in the Northern District of New York on July 13, 2013. Now that the Program has been available for several years, it has proven to be an effective vehicle to facilitate a consensual resolution when a debtor's principal residence is at risk of loss due to foreclosure.

The majority of our Loss Mitigation Requests arise in chapter 13 cases. The most common resolution when an agreement between the loss mitigation parties is reached is that the debtor is offered a trial modification for three months. If the debtor successfully makes payments for three months, a final loan modification is negotiated between the parties and a Stipulation and Order Authorizing the Parties to Enter into the Loan Modification is submitted to the court for consideration.

During the period July 1, 2016 through June 30, 2017, 398 Loss Mitigation Requests were filed. The number of requests in the Northern District of New York is down approximately 18% annually over the three-year average. Approximately 346 Orders Terminating Loss Mitigation and Final Reports were filed during this same period. From the information gleaned from these Orders and Reports, approximately 191 loss mitigation requests resulted in a loan modification being granted and 55 requests resulted in the parties not being able to reach an agreement. Other outcomes reported, although less frequently, include short sales and surrender of the real property.

The Loss Mitigation Program Procedures and forms are available under the Loss Mitigation tab on the home page of the court's website.

Loss Mitigation Program Reminders

By: Elizabeth Vadney

The Loss Mitigation Program Procedures provide that when loss mitigation is commenced other proceedings (*e.g.* motions or applications) pending between the loss mitigation parties, to the extent that those matters concern (1) an objection to the allowance of a proof of claim, (2) the reduction, reclassification or avoidance of a lien, or (3) the valuation of a lien on the debtor's property, shall be adjourned by the party who commenced the proceeding. The procedure for adjourning matters is set forth in Local Bankruptcy Rule 9013-1(i) and (j). The initial status conference date set forth in the Loss Mitigation Order should be used as the initial adjourned date. Thereafter, the adjourned proceedings will be carried on the calendar with any adjournments of the loss mitigation status conference. If a motion for relief from the stay is filed by the loss mitigation creditor prior to the

Clerk's Office Awards Program:

Each year the Clerk's Office holds a ceremony to honor employees who excel at their job and contribute significantly to the court's success or who share ideas that improve the court's methods, productivity, and cost efficiency.

This year's award recipients are:

Jim Fleming – Utica
Nicole Smith – Syracuse
Jeffery Dingman – Utica
Sara Weiler – Syracuse
Traci Phillips – Syracuse
Dawn Simmons – Syracuse
Aaron Greth – Albany
Dina McDonald – Albany
Cherie Gailor – Albany

Awards are also given to employees for their years of dedicated government service. This year's service award recipients are:

Carolyn Behm – 10 Years
Nicole Smith – 10 Years
Jill Dalrymple – 10 Years
Dawn Simmons – 10 Years
Tom Schaaf – 20 Years
Lynn Chest – 20 Years
Mary Davis – 20 Years
Dana Rosenberg – 20 Years

entry of the Loss Mitigation Order, it shall be adjourned by the creditor to the date of the initial status conference by following the steps set forth in Section VI(B)(2) of the Loss Mitigation Program Procedures.

Order Terminating the Automatic Stay Imposed By 11 U.S.C. § 362(a)

By: Cynthia Platt

The Northern District of New York Board of Bankruptcy Judges has approved a form order to be used when a motion seeking termination of the automatic stay as to real property is granted ("Form § 362(d) Order"). The proposed amendment to Local Bankruptcy Rule 4001-1 requires that a proposed order terminating the automatic stay as to real property conform substantially to the Local Form § 362(d) Order. The proposed amendment to Local Bankruptcy Rule 4001-1 will take effect December 1, 2017. The Local Form § 362(d) Order will be posted to the court's website under Local Forms.

The Form § 362(d) Order should be used in connection with relief granted under 11 U.S.C. § 362(d)(1) and/or (2). It permits the movant to enforce its state law rights and remedies with respect to the property referenced in the motion, to send notices and communications to the debtor as required by law, and to engage in loss mitigation with the debtor. The Form § 362(d) Order also contains the language required under Local Bankruptcy Rule 4001-1(f). The decretal paragraphs awarding fees and costs and waiving the 14-day stay of enforcement set forth in Fed. R. Bankr. P. 4001(a)(3) may be included if such relief was requested in the underlying Notice of Motion and Motion.

Rule 9013-5 Ex Parte Order - Order Shortening Time - Order to Show Cause

By: Elizabeth Vadney

Some of the Divisions have noted an increased number of applications to shorten time or orders to show cause being filed at the last minute when the movant was aware of the relief needed and the timing of a matter much earlier than the request being made to the court. Additionally, the court is not always apprised of the request by e-mail and, in many cases, the case administrators are the first to bring attention to the application to chambers. Be mindful that cause must be established to reduce a notice period. Law office failure does not constitute cause. Additionally, if the notice period is reduced, the affected creditor must still be given adequate notice under the circumstances. The procedure for obtaining an order shortening time or an order to show cause is set forth in Local Bankruptcy Rule 9013-5 (b)(1) and (c)(1) as shown below:

Honor Roll of Attorneys Providing Pro Bono Services:

October 1, 2016 to September 19, 2017

Chief Judge Margaret Cangilos-Ruiz, Judge Diane Davis, and Judge Robert E. Littlefield wish to acknowledge and thank the attorneys listed below for their public service to parties needing representation. During the last 12 months, these attorneys assisted 205 debtors. Several attorneys provided *pro bono* services in 10 or more cases: Michael Jude O'Connor (39); M. Lettie Dickerson (16); Gregory L. Germain (15); Susan N. Esce (11); Michael J. Toomey (10) and Marc S. Ehrlich (10). In addition, Michael J. Balanoff and Elizabeth Fairbanks-Fletcher served *pro bono* as a mediator. Thomas Kennedy, Amanda Shaw, Laura Harris-Courage, and Erin Champion volunteered their time performing outreach to the community through presenting the CARE financial literacy program.

The Board of Judges have determined that the attorneys rendering *pro bono* services during this annual period will be further acknowledged through the gift of a glass paper weight bearing the court's seal. Attorneys attending the annual seminar in Cooperstown in October may pick up their gift at the Clerk's Office table. Attorneys not in attendance at the annual seminar, may stop in to the most convenient Clerk's office and pick up their gift.

The Judges are grateful for your commitment to the community, and your willingness to give of your professional time. Your efforts are surely appreciated by those you serve.

(b) Order Shortening Time.

(1) **Application.** A request for an order shortening any specified notice period shall be made by application for an expedited hearing on the motion pursuant to Federal Rule of Bankruptcy Procedure 9006(d). Such application shall contain a clear and specific showing by affidavit of good and sufficient reasons for shortening the notice period and whether previous application for similar relief has been made. Law office failure does not provide good and sufficient cause.

(c) Order to Show Cause.

(1) **Application.** No order to show cause to bring on a motion will be entered except upon a clear and specific showing by affidavit of good and sufficient reasons why proceeding other than by notice of motion is necessary. Law office failure does not provide good and sufficient cause relief has been made. The papers shall also state whether a previous application for similar relief has been made.

Amendments to Local Bankruptcy Rules

By: *Cynthia Platt*

The Local Rules Standing Committee is composed of attorneys, court personnel, and trustees. It serves the important role of ensuring that the court's Local Bankruptcy Rules accurately reflect changes to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure as well as local court practices. The Committee meets 3-4 times a year to consider the addition of new rules and modifications to existing rules for recommendation to the Northern District of New York Board of Bankruptcy Judges. The public and members of the bar can submit a comment on the local rules at any time through the court's website at www.nynb.uscourts.gov. To date, in 2017, several Local Bankruptcy rules have been amended. Local Bankruptcy Rule 7004-1 was amended as of May 12, 2017. Local Bankruptcy Rules 4002-1, 4002-2, 5005-2, 9013-1, 9013-3, 9013-5, and 9037-1 were amended as of February 1, 2017. Redlined and clean versions of the amended rules can be found on the court's website. On August 31, 2017, proposed amendments to Local Bankruptcy Rules 1001-1, 1006-1, 1007-1, 1015-1, 2014-2, 2016-3, 3007-1, 3015-1, 4001-1, 9001-1 and 9013-6 were posted for public comment on the court's website under News & Announcements and disseminated via GovDelivery. The amendments to these Local Bankruptcy Rules will become effective December 1, 2017.

Honor Roll of Attorneys Providing Pro Bono Services Continued:

Kathy A. Ahearn
Mark E. Anderson
Theodore Lyons Araujo
Michael D. Assaf
Michael Balanoff *
Paula M. Barbaruolo
Lawrence E. Becker
William F. Berglund
Donald W. Biggs
Brian H. Bronsther
Michael A. Castle
Erin Champion **
Maxsen D. Champion
Lauren S. Cohen
James S. Cox
Guy J. Criscione Jr.
James G. Cushman
Nancy Baum Delain
David F. DeVall
M. Lettie Dickerson
Steven R. Dolson
Elizabeth Fairbanks-Fletcher*
Cindy Domingue-Hendrickson
Christian H. Dribusch
Marc S. Ehrlich
Susan N. Esce
Mary Lannon Fangio
Gregory L. Germain # **
David J. Gruenewald
Laura Harris-Courage **
Gayle Hartz
Catherine Hedgeman
Justin D. Herzog
Thomas Paul Hughes
Craig C. Humpleby
Leigh A. Hoffman
Thomas Kennedy **
Christy Lay-Mumin
Alan R. LeCours Sr.
Carol Ann Malz
Matthew J. Mann
Zachary DeCurtis McDonald
Sean Patrick Moran

Notice to Counsel and Parties Regarding Audio Recordings

By: Elizabeth Vadney

CourtSpeak is available to attorneys practicing in the Syracuse Division. It allows attorneys to access the digital audio recordings for most hearings and trials via a PACER account. In most cases, the recording is available within 24 hours of the hearing or trial.

The digital recording available through CourtSpeak **is not** an official record. The official record of any hearing remains the written transcript prepared by an approved transcriber from materials provided by the court.

CM/ECF Training Classes - 3.5 Hours CLE Credit

By: Dina Ventura

Attorneys and staff may attend a free CM/ECF training class. Classes will be scheduled on an as needed basis at the courthouses in all three Divisions. Interested parties may e-mail CMECFTraining@nynb.uscourts.gov for additional information.

Chapter 13 Debtors Ineligible for a Discharge

By: Cindy Platt

The new Local Form Plan which debtors will be required to use as of December 1, 2017 in the Northern District of New York will require debtors to affirmatively state whether they are eligible for a chapter 13 discharge. If a debtor is not eligible for a discharge the chapter 13 trustee will file a Trustee's Notice of Ineligibility for Chapter 13 Discharge with the court. In such cases, once all payments under the chapter 13 plan are made and the Trustee's Final Report is filed, a discharge hearing will not be set. Instead, the debtor's case will be closed without a discharge being granted. Additionally, there will be no need for the debtor to file the Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Sections 522(q) and 1328 or a Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management, as both are prerequisites for the granting of a discharge.

Justin D. Myers
Michael Jude O'Connor
Peter Alan Orville
Robert J. Pellegrino
David Allen Price
Stephen T. Rodriguez
Arlene Sanders
Matthew James Schreck
Amanda Shaw **
Sujata Sidhu
David H. Swyer
Nicole E. Talev
Kevin B. Thiemann
Michael J. Toomey
Thomas F. Turturo
William Van Zyverden
Meade H. Versace
Jonathan D. Warner
Samuel B. Warner
Richard H. Weiskopf
Frank G. Zappala
L. David Zube

*Mediator Service

**CARE Outreach

#Syracuse University College of
Law

Bankruptcy Clinic

Ten Most Common Deficiencies

By: *Edward Didonna and Rochelle Murine*

1) Sharing a CM/ECF login and password.

- Every attorney in a firm must have a unique login and password. (LBR 9011-3(d)).
- Sharing a login and password contravenes the intent of the administrative order and procedure governing system usage by registered users.

Sharing a login and password may be cause to suspend or revoke CM/ECF filing privileges.

2) Filing documents and/or attachments which contain personal identifying information contrary to Fed. R. Bankr. P. 9037 and Local Bankruptcy Rule 9037-1.

- Medical exhibits with patient diagnosis and procedures-information that may also violate HIPPA;
- Credit applications with full social security numbers and account numbers;
- Loan documents with full account numbers;
- Schedule I with full names of minor dependents;
- Schedules D, E/F, and creditor matrix with full account numbers;
- Official Form 121 (Statement About Your Social Security Numbers) filed as part of the petition.

Once a document has been filed, it cannot simply be removed. You must file an ex-parte application with a redacted copy of the document as an exhibit, pay the applicable filing fee, and upload a proposed ex parte order via E-Orders. (LBR 9037-1). Once the order is entered, the unredacted document will be replaced with the redacted document.

3) Using the incorrect code - "motion to avoid lien" for "Pond" motions. The correct code is "Strip Unsecured Lien on Principal Residence (POND)."

- POND motions cannot be done on default.
- These motions are reviewed for proper service and evidence of value.

4) Failure to select all types of relief requested when filing your motion in CM/ECF.

Adding relief as text to the final screen does not put that relief on the court calendar.

Common examples of additional relief are:

- Attorney compensation, conversion to chapter 7 as an alternative to dismissal under § 1307, and co-debtor relief under §1301.

I like to listen. I have learned a great deal from listening carefully. Most people never listen.

Ernest Hemingway

If everyone is moving forward together, then success takes care of itself.

Henry Ford

The leading rule for the lawyer, as for the man of every calling, is diligence.

Abraham Lincoln

The test of a first-rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function.

F. Scott Fitzgerald

5) Failure to link one document to another, especially motion related papers.

- This includes all supplemental responses and letters relating to an action.
- The Clerk's Office relies on the docket to ensure that hearing related papers are kept together for chamber's review.

6) Failure to adhere to Local Bankruptcy Rule 1009-1 for filing amendments to lists, schedules, statements, and mailing matrices.

Most common error(s):

- Missing amended summary of schedules and statistical information when correcting dollar amounts;
- Missing an amended matrix when adding creditors;
- Missing an unsworn declaration with the amended schedules; and
- Forgetting to add new creditors via creditor maintenance.

7) Incorrect Captions - Local Bankruptcy Rule 9004-1(c).

- Not using correct caption for adversary proceedings or jointly administered cases.
- Amended documents not labeled "Amended."

8) Entering a Notice of Appearance or Creditor Request for Notice and NOT adding your name and address to the matrix via creditor maintenance.

9) Incorrect hearing information in Notice of Motion - date, time, or location.

- Especially troublesome for the Utica Clerk's Office with hearings held in Utica and Binghamton, as well as via Court Call, and Judge Littlefield's conflict calendar.
- Call the court to confirm the date, time, and location of a hearing if you are unsure of the proper time and location for your particular case or matter.

10) Failure to seek an Order Reopening a Case on an Ex Parte Basis under Local Bankruptcy Rule 5010-1.

Relief may be sought ex parte if the purpose of the reopening is:

- To file a debtor's certificate of completion of a financial management course;
- To correct an administrative error;
- On account of actions relating to the debtor's discharge; or
- To avoid a judicial lien pursuant to § 522(f).

I can change my life. No one can do it for me.

Carol Burnett

The secret of getting ahead is getting started.

Mark Twain

Success is not final, failure is not fatal: it is the courage to continue that counts

Winston Churchill

The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing.

Caroline Kennedy

Chap: Real Time Access for the Public to the Court's Calendar

By: Lynn Chest

CHAP (Chambers Automation Program) is a calendaring and matter-tracking program for judges and their staff. Our court uses CHAP to create the public calendar that is printed and posted to our website: <http://www.nynb.uscourts.gov/?q=calendar>. Within the next year CHAP will enable "real time" access to the court's calendar. The calendar will update every 10 minutes. You will see what matters have been set for a hearing or removed from the calendar as it happens. An application for smart phones and tablets is also in development. This will give you access to the court's calendar any time, any place. Stay tuned on the court's website under News & Announcements or sign up on the website for e-mail alerts for upcoming CHAP announcements.

Minimum Amount for Refund of Overpayment of Fees

By: Frank Faragon

Occasionally the Clerk's Office receives payments that exceed the amount owed, for instance, the fee due for a particular filing or the balance due on a debtor's installment plan. In July 2017, the Clerk's Office implemented a minimum amount for refunding overpayments of fees. For overpayments in excess of \$10.00, a packet explaining the refund process will be mailed to the party that paid the fee. Overpayments less than \$10.00 will be held in a United States Treasury overage account. This change will result in a reduction in administrative expenses related to the processing of these types of refunds.

Northern District of New York Bankruptcy Court Personnel Updates from Human Resources

By: Sean Garrow

The past year brought some changes to the Clerk's Office and chambers' staffs in our court.

Clerk's Office

Diann Freeman (Chief Deputy) retired in December 2016 after 16 years with the bankruptcy court. **Cynthia Platt** (Former Career Law Clerk to Judge Littlefield) was appointed our new Chief Deputy in May 2017.

Our court also welcomed a new employee. **Austin Malone** (Information Technology Specialist) began work in the Clerk's Office IT department in the Syracuse Division in August 2017.

Chambers

Our Judges' chambers experienced some transition as well.

Syracuse Chambers

Michael Legge (Term Law Clerk to Chief Judge Cangilos-Ruiz) finished his term clerkship. He is now an Associate with Hunton & Williams in New York City. **Michael Hodess** (Term Law Clerk for Chief Judge Cangilos-Ruiz) began his term clerkship in September 2017.

Utica Chambers

Lisa Taylor (Term Law Clerk for Judge Diane Davis) finished her term with Judge Davis. She is now a term clerk for the Honorable Robert B. Jones, United States Magistrate Judge for the Eastern District of North Carolina in Wilmington, North Carolina. **Justin Baumgartner** (Term Law Clerk for Judge Davis) began his term clerkship in September 2017.

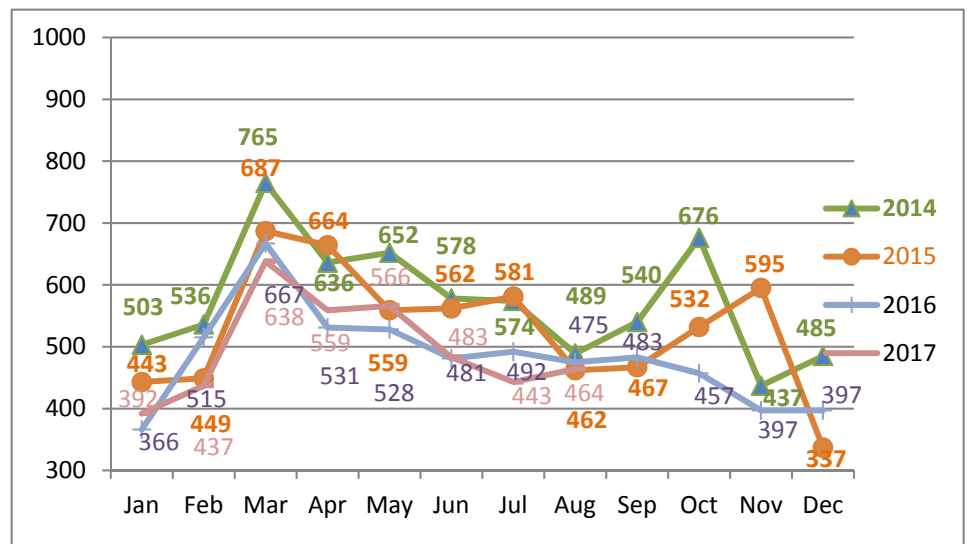
Albany Chambers

Cynthia Platt (Career Law Clerk to Judge Littlefield) was appointed Chief Deputy in May 2017. **Matthew Zapala** (Term Law Clerk to Judge Littlefield) was appointed in June 2017 to Career Law Clerk for Judge Littlefield. **Alex Slichko** (Term Law Clerk for Judge Littlefield) began his term clerkship in June 2017.

US Bankruptcy Court NDNY Case Filings Statistics

By: Sean Garrow

US Bankruptcy Court NDNY Case Filings by Month 2014-2017



US Bankruptcy Court NDNY Total Filings 2014-2017

