

United States Bankruptcy Court, NDNY

November 2023

Editors: Cynthia Platt, Dawn
Simmons, and Kelly Griffith

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Clerk's News 2023



Syracuse Courthouse



Albany Courthouse



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U.S. TRUSTEE PROGRAM TO IMPLEMENT VIRTUAL § 341 MEETINGS OF CREDITORS NATIONWIDE

The U.S. Trustee Program (“USTP”) will implement virtual § 341 meetings of creditors (“341 meetings”) via Zoom for all chapter 7, 12, and 13 cases filed in the Northern District of New York on or after October 23, 2023.

Debtors and other interested parties should follow the instructions provided in the 341 meeting notice they receive from the court, as well as additional instructions provided by the trustee assigned to the debtor’s case, to determine the proper procedures for connecting to the meeting.

The USTP’s transition to video 341 meetings will foster greater participation, result in substantial cost and time efficiencies for debtors and creditors, and better ensure the efficiency and integrity of the bankruptcy system. Once implemented, the U.S. Trustee may approve alternative arrangements for 341 meetings when extenuating circumstances exist that preclude a debtor’s attendance by video. In addition, in rare cases, the U.S. Trustee may determine that an in-person 341 meeting is necessary.

For additional virtual 341 meeting information for debtors, debtor counsel, and parties in interest visit: [Section 341 Meeting of Creditors Information \(justice.gov\)](https://www.justice.gov/section341)

Contact Information

ALBANY:

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

Albany Clerk's Office Phone:
518-257-1661

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

SYRACUSE:

U.S. Bankruptcy Court
James M. Hanley
U.S. Courthouse and Federal
Building
100 South Clinton St.
Syracuse, NY 13261

Syracuse Clerk's Office Phone:
315-295-1600

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

UTICA:

U.S. Bankruptcy Court
Alexander Pirnie U.S.
Courthouse and Federal Building
10 Broad St.
Utica, NY 13501

Utica Clerk's Office Phone:
315-793-8101

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

Website Address:

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

Clerk's Office Information and Tips

By: *Kat VanPatten and Rochelle Murine*

Hybrid Hearings. Since September 5, 2023, parties have had the option of appearing at hearings in-person or by telephone. As such, all notices of hearing (both default and calendared matters) must indicate that the hearing will be held at the assigned Judge's courthouse address **and** advise recipients that appearances may be made in-person at the courthouse **or** by telephone via the assigned Judge's call-in number and access code, as set forth below:

Albany

James T. Foley U.S. Courthouse
445 Broadway, Albany, NY 12207

Call-in number: 877-402-9753; Access code: 4954900#

Syracuse

James M. Hanley U.S. Courthouse and Federal Building
100 South Clinton Street, Syracuse, NY 13261

Call-in number: 888-398-2342; Access code: 3187406#

Utica

Alexander Pirnie U.S. Courthouse and Federal Building
10 Broad Street, Utica, NY 13501

Call-in number: 877-411-9748; Access code: 3229032#

Clerk's Office Hours. The public counters are open from 9:00 a.m. to 4:00 p.m. If you need access before or after regular hours, please call us to request an accommodation. We are happy to help.

Redaction. Personal Information has no place on a public docket! We are seeing an uptick in Motions to Redact to correct inappropriate disclosure of personal identifiers. Please review your filings, including exhibits, to ensure compliance with Federal Rule of Bankruptcy Procedure 9037. If you must redact a filing, refer to Local Bankruptcy Rule 9037-1 for instructions.

Multiple Requests for Relief. When you file a pleading that contains multiple requests for relief, each type of relief (event) should be selected concurrently in CM/ECF. A common example is a motion for relief from the automatic stay with a request for relief from the co-debtor stay, and fees and costs.

To select multiple events, press the CTRL key and click on (1) Relief from Stay; (2) Relief from Co-Debtor Stay; and (3) Compensation. The screen will look like this:

Start typing to find another event. Hold down Ctrl to add additional items.

Available Events (click to select events)	Selected Events
Redact	Compensat
Redact Claim	Relief from
Redeem	Relief from:
Release Funds from Court Registry	
Relief from Co-Debtor Stay	
Relief from Stay	
Relief from Stay or Abandonment	
Remand	
Remove Debtor as Debtor in Possession	
Remove Professional	

Recognition of *Pro Bono* Service Providers

October 1, 2022 to September 30, 2023

Chief Judge Wendy Kinsella, Judge Robert E. Littlefield, Jr. and Judge Patrick Radel wish to acknowledge the selfless pro bono services performed by members of the CNY BBA and CRBBA and students from the Bankruptcy Law Clinic at Syracuse University College of Law. The Judges applaud the commitment of the 28 attorneys and 15 students listed below to assisting the ever-growing unmet legal needs of low-income and vulnerable populations. During the last 12 months, these 43 individuals assisted 102 debtors who otherwise would not have been able to afford legal representation. The Court is grateful for the willingness of these attorneys and students to give of their time and expertise.

Michael D. Assaf
 Paula M. Barbaruolo
 William F. Berglund
 Brandi Burns
 Guy J. Criscione Jr.
 Nancy Baum Delain
 Heidi Dennis
 David F. DeVall
 Cindy Domingue-Hendrickson
 Christian H. Dribusch
 Marc S. Ehrlich
 Mary Lannon Fangio
 Edward Jack Fintel*
 Andrew William Kramer
 Merritt S. Locke
 R.P. Andrew McNee

It is important to select all relief sought so that the Judge's calendar is accurate. If you would like personal assistance when filing a motion seeking multiple forms of relief, please call and we will walk you through the filing.

Financial Management. The Certificate of Completion of a Financial Management Course is oftentimes e-filed by the course provider. If the provider files the Certificate, the court does not need another copy filed by counsel. Consider it one less thing to do.

Person v. Legal Entity. An LLC, Inc., PC, PLLC, Corp., etc. is a separate legal entity and should NOT be included as an a/k/a, or trade name in a petition filed by an individual.

So Ordered Stipulation. If you file a Stipulation on a case or adversary proceeding and want it to be "So Ordered," you must upload the Stipulation via E-Orders formatted with a 4" top margin or a separate proposed Order approving the Stipulation for the Judge's signature. Stipulations filed on a case or A.P. stay there. They are not routed to a Judge.

Personnel Updates from Human Resources

By: Lisa Cardinal

The past year we said good-bye to one of our Judges and several long-term employees and welcomed new faces in both the Clerk's Office and chambers.

Former Chief Judge Diane Davis retired on March 5, 2023, after 14 years of service. The CNY BBA and CRBBA held a well-attended send off for Judge Davis in late March to celebrate her career and next chapter at the Yahnundasis Golf Club in New Hartford, New York.

Judge Patrick G. Radel was sworn in as U.S. Bankruptcy Judge on June 1, 2023, at an Investiture held in the U.S. District Court's historical courtroom in the Alexander Pirnie U.S. Courthouse and Federal Building in Utica.

Albany Chambers

Kristopher Larsen (Term Law Clerk to Judge Littlefield) finished his appointment in October and began a term clerk position the following week with U.S. Bankruptcy Judge John T. Gregg in the Western District of Michigan in Grand Rapids.

Cameron Krause (Term Law Clerk to Judge Littlefield) began his appointment in October. Cameron is a 2023 graduate of William & Mary Law School.

Utica Chambers

T. Jackson Brake (Term Law Clerk to Judges Davis and Radel) finished his appointment in March and began a term clerk position in April with Senior District Judge Joan A. Lenard in the Southern District of Florida in Miami.

Esteban Valtierra (Term Law Clerk to Judge Radel) began his appointment in August. Esteban received his law degree from Chicago-Kent College of Law, where he served as Editor of the *Employee Rights and Employment Policy Journal*.

Ariadne S. Montare
 Michael Jude O'Connor
 Peter Alan Orville
 Arlene Sanders
 Randy J. Schaal
 Peter C. Schaefer
 Michael J. Toomey
 James P. Trainor
 Jonathan D. Warner
 Christiaan M. Van Niekerk
 Lee Edwin Woodard*^
 L. David Zube

*Adjunct Professor at
 Syracuse University College of
 Law

^Director, Bankruptcy Law
 Clinic

STUDENT PRACTITIONERS FROM SYRACUSE UNIVERSITY COLLEGE OF LAW BANKRUPTCY LAW CLINIC

Quinlyn Beaver
 Amanda Dranitch
 Andrew Fowler
 Harrison Gregoire
 Haydn Jones
 Todd Jones
 William Krueger
 Daniel McGarvey
 Miriam Mokhemar
 Marc Pietropol
 Ivory Roberts
 Alessa Rodriguez
 Alexander Shaw
 Hannah Tulchinsky
 Anushe Zebal

Clerk's Office

Edward DiDonna (Albany Operations Supervisor) and **James Fleming** (Systems Manager) both retired this year after more than 30 years of exemplary service to the Court.

Rachel Sugrue joined the Syracuse Division of the Clerk's Office in June as an Operations Support Clerk. Rachel comes to the court with over 20 years of customer service experience. Prior to joining the Court, Rachel was employed as an Operations Specialist for Disability Management Services in Syracuse.

Kat VanPatten joined the Clerk's Office in June as a District-Wide Operations Supervisor. Kat came to the Court with over 10 years of bankruptcy experience on both the creditor and debtor side. Before joining the Court, Kat was a manager in the bankruptcy department at RAS Boriskin, LLP.

Frank Faragon (Administrative Manager), after more than 25 years of service at the Court, transferred in February to the Northern District of New York Federal Public Defenders Office where he serves as the Administrative Officer for the district.



Civics Outreach and Education

By: Kelly Griffith

The Bankruptcy Judges for the Northern District of New York regularly participate in civic and educational outreach programs in continued support of our communities. Over the past year, our Judges presided over Naturalization Ceremonies on four separate occasions where nearly 300 applicants became United States Citizens. Shortly after he was sworn in on June 1, Judge Radel was a guest speaker at one of those ceremonies presided over by Judge Hurd.

Sites of Interest

U.S. Trustee Region 2:

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

Electronic Bankruptcy Noticing:

<https://bankruptcynotices.uscourts.gov/>

Government Printing Office:

<https://www.govinfo.gov>

PACER Service Center:

<https://pacer.uscourts.gov/>

Judge Kinsella and Magistrate Judge Dancks are actively involved with school groups. In January, 55 local high school students met with them and others from the judiciary staff and federal agencies to discuss different careers available within the federal system. In March, Judge Kinsella and Magistrate Judge Dancks hosted 80 third graders who heard from various federal agencies and observed a presentation from a Syracuse Police Officer and a K9 partner about investigations and gathering evidence. Judge Kinsella then presided over a trial of Benjamin B. Wolf (a/k/a the “Big Bad Wolf”) where the students participated as the jury and found Defendant Wolf NOT GUILTY.

Judge Kinsella also hosted students from the Syracuse University College of Law Bankruptcy Clinic and from the Syracuse University College of Law JD Interactive (JDi) program to learn about bankruptcy practice and clerkship and other career opportunities. In September, Judge Kinsella was the keynote speaker at the Upstate New York NEBSA Academic Retreat at Syracuse University focusing her message on successfully navigating the first year of law school and beyond.

Recently, Judge Radel and Judge Kinsella presented to the LL.M. International Students of the Syracuse College of Law, discussing the history and basics of bankruptcy practice, the appointment process for bankruptcy judges and “A Day in the Life of a Bankruptcy Judge.”

Outside of the courthouse, Judge Kinsella was a panelist at an event hosted by the Turnaround Management Association, together with Kenneth Gardner, Debra Sullivan, Esq. and Sara Temes, Esq. discussing contested real property valuation disputes, considerations of evidentiary submissions, and resolving disputes out of court. She also spoke at a program jointly hosted by the NDNF Federal Court Bar Association and the Central New York Women’s Bar Association with Chief District Judge Sannes and District Judge Nardacci, each discussing their professional lives prior to being appointed federal judges and issues they have encountered as judges.

On October 26, 2023, the NDNF Federal Court Bar Association, the Central New York Women’s Bar Association, CNY BBA, and CRBBA took this program on the road to Binghamton. There, District Court Judge Nardacci, Senior District Judge McAvoy, Magistrate Judge Lovric, and Judge Radel shared their pathways to the bench and answered questions related to their experiences on the bench.

Pending Rule and Form Changes:

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

Federal Rules and Policies:

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

December 1, 2023 Changes to NYNB Local Bankruptcy Rules

By: Dawn G. Simmons

On December 1, 2023, two amended Local Bankruptcy Rules go into effect. The changes were made to:

2014-2(b)(1)(C) to update the procedure for payment of the required fee to District Court for pro hac vice admission from by check to an electronic payment via Pay.Gov; and

8009-1(b) and (c) to add *USB Flash Drives* as an acceptable means of transmitting copies of the items designated to be included in the record on appeal. The **Comment** is also being revised to read:

Audio recordings of proceedings made available on PACER are not the official record of a court hearing and do not take the place of a written transcript. See Rule 5007-2.

Changes to Federal Rules of Bankruptcy Procedure and Bankruptcy Court Miscellaneous Fee Schedule to Go into Effect on December 1, 2023

By: Dawn G. Simmons

On December 1, 2023, an updated Bankruptcy Court Miscellaneous Fee Schedule and one new and three amended Federal Rules of Bankruptcy Procedure will take effect.

Rule 3011 The amendment requires the Clerk to post a link to the U.S. Bankruptcy Unclaimed Funds Locator on a court's website. This link is already on our Court's website under the Forms tab and may be accessed by clicking [here](#).

Rule 8003 The amendment prevents the loss of appellate rights under certain circumstances.

Rule 9006(a)(5)(A) The amendment adds "Juneteenth National Independence Day" to the list of legal holidays.

Rule 9038 This new Rule provides the Judicial Conference of the United States with the exclusive authority to declare a Bankruptcy Rules emergency. During such an emergency, the chief bankruptcy judge can grant district-wide extensions for any time periods specified in the Rules and individual judges may do so in specific cases.

The **Bankruptcy Court Miscellaneous Fee Schedule** Click [here](#) for the updated Fee Schedule. Changes are reflected in **Red**.

CHAP MOBILE

HEARING CALENDARS. Quickly view daily hearing calendars. Calendar views include case and hearing information, hearing date, time, and location. Easily search for hearings by Debtor Name or Case Number and Track Active Hearings in the App.

341 MEETING CALENDARS. The 341 daily calendar view includes date, time, meeting location, and case information for each bankruptcy trustee or U.S. Trustee with an upcoming 341 calendar. Easily search for a 341 Meeting by Debtor Name, Case Number, or Attorney.

COURT LOCATION. View addresses and directions to courthouses and jump to court websites. Call or email the court directly in the App.

MY LISTS. Save time tracking information for the same cases and attorneys. Create personalized lists to follow attorneys, bankruptcy cases, or debtors with upcoming court hearings.

DOWNLOAD AND INSTALL TODAY!!



Annual Loss Mitigation Statistics: October 1, 2022 to September 30, 2023

By: Kat VanPatten and Edward DiDonna

The Court's Loss Mitigation Program celebrated its **tenth** year in July 2023. Although bankruptcy case filings have dropped by approximately 50% from 2019, requests for loss mitigation in chapter 13 cases have remained steady at 17% of cases filed. Most loss mitigation requests continue to result in a loan modification acceptable to the debtor and creditor despite rising interest rates. Mortgage modifications, as a percentage of loss mitigation requests, averaged 67%, and during the past 12 months, 64 mortgage modifications were approved.

District Wide	10/01/22 - 09/30/23	10/01/21 - 09/30/22	10/01/20 - 09/30/21	10/01/19 - 09/30/20
Number of Loss Mitigation Requests Filed	97	110	108	166
Number of Loss Mitigation Proceedings Closed	90	111	113	137
Number of Loan Modifications Granted	64	75	86	81



New DOJ Process for Student Loan Bankruptcy Discharge Cases

By: Cynthia Platt

In late 2022, the Department of Justice (DOJ) announced updated guidance to its attorneys regarding requests to discharge federal student loans in bankruptcy cases. The guidance published by DOJ, in close coordination with the Department of Education, includes a new process for evaluating proceedings in which individuals seek to discharge student loans.

In an adversary proceeding seeking to discharge a federal student loan, the burden is on the debtor to demonstrate through litigation that they will suffer an “undue hardship” if the loan is not discharged. To establish this in the Second Circuit, a debtor must establish the three prongs of the *Brunner* test:

Hardship: the debtor can’t maintain a minimal standard of living for themselves and their family if forced to repay the loan;

Persistence: the debtor’s current financial situation is unlikely to change during the repayment period; and

Good Faith: the debtor made a good faith effort to repay the student loan.

Brunner v. New York State Higher Education Services Corp., 831 F.2d 395 (2d Cir. 1987).

Although the court will make the final decision as to whether to grant the discharge of a student loan, the new process announced by DOJ provides its attorneys with clear standards for establishing each of the *Brunner* factors and determining whether to recommend discharge to a judge without burdensome and time-consuming discovery and protracted litigation.

Under the new process, after an adversary proceeding is commenced, the debtor will complete an attestation form to assist the government in assessing the discharge request. The debtor will submit the form to the Assistant United States Attorney defending the case. The form follows the three prongs of the *Brunner* test to establish undue hardship: present financial circumstances, future circumstances, and past good faith. The updated guidance issued by DOJ provides certain facts that would satisfy each of the prongs. If DOJ agrees that the debtor has established undue hardship, DOJ will stipulate to the facts leading to that conclusion and

recommend to the court that the debt be discharged. The court must then exercise its independent review. If the factors do not weigh in favor of recommending discharge of a loan, DOJ will consider recommending a partial discharge if appropriate.

The new process is intended to lend transparency and consistency to student loan discharge proceedings and their outcomes. Additionally, it is hoped that the process will reduce barriers that may have prevented debtors from seeking a discharge of their student loans by enabling debtors and their attorneys to more easily predict whether a debtor meets the criteria for DOJ to recommend to the court that a loan be discharged.

Stay Vigilant, Be Diligent: Protect Yourself from Cyber Attacks

By: Maysa Ahmed, MBA, IT Security Specialist & Christian Bogausch, IT Security Administrator

As digitalization continues to grow, it's important to be aware of the risks and to take necessary precautions to protect your personal and professional data. Here are some tips on how to stay safe online and avoid common pitfalls.

1. Be password smart. Avoid sharing or reusing the same password for multiple accounts and use a password manager to keep your passwords secure.
2. Disable location settings in your applications and never post your current location to protect your privacy.
3. Back up your files regularly to prevent data loss in case of device failure or other issues.
4. Avoid clicking on links or opening attachments from unsolicited emails to protect yourself from phishing attacks.
5. Keep your devices up to date with the latest software patches to ensure that they are secure and running smoothly.
6. Secure your wireless network by avoiding open Wi-Fi networks to prevent unauthorized access to your devices.
7. Secure all your devices, including cell phones, with a password to prevent unauthorized access.
8. Limit the amount of information you publish on social media accounts, as once it's posted, it can never be 100% deleted from the internet.
9. Use multifactor authentication where possible to add an extra layer of security to your accounts.
10. Be skeptical of requests asking for personal information, especially if they come from unknown sources.

Northern District of New York Bankruptcy Court Case Filing Statistics

By: Kat Van Patten and Sara Weiler

