



Clerk's News 2018

October 2018

Editors: Dawn Simmons, Dina Ventura and Cynthia Platt

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Contact Us:

Albany:

U.S. 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

CourtSpeak Program

By: Elizabeth Vadney

The Digital Audio Recording (CourtSpeak) program began March 16, 2015 in the Syracuse division as a pilot program. Beginning in February 2018, CourtSpeak became available in the Albany division. CourtSpeak is now fully functional in the Syracuse and Albany divisions.

CourtSpeak makes the digital audio recordings for most hearings and trials available on PACER. This audio file will generally be available within 24 to 48 hours after the conclusion of a hearing. The digital audio recording will appear on the docket as a PDF document with an MP3 file. Instructions on how to access Court audio files on the CM/ECF docket are available on our website under Programs & Services.

The digital recording available through CourtSpeak **is not** an official record and should not be used as such. The official record of any hearing remains the written transcript.

Calendar Changes for Utica Division

By: Elizabeth Vadney

In September 2018, Judge Davis changed the name and location of her motion calendars. The former Binghamton Calendar is now called the Southern Tier Calendar. The former Utica and CourtCall Calendars were combined and are now known as the Northern Tier Calendar. All Chapter 11 matters continue to be heard once a month on the Chapter 11 Calendar. Parties may appear at the Northern Tier and Southern Tier Calendars via CourtCall or in person at the Utica, New York Courthouse. All Chapter 11 matters continue to require a personal appearance in Utica, New York. Please be aware of the amended motion dates and hearing location posted on the Court's website when scheduling or adjourning matters.

Organizations Providing Pro Bono Services in the Northern District of New York

By: Edward Didonna

We understand that attorneys have many opportunities to provide a range of pro bono legal services to the community. We sincerely appreciate the services you render to the public with respect to bankruptcy matters. The Court and Clerk's Office are often beneficiaries of those efforts.

Syracuse:

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

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

Utica:

U.S. 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>

District Case Assignments

Case Series: Direct Number

01-10	315-295-1605
11-20	315-295-1606
21-26	315-295-1686
27-36	518-257-1614
37-42	518-257-1607
43-52	518-257-1611
53-64	518-257-1633
65-70	315-266-1102
71-80	315-266-1149
81-88	315-266-1108
89-00	315-295-1653

In addition to the outreach provided by Bar Associations, here is a list of links to other organizations that provide or make referrals for pro bono legal services.

The Legal Aid Society of Mid-New York, Inc.:
<http://www.lasmny.org/Index.shtm>

Legal Services of Central New York: <https://www.lscny.org/>

The Greater Syracuse Tenants Network, Inc.:
<http://www.syracusetenant.org/>

The Legal Project: <http://www.legalproject.org/>

The Legal Aid Society of Northeastern New York:
<https://www.lasny.org/>

St. Peter's Health Partners: <http://www.sphp.com/>

The Affordable Housing Partnership: <http://ahphome.org/about-ahp.html>

United Tenants of Albany, Inc.: <http://unitedtenantsalbany.org/>

Bankruptcy Law Network: <http://www.bankruptcylawnetwork.com/>

American Bankruptcy Institute Bankruptcy Resources:
<http://bankruptcyresources.org/content/resources?state=NY>

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

During the period September 30, 2017 through August 31, 2018, 243 Loss Mitigation Requests were filed. Approximately 240 Orders Terminating Loss Mitigation and Final Reports were filed during this same time frame. From the information accumulated from these Orders, approximately 105 requests resulted in a loan modification and approximately 55 requests resulted in the parties being unable to reach an agreement. Other items reported, although less frequently, include short sales, surrender of real property, and Debtor's rejection of the Creditor's offer of a loan modification.

Sites of Interest:

Pending Form Changes Effective December 01, 2018

<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-amendments>

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

Federal Rules and Policies:

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

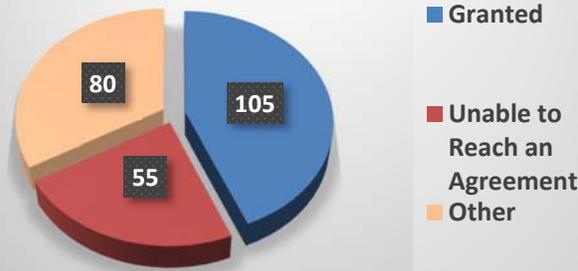
United States Trustee Region 2

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

Electronic Bankruptcy Noticing

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

Loss Mitigation Statistics



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 Bankruptcy Court.

Clerk's Office

Kim Lefebvre (Clerk of Court) retired in August 2018 after 37 years with the federal government.

Cynthia Platt (Former Chief Deputy) was appointed our new Clerk of Court in August 2018.

Dawn Simmons (Former Career Law Clerk to Chief Judge Cangilos-Ruiz) was appointed our new Chief Deputy in October 2018.

Kim Ferdula (Case administrator - Utica) retired in February 2018 after 20 years with the Bankruptcy Court.

Mary Davis (Case administrator – Utica) will be retiring on October 28, 2018 after nearly 22 years with the Bankruptcy Court.

Sara Weiler (Intake Clerk – Syracuse) was promoted to CM/ECF Analyst in June 2018.

Chambers

Our Judges' Chambers experienced some transition as well.

Syracuse Chambers

Michael Hodess (Term Law Clerk to Chief Judge Cangilos-Ruiz) finished his term clerkship.

Raphael Stern (Term Law Clerk for Chief Judge Cangilos-Ruiz) began his term in September 2018.

Dawn Simmons (Career Law Clerk to Chief Judge Cangilos-Ruiz) was appointed Chief Deputy on October 28, 2018.

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:

Darcy Davis – Utica
Frank Faragon – Albany
Dorothy Glasheen – Syracuse
Mary Davis – Utica
Aaron Greth – Albany
Carolyn Behm – Syracuse
Judy Bazan – Albany
Sara Weiler – Syracuse
Rochelle Murine – Utica
Darcy Davis – Utica
Ed Didonna – Albany
Jim Fleming – Utica
Dana Rosenberg - Albany

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

Cindy Platt – 15 Years
Frank Faragon – 20 Years
Colleen Johnson – 20 Years
Ed Didonna – 25 Years
Sean Garrow – 25 Years

Haseeb Fatmi (Term Law Clerk for Chief Judge Cangilos-Ruiz) began his term in October 2018.

Utica Chambers

Justin Baumgartner (Term Law Clerk for Judge Davis) finished his term in July 2018.

Kourtney Barefoot (Judicial Assistant to Judge Davis) began her appointment in September 2018.

NextGen is Coming

By: Cynthia Platt

The Next Generation of CM/ECF ("NextGen CM/ECF") maintains existing CM/ECF functionality while adding central sign-on for public and judiciary users. This new feature will allow users to maintain one account across all NextGen CM/ECF Courts. Both PACER and electronic filing access will be available from a user's PACER account. This feature will also provide a centralized functionality for attorney registration and admissions. NextGen CM/ECF should provide greater consistency in user experience, especially for external users. The Court will begin NextGen CM/ECF implementation activities in October 2019. The NextGen implementation process generally takes about 6 months to complete.

International Travel: Stay Physically Secure and Cyber Aware

By: James Fleming

We are all aware of attacks that have been perpetrated in popular tourist destinations including Brussels, London, Ottawa, and Paris during the past several years. It seems that travel, even to countries considered 'friendly' or 'safe' to U.S. citizens, can be fraught with danger. Today's traveler can be exposed to threats to physical safety not only when alone or 'traveling off the beaten path', but also while traveling in groups or visiting popular tourist attractions. The traveler may also be subject to a wide range of cyber threats from various nation-state or criminal actors.

While a certain degree of risk is always inherent in travel to foreign destinations, there are measures a traveler can take to reduce the risks to both physical and cyber security and ensure a safe and enjoyable trip. If you are planning a trip to a foreign destination, take the time to learn the potential physical risks you will be faced with once you leave the U.S.A. Below is a list of online resources to make use of while planning your trip.

- **Country Specific Information, Travel Alerts and Warnings** - Department of State: provides long-term international travel warnings and short-term alerts.
Website: <http://jnet.ao.dcn/information-technology/security/international-travel>
- **Worldwide Caution Information** – Department of State: provides information on the continuing threat of terrorist

Honor Roll of Attorneys Providing Pro Bono Services:

Chief Judge Margaret Cangilos-Ruiz, Judge Diane Davis, and Judge Robert E. Littlefield, Jr. wish to recognize and thank the attorneys and student practitioners listed below for their outstanding pro bono contributions. During the last 12 months, these attorneys assisted 203 debtors who otherwise would not have been able to afford legal representation. Several attorneys provided pro bono services in 10 or more cases: Michael J. O'Connor (32), Michael J. Toomey (15), Marc S. Ehrlich (14), Jonathan Warner (12), Sean Patrick Moran (12), and M. Lettie Dickerson (10). In addition, under the supervision of Lee E. Woodard, law students at Syracuse University College of Law represented 16 debtors pro bono. Joann Sternheimer provided pro bono services as a mediator during this period, and Guy Van Baalen, Lee Woodard, Thomas Kennedy, and Susan Esce stepped forward to support financial literacy and civic education outreach efforts within the greater Northern District of New York community. The efforts of these attorneys to assist with the ever-growing unmet legal needs of low-income and vulnerable populations is to be commended. The Judges are grateful for your commitment to the community, and your willingness to give of your professional time.

actions, political violence, and criminal activity targeting U.S. citizens and interests abroad.

Website:

<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/worldwide-caution.html>

- **Overseas Security Advisory Council (OSAC)** – Department of State: provides city and country specific crime and safety information that includes a cyber component.
Website: <https://www.osac.gov/Pages/Home.aspx>
- **Statement of the Record: Worldwide Threat Assessment** – Defense Intelligence Agency: provides assessments of the political and military postures of various countries.
Website: <http://www.dia.mil/News/Speeches-and-Testimonies/Article-View/Article/1189500/statement-for-the-record-worldwide-threat-assessment/>
- **The Smart Traveler Enrollment Program (STEP)** – Department of State: enrollment through the website allows you to receive security messages related to terrorist threats, security incidents, planned demonstrations, natural disasters, etc. Enrollment makes it easier to locate you in the event of an emergency.

Laptops, tablets, and smartphones are defined as 'mobile devices' because they are designed for use wherever and whenever a user needs them. They have become so incorporated into daily life that the majority of us rarely think twice about bringing them with us wherever we go. However, traveling abroad with a mobile device may expose them to a wide variety of threats including eavesdropping malware, data theft, tampering, or physical theft of the device.

Before you embark on international travel with a mobile device, browse to the website of the Overseas Security Advisory Council at <https://www.osac.gov/Pages/Home.aspx> to educate yourself in the cyber risks you may be exposed to in the country you will be visiting. You should also consider the following:

- if it isn't imperative to travel with a mobile device, leave it at home;
- if you are planning to travel abroad for personal pleasure, do not bring any mobile device with you that is used for business purposes;
- consider bringing a disposable 'flip phone' with you when traveling abroad instead of your smartphone.

If you feel you need to travel with a mobile device, then consider taking the following precautions to better protect yourself from cyber threats:

- keep the mobile device's operating system, applications, and security software up-to-date;
- use Touch ID, a passcode, or a strong password to protect your device;
- do not allow your device to remember passwords;
- enable a screen timeout, firewall, and file encryption on your device, where possible;

Honor Roll of Attorneys Providing Pro Bono Services Continued:

Mark E. Anderson
Michael D. Assaf
Paula Barbaruolo
Lawrence E. Becker
Neil T. Bhatt
Brian H. Bronsther
Michael R. Cardinale
Maxsen D Champion
Guy J. Criscione Jr.
Nancy Baum Delain
David F. DeVall
M. Lettie Dickerson
Christian Dribusch
Marc S. Ehrlich
Clifford Eisenhut
Susan Esce**
Mary Lannon Fangio
George J Flemma
Jessica G. Grady
David J. Gruenewald
Kristie H. Hanson
Gayle Hartz
Peter M. Hobaica
Leigh A. Hoffman
Anthony Inserra
Robert L. Katzman
Thomas Kennedy**
Charles T. Kriss
Christy Lay-Mumin
Alan R. LeCours Sr
Paul A. Levine
Carol Ann Malz
Zachary DeCurtis McDonald
Sean Patrick Moran
Justin D Myers
Christopher S. Nenninger
Michael J O'Connor
Peter Alan Orville
Robert J Pellegrino
David Allen Price
Rachel A. Rappazzo
Kenneth A. Reynolds

- disable or limit the use of Bluetooth, Handoff or similar utilities, and location services;
- avoid using unsecured Wi-Fi networks;
- use virtual private networks (VPNs) when possible;
- lock your mobile device when it is not in use;
- never connect your device to any device you do not control;
- use only your own adapters with your device, and only use wall outlets to charge your device;
- back up the data on your device before you leave home;
- never leave devices in unattended or in unsecure locations;
- store your devices in carry-on luggage and not in checked or unattended luggage.

Upon returning home, it is wise to scan your device using anti-virus and/or anti-malware software before connecting it to your personal or office Wi-Fi or computer. You should also consider wiping your device and restoring saved data if you backed up the device before leaving on your trip.

Perhaps a traveler's most powerful tool in protecting his or her person and data while traveling abroad is common sense. The tips and resources mentioned above, when combined with good judgment, can greatly increase your chances of having a safe and enjoyable trip.

Order Avoiding Lien Pursuant to 11 U.S.C. § 522(f)

By: Cynthia Platt

The Board of Judges has approved two form orders that avoid a judicial lien against the debtor's residence pursuant to 11 U.S.C. § 522(f). The first form order is to be used if avoidance of a judicial lien is requested by motion ("Local Form § 522(f) Order (Motion)"). The second form order is to be used in a chapter 13 case where the debtor seeks to avoid a judicial lien in a chapter 13 plan as an allowed contested matter ("Local Form § 522(f) Order (Plan)"). The only differences in the two orders is the manner the relief is sought. The relief granted in both orders is identical. Local Form § 522(f) Order (Motion) and Local Form § 522(f) Order (Plan) are posted on the Court's website under Local Forms.

The form orders provide that the debtor may file a copy of the order with the appropriate Office of the County Clerk and that the Clerk may mark its records accordingly. In addition, pursuant to 11 U.S.C. § 349(b), the orders direct that dismissal of the bankruptcy case voids the order and reinstates the lien(s) avoided.

Honor Roll of Attorneys Providing Pro Bono Services Continued:

Stephen Rodriguez
 Arlene Sanders
 Russell S. Simonetta
 Joann Sternheimer*
 David H. Swyer
 Michael J. Toomey
 Guy Van Baalen**
 Christiaan M Van Niekerk
 Meade H. Versace
 Jonathan D. Warner
 Samuel B. Warner
 Mark A. Weiermiller
 Richard H. Weiskopf
 Jay G. Williams III
 Lee Edwin Woodard** #
 Meade H. Versace

Student Practitioners#

Shelina Fanelli
 Alexandra Grzebyk
 Jacob Honan
 Ahmed Khattab
 Shin Sung Kim
 Jeong Min Lee
 Da Lu
 Margaret E. Mabie
 Dehrish Nawaz
 Evan Naylor
 Gardar Olafsson
 Lynna Paradiso
 Xiang Qi
 Nicole Sands
 Zahra Vakil
 Nicolette J. Zulli

*Mediator Service

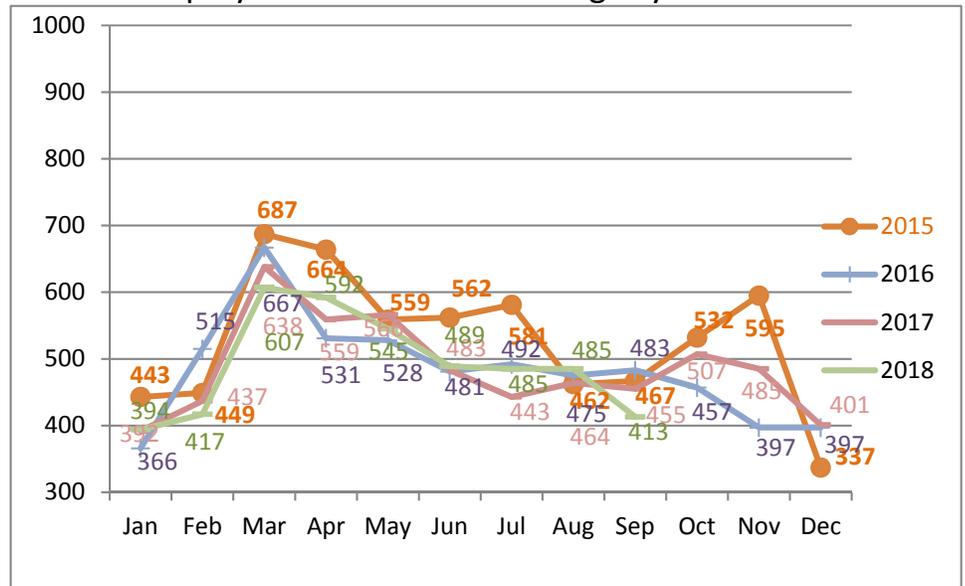
**CARE Outreach

#Syracuse University College of Law Bankruptcy Clinic

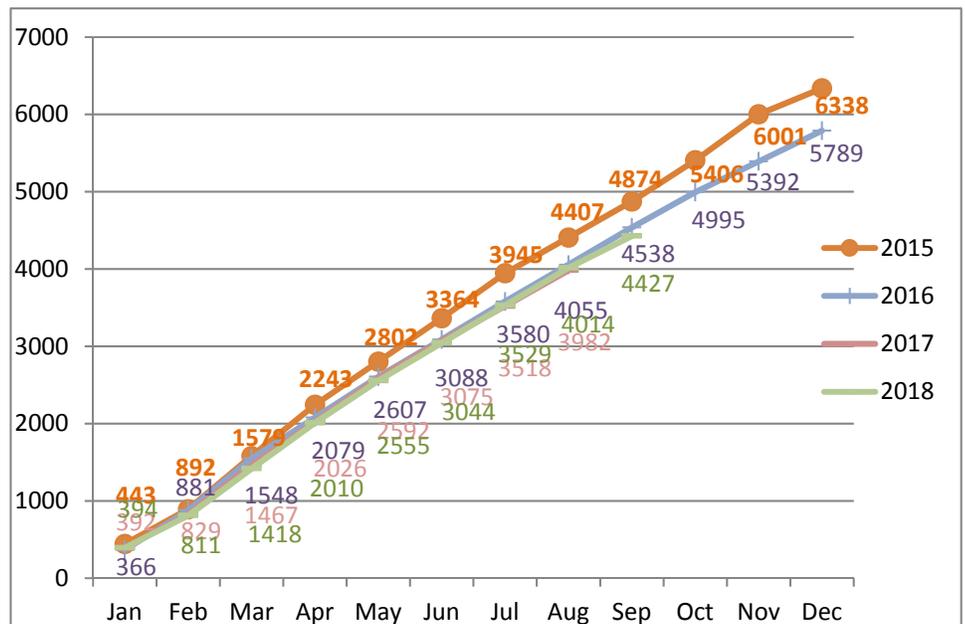
U.S. Bankruptcy Court NDNY Case Filings Statistics

By: Sean Garrow

U.S. Bankruptcy Court NDNY Case Filings by Month 2015-2018



U.S. Bankruptcy Court NDNY Total Filings 2015-2018



Amendments to Local Bankruptcy Rules

By: *Cynthia Platt*

Work hard, stay positive, and get up early. It's the best part of the day.

George Allen, Sr.

Courage is grace under pressure.

Ernest Hemingway

A judge sworn to decide impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process.

Ruth Bader Ginsburg

Every right implies a responsibility; Every opportunity, an obligation, Every possession, a duty.

John D. Rockefeller

The Local Rules Standing Committee is made up 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 ("FRBP") as well as local Court practices. The committee meets 2-3 times a year to consider the addition of new rules and modifications to existing rules for recommendation to the Board of Judges. The public and members of the bar can submit comments on the local rules at any time via email addressed to rules_comments@nybn.uscourts.gov, or through the Court's website at www.nybn.uscourts.gov.

On September 25, 2018, redline versions of the proposed amendments to Local Bankruptcy Rules 1006-1 (New), 1017-1, 4001-4 (New), 5005-1, 5010-1, 6005-1, 8007-1, 9013-1, 9013-6, and 9025-1 were posted for public comment to the Court's website under News & Announcements and disseminated via GovDelivery. The amendments to these local rules will become effective December 1, 2018. Some of the amendments are the result of changes to FRBP that also take effect December 1, 2018.

Local Bankruptcy Rule 1006-1 (Filing Fee) is new. It sets forth that a petition to commence a case must be accompanied by the filing fee, an application to pay the fee in installments, or an application to waive the fee. If the Court waives the fee under 28 U.S.C. § 1930(f), the rule clarifies that the waiver applies to all future fees assessed by the Clerk in the case unless the Court orders otherwise. Lastly, the rule provides that any fee due in connection with an electronically filed document must be paid via the on-line payment program the day it is incurred. Failure to pay the fee will result in suspension of the filer's ability to file electronically via the CM/ECF system.

Local Bankruptcy Rules 1017-1 (Dismissed Case – Motion to Vacate Order of Dismissal and to Reinstate Case) and 5010-1 (Reopening a Case) are amended, respectively, to indicate that an ex parte motion to redact is a permissible filing in a dismissed case and a closed case.

The local requirement that a motion to avoid a judicial lien pursuant to 11 U.S.C. § 522(f) must be served upon the attorney who obtained the judgment on behalf of the creditor has been removed from Local Bankruptcy Rules 9013-1 (Motion Practice) and 9013-6 (Motion to Avoid Judicial Lien). Thus, service will be sufficient if the judgment creditor is served with the motion pursuant to FRBP 7004.

The changes to Local Bankruptcy Rules 8007-1 (Stay Pending Appeal) and 9025-1 (Sureties and Other Providers of Security) are consistent with the changes to FRBP 8007 and 9025. Previously, a party was required to provide a "supersedeas bond" to obtain a stay of a judgment and proceedings to enforce a judgment. Changes to the federal rules now allow a party to obtain a stay by providing a "bond or other security."

An investment in knowledge
pays the best interest.

Benjamin Franklin

Never, never, never give up.

Winston Churchill

When one door closes, another
opens; but we often look so
long and so regretfully upon
the closed door that we do not
see the one which has opened
for us.

Alexander Graham
Bell

It is amazing what you can
accomplish if you do not care
who gets the credit.

Harry S Truman

Local Bankruptcy Rule 4001-4 (Payment and Cure of Pre-Petition Judgment of Possession Involving Residential Property) is new. Bankruptcy Code § 362(b)(22) provides that there is no automatic stay of the continuation of an eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor/tenant involving residential property where the landlord obtained a judgment for possession against the debtor prior to the filing of the petition. Under Bankruptcy Code § 362(l)(1), however, the debtor can obtain a 30-day stay of the eviction, unlawful detainer action, or similar proceeding if the debtor certifies that under non-bankruptcy law the debtor would be permitted to cure the default that gave rise to the judgment for possession after it was entered and the debtor has deposited with the Clerk the rent that would be due during the 30-day period after the filing. The debtor can take further steps under § 362(l) to impose the stay beyond 30-days. Subparagraph (a) of new Local Bankruptcy Rule 4001-1 clarifies that to comply with § 362(l)(1), the debtor must file an Initial Statement About an Eviction Judgement Against You (Official Form 101A), which constitutes the debtor's certification, and deliver the rent payment payable to the lessor to the Clerk by the close of business on the day of filing. The rent payment cannot be made electronically because it is payable to a third party and not the Court. Subparagraph (b) of the new rule sets forth the notice the Clerk must provide to the landlord and treatment of the rent payment. The new rule also addresses the procedure for the landlord to object to the debtor's certification and request a hearing.

Amendments to FRBP 5005 make electronic filing mandatory in all districts except for filings made by an individual not represented by an attorney. Local Bankruptcy Rule 5005-1 (Electronic Filing and Service) is amended to clarify that an entity represented by an attorney must file documents electronically unless otherwise permitted by the Court, and an unrepresented individual must file documents in paper format. The paper documents may be filed in any of the Clerk's Offices in the district. The amended rule also indicates that the Clerk will not accept documents submitted via email or facsimile for filing.

The maximum commissions of 12%, 5.5%, or 2.5 %, depending on the gross proceeds of sale, were removed from Local Bankruptcy Rule 6005-1 (Appraisers and Auctioneers). Instead the amended rule indicates that an auctioneer's commission shall be determined and set by the Court in the order approving employment of the auctioneer. The auctioneer's application must demonstrate the proposed commission is reasonable and customary for the kind of auction to be held and the type and amount of property to be sold. In no event, however, shall the commission exceed 15% of gross sale proceeds. The amended rule also adds the requirement that the auctioneer's application contain a proposed itemized budget setting forth a good faith estimate of the reasonable and necessary expenses expected to be incurred.

Motion Calendars at Your Fingertips: The CHAPMobile App

Do you wish you could access the most current Bankruptcy court motion calendars on your smartphone or tablet anytime, anywhere? Then the CHAPMobile App is the answer you have been looking for! The CHAPMobile App is an optional free download for iOS and Android devices available at the Apple App Store and Google Play.

With the CHAPMobile App:

- View each judge's hearing calendar (for a range of days)
- Search hearing by case name and case number
- View 341 Meetings by trustee (for a range of days) and search by attorney, case name, or case number
- View court locations and contact information
- Create your own list of attorneys to quickly view upcoming hearings
- Navigate to another Bankruptcy court's CHAP Public Mobile Calendar

Hearing Calendar:

Displays hearing data, organized by judge.

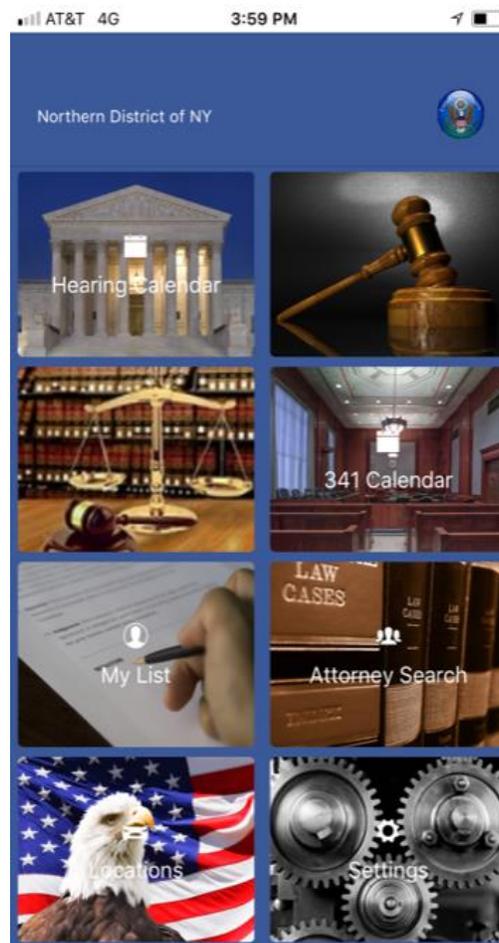
Search by:
Debtor Name
Case Number

My List:

Create an attorney "favorites" list, and view their cases scheduled on the hearing calendar.

Locations:

Court office locations, contacts, and court website.



341 Calendar:

Displays all scheduled 341 Meetings, by Trustee.

Search by:
Debtor Name
Case Number
Attorney

Attorney Search:

Search an attorney name to view their cases scheduled on the hearing calendar.

Settings:

Each user can set their own preferences at any time and view app information for the "Last Updated" date and time.

To watch a training video, please visit

<https://www.youtube.com/watch?v=AEMPzoVF-S8>.

NYNB's "CHAPMobile App User Guide" is available at

<http://www.nynb.uscourts.gov/sites/default/files/Calendar/CHAPMobile-User-Guide.pdf>.

We would like to make this App available to anyone who is interested. Contact Jim Fleming, NYNB Systems Manager, at james_fleming@nynb.uscourts.gov for more information.

ON THE RECORD WITH THE AO

By Scott Myers¹

NEWS FROM THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

My summer column typically provides a brief preview of bankruptcy rule and form changes on track to go into effect this year, and lists any proposed rule and form changes that have been published for comment.

Bankruptcy Rules and Forms effective December 1, 2018

The following rules and forms are on track to go into effect on December 1, 2018: Bankruptcy Rules 3002.1, 5005, 7004, 7062, 8002, 8006, 8007, 8010, 8011, 8013, 8015, 8016, 8017, 8021, 8022, 9025, new Rule 8018.1 and the new Part VIII Appendix to the Bankruptcy Rules, and amendments to Official Forms 417A and 417C.

Two additional forms, Director's Forms 4011A and 4011B, will be reissued as Official Forms 411A and 411B effective December 1, 2018, if approved by the Judicial Conference in the fall.

A. *Rule 3002.1*

Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence) applies to home mortgage claims in chapter 13 cases. The amendments to subdivisions (b) and (e) do three things: they (i) create flexibility regarding a notice of payment change for home equity lines of credit; (ii) create a procedure for objecting to a notice of payment change; and (iii) expand the category of parties who can seek a determination of fees, expenses, and charges that are owed at the end of the case.

B. *Rules 5005 and 8011*

Rule 5005(a)(2) (Filing and Transmittal of Papers) addresses electronic filing in bankruptcy cases and Rule 8011 (Filing and Service; Signature) addresses filing, service, and signatures in bankruptcy appeals. The proposed amendments are coordinated with similar recommended amendments across the Federal Rules of Appellate, Civil and Criminal procedure that would require a person represented by counsel to file papers electronically, but allow exceptions for good cause. Courts would also have discretion to permit electronic filing by pro se parties, or require it if reasonable exceptions are allowed. Additionally, the amendment to Rule 8011 establishes a uniform national signature provision for bankruptcy appeals.

¹ Scott Myers (Scott_Myers@ao.uscourts.gov) is an attorney for Rules Committee Staff at the Administrative Office of the United States Courts. His primary duties are to provide support for the Judicial Conference's Standing Rules Committee and its Advisory Committee on Bankruptcy Rules.

C. *Rule 7004*

Rule 7004 (Summons; Service; Proof of Service) incorporates by reference certain components of Civil Rule 4, including the provision addressing a defendant’s waiver of service of a summons. Civil Rule 4(d) was amended in 2007 to change, among other things, the language and placement of the provision addressing waiver of service of summons. The cross-reference to Civil Rule 4(d)(1) in Rule 7004(a), however, was not changed at that time. The pending technical amendment to Rule 7004(a) would make the appropriate reference to Civil Rule 4(d)(5).

D. *Rules 7062, 8007, 8010, 8021, and 9025*

The amendments to Rules 7062, 8007, 8010, 8021, and 9025 conform these rules with pending amendments to Civil Rules 62 and 65.1 that would lengthen the period of the automatic stay of a judgment and modernize the terminology “supersedeas bond” and “surety” by using instead the broader term “bond or other security.” (Pending amendments to Appellate Rules 8, 11, and 39 adopt conforming terminology).

Because Bankruptcy Rule 7062 incorporates the whole of Civil Rule 62, the new security terminology will automatically apply in bankruptcy adversary proceedings when the civil rule goes into effect. Rule 62, however, also includes a change that would lengthen the automatic stay of a judgment entered in the district court from 14 to 30 days to address a gap between the end of the judgment-stay period and the 28-day time period for making certain post-judgment motions in civil practice. Because the deadline for post-judgment motions in bankruptcy is 14 days, however, the proposed amendment to Rule 7062 would maintain the current 14-day duration of the automatic stay of judgment.

E. *Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022, the Part VIII Appendix to the Bankruptcy Rules, and Official Forms 417A and 417C*

Amendments to Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022, and the Bankruptcy Rules Part VIII Appellate Rules Appendix bring the Bankruptcy Rules into conformity with amendments to the Federal Rules of Appellate Procedure (“FRAP”) that went into effect on December 1, 2016, as well as some pending 2018 amendments to FRAP.

The amendments to Rules 8002(c) and 8011(a)(2)(C) include inmate-filing provisions that are virtually identical to, and are intended to conform to, the inmate-filing provisions of Appellate Rules 4(c) and 25(a)(2)(C). These rules treat notices of appeal and other papers as timely filed by inmates if certain specified requirements are met, including that the documents are deposited in the institution’s internal mail system on or before the last day for filing. To implement the FRAP amendments, a new appellate form was adopted to provide a suggested form for an inmate declaration under Rules 4 and 25. A similar director’s form was developed for bankruptcy appeals, and Official Form 417A (Notice of Appeal and Statement of Election) was amended to alert inmate filers of the existence of the director’s form.

Rule 8002(b) and its counterpart, Appellate Rule 4(a)(4), set out a list of post-judgment motions that toll the time for filing an appeal. The 2016 amendment to Appellate Rule 4(a)(4) added an explicit requirement that the motion must be filed within the time period specified by the rule under which it is made in order to have a tolling effect for the purpose of determining the deadline for filing a notice of appeal. A similar amendment is made to Rule 8002(b).

The amendments to Rules 8013, 8015, 8016, and 8022, and the new Part VIII Appendix conform the bankruptcy appellate rules to the new FRAP length limits. Existing page limits are converted to word limits for documents prepared with a computer, and existing word limits are reduced. Official Form 417C (Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements) was amended to reflect the new limits, and the new Part VIII Appendix collects all the changes into a single chart, conforming to a similar appendix collecting FRAP length limits that was added to the Appellate Rules in 2016.

Rule 8017 is the bankruptcy counterpart to Appellate Rule 29. The 2016 amendment to Rule 29 provided a default rule concerning the timing and length of amicus briefs filed in connection with petitions for panel rehearing or rehearing en banc. A parallel amendment is made to Rule 8017. A pending 2018 amendment to Appellate Rule 29(a) would authorize a court of appeals to prohibit or strike the filing of an amicus brief if the filing would result in the disqualification of a judge. A similar amendment to Rule 8017 is made to maintain consistency between the two sets of rules.

F. Rule 8002

A new subdivision (a)(5) is added to Rule 8002 (Time for Filing Notice of Appeal) defining entry of judgment. The amendment clarifies that the time for filing a notice of appeal under subdivision (a) begins to run upon docket entry in contested matters and adversary proceedings for which Rule 58 does not require a separate document. In adversary proceedings for which Rule 58 does require a separate document, the time starts when the judgment, order, or decree is entered on the docket and either (1) it is set forth on a separate document, or (2) 150 days have run from the entry on the docket, whichever occurs first.

G. Rule 8006

The amendment to Rule 8006 (Certifying a Direct Appeal to the Court of Appeals) adds a new subdivision (c)(2) that authorizes the bankruptcy judge to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all the parties to the appeal.

H. Rule 8018.1

New Rule 8018.1 (District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter) authorizes a district court to treat a bankruptcy court's

judgment as proposed findings of fact and conclusions of law if the district court determines that the bankruptcy court lacked constitutional authority to enter a final judgment. The procedure would eliminate the need to remand an appeal to the bankruptcy court merely to recharacterize the judgment as proposed findings and conclusions.

I. Director's Forms 4011A and 4011B

Prior to renumbering the bankruptcy forms in 2015 as part of the Forms Modernization Project, Director's Forms 4011A (General Power of Attorney) and 4011B (Special Power of Attorney) were Official Forms 11A and 11B. Because the power of attorney forms are routinely modified to conform to state law, the needs of the case, or local practice, there was a concern that their use would be limited by then pending changes to Rule 9009 (Forms) that were designed to restrict modification of official forms. The forms were therefore designated as Director's Procedural Forms so that they could be altered as needed. This change turned out to be inconsistent with Bankruptcy Rule 9010(c) (Power of Attorney), however, which provides that "[t]he authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose . . . shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form" (emphasis added).

In order to bring Rule 9010(c) and the forms into conformity, the Advisory Committee and Standing Committee have recommended redesignating the power of attorney forms as Official Forms. Because Rule 9010(c) only requires that a power of attorney conform "substantially to the appropriate Official Form" modifications can be made, and the original justification for making the forms director's forms was misplaced. The forms are on track to be redesignated as Official Forms 411A and 411B on December 1, 2018, if approved by the Judicial Conference in September.

Rules and Forms Published for Comment

Bankruptcy rule and forms amendments are generally published for public comment for approximately six months from mid-August to mid-February along with any proposed amendments to other rules of procedure or rules of evidence in the "Preliminary Draft of Proposed Amendments." Three bankruptcy rules are out for public comment this cycle: Rules 2002, 2004, and 8012. Readers are encouraged to review the proposed amendments and to submit comments from August 15, 2018 through February 15, 2019 by following the instructions at the following link: <http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.