



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.

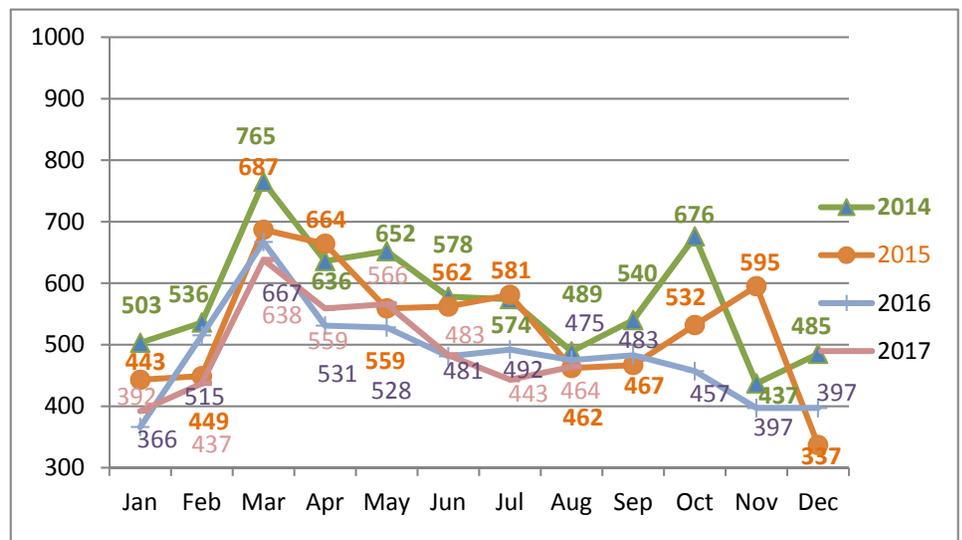
Albany Chambers

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.

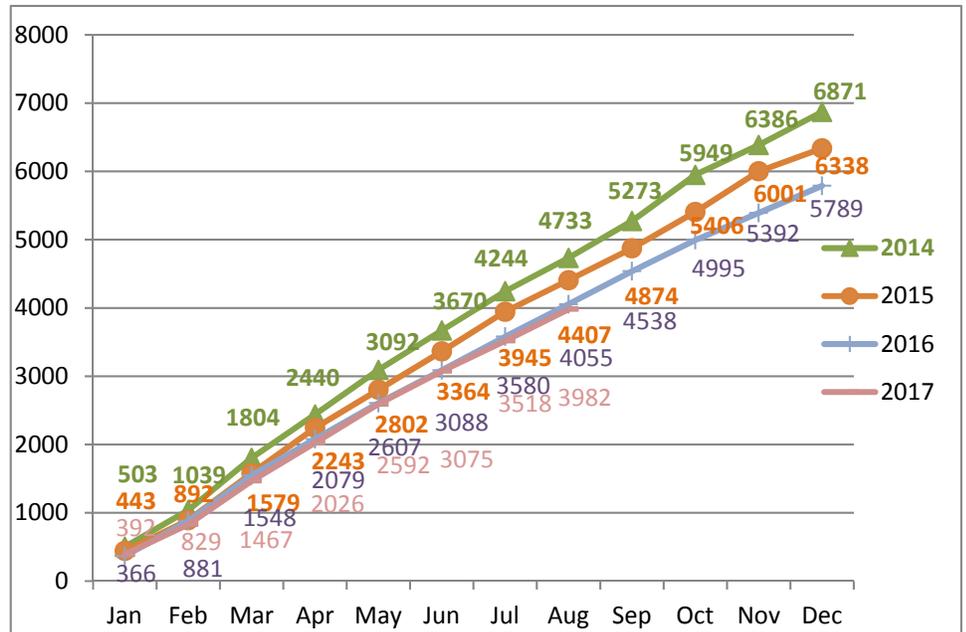
US Bankruptcy Court NDNY Case Filings Statistics

By: Sean Garrow

US Bankruptcy Court NDNY Case Filings by Month 2014-2017



US Bankruptcy Court NDNY Total Filings 2014-2017



Resetting Your Password In CM/ECF

by James E. Fleming, Systems Manager

Introduction

Have you ever forgotten your CM/ECF password? You now have the ability to reset your NYNB-issued, non-PACER CM/ECF password using a “Password Reset” feature recently added to the application.

How to Reset Your Password

1. Using Internet Explorer, navigate to <https://ecf.nynb.uscourts.gov>:

CM/ECF Filer or PACER Login

Notice
This is a **Restricted Web Site** for Official Court Business only. Unauthorized entry is prohibited and subject to prosecution under Title 18 of the U.S. Code. All activities and access attempts are logged.

Instructions for viewing filed documents and case information:
If you do not need filing capabilities, enter your PACER login and password. If you do not have a PACER login, you may register online at <http://www.pacer.gov>.

Instructions for filing:
Enter your CM/ECF filer login and password if you are electronically filing something with the court.

Lost your password? Attempt to [Reset](#) it.

Authentication

Login:

Password:

Client code: I understand that, if I file, I must comply with the redaction rules. I have read this notice.

Login Clear

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer-identification numbers; dates of birth; names of minor children; and financial account numbers, in compliance with [Fed. R. Bankr. P. 9037](#). This requirement applies to all documents, including attachments.

Notice
An access fee of \$0.10 per page or \$2.40 per document with an audio attachment, as approved by the Judicial Conference of the United States, will be assessed for access to this service. For more information about CM/ECF, [click here](#) or contact the PACER Service Center at (800) 676-6856.

CM/ECF has been tested using Firefox and Internet Explorer 8 and 9.

2. Click the “Reset” link:

Lost your password? Attempt to [Reset](#) it.

Authentication

Login:

Password:

You will be brought to the “CM/ECF Password Changes” page.

https://ecf.nynb.uscourts.gov/cgi-bin/lostPassword.pl

USBC-NYNB Registration

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

CM/ECF Password Changes

**This page is for CM/ECF logins only, it will not work for PACER accounts.
For a lost password on a PACER account, please contact the [PACER Service Center](#).**

Notice
This is a **Restricted Web Site** for Official Court Business only. Unauthorized entry or use or a use that attempts to circumvent access controls or PACER billing processes is prohibited and subject to prosecution under Title 18 of the U.S. Code. All activities and access attempts are logged.

Enter your Login ID, **or** enter your first name, last name, and the primary email address for your ECF account and click on "Submit":

Login ID:

--OR--

First Name:

Last Name:

Primary Email Address only:

- To receive an email containing a link to reset your password, either enter your login ID,

Login ID:

--OR--

First Name:

Last Name:

Primary Email Address only:

or enter your first name, last name, and primary email address.

- Click the "Submit" button.
- An email from "webmaster" will be sent to your primary email account:



6. The email will contain a link directing you to a “CM/ECF Password Changes” web page:

To reset your CM/ECF password (account “jdoe”), use this URL:

<https://ecf.nynb.uscourts.gov/cgi-bin/lostPassword.pl?key=4ek7NXzDeXeCe36JW1kY>

If the link isn't working please copy and paste it into a browser making sure to include the whole link.

7. On the “CM/ECF Password Changes” web page, enter your login ID, enter a new password, then click Submit.

You should now be able to successfully log into CM/ECF.

REMEMBER

- You cannot use the “Password Reset” program to reset your PACER password. If you cannot remember your PACER password, please call the PACER Service Center at (800) 676-6856.
- For additional assistance using the “Password Reset” program, please call NYNB’s CM/ECF Help Desk at the following phone numbers:
 - the Albany CM/ECF Help Desk at (518) 257-1616;
 - the Syracuse CM/ECF Help Desk at (315) 295-1618;
 - the Utica CM/ECF Help Desk at (315) 266-1118.

ON THE RECORD WITH THE AO

By Scott Myers¹

NEWS FROM THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Bankruptcy Rules and Forms effective December 1, 2017

My summer/fall column typically provides a brief preview of upcoming bankruptcy rule and form changes. This year there are 12 rule amendments (Rules 1001, 1006, 1015, 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009), one new rule (Rule 3015.1), and 10 official form amendments (Official Forms 25A, 25B, 25C, 26, 101, 113, 309F, 309G, 309H, and 309I) on track to go into effect on December 1, 2017.

- *The Chapter 13 Plan Form (Official Form 113) and related rules (Rules 2002, 3002, 3007, 3012, 3015, 3015.1, 4003, 5009, 7001, and 9009).*

Most of the rule and form changes coming this December are part of the Chapter 13 Plan Form package. At its fall 2015 meeting, the Advisory Committee approved the plan form (Official Form 113), and amendments to eight of the related rules—Bankruptcy Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009—but voted to defer submitting those items to the Standing Committee.² As a result of the comments received during the 2014 publication, the Advisory Committee proposed and the Standing Committee agreed to republish for comment one of the initial nine rules, Rule 3015, and new Rule 3015.1. Rules 3015 and 3015.1 introduced the possibility of a district-by-district opt-out from the national form plan concept, as long as the opt-out district adopts a local district-wide form plan that meets the requirements set forth in new Rule 3015.1.

Rules 3015 (Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case), and 3015.1 (Requirements for a Local Form for Plans Filed in a Chapter 13 Case), were published for comment for a three-month period—July 1, through October 3, 2016. The Advisory Committee approved these two rules and the opt-out concept after the comment period, and recommended final approval of the full chapter 13 plan form package at its fall 2016 meeting. The Standing Committee approved the package at its January 2017 meeting, and the Judicial Conference approved it at its March 2017 meeting. The

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² Links to the pending rules can be found on the [Pending Rules and Forms Amendments page](#) at uscourts.gov. The forms will be available on the [pending bankruptcy forms](#) page on uscourts.gov.

rules have been approved by the Supreme Court and the full package is on track to go into effect on December 1, 2017, if Congress takes no action to the contrary.

As approved, the chapter 13 package requires use of Official Form 113 for chapter 13 plans filed in the district *unless* the district adopts a district-wide local plan form that meets the requirements in new Rule 3015.1. One requirement in the new rule is that adoption of a local plan must be preceded by “public notice and an opportunity for public comment.” Rule 3015.1(a). The rule does not specify the time or process for the notice and comment period. Most courts will likely follow the same process used for the adoption of local rules. Information about the use of the national form or a local court variant will be posted on local court websites.

Some of the rule amendments apply outside the context of chapter 13 cases; notable examples follow.

The changes to Rule 3002 (Filing Proof of Claim or Interest), clarify that a creditor, *including a secured creditor*, must file a proof of claim in order to have an allowed claim in a case. The rule also alters the claims bar date (i.e., date by which the creditor must file a claim) in chapter 7, 12 and 13 cases from 90 days after the § 341 meeting of creditors to 70 days after the petition date.

The changes to Rule 3007 (Objections to Claims), make clear that Rule 7004 does not apply to most claims objections. In addition, the rule no longer will require that a hearing be scheduled or held on every objection. Rather, as amended, the rule permits local practices that require a claimant to timely request a hearing or file a response in order to obtain a hearing.

The changes to Rule 9009 (Forms), are also not limited to chapter 13 cases. Current Rule 9009 requires only substantial compliance with official forms and expressly provides that “[f]orms may be combined and their contents rearranged to permit economies in their use.” As amended, Rule 9009 is more restrictive and would require the use of official forms “without alteration, except as otherwise provided in these rules or in a particular Official Form.” The changes are designed to limit and define the types of modifications that can be made to official forms. In particular, the chapter 13 plan form requires that nonstandard provisions appear only in one portion of the form, and it would defeat the purpose of this feature if the form could be rearranged freely.

Amended Rule 9009 does not require pixel by pixel reproduction of official forms. Rather, the rule allows for deviations from an official form if permitted by the national instructions for the form or by instructions on the form itself. It would also allow “minor changes not affecting wording or the order of presenting information” on a form.

- *Rules 1001, 1006(b), and 1015(b)*

Rule 1001 (Scope of Rules and Forms; Short Title), is the bankruptcy counterpart to Civil Rule 1, and it generally tracks the language of the civil rule. As amended December 1, 2016,

Civil Rule 1, states: “[These rules] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” The proposed amendment to Rule 1001 changes the last sentence of the rule to conform to the language of Civil Rule 1.

Rule 1006(b) (Filing Fee), governs the payment of the bankruptcy filing fee in installments, as authorized for individual debtors by 28 U.S.C. § 1930(a). In evaluating a suggested amendment to the rule, the Advisory Committee became aware that some courts refuse to accept a petition or summarily dismiss a case if an installment payment is not made at the time the case is filed. The Advisory Committee concluded that such a practice is inconsistent with Rules 1006(b)(1) and 1017(b)(1). The latter provision allows for dismissal of a case for the failure to pay any installment of the filing fee only “after a hearing on notice to the debtor and the trustee.”

In order to clarify that courts may not refuse to accept petitions or summarily dismiss cases for failure to make initial installment payments at the time of filing, amended Rule 1006(b)(1) requires that an individual debtor’s petition must be accepted for filing so long as the debtor submits a signed application to pay the filing fee in installments—even if a required initial installment payment is not made at the same time. The committee note explains that dismissal of the case for failure to pay any installment must proceed according to Rule 1017(b)(1).

Rule 1015(b) (Cases Involving Two or More Related Debtors), provides for the joint administration of bankruptcy cases in which the debtors are closely related. Among the debtors covered by the rule are “a husband and wife.” In light of the holdings and reasoning in *United States v. Windsor*, 133 S. Ct. 2675 (2013) and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the Advisory Committee replaced both instances of “husband and wife” in the rule with “spouses.”

- *Rule 7004(a)(1)*

Rule 7004 (Process; Service of Summons, Complaint), incorporates by reference certain components of Civil Rule 4. In 1996, the Advisory Committee amended Rule 7004(a) to incorporate by reference the provision of Civil Rule 4 addressing a defendant’s waiver of service of a summons. At that time, the provision was set forth in Civil Rule 4(d)(1).

In 2007, Civil Rule 4(d) was amended to change, among other things, the language and placement of the waiver provision, renumbering it as Civil Rule 4(d)(5). The amendment to Rule 7004(a) updates the reference to Civil Rule 4(d)(5).

- *Official Forms 25A, 25B, 25C, and 26, (Business forms)*

Most official bankruptcy forms were renumbered on December 1, 2015, as part the Advisory Committee’s Forms Modernization Project that began in 2008. Work on Official Forms 25A, 25B, 25C, and 26, however, was deferred to allow for review and consideration by the Advisory Committee’s Business Subcommittee. As amended, the forms are renumbered

425A, 425B, 425C, and 426. Official Forms 425A and 425B set forth an illustrative form plan of reorganization and disclosure statement, respectively, for small business debtors under chapter 11 of the Bankruptcy Code. Official Form 425C is the monthly operating report for small business debtors, and Official Form 426 is used to disclose information on the “value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor [in a chapter 11 case] holds a substantial or controlling interest.”

The revised forms incorporate stylistic and formatting changes to conform to the general structure of the modernized forms. Certain changes have also been made to clarify the information requested and to make them easier for the debtor to complete.

- *Official Form 101*

Official Form 101 (Individual Debtor Petition), Part 2, line 11, is amended to accurately reflect the requirements of § 362(l) of the Bankruptcy Code. All debtors against whom an eviction judgment has been entered with respect to their residence must fill out Official Form 101A (Initial Statement About an Eviction Judgment Against You), whether or not they want to remain in their residence. Form 101A is deemed to be part of the petition.

- *Official Form 309F*

Official Form 309F (Notice of Chapter 11 Bankruptcy Case—For Corporations or Partnerships), revises the instructions at lines 8 and 11 of the form. The instructions currently require a creditor that seeks to have its claim excepted from the discharge under § 1141(d)(6)(A) of the Bankruptcy Code to file a complaint by the stated deadline. The applicability of the deadline is in some circumstances unclear, however, so the proposed revision leaves it to the creditor to decide whether the deadline applies to its claim.

- *Official Form 309G, 309H, and 309I*

Official Forms 309G, 309H, and 309I are the official form notices that are sent to creditors upon the filing of a chapter 12 or chapter 13 case. The proposed form amendments conform to a pending change to Rule 3015 scheduled to take effect on December 1, 2017, absent contrary congressional action.

Rule 3015 governs the filing, confirmation, and modification of chapter 12 and chapter 13 plans. The pending amendment to the rule eliminates authorization for a debtor to serve a plan summary, rather than a copy of the plan itself, on the trustee and creditors. The changes to Official Forms 309G, 309H, and 309I accordingly remove conditional language that indicates that a “plan summary” may be included with the notice or otherwise served, as that option will no longer be available.

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. Five rules and one official form are out for public comment this cycle: Rules 2002, 4001, 6007, 9036, and 9037 and Official Form 410.

- *Rule 4001*

The proposed amendment to Rule 4001(c) (Obtaining Credit), governs the process for a debtor in possession or a trustee to obtain credit outside the ordinary course of business in a bankruptcy case. Among other things, the rule outlines eleven different elements of post-petition financing that must be explained in a motion for approval of a post-petition credit agreement. The suggestion was made that because Rule 4001(c) is designed to provide needed information for approval of credit in chapter 11 business cases, its application in chapter 13 consumer bankruptcy cases was unhelpful, where typical post-petition credit agreements concern loans for items such as personal automobiles or household appliances. The Advisory Committee agreed and proposed an amendment to Rule 4001(c) that removes chapter 13 from the bankruptcy cases subject to the rules' requirements.

- *Rule 2002, Rule 9036, and Official Form 410*

The proposed amendments to Rules 2002(g) (Addressing Notices), 9036 (Notice by Electronic Transmission), and Official Form 410 (Proof of Claim), are part of the Advisory Committee's ongoing review of noticing matters in bankruptcy. The proposed amendments would enhance the use of electronic noticing in bankruptcy cases in a number of ways. The amendment to Official Form 410 would allow even creditors who are not registered with the court's case management/electronic case files (CM/ECF) system the option to receive notices electronically instead of by mail by checking a box on the form. The proposed change to Rule 2002(g) would expand the references to "mail" to include other means of delivery and delete "mailing" before "address," thereby allowing a creditor to receive notices by email. And the amendment to Rule 9036 would allow the clerk or any other person to notice or serve registered users by use of the court's electronic filing system and to other persons by electronic means that the person consents to in writing.

- *Rule 6007*

The proposed amendment to Rule 6007(Abandonment or Disposition of Property), addresses a suggestion that the Advisory Committee received concerning the process for abandoning estate property. The suggestion highlights the inconsistent treatment afforded notices to abandon property filed by the bankruptcy trustee under subdivision (a) and motions to compel the trustee to abandon property filed by parties in interest under subdivision (b). Specifically, Rule 6007(a) identifies the parties that the trustee is required to serve with its notice to abandon, but Rule 6007(b) is silent regarding the service of a party in interest's motion to compel abandonment. In order to more closely align the two subdivisions of the rule, the proposed amendment to Rule 6007(b) would specify the parties to be served with the motion to

abandon and any notice of the motion, and establish an objection deadline. In addition, the proposed amendment would clarify that, if a motion to abandon under subdivision (b) is granted, the order affects the abandonment without further notice, unless otherwise directed by the court.

- *Rule 9037*

Proposed new subsection (h) to Rule 9037 (Privacy Protection for Filings Made with the Court), responds to a suggestion from the Committee on Court Administration and Case Management that a uniform national procedure is needed for belated redaction of personal identifiers. The amendment sets forth a procedure for a moving party to identify a document that needs to be redacted and for providing a redacted version of the document. Upon the filing of such a motion, the court would immediately restrict access to the original document pending determination of the motion. If the motion is ultimately granted, the court will permanently restrict public access to the originally filed document and provide access to the redacted version in its place.

Readers are encouraged to review the proposed amendments and new rules and forms that make up the August Preliminary Draft of Proposed Amendments and to submit comments. Copies of the proposed amendments will be available on the judiciary's public website beginning August 15, 2017 at the following link:

<http://www.uscourts.gov/RulesAndPolicies/rules/proposed-amendments.aspx>

Comments can be submitted by email at rules_comments@ao.uscourts.gov. The deadline for submitting comments addressing the amendments in the Preliminary Draft is February 15, 2018.

Connected Home Devices: The Internet of Things

From the *MS-ISAC Monthly Security Tips Newsletter*, August 2017, Vol. 12, Issue 8

What is the Internet of Things (IoT)?

We have become more connected than ever before. A little over ten years ago, we only accessed the Internet through a laptop or a desktop computer. Then, we added phones and tablets to our list of connected devices. Today, we have even smaller connected devices, such as fitness trackers and smart watches. According to ABI Research, there will be over 30 billion devices connected to the Internet by 2020. The list of Internet connected devices, or “things”, keeps growing. Kevin Ashton, cofounder and executive director of the Auto-ID Center at the Massachusetts Institute of Technology (MIT), first mentioned the term Internet of Things (IoT) in 1999, but the first device to be connected to the Internet was actually a Coke machine at Carnegie Mellon University in the early 1980s. Programmers could connect to the machine over the Internet, check the status of the machine, and determine whether there would be a cold drink waiting for them. Today, IoT consists of everyday devices that are connected to the Internet, such as fitness trackers, vehicles, smart televisions, doorbells, light bulbs, home security systems, thermostats, and refrigerators. Basically, if it is not a computer, smartphone or tablet, *and* it connects to the Internet, it can be called an IoT device.

What are the issues with IoT devices?

Many people know they should install anti-virus (AV) software on their computers and be careful of what websites they visit or software they download. Unfortunately, most people probably do not consider their IoT devices to be a security threat. These devices are more accessible and make our lives more integrated, but many of the companies behind these new devices are not designing them with security in mind. For example, many IoT devices have default passwords that are well known and *cannot* be changed, or cannot be changed easily. They also can be difficult or impossible to update to mitigate known vulnerabilities, or have no settings to customize security.

Our dependence on Internet-connected devices has grown faster than the means, and/or awareness, to secure them. Leaving IoT devices unsecured, as with any Internet connected device, is like leaving the back door to your house unlocked. It gives attackers access to your personal information and the potential to further compromise other devices on your network. It also gives attackers the means to propagate their attacks onto others by using your insecure devices to attack other networks and devices.

How can you secure your IoT device?

So, what can you do to enjoy the functionality of IoT devices and remain more secure at the same time? The following tips may help you in these endeavors:

- Know what IoT devices are connected to your network. It is possible that there are devices connected to your network that you do not know about.
- Consider only purchasing devices that you *need to use*. Some Internet-capable devices may be nice to have, but provide limited benefit and reduce your security.

- Isolate IoT devices from other devices on your network by creating a separate Wi-Fi network just for them. This protects your other devices if your connected IoT devices are compromised.
- Update the device's software, if possible. If you update your device regularly, this will reduce the chances of a successful attack.
- Replace default passwords with unique and strong ones of your choosing. Passwords should have upper and lower case characters, numbers, and special characters, with at least 10 total characters.
- Configure security and privacy options, such as enabling encryption and limiting the information your devices share.
- Replace insecure IoT devices with more secure ones. Seek out reviews on these devices that address security features and patching support to determine which ones may have a reasonable baseline of security.

Resources:

<https://www.abiresearch.com/press/more-than-30-billion-devices-will-wirelessly-conne/>

<http://internetofthingsagenda.techtarget.com/definition/Internet-of-Things-IoT>



The information provided in the MS-ISAC Monthly Security Tips Newsletter is intended to increase the security awareness of an organization's end users and to help them behave in a more secure manner within their work environment. While some of the tips may relate to maintaining a home computer, the increased awareness is intended to help improve the organization's overall cyber security posture. This is especially critical if employees access their work network from their home computer. Organizations have permission and are encouraged to brand and redistribute this newsletter in whole for educational, non-commercial purposes.

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