



Court News and Views

THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

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Clerk's Corner
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Hello everyone! Thank you for reading this edition of our newsletter!

Local Rules: the hottest topic in our court continues to be our new Local Rules. The Rules went into effect April 1st of this year. Special thanks to the Local Rules Committee who spent countless hours working on the rules. The Committee was led by our Chapter 13 Trustee, Sabrina McKinney. The Committee members were: Andrew Poston, Brian Suckman, Brian Walding, Leigh Carr, Marsha Mason, Paul Esco, and Danielle Greco. Please see Judge Creswell's article starting on page 2 for more details regarding the new rules.

Attorney forums: we will hold our annual attorney forums at each of the divisions again in the fall. We will send out dates for each location as soon as the dates are determined.

Filing numbers: while our new case filings were down 3 percent for the month of March compared to last year, they are up 5 percent overall for 2024 (over 2023).

Chief Deputy retires: our incredible chief deputy, Tonya Hagmaier, retired February 9th. Tonya spent almost 10 years as our chief deputy. She worked with me to run the clerk's office and provided critical support to our bankruptcy chambers. She supervised the day-to-day operations of the clerk's office, including case management, courtroom services, statistical analysis and reporting, information technology, financial management, budget, space and facilities, and human resources. She also led numerous large projects including our active shooter program, our procedure documentation program, and our summer internship program. Before coming to the court, Tonya had an incredibly successful 28-year career as an Air Force judge advocate (JAG). Tonya made a positive difference everywhere she served. While we will all miss her, we are very proud of her accomplishments, and we wish her all the best in her well-deserved retirement.

New Chief Deputies: I am proud to announce our new chief deputy clerk is Brian Suckman. Brian has had great success as our information systems manager and he will continue to do amazing things for our court as chief deputy clerk. We also created a new position—chief deputy of administration. I am proud to announce we selected Jessica Trotman for that position. Jessica came over to us from the Chapter 13 Trustee's Office where she was a staff attorney. She has hit the ground running and is a fantastic addition to our office. Please see page 5 for more information about both Brian and Jessica.

Clerk of Court retires: I recently announced my retirement from the Judiciary. After 35 years in government service, I am making a move into the private sector. My last day in the office will be May 7th. I am so grateful for the opportunity I had to serve as clerk of court here for almost 15 years. I have really enjoyed working with all of you. I wish you all the best! Take care and God bless.

Local Rules Update from Chambers

Bess Creswell, Chief U.S. Bankruptcy Judge

As of April 1, 2024, the new Local Rules for the Middle District of Alabama Bankruptcy Court are in effect. The new Local Rules incorporate extensive changes. The revision process was a significant undertaking initiated by Chambers and made possible with the help of the Local Rules Committee. In addition to input from the Local Rules Committee and local practitioners, a significant amount of time was spent reviewing the current rules and researching local rules of other courts to best implement clear and effective rules that provide guidance and clarity to those practicing in our Court. The changes were necessary due to developments in the law, the Bankruptcy Code, naming conventions of local rules, updates in form filing requirements, and to provide clarification on certain procedures and expectations in our Court. The Court also took the time to incorporate Administrative Orders into the Local Rules for expediency and convenience so that requirements and procedures are easy to find in a consolidated location for both local and out-of-town practitioners. Many of the changes and updates may be familiar to those who practice in other bankruptcy courts of Alabama as multiple rules were updated based on existing rules in the Northern and Southern Districts.

One of the most significant changes was to the negative notice procedures for Local Rule 3007 claim objections and other matters formerly listed under Local Rule 9007. While some courts have limited the negative notice procedures in the revision process, our Court took another approach. The list of Rule 9007 matters will be maintained separately, outside of the Local Rules, so that it can be updated as needed. This means that items may be added to or removed from the list, so it is important to review the list for updates periodically. The changes to the negative notice procedures were primarily necessary because the former process lacked oversight and raised due process concerns. Notably, when reviewing the former process, the Court realized that lack of notice, incorrect service, and motions filed by improper parties were frequent errors. The new Declaration and Order submission requirements are to address those critical issues in the former process. While the new process involves a greater workload on all parties (the Court and Clerk's office included), the changes are necessary to preserve due process and for all parties to be able to rely on final, valid orders. Additionally, the Court has created template motions and orders to assist with the implementation of the new rules that can be found at <https://www.almb.uscourts.gov/local-forms>.

Another change to note is Local Rule 1014-2. This rule requires that all petitions must be filed in the proper division. Any petitions not filed in the correct division after April 1, 2024, will be set for a show cause for the debtor to appear and show cause why the case should not be transferred to the proper division. The Court recognizes that it has been a customary practice to file in a particular division based primarily on convenience (whether of the debtor attorney or the debtor). However, this local practice is not in line with the Bankruptcy Code (28 U.S.C. §§ 1404 and 1412) or the revised local rules. Specifically, the proper division should be selected based on a debtor's residence, and, after filing in the correct district and division, a debtor may seek to transfer to a different division: an intra-district transfer. Prior to filing a motion to transfer merely for personal convenience, a debtor or attorney for debtor should review the requirements and assess whether debtor can meet the burden to transfer a case. Transfer is not automatic. Instead, it is a determination that is made on a case-by-case basis at the discretion of the presiding judge after a hearing. Upon a motion, the burden of proof is on the party requesting the transfer, and that party must "establish by a preponderance of the evidence that transfer is appropriate." *In re Terry Mfg. Co. Inc.*, 323 B.R. 507, 509 (Bankr. M.D. Ala. 2005). The Court heard your concerns about multiple case numbers after a transfer and implemented a change in procedure to avoid potential credit reporting issues. Now, an intra-district case transfer will no longer be assigned a new case number but will retain the original case number and be assigned to the new division.

Finally, the creation of Local Rule 4070-1 significantly expedites the insurance process for motor vehicles. Because of this expedited process, requirements for proof of insurance on motor vehicles is something counsel for debtors should discuss with new clients at intake. This new rule was created at the request of local practitioners and provides a way for creditors to notify counsel for debtors about lack of insurance on motor vehicles and obtain an order lifting stay without a hearing as soon as 14 days after filing a Notice using Local Form 9. The parties should communicate to resolve any insurance issues prior to Creditor filing a Notice. However, once the Notice is

Local Rules Update from Chambers cont'd

filed, a debtor has 7 days to respond and set forth "in detail" why an order lifting the stay is not warranted. When a response is filed, a hearing will be scheduled. Though a response is due within 7 days, Debtors have 14 days to provide proof of insurance naming the creditor as loss payee. If no response is filed and proof of insurance is not provided, the creditor will need to submit a Declaration (Local Form 5) and order lifting the stay.

For your reference a handout with a brief summary of each change can be found on the website: <https://www.almb.uscourts.gov/sites/almb/files/Summary%20of%20Changes%20to%20Local%20Rules.pdf>. However, the full rules should be reviewed in their entirety.

News from the Bankruptcy Administrator

Chapter 11 Balloting Changes

The new Local Rules, which went into effect on April 1, 2024, contain an important change for chapter 11 practitioners and attorneys representing creditors relating to filing and tabulating chapter 11 ballots. The new requirements apply to all pending chapter 11 cases where a plan has not yet been confirmed. Specifically, Local Rule 3018-1 now requires that creditors casting their ballots must either file the ballot in CM/ECF or return it directly to the Clerk. Creditors will no longer submit their ballots to debtor's counsel. Additionally, debtor's counsel (or counsel for the plan proponent if not debtor's counsel) must prepare a tabulation of the acceptances and rejections of the plan, such tabulation to be filed not later than three business days prior to the confirmation hearing. The tabulation must list the following for each class: total number of claims voting; total number of claims accepting; total dollar amount of claims voting; total dollar amount of claims accepting; percentage of claims voting that accept the plan; and percentage of dollar amount of claims voting that accept the plan. The ballot tabulation must also indicate whether the class is impaired or unimpaired and whether the class has accepted or rejected the plan. Debtor's counsel should review Local Rule 3018-1 for additional guidance on how to tabulate ballots.

Tips from the Chapter 13 Trustee

Sabrina L. McKinney, Trustee

On March 12, 2024, the Court issued Administrative Order 2024-01 regarding the compensation of debtor's attorneys in student loan dischargeability actions. This Order provides for a \$500.00 presumptively reasonable fee for "pre-litigation" work that consists primarily of the attorney's due diligence to determine if a student loan hardship adversary proceeding is advisable. The Order outlines six items that are expected from the attorney to earn the \$500 "pre-litigation" fee.

If it is determined that the filing of an adversary proceeding to have the student loan declared an undue hardship is advisable, the presumptively reasonable "Consensual Litigation Fee" amount is set by the Court at \$2,000.00. The Court sets out six factors with respect to earning this fee which includes the filing of an adversary proceeding. (see paragraph 3.a. of the Order)

The fee approved by Administrative Order 2024-01 may be earned in Chapter 7 and Chapter 13. If the fee is being sought in an active Chapter 13 case, this article is designed to assist the practitioner in the appropriate steps to take to ensure that your fee is and can be paid through the Chapter 13 case.

In cases where the debtor has listed government-backed student loans and wishes to attempt to discharge those student loans, the maximum fee that can be sought in an unconfirmed case is the \$4,500.00 regular

Tips from the Chapter 13 Trustee cont'd

Chapter 13 case attorney fee, plus the \$500.00 “pre-litigation fee” for performing the analysis of debtor’s situation to see if they might qualify for discharge of their student loan debts. The attorney may not seek the full \$7,000.00 fee in a brand-new unconfirmed chapter 13 case because in order to earn the \$2,000.00 “consensual litigation fee” an adversary proceeding must be filed, and it has been told to the Trustee’s office that the government does not want debtors filing the undue hardship adversary proceedings in unconfirmed cases.

In a new Chapter 13 case, the attorney may put the \$5,000.00 figure (\$4,500 plus the new \$500) in Section 1 of Form B2030 (Disclosure of Compensation of Attorney for Debtor(s)) and detail in Section 5.d. that the \$5,000.00 fee consists of the \$4,500.00 presumptive 13 fee plus the \$500.00 “pre-litigation fee” for student loan analysis. Also include in Section 5.d. of Form B2030 that the attorney intends to file an adversary proceeding to discharge student loans following confirmation of the Chapter 13 plan and after the AP is filed, the attorney will be seeking the remaining \$2,000.00 “consensual litigation fee.” When the case gets confirmed and the adversary proceeding is filed, the attorney will need to amend Form B2030 Section 1 disclosure to change fee from \$5,000.00 to \$7,000.00.

When doing plan calculations, the debtor may calculate the extra \$2,500.00 fee into the case so the plan will not have to be modified post-confirmation. The Trustee will not be filing any “applicable commitment period” objections to confirmation so long as the case does not pay out by more than \$2,500.00.

If you are representing a debtor in a case confirmed prior to the entry of Administrative Order 2024-1 and you wish to assist the debtor with a student loan dischargeability complaint, you may amend your B2030 Disclosure form to include the \$2,500.00 student loan fee but you will also have to file a Rule 9007-1 Motion to Modify the Chapter 13 plan post-confirmation to list the correct amount of the fee to be paid through the plan and to increase the plan payments by \$2,500.00 over the life of the plan so that other creditors will not be affected by the addition of the new fee into the case.

A practice pointer of particular note - Form B2030 must not exclude the filing of AP’s on behalf of the debtor as eligible services because in order to get the student loan full \$2,500.00 fee, an adversary proceeding must be filed and if the attorney’s disclosure of compensation provides they will not represent the debtor in adversary proceedings, the attorney runs the risk of the Bankruptcy Administrator’s office objecting to the attorney’s fee as being excluded from the agreement with the debtor.

Our next article will focus on the Chapter 13 perspective on the new Local Rules that went into effect on April 1, 2024.

As always, if you have any questions, feel free to reach out to me at any time. Thank you. slm

Helpful Tips from the Clerk’s Office

From the Case Administrators

- ◆ We are no longer contacting a filer or entering a submission error when personal identifiers are present within a pleading. The responsibility for redacting the personal identifiers discussed in Rule 9037, Federal Rules of Bankruptcy Procedure, rests with counsel and the parties. The clerk is not required to review pleadings for compliance with this rule.
- ◆ Many of our local forms have changed with the updated Local Rules. Please look at the forms section on the Clerk’s website before submitting a local form to ensure you are filing the most recent form.
- ◆ When amending a petition to add an alias, you should not change the original name of the debtor listed in the initial petition.

Helpful Tips from the Clerk's Office cont'd

From the Case Administrators

- ◆ Please remember when you file an amendment, the new document must be filed as amended. Before re-filing, please either check the amended box on the document or type "amended" in the heading of the document. Also, verify the case number and debtor(s) name is in the heading of the document.
- ◆ Make sure the debtor's previous bankruptcies filed are within the last 8 years are listed in part 2, question 9 of the petition.

From the Courtroom Deputies

- ◆ If, on the day of a scheduled confirmation docket, an attorney for a debtor finds that he or she is unable to attend court in person, that attorney should contact the CRD as soon as possible for assistance in rescheduling their hearings. By contacting the CRD directly, before the beginning of a docket call, debtors' attorneys can ensure that all their matters are rescheduled promptly without any interruptions or unnecessary delays.
- ◆ When on a telephone court docket call, please remember to mute your telephone until your case is called. If you cannot find the mute button on your phone, the ALMB conference line has a mute feature that you can access from any phone. While you are on the call, dial *6 to mute or unmute your phone. Additionally, do not place the call on hold because many companies use background music while the call is on hold.
- ◆ Please remember that the moving party should announce their appearance first. This avoids confusion and allows a clear record of who is in attendance.

Welcome to our new Chief Deputy Clerk and Chief Deputy of Administration!

Brian Suckman is a Georgia native and grew up in a military family. After completing his undergraduate degree at Mercer University, he attended the Walter F. George School of Law. Brian then joined the Air Force as a judge advocate. For 10 years, Brian served at a variety of command levels, serving as a prosecutor, area defense counsel, labor attorney, contracts attorney, operations lawyer, ethics advisor, fiscal law consultant, and executive officer. After separating from the Air Force, Brian returned as an Air Force civilian developing software for the JAG Corps.



In 2016, Brian brought his unique legal and technical knowledge to the judiciary as the information systems manager for the U.S. Bankruptcy Court for the Middle District of Alabama. Besides managing the IT systems, Brian was the go to person for legal advice on pleadings and court procedures for the clerk's office. In January 2024, Brian assumed his new role as chief deputy clerk of court while maintain his position as IT manager.



Jessica Pitts Trotman joined the Clerk's office in January as Chief Deputy of Administration. Jessica is a native of Chilton County. She graduated from the University of Alabama at Birmingham with a Bachelor of Arts degree. Jessica is also a graduate of Mississippi College School of Law where she served on the Moot Court Board. Jessica practiced law for eight years in Montgomery, Alabama at, specializing in civil defense litigation. Most recently, she was a staff attorney for the Standing Chapter 13 Trustee for the Middle District of Alabama. She and her husband, William, have three children.