



# COURT

VOL. 6 | NOVEMBER 2013

A BIENNIAL PUBLICATION OF THE U.S. BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA

## News and Views

### CLERK'S CORNER JC Guerrero

Happy Thanksgiving! Here in the Middle District of Alabama Bankruptcy Court, we are thankful for a lot of things—not the least of which is our great relationship with our local bar. While we continue to deal with budgetary constraints, we will continue to keep the lines of communication open between the bar and our court. We will also keep our focus on customer service and we will do everything we can to not let our level of service drop. If you ever see any kind of negative change in the level of service we provide, please let me know immediately. Our goal is that any changes we may have to make because of budgetary constraints will go unnoticed by you.

#### **Quick updates:**

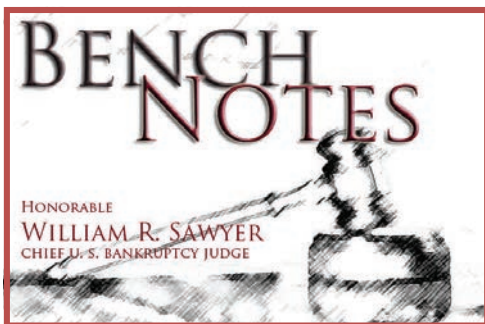
Judge update: since we last spoke, both Judge Sawyer and Judge Williams were reappointed to the bench for another 14-year term. Congratulations to both! Additionally, Judge Sawyer replaced Judge Williams as Chief Bankruptcy Judge for our district after Judge Williams' 7-year term ran out. This is Judge Sawyer's second 7-year term as Chief Bankruptcy Judge.

Webpage: we are in the final review stages for our new webpage. Recall the main purpose of the webpage change is to be consistent with the recently created national model webpage for bankruptcy courts. If you want see a webpage similar to the new one we are about to implement, please visit the Northern District of Alabama's webpage at [www.alnb.uscourts.gov](http://www.alnb.uscourts.gov). While we really like our current webpage, we are excited about this "upgrade" and hope you will like it as well. We will send an e-mail out and put an announcement on our current webpage once we have an exact "go-live" date. Once we go live, please give us feedback at [feedback@almb.uscourts.gov](mailto:feedback@almb.uscourts.gov).

Local Rules Committee: a huge thank you to all of you who volunteered to serve on our Local Rules Committee. As you probably know by now, the judges selected 7 attorneys to serve on the Committee. They are: Britt B. Griggs (Chairperson), DeAnne M. Calhoon, J. Kaz Espy, Kristen P. Abbott, Richard C. Dean, Jr., Charles M. Ingram, Jr., and Jennifer R. Stanley. If you did not get selected this time, please volunteer again. The judges strive to spread out these types of opportunities to different geographic locations, types of practice, etc. The Committee has worked hard so far and is close to having some local rules recommendations to send to the judges. Thank you to these attorneys for all of your hard work.

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## *A Note From the New (Old) Chief Judge*



Last month I had the honor of being sworn in as Chief Judge for the Middle District of Alabama Bankruptcy Court. I will serve for a term of seven years. My colleague, Judge Williams, preceded me, having served a seven year term of his own. The older hands may recall that I preceded Judge Williams, having served as Chief from 1999 to 2006. I thought this would be a good time to review what we have accomplished these past

fourteen years, and provide a few thoughts on what I hope to accomplish the next seven.

One of my first tasks as Chief Judge in 1999 was to hire a new Clerk of Court and we found an outstanding one in Richard Oda. Prior to 1999, the Middle District Bankruptcy Court was very much “old school,” not taking advantage of recent advances in technology. Mr. Oda was an expert in telecommunications and had considerable experience working with modern information technology. Our obsolete telephone system was replaced with a state-of-the-art system. However, the far more challenging task was to update to the new CM/ECF filing system which we now use. Prior to CM/ECF, the Court had no capability to accept the electronic filings or provide internet-based access to court filings.

In 1999, our court had an antiquated version of the old NIBS case management system. Almost all of the Bankruptcy Courts in the United States had updated to the newer and more robust BANCAP case management system. When the Administrative Office designed our new CM/ECF system, it was designed to allow courts to migrate from BANCAP to CM/ECF. As NIBS was obsolete, it did not occur to them that some courts may be left in the lurch. The designers of CM/ECF did not think a court could migrate from NIBS to CM/ECF, rather they suggested that we migrate from NIBS to BANCAP and then to CM/ECF. Needless to say, that would have taken a considerable amount of time. Our former IT director, Karen Pleasant, and Richard Oda found a way to do something that no one thought could be done. In June of 2002, we migrated directly from NIBS to CM/ECF and went live, accepting electronic filings. We were the first court to accomplish such a feat.

Another unusual thing about our change to CM/ECF is that we went live for all bankruptcy chapters and all bankruptcy users at once. Prior to that time, most courts would dip one toe into the electronic filing pool at a time, converting only one chapter at a time, and in some cases, allowing only special users to convert, leaving the rest of users filing the old fashioned way, without electronic access to the Court’s records. Mr. Oda’s idea was to take all the discomfort of the change at once—getting it over in a short time, like removing a bandage quickly, rather than slowly—prolonging the agony. As always, he was right and we were quickly up and running in an electronic environment.

While Karen Pleasant and Richard Oda have moved on, we are exceedingly well served by our IT staff, consisting of our Director of Information Technology Scooter LeMay, Network Specialist Tony Nolen and our Automation Support Specialist Kerwin Washington. I have boasted frequently that, of all the small bankruptcy courts, we have the best IT Department in the nation.

More recently, under Judge Williams’ leadership we have instituted regular meetings with practitioners and we have appointed an Attorney Advisory Group. Both of these are designed to improve

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**(Bench Notes - Continued from page 2)**

communication between the Court and those who use its services. We strive to understand the needs and concerns of the people we serve and we endeavor to communicate both our needs and our capabilities to those who use our services. Anyone who has a question or concern is encouraged to communicate with the Court either directly to Judge Williams or me, or through an Attorney Advisory Group member. The names of the members may be found on our website.

In the near to intermediate future, I believe that our biggest challenge will be dealing with budget cuts. As everyone is aware, we are in very challenging times. Due to the downturn in the economy, Congress is looking to save money wherever it can, and we are not immune from budget cuts coming from Washington. Our budget has been cut considerably the past three years and I expect cuts in the future. It will be a challenge to maintain our current level of service, but it is a goal we will do our best to meet this coming year. Our Clerk of Court JC Guerrero, Chief Deputy Doug Young, and Financial Administrator Janet Clark have worked extremely hard to minimize the effect of these cuts on both our staff and court users. Moreover, our case administrators have stepped into the breach, taking on additional work resulting from positions lost through retirement and attrition. We have not been able to hire any new case administrators in years. Our human resources can be stretched only so far, and then our only alternative may be to cut back on the services we provide to the public. I deeply appreciate the support and collegiality of the Middle District Bankruptcy Bar and welcome the thoughts and counsel of all.



## NEW LAW CLERK SELECTED

Contributed by Henrietta Foster - HR Manager

Erin Hoskins began her tenure as Law Clerk for United States Bankruptcy Judge Dwight H. Williams, Jr. on September 9, 2013.

Erin was born and raised in St. Paul, Minnesota. After graduating from the Air Force Academy with a degree in math, she attended pilot training in Oklahoma, Texas, and Arkansas before being stationed at Dyess AFB, TX as a C-130 pilot. Upon leaving the Air Force, she found her way to Montgomery with her husband, Douglas, who is a pilot with the 908th Reserve Wing at Maxwell AFB.

Erin recently earned a Juris Doctorate from Jones School of Law and says that she is very excited to join the court and has enjoyed meeting everyone and learning everything there is to know about bankruptcy law. In her spare time, she stays quite busy chasing after her two children, Margaret and William. Welcome Erin!



# FINANCIAL FACTS

## Fee Changes - Effective December 1

The Judicial Conference recently approved several changes to the federal court miscellaneous fee schedules.

- A new fee was established of **\$176** to file a Motion to Sell Property of the Estate Free and Clear of Liens under 11 U.S.C. §363(f). Motions filed under this statute provide asset purchasers and sellers in bankruptcy cases with substantial benefits, and impose significant burdens on the courts to resolve them.
- The records retrieval fee was increased from \$53 to **\$64** for the **first** box requested from a Federal Records Center and a new fee of **\$39** was created for each additional box requested. These fees represent an effort to recoup some of the rising shipping and processing costs for handling paper records.



## Unclaimed Funds

The Clerk's office regularly receives unclaimed funds for checks issued by our trustees but not timely negotiated by the payees (creditors and debtors). Please encourage your clients to keep their addresses current with the court, to promptly open their mail, and to promptly cash any checks. Checks issued by a trustee must be negotiated within 60 days or they are automatically cancelled. Once the funds reach the Clerk's office, a motion must be filed and the claimant must prove they are entitled to the funds before we make a disbursement.

### Unclaimed Funds FAQs

#### **Q. How can I find unclaimed funds held at your court?**

**A.** Unclaimed funds information is docketed within each case.

#### **Q. How can I receive unclaimed funds held by the court?**

**A.** We plan to post instructions to our website soon on how a claimant can request unclaimed funds from the court. In the meantime, call the Clerk's office at 334-954-3800 and ask for Janet Clark or Linda Bodden and they will give you the necessary information.

#### **Q. Can I file for unclaimed funds for my client?**

**A.** Yes, but it is easier for the owner of record to file directly with the court. A power of attorney must accompany a motion for unclaimed funds if filed by a representative of the owner of record.

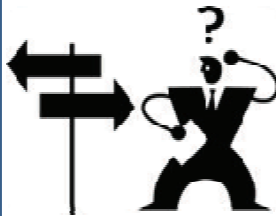
Life is a gift, and it offers privilege, opportunity, and responsibility to give something back by becoming more.

Tony Robbins



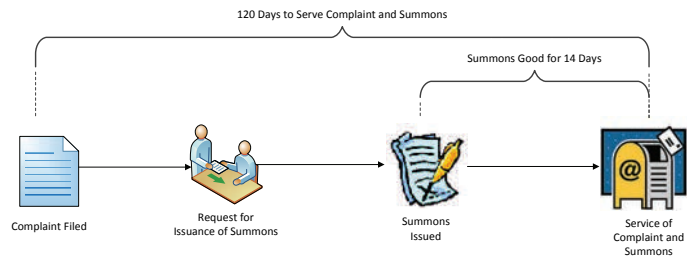
## Filing Procedures

### Issuance of Summons in an Adversary Proceeding



A summons is a writ notifying the defendants in an adversary proceeding of the names of the parties, the court in which the adversary proceeding has been filed, and that a response to the complaint is due within a certain period of time. A summons (or a copy of a summons that is addressed to multiple defendants) must be issued for each defendant, and must be served by the plaintiff with a copy of the complaint.

In order for a summons to be properly issued, the plaintiff must present a properly completed summons to the Clerk for signature and seal using Form B250A. [Fed. R. Bank. P. 7004\(a\)](#); [Fed. R. Civ. P. 4\(b\)](#). The role of the Clerk is limited strictly to reviewing the summons to see that it contains the correct information. After the filing of an adversary proceeding, the plaintiff should present a summons for issuance using ECF event *Adversary>Miscellaneous>Request for Issuance of Summons*. A fillable PDF Summons Form B250A is available from the court's webpage under Forms or by clicking [here](#).



Generally, the summons and complaint must be served within 120 days of the filing of the complaint or the action may be subject to dismissal. [Fed. R. Civ. P. 4\(m\)](#). Also note that in most instances service must be made within 14 days of the issuance of the summons. If delivery is not made within 14 days after the summons is issued, the plaintiff will need to request another issuance of summons using the same ECF event mentioned above. [Fed. R. Bank. P. 7004\(e\)](#).

## Amendments to Federal Rules of Bankruptcy Procedure Effective December 1, 2013



Several amendments to the Federal Rules of Bankruptcy Procedure were approved by the Judicial Conference at its September 2012 session, and subsequently adopted by the Supreme Court pursuant to Section 2075 of Title 28, United States Code. The amendments were transmitted to Congress in accordance with the Rules Enabling Act, and will take effect on December 1, 2013, unless Congress enacts legislation to the contrary. Also taking effect will be amendments to several official bankruptcy forms as well as the Director's procedural forms for subpoenas.

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The following is a summary of the rule and form amendments. For further information regarding rule changes, please visit the U.S. Court Rulemaking page located at [www.uscourts.gov/RulesAndPolicies/rules.aspx](http://www.uscourts.gov/RulesAndPolicies/rules.aspx). A redline version of the rule amendments is also available as a supplement to this summary on our webpage under Attorney Resources or by clicking [here](#).

## Amendments Related to Certification of Course in Personal Financial Management

**Bankruptcy Rule 1007** - The proposed amendment to Rule 1007(b)(7) relieves individual debtors of the obligation to file a certification of completion of an instructional course concerning personal financial management (Form B23) as a condition for discharge if the provider of an instructional course directly notifies the court that the debtor has completed the course.

**Bankruptcy Rule 4004** - The proposed amendments to Rule 4004(c)(1) are made to conform to the simultaneous amendment to Rule 1007(b)(7) as well as to add clarification language to other provisions of subdivision (c)(1).

Rule 4004(c)(1)(H) is amended to provide that the court must delay entering a discharge for a debtor who has not filed a certificate of completion only if the debtor was in fact required to do so under Rule 1007(b)(7).

The introductory language of 4004(c)(1) is revised to make clear that the listed circumstances for the denial of discharge do not just relieve the court of the obligation to enter the discharge but that they prevent the court from entering a discharge.

Subdivision (c)(1)(k) is amended to make clear that the prohibition on entering a discharge due to a presumption of undue hardship under § 524(m) ceases when the presumption expires or the court concludes a hearing on the presumption.

**Bankruptcy Rule 5009** - The proposed amendment to Rule 5009(b) reflects the proposed amendment of Rule 1007(b)(7). If Official Form B23 has not been filed within 45 days after the first date set for the meeting of creditors, Rule 5009(b) currently requires the clerk to send a warning notice that the case will be closed without discharge unless the statement is filed within the applicable time limit. The proposed amendment requires the clerk to send the notice only if the course provider has not notified the court of the debtor's completion of the course and the debtor has failed to file the statement within the 45 day period.

## Amendments Related to Time Limits for Service of Motions and Responses

**Bankruptcy Rule 9006** - The title of this rule is amended in order to draw attention to the rule's default deadlines for the service of motions and written responses. This change is consistent with Federal Rule of Civil Procedure 6 and should make it easier to find the provision governing motion practice.

Rule 9006(d) currently covers only the timing of serving opposing affidavits. The proposed amendment would expand the coverage of subdivision (d) to address the timing of the service of any written response to a motion.

**Bankruptcy Rule 9013** - Rule 9013, which addresses the form and service of motions, is amended to provide a cross-reference to the time periods in Rule 9006(d) and to call greater attention to the default deadlines for motion practice. Stylistic changes are also made to provide greater clarity.

**Bankruptcy Rule 9014** - Rule 9014, which addresses contested matters in bankruptcy, is amended to provide a cross-reference to the time periods in Rule 9006(d) for serving motions and responses.

## Amendments to Official Bankruptcy Forms

### **Forms Modernization Project**

The Application to Pay Filing Fee in Installments, Application for Waiver of Ch. 7 Filing Fee, Schedule I, and Schedule J, are the first of the restyled forms developed as part of the Bankruptcy Rules Committee's Forms Modernization Project ("FMP"). The FMP is a multi-year endeavor with the goal of improving ease of use as well as improving the interface between the forms and the latest technology. The forms listed below were selected for the initial implementation phase of the FMP because they make no significant change in substantive content and simply replace existing forms that apply only in individual debtor cases.

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The forms are designed to be more easily understood by users who are unfamiliar with bankruptcy and who are often not represented by an attorney. In addition to restyling, minor substantive changes are described in the committee notes for the four forms.

[Form 3A Application to Pay Filing Fee in Installments](#)

[Form 3B Application to Have Ch. 7 Filing Fee Waived](#)

[Form 6I Schedule I: Your Income](#)

[Form 6J Schedule J: Your Expenses](#)

#### Other Amended Official Forms

The Summary of Schedules (B6) and Reaffirmation Cover Sheet (B27) are revised with cross references to Schedules I and J.

Official Form 23 is revised in connection with a change to Bankruptcy Rule 1007(b)(7). Official Form 23 is revised to reflect the rule change by including an instruction stating that the debtor should complete and file the form only if the provider has not already notified the court of the debtor's completion of the course.

[Form B6 Summary of Schedules](#)

[Form B23 Certification of Completion of Course Concerning Financial Management](#)

[Form B27 Reaffirmation Agreement Cover Sheet](#)

#### Director's Procedural Forms for Subpoenas

The three existing Director's Procedural forms for subpoenas will be withdrawn on December 1, 2013 and replaced with four updated versions (Forms 254, 255, 256, and 257) that incorporate pending changes to Federal Rule of Civil Procedure 45, which is made applicable in bankruptcy cases by Bankruptcy Rule 9016. The revised bankruptcy subpoenas more closely follow the topic organization of subpoenas in civil cases.

[Form B254 Subpoena for Rule 2004 Examination](#)

[Form B255 Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case \(or Adversary Proceeding\)](#)

[Form B256 Subpoena to Testify at a Deposition in a Bankruptcy Case \(or Adversary Proceeding\)](#)

[Form B257 Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case \(or Adversary Proceeding\)](#)

For further information regarding pending changes in bankruptcy forms, including copies of instructions and committee notes to each amended form, please visit the Bankruptcy Forms Pending Changes section of the Federal Rules page of the Judiciary website at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx>.

## Courthouse Holiday Schedule



### THANKSGIVING

CLOSED

November 28-29



### CHRISTMAS

CLOSED

December 25



### NEW YEAR'S CLOSED

December 31 and January 1

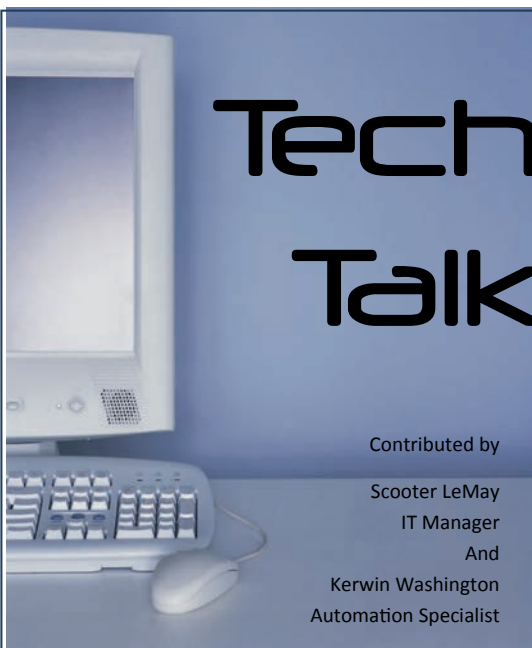
# CONGRATULATIONS... JOB WELL DONE!



This year marks significant milestones for several employees of the Clerk's office. In late September, we held our annual employee recognition program in which these individuals were honored for their service, and the entire court celebrated the accomplishment of our annual goals and projects.

The following employees were recognized for their contribution to the mission of the court. (In photo above, L to R) Doug Young, Chief Deputy Clerk (20 years), Rhonda King, Case Administrator/ECRO (15 years), Cynthia Sanders, Case Administrator/HR Assistant (15 years), Jacqueline McLain, Courtroom Deputy (25 years), Janet Clark, Financial Administrator (10 years), and Tony Nolen, Network Specialist (15 years).

Thank you all for all that you have done and for all that you continue to do!



The IT Team is constantly looking for ways to improve our customer service. Here are a couple initiatives we have in the works:

- ⇒ **EMAIL UPDATE SUBSCRIPTION** - as the Clerk mentioned in his article, we are almost finished with our new and improved webpage. As part of this change, we are adding an email update subscription feature. Our customers will be able to control how they receive our email announcements, and updates.
- ⇒ **CREDITOR MATRIX TEMPLATE** - in order to help with filling out the creditor matrix, our IT staff (with help from our operational staff) is working on a new matrix template and guide. More to follow soon...

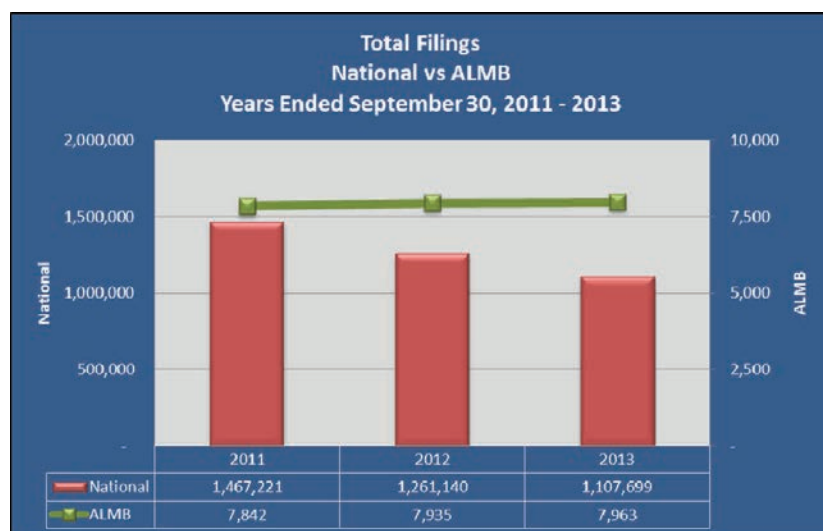


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Attorney Advisory Group: another huge thank you to all of you who volunteered to serve on our Attorney Advisory Group. We use this group as a key way to collect feedback and to keep the lines of communication open between the local bar and the Court. The Attorney Advisory Group now consists of the following attorneys: Paul J. Spina, III (term continues), Charles N. Parnell, III (term continues), Marsha C. Mason (term continues), Cameron A. Metcalf (new member), Paul D. Esco (new member), Charles E. Grainger (new member), and Bowdy J. Brown (new member). Again, the judges tried to maintain a balance geographically and by types of practice. If you were not selected this time, please volunteer next time. We will continue rotating these folks. The group meets once a year. Our next meeting is during the first week of December. If you have anything you want them to bring to the attention of the judges or the clerk's office, please let one of these members know and they will pass it on to us at the meeting.

Attorney forums: our next attorney forums will be held in the spring. As in years past, we will hold one each in Montgomery, Dothan, and Opelika. We will send the exact dates out by e-mail and by webpage announcement. Please plan to attend. These are great opportunities to have informal discussions with the judges and the clerk's staff on the latest happenings with the court and on ways we can improve how we serve you.

I hope you all have a healthy and happy holiday season! Until next year...



## National Bankruptcy Filings Down 12% for FY 2013

**Filings Remain Steady in Middle District of Alabama**

According to a recent press release from the Administrative Office of the U.S. Courts, national bankruptcy filings are down 12% for the year ending September 30, 2013 from the same period ending September 30, 2012. With a very modest 1.5% uptick, the Middle District of Alabama remains one of only a handful of districts in which filings have not declined over the last two years.

## COURT NEWS & VIEWS

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Chief Judge

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