

Court News and Views

A Semi-annual Publication of the U.S. Bankruptcy Court | Middle District of Alabama

Volume 9

July 2015

Clerk's Corner

Hello everyone! Where has the summer gone? Wow. I hope this newsletter finds things going well for all of you. Thankfully, everything is going well here in our court.

Summer hires: speaking of summer going fast, we will be sad to see our summer temporary hires leave us at the end of the summer. This is the first time we have hired summer employees since I have been here. It was a huge success. Please read their bios and article on pages 7-8. We wish them all the best as they head back to school. Ladies--thank you for a job well done!

Attorney forums: please mark your calendars for our next attorney forums. They will be held as follows:

Dothan first floor hearing room: Thursday, September 3 at 10:30

Montgomery 341 hearing room: Thursday, September 24 at 10:30

Opelika first floor courtroom: Friday, September 25 at 10:30

These forums provide a great opportunity for attorneys to get updates from our court and a chance to talk with and ask questions of our judges and staff in an informal setting. We already have CLE approved for these sessions. Please plan to attend!

Debtor electronic bankruptcy noticing (DeBN): beginning last May, debtors in the Middle District of Alabama can request to receive court notices and orders by email rather than by U.S. mail. For more information, see page 7. Please talk with your clients and sign them up!

CM/ECF Next Generation (NextGen): as many of you have heard, a new version of CM/ECF is being finalized for release to all of the courts. This update will contain several upgrades and may require some hands-on training in our office. I hesitate to give you a timeframe yet because the new version has not been fully released yet, but we will keep you posted by email and webpage announcements. See page 6 for a more detailed information.

Bankruptcy rules and form changes effective December 1st: speaking of changes, this year's bankruptcy rules and form changes will also be more substantial than normal. We will be providing more information as soon as we have it.

Procedural manual: we are well into scrubbing all of the procedures in our office. It is still not too late to provide us with any procedural recommendations or concerns. Please call our office at (334) 954-3800 and ask for our chief deputy, Tonya Hagmaier.

I hope everyone enjoys the rest of summer! See you all at the attorney forums in September!

JC Guerrero

BENCH

Chief Bankruptcy Judge William R. Sawyer

Notes



Dates on Orders and Judgments

Many years ago, when I was a young lawyer in Indiana and computers had nothing to do with the practice of law, I saved the day for another lawyer who had lost a case in court. A copy of the order was on his desk. Needless to say it was a “hard copy” as there was nothing else in those days. The case had been tried months earlier to the court and the trial judge took it under advisement because he said he wanted to think about it. Weeks passed and our thoughts of the case gradually receded.

The decision was about ten pages long—which was long in those days. The trial judge signed and dated the decision. By the time my friend noticed the order sitting under a pile of papers on his desk, it was July 27. The problem was, the order was dated June 26. In Indiana at that time, final orders in civil case had to be appealed within 30 days of entry. As July 27 is more than 30 days after June 26, my friend thought he was a goner.

My first thought was “when was the order entered?” The only date we saw was June 26. I took the order to the Circuit Court—there was no CM/ECF in those days—and pulled what we used to call the “jacket” and the “docket sheet.” The order which was dated June 26, was not entered on the docket until July 7. Thirty days after July 7 was August 6—we had plenty of time to file our notice of appeal.

Some time later, while at a bar function, I asked the trial judge why his judgment was entered so long after it was rendered. He told me that he took a long vacation in Vermont and worked on the decision there. He finished the decision, and signed it, on June 26. The judgment was placed in an envelope addressed to the Clerk of Court. Unfortunately, his part-time secretary in Vermont did not get around to mailing it for almost two weeks. This explained the delay.

The point of this story is to illustrate the mechanics of entry of a judgment. First, when a case is tried, the judge may (or may not) announce his decision in court. Second, it may be days or weeks later until he gets around to reducing his judgment to writing and signing it—or more formally, the decision is rendered. Third, once the judge has signed, or rendered, his judgment, it must still be entered on the court’s docket. While this last step may seem like nothing more than bureaucratic fiddling because courts are courts of record in the United States, the act of entry on the docket, in the old days, meant that a docket clerk typed an entry on the court’s docket sheet and made a separate entry of the court’s judgment docket. Sometimes the docket clerk would insert her initials to show who did it. Many courts would make a notation on the judgment indicating when it entered on the docket, which often times was not the same date as when it was rendered. Practice on this point varied widely and the careful lawyer would always check the court’s docket sheet because that was the official record.

So, how has electronic filing changed all of this? The answer is not as much as you might have thought. First, the means by which a case is tried and a decision is announced has not changed. In some instances a judge will take a case under advisement and the decision may not be actually announced. Second, the mechanics of rendition have changed somewhat. Most judges that use electronic filing do not do an old fashioned “cursive” signature with a real pen on real paper with “wet” ink, but some do. Most judgments are prepared on a word processor and may be signed and dated electronically. Some judges will use an image of their signature and input it at the bottom of the judgment and type the date that it is “signed.” Some judges will use a macro, which automatically inputs the date when the signature is affixed. A judge’s signature is a matter of intent. Regardless of the mechanics used, the judge must in some way express his intent as to when a few bits of electronic data become an order of the court. The order must next be entered on the docket. This is now done when a docket clerk (we call them case administrators now) actually makes a computer entry, which in turn makes an entry on the docket. This Court’s official records are now electronic. We have the capability of making the docket entry in chambers and I do so on occasion. For purposes of appeal, it is the date of entry on the docket that counts. While CM/ECF has reduced delays inherent in the process, there is still something which must be done by a human being before an order is entered on the docket. Counsel should remember that in bankruptcy court, a notice of appeal must be filed within 14 days of entry of judgment. Rule 8002(a) Fed. R. Bankr. P. This will occasionally surprise some lawyers because they have 30 days to appeal from federal district court and 42 days to appeal from Alabama trial court.

The important thing to remember is that the date of rendition—that is the date near the judge’s signature—may not be the same as the date of entry on the docket. In some versions of CM/ECF, the date of entry will be printed in the bottom margin of the document. To be sure, counsel should independently check the docket to make sure he is aware of the date of entry, which is the proper date from which one calculates the due date for his notice of appeal.

A Celebration of Black History Month

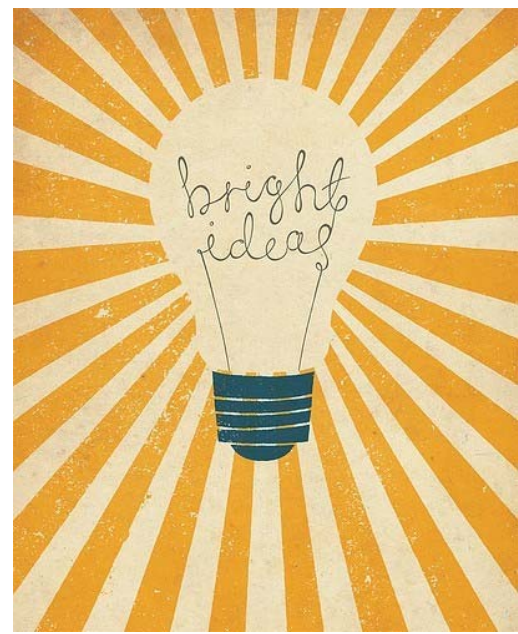


Chief Judge William Sawyer, Richard Cohen

February 26, 2015 marked our eighth annual Black History month celebration. Chief U.S. Bankruptcy Judge William R. Sawyer, presided over the celebration themed, “Remembering the past....shaping the future.” The guest speaker for the event was Mr. Richard Cohen, President of the Southern Poverty Law Center.

Following the ceremony guests fellowshiped and enjoyed a luncheon sponsored by the Bankruptcy court.

Practice Tips for Bankruptcy Attorneys



- **Filing Objections to Claims** - When you file an objection to a claim, please remember to list the claim number in the pleading.
- **Filing a Response to an Objection to Claim** - When filing a response to objection to claim, use **Bankruptcy>Claim Actions On One Case>Response to Objection to Claim**. Please do NOT use Answer/Response/Objection as this is an incorrect filing and will cause delays in your case.
- **Filing a Chapter 7 Statement of Current Monthly Income** - When you have a case converted to a Chapter 7, be sure to file the Chapter 7 Statement of Current Monthly Income by using this event: **Bankruptcy>Filings> Miscellaneous/Other>Chapter 7 Statements-Monthly Income (Form 22a-1)/ Exemption Presumption of Abuse (22A-1 Supp)**.
- **Filing Motions to Redact** - If you need to redact something from a previous filing, you will discover you must select the event called Motion to Redact because we no longer have an event called Motion to Restrict Public Access. You must also title your motion as Motion to Redact. In the motion you should identify the document and the information in the document that needs to be redacted, ask the Court for permission to redact the document, and ask the Court to order the Clerk to restrict public access to the document. In his order, the judge will order the Clerk to restrict public access to the document and will order you to file a properly redacted document within seven days.
- **Filing an Application for Employment of Professional Person under Rule 9007-1** - When a lawyer files a Rule 9007-1 Application for Employment of Professional Person, he or she is usually not representing the debtor as the attorney in the bankruptcy case but is instead representing the debtor for a specific purpose. If you find yourself in this scenario, be sure to add yourself as the party you are filing on behalf of, in this case the debtor, and select the appropriate role, for example, special counsel.

Attorney Forum

Dates

Thursday, September 3, 2015

DOTHAN

10:30 a.m.

U.S. Courthouse, Dothan (first floor hearing room)

Thursday September 24, 2015 MONTGOMERY

10:30 a.m.

Frank M. Johnson Jr. U.S.

Courthouse Complex (341 Hearing Room)

Friday, September 25, 2015 OPELIKA

10:30 a.m.

George W. Andrews Federal Building (first floor courtroom)



Personal Property Exemptions

On June 11, 2015, Act No. 2015-484 became effective which increased the personal property exemptions to individual debtors from \$3,000.00 to \$7,500.00 and increased the homestead exemption from \$5,000.00 to \$15,000.00.



TECH TALK



Don't Wait! Get Ready For NextGen

Q: What do I do to get ready?

A: You must have an upgraded PACER account to access courts that upgrade to the next generation (NextGen) of CM/ECF software. Login to your PACER account to upgrade or create a new one today by visiting www.pacer.gov.

Q: How do I know if I have an upgraded PACER account?

A: Upgraded PACER accounts have 8 or more characters. If yours is 6 characters, you should upgrade.

Q: How do I upgrade my PACER account?

A: Select Manage My Account at www.pacer.gov

Contact the court's Information
Technology Department at
(334) 954-3870 for more information.

Trustee's Tips

Contributed by Sabrina McKinney
Chapter 13 Trustee's Office

1. On May 18, 2015, the Supreme Court issued its opinion in the case of *Harris v. Viegelahn* (*In re Harris*), 135 S.Ct. 1829 (May 18, 2015) holding that absent a bad faith conversion, the Chapter 13 trustee must refund to the debtor any post-petition wages on hand with the trustee at the time of conversion. This ruling upholds our Court's opinion in the case of *In re Norma J. Murphy*, Case No. 09-81861, Bankr. M.D. Ala. February 11, 2014. Of note for this district is that if it is a pre-confirmation conversion, the refund check is made payable to the debtor, but mailed to counsel for the debtor. In the case of a post-confirmation conversion, any funds on hand at the time of conversion are sent directly to the debtor, and not through counsel.
2. Regarding the new personal property and homestead exemptions in Alabama, the Trustee is taking the position that this change in exemptions is only for cases filed on or after June 11, 2015. Some debtors have already started amending their exemptions in cases filed prior to June 11, 2015. It is the Trustee's intention to object to any claim of exemptions under Act No. 2015-484 claimed by debtors whose cases were filed prior to June 11, 2015. As such, we should have a ruling from our Court soon on this issue.
3. Judge Sawyer has recently issued a memorandum decision in the case of *In re: Billy Jack Smith*, chapter 13 case no. 11-81204-WRS, Doc. 43, Bankr. M.D. Ala. (July 16, 2015), that the Trustee felt would be beneficial to share with the entire Bar. In Judge Sawyer's decision, Section III, Judge gives some "Practice Pointers" for attorneys when they are representing debtors who have litigation pending while in Chapter 13. We recommend reading the entire decision, not just Section III.

Changes Coming to PACER and CM/ECF

As the court begins to update to the next generation of CM/ECF (called NextGen), users of PACER and CM/ECF NextGen will notice some changes to the program.

NextGen requires users to use the same account for both PACER and electronic filing. Some additional improvements include:

- User-selected usernames
- Same username can file and view cases in all courts that have converted to the NextGen system
- Enhanced security with a password strength meter to create safer passwords
- New look to Manage My Account screen
- Ability to store credit card information for e-file payments
- One account per user
 - You will use one account with your personal username and password.
 - Your account will stay the same, even if you change firms.

PACER administrative accounts (PAA) will also be affected by these changes. PAA owners will need to upgrade their accounts to continue all functions besides making payments. Since all accounts will be owned by their users, administrators' rights regarding their access to accounts have been modified to the following:

- PAA owners will no longer
 - Own user accounts linked to PAA
 - Have access to users' accounts other than usage details
 - Be able to create new accounts
 - Be able to activate or deactivate the account itself
- Users must take their new accounts with them to new firms, where their accounts will be linked with the new firm's PAA.
- PAA owners and individual account owners will be able to unlink from a PAA.

Automated users will also face some changes when logging in.

Changes to the PACER website are expected to begin on August 11, 2015. More information on these changes and others coming to PACER can be found at www.pacer.gov, or by calling the PACER service center at 1-800-676-6856.

ALMB Offers Debtor Electronic Bankruptcy Noticing (DeBN)

On May 1, 2015, we began offering debtors the option to sign up for DeBN. Debtors signed up for DeBN receive emails when any court-generated notice or order has been docketed in their cases. The BNC sends the emails and attaches a pdf copy of the notice or order for debtors to easily view.

This new program is advantageous to both debtors and the court. For debtors, DeBN is the most efficient way to keep up with a bankruptcy case. The program is free, and debtors are not limited to the amount of times they may view the pdf notice or order. For courts, DeBN reduces paper consumption and saves on judiciary noticing costs.

Signing up for DeBN can be done by the debtor or the debtor's attorney. A request form must be filled out and returned to the court before the account can be activated. The DeBN request form can be found at www.almb.uscourts.gov/debn. Attorneys can request a DeBN account for their clients by entering CM/ECF, choosing Miscellaneous/Other under Bankruptcy, selecting Request for DeBN Account as the event, and attaching the request form.

The debtor's name and address must appear on the request exactly as it appears in the debtor's case for email noticing to work. Joint debtors must each have their own account. The BNC will send notices via U.S. mail if the debtor's name and address on the account does not match that which is on the case. For more information on DeBN, contact the clerk's office at (334) 954-3800, or visit our website at www.almb.uscourts.gov/debn.



Bankruptcy Court Summer Interns

Caitlin Ray and Jennifer Ward began interning for the Clerk's office on May 18, 2015.



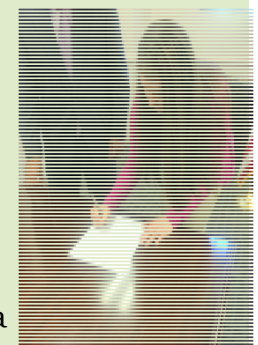
JC Guerrero, Jennifer Ward and Caitlin Ray

Caitlin comes from a military family but considers herself to be an Alabamian because she has lived here the longest. She received her BA in English this past May from Huntingdon College, and in the fall she will move to the UK to study at St. John's College, Cambridge. While at Cambridge she will work on an affiliated bachelor's degree also known as the Cantab degree.

Jennifer Ward has lived in Mississippi, Canada, and Alabama, but considers her time in Indiana to be the coldest yet. She is currently a junior at Indiana Wesleyan University in Marion, Indiana, double majoring in English and Writing. She is the secretary of the Lambda Tau chapter of Sigma Tau Delta, and finds the most pleasure in her job as a writing tutor at the Ink Well, her university's writing center.



Caitlin Ray



Jennifer Ward

Through the Eyes of an Intern

By Jennifer Ward and Caitlin Ray



We had no idea what to expect when we walked up those stone steps on our first day of work. We knew we had gotten jobs at the United States Bankruptcy Court as interns. We knew we would be working an eight-to-five job for most of the summer. We knew we would have to learn a lot about bankruptcy law before we could even begin to be helpful.

Telling people we were interning at the bankruptcy court often brought blank stares, followed by a very predictable question: “Well, what do you do there?”

This summer, we worked on crafting, drafting, and eventually producing a procedures manual for ECF. Along the way, we realized the large sea that separated us from reaching our goal of understanding what we were writing. That sea, as it happens, was made intimidating by heavy bankruptcy code sharks and stinging ECF eels. Needless to say, we were quite overwhelmed our first few weeks as interns and felt more like we were drowning, trying desperately to stay afloat.

As with all fear, though, ours began to diminish as we found people to guide us in our work. Every member of the bankruptcy court family was willing to answer any questions we had. Our job became easier as we began to dig deep into bankruptcy code and rules. We frequently flocked to the internet to aid in our understanding of reaffirmation agreements and liens. By our third week of interning, we could easily distinguish between chapter seven, eleven, and thirteen bankruptcy filings, a great accomplishment for English majors!

When we ventured outside the four walls of our offices, we enjoyed getting to know all of the sweet people who work at the bankruptcy court. Our mornings were always greeted with a hello from intake desk workers. We learned more about the office’s goals in staff meetings. We were able to answer the phones for Judge Williams. Soon we found ourselves walking on the very water that frightened us so much in our first few weeks.

You’ve got mail!



To our surprise, we had quite a bit of fun. We took daily walks around the building and marveled at the historic architecture. We learned to bring blankets so we would not freeze, and books so our eyes could focus on something other than the computer screen, even if just for a few minutes. We crawled around the courtrooms searching for barcodes to take inventory. We ordered posters and signs, had pizza lunches in the soccer field, and cleared the storage room of ancient copier toners.

As we prepare to take our final walk down those stone steps, we find ourselves thrilled at the information we’ve learned and saddened that our time is ending. We did not just cross the intimidating sea of the unknown—we walked on it, steadied by the help and support of so many of these great employees. There are two pieces of wisdom we have taken away from working here. The first is that asking for help is never burdensome. The second is that there is always chocolate in Tonya’s office.

Thank you for an amazing summer!

KERWIN WASHINGTON'S HELPING HAND

One of the bankruptcy court's very own, Kerwin Washington, was recently highlighted in the Montgomery Advertiser for his work with Meals on Wheels and the Montgomery Area Council on Aging.



The article speaks of the Montgomery Area Council on Aging and its involvement in the 13th National March for Meals in March, 2015. Kym Klass, author of the article, notes that Meals on Wheels is one of the programs sponsored by the Montgomery Area Council on Aging. They have been delivering meals to seniors in the Montgomery, Autauga, Elmore, Tallapoosa, and Coosa counties for more than 40 years.

Volunteers at Meals on Wheels deliver meals to seniors who can no longer cook due to sickness or other physical restraints. For example, Klass writes of one senior who cannot stand for long periods of time, causing her to be very limited in the kitchen.

This is where Kerwin's love for serving others shines. He has been a volunteer at Meals on Wheels for 18 years. Of his involvement in the program, Kerwin says, "This is my passion...a love I have. I spend more than a couple of minutes at each house. [The seniors] won't let you go. I treat them like moms and dads."

We are proud of the helping hand Kerwin lends to both his colleagues and the community.

