



Court News and Views

THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

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Clerk's Corner
JC Guerrero

Happy Spring everyone! I hope this finds everyone doing well. I know this past year has been challenging; we really appreciate your working with us as we made adjustments with our dockets and hearings. We hope to be moving back into the courtroom soon for at least some of our hearings (see Judge Creswell's article on page 2).

Courthouse Entry - We recently changed our COVID safety procedures for courthouse entry. We were requiring everyone to meet us at the front door of the courthouse when dropping off paperwork at the bankruptcy clerk's office, but as of April 19th, paperwork can now be brought to our front desk. Please make sure you wear a mask and continue to socially distance as much as possible while you are in the courthouse.

NextGen (CM/ECF) - As you know by now, we recently moved to the NextGen version of CM/ECF. Thank you all for your cooperation and patience as we made that transition. Please let us know if you are having any issues related to CM/ECF.

Bankruptcy Rules and Form Changes - As we do every year, we will have some bankruptcy rule and form changes that go into effect on December 1st. We will post a summary of those changes on our webpage as we get closer to the effective date.

Attorney Forums - We will hold our attorney forums again later this year. Depending on how things are looking with vaccinations and COVID, we hope to have them in person. Stay tuned for the dates and the locations.

Judgeship Vacancy - As you have probably heard by now, Judge Sawyer is retiring effective March of 2022. We are all grateful for his service, and we will miss him. Please see our website for the 11th Circuit's judgeship vacancy announcement. Applications are due to the 11th Circuit by June 7, 2021.

Feedback - With so much of our work now being accomplished remotely, and with the limited opportunities we have to see each other in person, getting feedback from all of you is more important than ever. We understand things are tough out there, and there are some things we just cannot do anything about. However, if there is anything we can do to improve our customer service, please reach out to us right away. You can call us at (334) 954-3800 or email us at feedback@almb.uscourts.gov.

As always, thank you for reading our newsletter! We hope to see you all in person sometime soon!

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COVID and the CAA

Bess Creswell, Chief U.S. Bankruptcy Judge

It is hard to believe it has been more than a year since I wrote to you all at the start of this pandemic. And what a year it has been for all of us! We have been challenged and stretched, but we have risen to the occasion and grown from this experience. Our court quickly adjusted to virtual hearings and telework with much thanks to JC Guerrero and his team. Also, thank you for your flexibility in adapting your practices to remote dockets and video hearings.

As vaccines are becoming more accessible, we will be moving back into the courtroom for some hearings. We plan to be back in the courtroom by July for evidentiary hearings. The courtrooms are outfitted with plexiglass, and all parties will be required wear an N95 or KN95 mask or be double-masked at all times. Additionally, we will continue to enforce social distance protocols and require all evidence be submitted electronically as set forth in Administrative Order 2020-14. While we continue to navigate through the process of finding our “new normal,” we welcome your input and thoughts on this process. You can provide this to us via email at feedback@almb.uscourts.gov or by reaching out to JC Guerrero via phone at 334-954-3800.

I also want to update you on the Consolidated Appropriations Act (the “CAA”) signed into law on December 27, 2020. The CAA supplemented the CARES Act and amended several provisions of the Bankruptcy Code to address the economic impacts of COVID-19. Specifically, the CAA includes:

- a temporary revision to the definition of “property of the estate” under Section 541(b) to exempt certain federal coronavirus relief payments;
- a provision whereby courts have temporary discretion to grant a chapter 13 discharge even if the debtor defaulted on residential mortgages payments for up to three months after March 13, 2020, as a result of a COVID-related hardship;
- an expansion of Section 525 to prohibit an individual debtor from being denied CARES Act relief based on past or present bankruptcy filings;
- amendments to Sections 501 and 502 to allow mortgage servicers to file supplemental proofs of claim for mortgage payments forborne, deferred, or otherwise modified under the CARES Act even though the claims bar date has passed, however, specific documentation must be included with the proof of claim; and
- amendment to Section 1329 to allow modification of a chapter 13 plan to account for creditor CARES Act forbearance proofs of claim and allowed deferred payments under Sections 501 and 502.

These provisions will sunset on December 27, 2021.

The CAA also includes amendments to assist commercial landlords and tenants by reducing preference exposure for commercial landlords under Section 547 (assuming certain qualifications are met), providing commercial debtors the ability to defer rent obligations for additional time under Section 365(d)(3), and extending commercial rent forbearance terms for small business debtors experiencing material financial hardship as a result of COVID-19. These provisions will sunset on December 27, 2022.

Additionally, the COVID-19 Bankruptcy Extension Act of 2021 extended key provisions of the COVID-19 Bankruptcy Relief Act enacted in the CARES Act for another year. Thus, provisions of the CARES Act that increase debt limit eligibility for small business debtors under Subchapter V or the amendments to Section 1329(d) which allows a debtor with an existing confirmed plan of March 27, 2020, to modify their plan, have been extended until March 26, 2022.

Please keep these changes in mind as you process cases. Again, thank you for all your hard work, and we look forward to seeing you back in the courtroom soon.

Trustee's Tips

Sabrina L. McKinney, Chapter 13 and Chapter 12 Trustee

Hope this finds you all safe and healthy!

We have had attorneys in the bar ask for some clarification about how we handle government claims under Section 5.1 of the plan. When the new plan and rules came into effect in December 2017, debtors were no longer able to modify a government claim through the plan (i.e., by treating it as a split-claim). Instead, if they want to put it under Section 5.1, they would contemporaneously file either an objection to the claim or a motion to value. However, if the claim is listed under Section 5.1 and the governmental entity has **not** filed a proof of claim yet, we will not send a pre-341 email about it and we will not object. Instead, at the 341, we will point out to the debtor's attorney that, if a claim files after the 341 but before confirmation, the attorney needs to either object, file a motion to value, or move the provision to Section 5.2. If the claim files after confirmation and the plan makes provisions under Section 5.1 (and the secured claim amount is more than the collateral value), **we will still pay the claim amount – not the collateral value under Section 5.1**. If the plan makes provisions under Section 5.1, but the secured amount of the claim is **less** than the collateral value (i.e., the claim would not be modified), we will no longer send a pre-341 email or object because the claim is not being modified. This is a slight adjustment to our prior position on these claims, so we wanted to make you all aware.

At the end of 2020, Congress enacted the Consolidated Appropriations Act of 2021, effective December 27, 2020. As part of the Act, Congress made changes to the Bankruptcy Code, including the addition of subsection (i) of 11 U.S.C. § 1328, which has a sunset provision of December 27, 2021, commonly referred to as a "COVID Discharge."

As it relates to delinquent mortgage payments specifically, a debtor may still receive a discharge if the debtor is behind by not more than three monthly payments on the residential mortgage due after March 13, 2020, and such delinquency was caused by a "material financial hardship" due, directly or indirectly, by the coronavirus pandemic. When a 1328(i) motion is filed, it will be set for hearing.

Relatedly, and in response to the Consolidated Appropriations Act, the Advisory Committee on Bankruptcy Rules approved a new Director's Form 4100S (Supplemental Proof of Claim for CARES Forbearance Claim). The form permits an "eligible creditor" to file a supplemental proof of claim for a CARES Act forbearance in a chapter 13 case. The two main sections of the new form ask the eligible creditor to list the amount of the loan that was not received during the forbearance period and information about whether an agreement was reached with the respect to the amount of the loan in connection with the forbearance (i.e., whether the creditor and debtor have entered into a loan modification or a deferment). The form can be filed after the claims bar date has passed, and, like 11 U.S.C. § 1328(i), will sunset on December 27, 2021. If the creditor selects that they have an agreement with the debtor, the trustee will make a note of this agreement in the chapter 13 system. If the creditor selects that they do not have an agreement with the debtor, these claims will be treated by the trustee's office as a "no provisions" claim, and notice will be given to the debtor and debtor's attorney to make provisions or object to the claim.

One of the negative results of the COVID pandemic has been the reduction in debtor NDC.org sign ups as we are no longer in person to use the tablets to sign up debtors for this online service. In an effort to resume the NDC.org sign up project, we are now collecting debtor email addresses prior to the §341 meeting of creditors. We collect the information for two reasons: First, to sign up the debtor for the NDC.org, and also ultimately to initiate the delivery of the debtor's annual report via electronic means. We appreciate your participation in this project to increase the efficiency of the trustee's operations.

As always, please feel free to reach out to me with any questions or concerns.

Regards,

Sabrina L. McKinney

Converting Chapter 13 Cases to Chapter 7 from a Means Test Perspective

Laura Hethcox, Paralegal, Bankruptcy Administrator's Office

Over time, attorneys converting cases from chapter 13 to chapter 7 have used two methods of calculating current monthly income (CMI). Calculations for CMI were derived from either the original petition date (when the chapter 13 case commenced) or the date when the case converted, with either being considered an acceptable method of calculation. To establish a more uniform standard of review, the Office of the Bankruptcy Administrator is requesting that chapter 7 means test forms being filed in converted cases use the petition date for purposes of calculating the CMI.

In comparing the two forms, the chapter 7 CMI will be identical to the chapter 13 CMI. If the presumption of abuse arises on the Chapter 7 Means Test Calculation, Official Form 122A-2, it should be noted on line 43 as to the cause/change in circumstances which resulted in the conversion. An amended Schedule I and Schedule J (all sections completed with current income and expenses at the time of conversion) should be filed in every converted case. The amended schedules enable our office to assess the current financial circumstances at the time of conversion. Amended Schedule I, Schedule J and the Chapter 7 Means Test Calculation should be filed at the time of conversion. Any delay in filing hinders our ability to review the case which may result in a continuance of the 341 meeting of creditors.

Please do not hesitate to contact our office if additional information or clarification is needed.

HELPFUL TIPS

FROM THE CLERK'S OFFICE

From the Case Administrators

- ◆ When a joint case splits into two cases, all the required documents filed in the previous case are also required in the new case.
- ◆ When you file the Debtor's Chapter 7 Statement of Your Current Monthly Income Form 122A-1, make sure you use the correct docket event. The docket event is located under Miscellaneous/Other > Chapter 7 Statement of Your Current Monthly Income Form 122A-1.
- ◆ Except for notices of change of address, all notices, motions, and pleadings must have certificates of service.
- ◆ Take the time to periodically update your saved forms and delete any outdated versions. This will save everyone time, and will save you from receiving submission errors. All forms, both national and local, can be found on the forms page of the court's website: www.almb.uscourts.gov/forms.
- ◆ Before you file a motion to redact, please read the guidance on our webpage: <https://www.almb.uscourts.gov/> under Attorneys Resources > Procedures for Attorneys > Procedure for Attorneys Filing Redactions. Please follow the guidelines listed there. The redacted replacement document must be exactly what was filed originally with the personal identifiers marked or whited out. Do not add any new information, including marking them as exhibits. Make sure the certificate of service shows both the motion and the attachment have been served on the debtor, debtor's attorney, trustee, BA, the filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

- ◆ When correcting a submission error, be sure you file the corrected document as amended, if applicable.
- ◆ When using fillable forms, be sure you save the document as a separate file. If you simply click the save button, the file remembers the information that you have entered, but still allows the document to be edited. This means that you are uploading a file to the docket sheet which can be edited by anyone with access to the docket sheet. By saving the document as a separate file, or better yet, printing to a pdf, you "flatten" the document, which makes it unable to be edited.

From the Courtroom Deputies

- ◆ When emailing settlements, please be sure to send them to the correct judge's settlement box:
Judge Creswell's – settlements4C@almb.uscourts.gov
Judge Sawyer's – settlements4D@almb.uscourts.gov
- ◆ When filing a Notice of Suggestion of Death in a chapter 13 case, please specify if the deceased debtor is to be dismissed from the case. If the notice is for informational purposes only, please state this clearly in your motion. Doing so will ensure that a debtor is not erroneously dismissed from a case, particularly in those cases where there are joint debtors.

From the IT Department

CM/ECF is set up to automatically assign new cases to a judge and trustee every night at 1:00 A.M. Before a case is assigned, it must have creditors associated with the case, or there is no one to notice.

Many times, we see that the creditor file has been uploaded as part of the petition but has not been separately uploaded. Without this upload, the case will not get assigned to a trustee, and a 341 meeting will not be set.

To upload a creditor file, please make sure it is a .txt file. Each creditor should be listed with name and address, and there should be a blank line between each creditor. The clerk's office does not need to be listed as a creditor; we will get added to the list automatically.

To upload the creditor file, go to Bankruptcy > Creditor Maintenance > Upload list of creditors file. Select the correct case number and click on Next. Click on Choose File to select the .txt file you want to upload. Click Next and then Submit on the next page to upload the creditor file.

Your new case will now automatically assign to a judge and trustee, and 341 notices will go out to all the creditors.

Personnel Changes in the Clerk's Office

In October, the clerk's office was joined by two new case administrators: Casi Bohart and Antenetta Clark.



Casi Bohart was born in Dothan, Alabama and raised in Enterprise. She graduated with honors from Enterprise High School and attended Wallace State Community College in Dothan where she studied Physical Therapy. She moved to Prattville in February of 2011 for a managerial promotion with a national inventory company. Soon after moving to Prattville she met her husband Robert and was wed in the fall of 2012. Casi later accepted a job in the life insurance field where she expanded her knowledge in data management, claims, licensing, and customer service.

Antenetta Clark is from Montgomery, Alabama. She graduated from the University of Alabama in 2015 with a BA in Business Management. Upon graduating, she started working at the Montgomery County courthouse as a court specialist. Her main hobby is singing, and her favorite vacation spot is Destin, Florida.

