



Court News and Views

THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

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A Biannual Publication

Clerk's Corner JC Guerrero

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Happy Spring! Welcome to the 21st edition of our newsletter. It is so great to have everyone back in court. And while the clerk's office has remained open throughout the pandemic, it is so nice to have everyone physically back in the office.

Chambers news: the biggest news to report since the last edition of the newsletter is that we have had a change in judges. Judge Sawyer retired in early March after 23 years of dedicated service to the bench. We are pleased to report that Judge Chris Hawkins is in place and running full speed ahead. You can find his biography on page 3.

Attorney procedures: with our filing numbers down for the past few years, we have had more time to dedicate to procedures. In fact, we have added many attorney procedures to our webpage at <https://www.almb.uscourts.gov>. You can also see a list of them on page 7 of this newsletter.

Attorney forums: recall we had to cancel our attorney forums for 2021 because of COVID. We have rescheduled them for next month. We will hold one in each of our courthouses. Please see page 8 for all of the details. As always, the Alabama State Bar will give one hour of CLE to each attorney who attends. Please make plans to attend! In the meantime, if you have items you would like to make sure we discuss at the forum, please email us at feedback@almb.uscourts.gov or call me at 334-954-3887.

Practice tips: our IT staff, courtroom deputies, and case administrators have provided some helpful practice tips for you and your staffs. Please see pages 6 and 7.

Feedback: finally, we are in the midst of a lot of change in our court right now—transition back to in-person court, a new judge, etc. Please let us know if there is anything we can be doing better for you. Whether it is a chambers issue or a clerk's office issue, we want to know about it. We can't fix it if we don't know it's wrong. Thank you in advance!

Returning Better

Bess Creswell, Chief U.S. Bankruptcy Judge

After two years, we have returned to in-court mass dockets—one of many exciting changes happening in the court. To reflect briefly, I was impressed with how well our bar transitioned to remote dockets over the last two years. While prior experience with phone dockets assisted in the transition, the bar's ability to embrace remote hearings and 341 meetings contributed to the overall success of our court's transitioning during the pandemic. As we move forward, we will retain some telephonic dockets, but I am looking forward to travelling the district again, seeing familiar faces, and meeting new ones. One of the new faces you will have the opportunity of meeting soon is Judge Hawkins, who joined us on March 14, 2022, following Judge Sawyer's retirement. After 23 years of service, Judge Sawyer retired on March 4, 2022. We are grateful for Judge Sawyer's years of dedication, leadership, and service, and we are excited to have Judge Hawkins join our court.

With our return to in-court hearings, I would like to note a few reminders for practices or expectations as well as recognitions of exemplary work that have not gone unnoticed despite the disconnectedness of remote work.

Reminders:

- ◆ Please make appearances when your case is called by the Court, and remember to use surnames when referencing other individuals in court. In addition to being a professional courtesy and keeping the record clear, making this practice a habit helps new attorneys and judges learn their colleagues' names.
- ◆ While we are returning to hearings in court, evidence and exhibits for trials and evidentiary hearings will still need to be submitted electronically. Please review Administrative Order 2020-14 for submission procedures. Instructions for electronic submissions and the fillable Exhibit List form are found in the Administrative Order.
- ◆ Pursuant to Administrative Order 2018-18, all filings in chapter 13 cases, including amendments to plans, schedules, and statements, must be made in a case no later than 5:00 PM on the fourth full business day prior to the day in which the case will be called, not counting the day of the hearing. This allows the Court and the Chapter 13 Trustee sufficient time to review the filings in advance of the hearing.
- ◆ When submitting orders granting relief from stay in a chapter 13 case, do not include language that relief survives conversion or binds the chapter 7 trustee.

Recognitions:

- ◆ **Few chapter 7s open for prolonged periods:** The Court scheduled status hearings in cases where a chapter 7 had been pending for more than two years. First, there were very few cases that required such a hearing, and the ones that did were moving along or had been reopened. Prompt administration of the majority of our chapter 7s is made possible by the efficient work of the bar and diligent oversight by trustees and the BA.
- ◆ **Communication with personal injury attorneys:** Too often, personal injury settlements are discovered after an improper disbursement directly to a debtor necessitating turnover, disgorgements, sanctions, and/or injunctions. Sometimes there is evidence a debtor intentionally concealed or withheld information, but often the consequences above may be avoided by open and direct communication among the debtor, special counsel, and trustee. While the egregious cases tend to garner more attention, the Court has noticed those cases in which there have been prompt amendments, disclosures, and even notices of pending actions filed on record. Here, diligence and disclosure can prevent disgorgement.

Scheduling Changes

- ◆ We've seen declining filings for two years now, and while we are trying to return to "normal" the Court is cognizant of the hardship the decline in case filings has caused. In an after-docket conversation with the Opelika bar recently, it was brought to our attention that certain calendaring changes to confirmation hearings have resulted in delayed disbursements to debtor attorneys. This was an unintended consequence that the Court was unaware of, but once learned, we revised the current calendar where possible and will keep this in mind going forward. Being aware of the issue will help us schedule better in the future when possible. We may not have a ready solution for every problem, but a solution is only possible if we know there is a problem. Please let us know of your concerns by notifying us through email: feedback@almb.uscourts.gov.

Judge Christopher Hawkins

Judge Chris Hawkins was sworn in as a bankruptcy judge for the Middle District of Alabama on March 14, 2022, succeeding Judge William R. Sawyer.

Before his appointment, Judge Hawkins was a partner at Bradley Arant Boult Cummings LLP, where he focused exclusively on bankruptcy and insolvency matters. For more than twenty years, Judge Hawkins represented debtors and creditors in out-of-court restructurings, commercial and consumer bankruptcy cases, bankruptcy litigation, and consumer bankruptcy compliance and regulatory enforcement matters. He also devoted significant time to *pro bono* work, the most notable matter being his post-conviction representation of a client on death row that spanned twelve years and five courts and ultimately resulted in a settlement that vacated his client's death sentence.

Judge Hawkins recently completed a two-year term as Co-Chair of the American Bankruptcy Institute's Consumer Bankruptcy Committee and is an adjunct professor at the Cumberland School of Law at Samford University. He co-authored *Thorny Issues in Consumer Bankruptcy Cases* (2nd ed. 2020) and recently was inducted into the American College of Bankruptcy as a member of the College's 33rd Class of Fellows. Prior to taking the bench, Judge Hawkins was listed in *Chambers USA* for Bankruptcy and Restructuring and was named in the 2022 edition of the *Lawdragon* 500 Leading U.S. Bankruptcy and Restructuring Lawyers.



Judge Hawkins graduated *summa cum laude* from Spring Hill College in 1996, where he earned a bachelor's degrees in English and Marketing and raced with the SHC Sailing Team. He earned his juris doctor degree from the University of Alabama School of Law in 1999, where he graduated *summa cum laude*, served on the managing board of the *Alabama Law Review*, and was a member of the Order of the Coif.

He and his wife Carrie celebrated their 25th wedding anniversary last June. They are the proud parents of four boys (Fischer, Harrison, John Kelly, and Ford), one girl (Anna Kate), and two Miniature Dachshunds (Chip and Franklin). When he is not working, Judge Hawkins enjoys spending time on the water and playing in local tennis leagues. On Saturdays in the fall, he and his family often can be found tailgating in Auburn.

Trustee's Tips

Sabrina L. McKinney, Chapter 13 and Chapter 12 Trustee

Hope this finds you all safe and healthy. We are so happy to return to some semblance of normalcy at the Trustee's office. We hope you all are enjoying this new normal as well.

Please check the Trustee's website www.ch13mdal.com for updates. We periodically update our website to include the monthly calendar and to inform the Bar regarding other announcements. We are currently focusing on updating the Forms tab and all the forms contained therein. Most recently we updated the cash collateral motion form to include a line to disclose whether there is any personal injury resulting from the motor vehicle collision. This will save time and work for debtors' counsel and the Trustee's office as we can avoid inquiring via separate form and process to obtain that information. We are also adding a form to our website for debtors' counsel to use to file and inform the Court and all interested parties that the debtor has a cause of action pending, has employed special counsel to represent him or her in the action, and that special counsel has been informed of their obligations to get employment as a professional person, and to get settlements, fees, and expenses approved. We encourage the use of this new form.

As a result of the reduced filings and the reduction in receipts, the Court has graciously approved the increase of the Trustee percentage fee from 5.82% to 6.5%. This will affect the Chapter 13 practice in a few different ways. First, you may use 6.5% as the multiplier in your above median income means test calculations. We will also be using that percentage in our below median income disposable income calculations. As you are all aware, for many years we have been using 6.5% as the Trustee percent fee when calculating feasibility of plan payments. We are going to raise the percent for feasibility calculations to 7.5% temporarily while the actual percent is at 6.5%. When the receipts return to normal, the percentage will return to our normal 5.82%. We will inform the Bar when this adjustment is made.

Finally, I would like to request two things from the debtor's Bar. First, I would like to request that those who are not currently receiving their monthly fee payments electronically to please sign up to do so. The EFT format for payment allows you to receive your monthly payment faster and is more efficient in multiple ways. I would also like to request that you sign up on the National Data Center at www.NDC.org as debtor's counsel. For debtors and debtors' attorneys, this service is free of charge. One of the biggest draws for debtors' attorneys on the National Data Center is that you can get your EFT monthly payment vouchers online at any time. You can also check your client's cases and run various efficiency and financial reports relating to your client's cases. This service is also available to creditors and creditors' counsel.

As always, I am available to you at any time if you have questions or would like to talk. I look forward to seeing you all again in person in court.

Regards,

Sabrina L. McKinney

Bankruptcy and the IRS

Kenya Bufford, IRS Insolvency Manager

Many individuals who choose bankruptcy as an option to help resolve their financial issues also have various IRS issues. The following information may be useful as you help your clients resolve those issues.

If your client recently received correspondence stating an examination of a prepetition tax year return revealed a liability that is now owed, please do the following:

- a. Ensure your client reviews the notice received and is agreeable with the proposed changes.
- b. Consider having your client sign the notice CP2000 or other notices related to the resulting changes.
- c. Take the necessary actions to ensure the IRS is noticed of the new liabilities.

The IRS will generally receive electronic notification of the case from the bankruptcy court within one to two days of the modified creditor matrix.

In cases where the IRS is properly noticed before the Section 341 hearing, we will file a proof of claim that includes estimated tax liabilities, and we will send a Letter 1714 to you and to the debtor requesting you send us any unfiled tax returns. When we receive copies of unfiled returns for the tax years listed on our proof of claim, we will review the returns and amend our proof of claim within seven to ten days of receipt. If there are issues with the information contained on the return, the assigned specialist will contact the debtor or attorney of record to secure the correct information. The assigned specialist will be your point of contact for questions about the IRS proof of claim, for information on payment provisions, and for filing all required tax returns. Our goal is to file an accurate proof of claim, collect the correct amount of tax, and provide prompt and courteous customer service to customers.

Lastly, please remind your clients that, without filing a motion to lift the automatic stay, the IRS has the authority to offset prepetition refunds to prepetition liabilities owed on federal debts - which includes income tax liabilities. We don't want anyone to be surprised if this happens.

For more information, visit the bankruptcy page on IRS.gov. www.irs.gov/business/small-business-self-employed/declaring-bankruptcy. You may also find it useful to review [Publication 908](#), Bankruptcy Tax Guide, and [Publication 5082](#), What You Should Know About Chapter 13 Bankruptcy and Delinquent Tax Returns.

BA's Office Welcomes New Staff Attorney

Elise Fuller was sworn in as a staff attorney in the Bankruptcy Administrator's Office on October 25, 2021. Prior to joining the BA's Office, Ms. Fuller served as a prosecutor for the State of Alabama in the District Attorney's Office for the 4th Judicial Circuit. Prior to her work as a prosecutor, Ms. Fuller was employed as a paralegal for the Jefferson County Commission, serving in the District Attorney's Office for the 10th Judicial District. Ms. Fuller worked as an attorney in private practice in the years preceding her roles in the DA's offices. While obtaining her law degree, she served as a Senior Probation Clerk in the U.S. Probation Office for the Northern District of Alabama. She is excited about her new position and role in the Middle District. Ms. Fuller earned her B.A. in Communications Management from the University of Alabama at Birmingham and her J.D. with honors from the Birmingham School of Law. She enjoys spending her spare time with family and friends

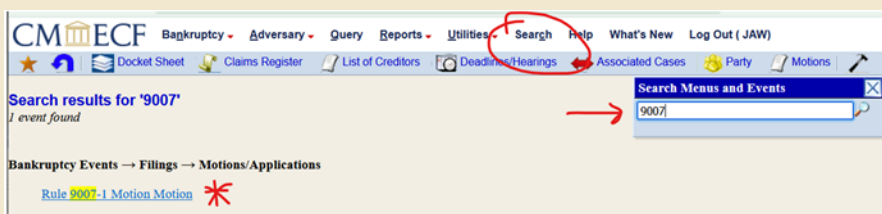


HELPFUL TIPS

FROM THE CLERK'S OFFICE

From the Case Administrators

- ◆ Here are some redaction tips from our Case Administrators:
 - ◆ Make sure you review your document for any personal identifiers (social security numbers, birthdates, bank account numbers, and names of minors); fully mark them out before filing the document. You want to avoid the complicated process of filing a motion to redact.
 - ◆ If you get a call notifying you we found an unredacted personal identifier, withdrawing the document and re-filing a redacted copy will not restrict access to the original document. You must file a motion to redact.
 - ◆ When a motion for discharge is filed for a debtor that is deceased, a redacted death certificate should be filed with the motion. If the certificate is not filed with the motion for discharge, a suggestion of death must be filed with the redacted death certificate.
 - ◆ For guidance on filing a motion to redact, please go to the court's website <https://www.almb.uscourts.gov/> under Attorneys Resources: Procedures for Attorneys: Procedure for Attorneys Filing Redactions. The redacted replacement document must be exactly what was filed originally, but with the personal identifiers marked or whited out. Please do not add any new information, including marking them as exhibits. Please follow the guidelines listed on the website. Make certain that 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.
- ◆ Make sure a certificate of service is included with a notice of withdrawal of document. We will file a submission error for the certificate of service if it is not included with the document.
- ◆ Before you submit a form document to the court, be sure you are using the most recent version of the form. The most current forms can be downloaded from the court's website www.almb.uscourts.gov/forms.
- ◆ When a notice of appearance is filed for a creditor that already has representation, all attorneys that have recorded appearances will be listed as representing the creditor and will receive notice for that creditor. We do not terminate attorney representation until the attorney files either a notice of withdrawal as attorney or a substitution of counsel that has been signed by both attorneys.
- ◆ All documents should have a full signature block containing all of the elements (name, address, phone number, and email address) required by LBR 9011-1.
- ◆ Did you know that CM/ECF has a search function that will help you find a specific event? For example, if you want to know where the 9007 motions in ECF can be found, enter 9007 in the search area, and the search engine will find every event in which 9007 is used. Please see below for a screenshot illustrating where the



From the Courtroom Deputies

- ♦ When you file an objection to confirmation in a chapter 13 case, you do not need to refile the same objection if the chapter 13 plan is amended unless the nature of the objection has changed. Regardless of the number of times a chapter 13 plan is amended, the objection will stay noted on the court's docket until it is withdrawn either orally in open court or by written agreement.
- ♦ When you file a motion requesting an expedited hearing, please be sure to include in the motion the reason the expedited hearing is needed.

From the IT Department

- ♦ ALMB authorizes the use of filing agent accounts in ECF. However, these accounts are only for employees of attorneys or trustees, not creditors. If you are a creditor or work for a creditor, please make sure you request an account as a creditor.
- ♦ If you have changes to your address, email address, or phone numbers, please remember to make those changes in PACER. The changes will be sent to all of the courts you are authorized to file in; you don't have to update each one individually.
- ♦ Please remember to check our website for different updates on court status and ECF operational issues. The website for our court is <https://www.almb.uscourts.gov>

Guides and Procedures for Attorneys

Don't forget we have several helpful procedures and guides for you to use as you work through some of our more difficult subjects. Just go to our website, <https://www.almb.uscourts.gov>. Click on Attorney Resources > Procedures for Attorneys. You'll see the following:

Procedures for Attorneys

- [Adding Attachments to a Document in ECF](#)
- [Administrative Order on Procedures for Attorneys Marking and Submitting Exhibits with Fillable Attachments](#)
- [Administrative Order on Procedures for *Pro Se* Parties Marking and Submitting Exhibits with Fillable Attachments](#)
- [CHAP Mobile Guide](#)
- [Common Document Mistakes](#)
- [Default: Requesting Entry of Default and Filing Motions for Default Judgment](#)
- [E-Orders Guidelines and Procedures](#)
- [Filing Applications to Employ Professional Persons](#)
- [Filing an Adversary Proceeding for Attorneys](#)
- [Filing Dismissals](#)
- [Guide for Processing Appeals](#)
- [Guide to Correcting a Social Security Number](#)
- [Guidelines for Evidentiary Video Hearings](#)
- [How to Create and Upload a List of Creditors to CM/ECF](#)
- [How to Mute Your Phone](#)
- [How to Share Your Screen for Evidence Presentation](#)
- [Motion to Sever Procedure](#)
- [Procedure for Attorneys Filing Redactions](#)
- [Procedures for Case Conversion](#)
- [Reopen v. Reconsider](#)

If you have questions on any of our procedures, just call us at 334-954-3811.



Save the Date!

ALMB will host its 2022 attorney forums as listed below. Please save the date so you and members of your staffs can attend one of these informative meetings. One hour of CLE will be awarded.

Monday, May 9, at 10:00 – Opelika, in the bankruptcy courtroom

Monday, May 16, at 10:00 – Dothan, in the bankruptcy hearing room

Tuesday, May 24, at 11:00 – Montgomery, in the BA's 341 hearing room

If you have questions or would like more information, please call the clerk's office at 334-954-3800.