



# Court News and Views

THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA

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Hey, everyone! I hope this newsletter finds all of you healthy. In our last newsletter in April, we talked a lot about COVID-19. It is hard to believe we are still dealing with all of that today.

**Attorney Forums** - Thank you to the many of you who tuned into our recent virtual attorney forums. It was great to see your faces. While we loved being able to see all of you again and the opportunity to give you some updates, we did not receive many questions during the forums. We understand that doing them virtually makes it harder to ask questions because technology is involved. So please let us know if you have questions or concerns that you did not have a chance to bring up during the forums. You can call us at 334 954-3800 or email us at [feedback@almb.uscourts.gov](mailto:feedback@almb.uscourts.gov).

**New Chief Bankruptcy Judge** - Just FYI – Judge Creswell is going to be taking over as chief judge this month. This should not impact your regular law practice, but I wanted you to know about this change.

**Changes in Personnel** - Since our last newsletter, Linda Overton, another one of our experienced case administrators, retired. Please see the short write up on page 7. We are very thankful for all Linda did for our office, and we are happy for her as she starts a new chapter in her life. We just hired two new case administrators who start with us at the end of this month. We are excited to have them join our team!

Judge Creswell also recently hired a new term law clerk, Sabrina Worsham. Please see the short write up on her on page 7. Welcome Sabrina!

**In this edition of the newsletter** - This newsletter is full of what we hope is useful information for your practice. Please take special note of all the practice pointers from various sources – Judge Sawyer, the chapter 13 trustee, case administrators, and the courtroom deputies. We also provided the most up-to-date list of fees on page 6. As always, please let us know how we can make this newsletter more useful.

Thank you for reading our newsletter. Until next time, stay safe and healthy!

# Practice Pointers for Arguing Motions

William Sawyer, Chief U.S. Bankruptcy Judge

Lawyers who practice regularly in bankruptcy court invariably make many appearances at motion dockets. This article provides practice pointers to lawyers who do not practice often in this Court to familiarize them with our procedures and perhaps provide a brush up for those that do.

1. A well-drafted motion or objection is the first step. The motion should recite facts which relate to the case at hand. Boilerplate motions are not well received and may result in a denial, without prejudice, leaving the lawyer to begin anew.

2. The motion should state specifically: (a) what the pleader wants; and (b) why the Court should grant the relief requested.

3. If there is an opposing party, counsel should reach out and attempt to resolve the matter. It is a poor reflection on both counsel when the Court calls a matter which is not resolved and counsel for the parties have not talked to one another.

4. Settlements are encouraged. Most matters are either settled or are granted by default. If a matter is settled, one counsel should be assigned to contact the Court by e-mail at least one day in advance. The Court has an administrative order on this point that should be observed. If a matter is settled more than 24 hours in advance, and an e-mail was sent to the appropriate Court e-mail, counsel need not attend the hearing.

5. Agreed orders should be submitted using the Court's prescribed e-order process. Directions are provided on the Court's website.

6. Is a continuance to be requested? The reason for the continuance and the amount of time needed to resolve the matter should be provided. Multiple requests for continuance are not well received.

7. Counsel should interview their clients in before the hearing. It is bad form for counsel in open court to be asking his client open ended questions as to why chapter 13 plan payments have not been made.

8. When a matter is called, moving counsel should speak first and advise the Court as to the status of the matter. Is it resolved? Will an e-order be submitted? If it is not resolved, is an evidentiary hearing necessary? If so, what issues have to be tried? Has counsel attempted in good faith to resolve any issues not in dispute? If there are legal issues to be decided, will briefs be necessary? At this stage of the proceedings, the lawyers are expected to know more than the Court about the matter at hand and should be able to explain, succinctly, how the matter is to be resolved.

9. If an evidentiary hearing is necessary, counsel should provide a good faith estimate as to how much time he expects the Court will need to hear the matter – an hour, a day, a week? How many witnesses will be called? Will there be documentary exhibits? If so, how many? A handful, several dozen, several hundred, more than a thousand?

10. Talking out of turn is in bad form. Moving counsel goes first. The exception is if opposing counsel no longer contests the motion and is giving up. After moving counsel has been heard, any other parties who support the motion may be heard. Next, opposing counsel is heard. Moving counsel may reply if she wants to be heard again. Generally, that is it. We generally do not hear further argument.

11. Motions to reconsider should be filed only for extraordinary reasons, and only where counsel has met the appropriate legal standard. A motion to reconsider simply to take another bite at the apple is in bad form.

12. Counsel should address the merits of the matter at hand and not engage in *ad hominem* attacks on opposing counsel or opposing parties.

13. Counsel should be addressed by the appropriate title and surname, i.e. Mr. Jones or Dr. Walker, not Bubba or Gus. The Court should be addressed as "Your Honor" or "Judge Sawyer," not, "Hey Judge."

14. When appearing on a telephonic docket counsel should keep their phones muted until their matter is called. Guidance for muting your phones is found on our website.

15. Counsel should be guided at all times by notions of professionalism and collegiality.

This article provides practice pointers for lawyers who practice in our Court. Using these pointers should help all of us move our cases along quickly, efficiently, and collegially.

## Trustee's Tips

Sabrina L. McKinney, Chapter 13 and Chapter 12 Trustee

Hope this finds you all safe and healthy.

In my last newsletter article I mentioned CARES Act modified plans, but I continue to have questions from attorneys on this topic so I felt this was a good opportunity to explain further. First, it is important to note that this provision of the Act allows for the modification of the debtor's plan only if the plan was confirmed prior to the date of enactment of the Act. It does not allow for the filing of new cases with plans in excess of five years. Further, the plan may be modified only when the debtor is "experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic." Please recall that the Act requires the modified plan be set on notice and hearing. So, if you seek to modify the debtor's plan under this new provision, your motion to modify plan will be set for an adjourned meeting of creditors and will appear on the court's docket for confirmation. One of the things we will require before we can recommend the modified plan for confirmation is documentation to substantiate the debtor's claim that he has suffered direct or indirect material financial hardship as a result of the COVID-19 pandemic. So please have your debtor's documentation gathered, and provide it to the trustee via the 13documents.com portal prior to the adjourned meeting of creditors. We have created a new document type in the 13documents.com portal named "COVID-19 documentation" for this specific purpose. We also require amended Schedules I and J before we can recommend the modified plan. It is helpful to all those involved if the COVID-19 documentation and the new I and J are submitted simultaneously with the motion to modify plan.

We are still seeing insurance settlements for totaled or damaged cars filed in several different motion types. Please see the trustee's website under the forms tab for a new form introduced in the spring to use in situations where your debtor has a damaged or totaled a vehicle and you need to address an insurance settlement. The form is called "motion to use cash collateral in chapter 13 cases." It can be filed using the Rule 9007 negative notice motion ECF event.

We continue to have issues with overpayment of filing fees in chapter 13 cases. This happens when the debtor provides for the payment of the filing fee through the chapter 13 plan, but then pays the fee directly without amending the plan to remove the fee. Most often this happens when the debtor has a less-than-perfect pay record and receives a notice of dismissal from the court for filing fee non-payment. Upon receiving the notice, the debtor pays the filing fee directly to the clerk when it should, instead, be paid to the trustee to be funneled through the plan. Please help us avoid unnecessary overpayment issues by consistently paying the filing fee through the plan.

We are excited about the transition to the Zoom platform for the §341 meetings. So far, the experiences have been positive. If you have questions or need further information about this transition to Zoom, please see the bankruptcy administrator's and chapter 13 trustee's websites.

Please email me if you have any questions or concerns. Stay safe and healthy. Regards, SLM

# Update on the Chapter 7 Trustee Panel

Danielle Greco, Bankruptcy Administrator

Effective October 1, 2020, Brian R. Walding and Mallory Harper will join the chapter 7 trustee panel.

Mr. Walding received his bachelor's degree in Industrial and Systems Engineering from Auburn University and his J.D. from The University of Alabama School of Law. Mr. Walding started his career at Maynard Cooper & Gale in their Birmingham office. He formed Walding, LLC, in 2009. During his career, Mr. Walding has represented numerous secured and unsecured creditors and official committees of unsecured creditors and ad hoc committees of creditors in bankruptcy cases. In addition to joining the chapter 7 trustee panel, Mr. Walding serves as a subchapter V trustee in the Northern District of Alabama. He will share Opelika chapter 7 cases with Ms. Wilkins going forward.

Ms. Harper received her bachelor's degree in Sociology from Auburn University and her J.D. and LL.M. from Faulkner University, Thomas Goode Jones School of Law. She joined Grainger Legal Services, LLC, in 2019 with a focus on consumer bankruptcy and appears regularly in court in Montgomery. Ms. Harper grew up and lives in Auburn. She will serve as a conflicts trustee in all three divisions.

Please join me in welcoming Mr. Walding and Ms. Harper to the panel!

## Attorney Resources

The attorney resources tab on the court's website offers useful information on a range of subjects, from requesting copies and transcripts to providing guidance on procedures and links to the local rules. A few of the resources are outlined below:

**Attorney 30-day Calendar** – This allows an attorney to pull up all cases he or she has set for hearing within the next thirty days. This saves time because you can avoid pulling up the individual case information in CM/ECF. The calendar gives you the case number and debtor name, the hearing information, and the docket entry to which the hearing is related.

**ECF Registration** – While you may already have a CM/ECF account, other attorneys that you might work with on a case might not. To avoid filing their documents for them, and possibly receiving a submission error for invalid filings, direct the other attorneys to the ECF Registration page. The court requires different forms for attorneys that are admitted to the district, for *pro hac vice* attorneys, and for individuals hired for professional services.

**Procedures for Attorneys** – To save time and potential errors, we have written procedures for some of the more complicated procedures that attorneys must complete. This link contains guidance on submitting e-orders, filing motions to redact, filing dismissals, requesting default in adversary proceedings, preparing for telephonic and video hearings, and filing exhibits. Please make use of these and let us know what other procedures might be helpful.

Whether you are an attorney newly filing with our court or an attorney who has been filing in our district for years, our website is full information which could help you be more effective. Please explore the resources we offer, and be sure to let us know how we can improve or what other tools might be beneficial to you!

# HELPFUL TIPS

## From the Case Administrators

- ◆ Do not put full social security numbers in any document you file with the court. Use only the last four digits.
- ◆ If you need to file a document but you are not sure how to file it, please call us. We will be more than happy to help you with the steps. We would much rather help you at the beginning than help you correct a mistake that could have been avoided (though, of course we will help you with that, too).
- ◆ Please read the submission error notices carefully. We try to provide detailed instructions that should help prevent additional errors for the docket entry in question. Examples include the need to file only amended certificates of services and not complete replacement documents, etc.
- ◆ If you happen to receive a submission error, remember that the pleading you file to correct the error is amended and should be titled and filed as such.
- ◆ Please take a few moments to review all of the updated local forms. The updated forms are dated 7/20.
- ◆ The U.S. Bankruptcy Court has a resourceful website [www.almb.uscourts.gov](http://www.almb.uscourts.gov) where you can find many answers to your questions. There is a specific tab listed “Attorney Resources” with valuable information.
- ◆ Please remember to pass on notices from this court to your staffs, especially ones concerning court filing requirements. This will help lower the number of submission errors you receive.
- ◆ If you mail anything to us, please be sure to use our correct address. Send all mail to: Bankruptcy Clerk’s Office at One Church Street, Montgomery, AL 36104.
- ◆ Before filing income records in a case, make sure to verify the name listed on the income records is also listed as a name or an a.k.a. on the case. If the name is not listed, file an amended petition before docketing the income records.
- ◆ File the financial management certificate when the case is initially filed.
- ◆ The title of Local Form 2 on our website, Notice of Continued 341 Meeting of Creditors for both Chapters 7 & 13, can be changed by clicking inside the title. This will allow a drop-down arrow at the end of the title to choose Amended Notice of Continued 11 U.S. C. 341 Meeting of Creditors. This also applies to the Local form, Statement Concerning Payment Advices (7/20). Open the form from our website and then download and open it with Adobe. The title of the form may be changed by clicking inside the title. This will allow a drop-down arrow at the end of the title to choose Amended Statement Under Penalty of Perjury Concerning Payment Advices.

## From the Courtroom Deputies

- ◆ When filing a chapter 13 motion for relief of stay, remember to file an affidavit with the motion. For motions going to Judge Creswell, remember to file the affidavit as a separate attachment to the motion. Refer to Judge Creswell’s Chambers Procedures > II. Motions for Relief.
- ◆ E-orders should include the name of the person preparing the order and a consent statement with the names of all of the parties in agreement with the order. Completing these measures will ensure your order is forwarded promptly to the appropriate judge for his or her review.

## Finance Department

### Fee Changes Effective December 1, 2020

At its March 2020 session, the Judicial Conference approved inflationary adjustments to the bankruptcy court miscellaneous fee schedules. These changes impact fees as follows:

Description	Fee as of Dec 1, 2020	Previous Fee Amount
<b>PETITION FEES</b>		
Chapter 7	\$338	\$335
Chapter 9	\$1,738	\$1,717
Chapter 11 Non-Railroad	\$1,738	\$1,717
Chapter 11 Railroad	\$1,571	\$1,550
Chapter 12	\$278	\$275
Chapter 13	\$313	\$310
Chapter 15	\$1,738	\$1,717
<b>SEVER JOINT CASES FEES</b>		
Chapter 7	\$338	\$335
Chapter 11 non-railroad	\$1,740	\$1,717
Chapter 12	\$278	\$275
Chapter 13	\$313	\$310
<b>MOTIONS</b>		
Motion for Relief from Stay	\$188	\$181
Motion for Abandonment	\$188	\$181
Motion to Withdraw Reference (Adversary Proceeding)	\$188	\$181
Combined Motion for Relief from Stay/Abandonment	\$188	\$181
Motion for Sale of Property Free and Clear of Liens	\$188	\$181
<b>AMENDMENT FEES</b>		
Amendment to Schedule D, E, F	\$32	\$31
Amendment to creditor matrix only	\$32	\$31
Amendment to Schedule D, E, or F and credit matrix (must be filed on same day)	\$32	\$31
<b>REPRODUCTION FEES</b>		
Audio CD of proceedings	\$32	\$31
<b>MISCELLANEOUS FEES</b>		
Motion to Redact	\$26	\$25
Transfer of Claim	\$26	\$25
Search per name or item	\$32	\$31
Exemplification of each document	\$23	\$22
File any document not related to a pending case or proceeding	\$49	\$47
Registration of judgment from another district	\$49	\$47
Registration of Order of Discharge from another district	\$49	\$47

## IT Department

### Attorney Admission to Practice in the Middle District of Alabama

Every attorney who seeks to generally practice in the Middle District of Alabama must be admitted to the bar of the U.S. District Court for the Middle District of Alabama. Admission to practice must be renewed every five years. For more information on your current status and being admitted to practice, please see the district court's website at <http://www.almd.uscourts.gov/attorneys/attorney-information>.

For those seeking to be admitted for specific issues, you may request admission *pro hac vice*. To start this process, please follow the directions located on the Bankruptcy Court for the Middle District of Alabama's website, <https://www.almb.uscourts.gov/ecf-registration>.

### NextGen CM/ECF is Coming!

The U.S. Bankruptcy Court for the Middle District of Alabama will be going live on NextGen CM/ECF on March 8, 2021. We will shut down the system on Friday, March 5, 2021, and will be down all weekend. When we return on Monday, March 8th, the new system will be accessible only through PACER using single sign-on. Before you will be able to access our system, you will have to link your existing CM/ECF account to your PACER account. Detailed instructions on how to do this are on our website, <https://www.almb.uscourts.gov/nextgen-cmecf-deployment-information>.

## Personnel Changes



After 21 years of working with the court as one of our case administrators, Linda Overton retired on September 30. Linda plans on relaxing and gardening. We will miss Linda's spirit and dedication to the office. We wish her the very best that retirement has to offer!

Sabrina Worsham is the new term law clerk for Judge Creswell. She was born in Sulphur, Louisiana, and raised in Texas. She earned her B.S. in Psychology, with an emphasis in business, graduating with a 4.0 and receiving *Highest Distinction* from Pennsylvania State University. She earned her J.D. in 2020 from The University of Arkansas School of Law graduating *Magna Cum Laude*. During law school, Sabrina worked in the Federal Bankruptcy Clinic as a student attorney representing chapter 7 clients. She also interned with several local law firms and obtained more than 50 hours in pro bono service, receiving the pro bono silver medal for her service to the community of NW Arkansas.

