



# Court News and Views

THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA

Volume 20 | October 2021

A Biannual Publication

## Clerk's Corner JC Guerrero

Hello everyone! I hope you are all doing well. Thank you for reading our newsletter. We have several important topics to cover in this edition so let's get started!

We are excited to report that we will be going back to in-court hearings again in January. Judge Creswell will hold confirmation hearings in Opelika and Dothan, and Judge Sawyer will hold confirmation hearings in Montgomery in courtroom 4D. Other hearings will continue to be held by telephone or video as scheduled by the judges. Please review the location of any scheduled hearings for 2022 to make sure you have the most current information. Please call us if you have questions about the location of any hearings — (334) 954-3800. Additionally, while the clerk's office has remained open throughout the pandemic by limiting in-office staff and using a heavy teleworking schedule, we are also bringing our staff back to the office after the new year.

As is the case every year, we will have some new bankruptcy rules that come into effect on December 1st. Please see page 6 for more details.

We were disappointed to have to postpone our in-person attorney forums this fall. We are planning to reschedule them for early next year. There will be more to follow soon on those dates.

Lastly, as most of you know by now, Judge Sawyer is retiring early next year after a long and distinguished career. In fact, this newsletter contains the last article he will write for us as a bankruptcy judge. Stay tuned for more information on his retirement festivities. Congratulations, Judge Sawyer!

I hope you find the information in this newsletter to be useful. Please continue to give us feedback on how we can make it better. Thank you!

One Church Street  
Montgomery, AL  
(334) 954-3800

# Amended Schedules

William Sawyer, U.S. Bankruptcy Judge

## Amended Schedules

All debtors who file for bankruptcy are required to file schedules of their assets and liabilities. 11 U.S.C. § 521 (a)(1)(B). The Federal Rules of Bankruptcy Procedure permit debtors to file amended schedules as a matter of course. Fed. R. Bankr. P. 1009. The failure to disclose assets or the failure to give notice to creditors can have disastrous consequences. Therefore, debtors and their counsel should use their best efforts to file complete and accurate schedules at the outset of the case.

If it becomes necessary to amend the schedules, counsel should bear in mind Federal Rule of Bankruptcy Procedure 1009 and Local Bankruptcy Rule 1009-1. Rule 1009 requires that notice be given to the Trustee and any party affected by the notice. The Court's local rules go further and require the debtor to send copies of the amendments, a copy of the notice of commencement of the case, and a copy of the chapter 13 plan, if applicable. L.B.R. 1009-1(a). Proof of mailing is to be attached to any amended filing. L.B.R. 1009-1(c). Creditors who are listed on the original schedules typically receive a copy of a notice of commencement of the case and a copy of the chapter 13 plan, if one is filed with the petition. The purpose of Local Rule 1009-1 is to attempt to put creditors added after the original schedules on an even playing field.

I recently pulled ten cases at random from the Court's record and was dismayed to see that nine of them did not comply with Local Rule 1009-1. Unfortunately, it appears that many of the regular practitioners in this Court have become complacent about compliance with the Court's local rules. No doubt, in most cases, there are no adverse consequences to the debtor for his lawyer's noncompliance. To put the matter differently, it is not a problem until it is. The debt of a creditor who is not given timely notice of a bankruptcy filing and a debtor's chapter 13 plan may not discharge. In addition, if a Trustee or a creditor gets the idea that a debtor is playing fast and loose in making disclosures of his assets, she may oppose discharge.

The Court's local rules are both simple and commonsense. A discharge in bankruptcy is a powerful thing; however, it depends on giving adequate notice to creditors and the Trustee. I urge counsel to review our local rules and their office practices to ensure compliance. The consequences of nondisclosure or failure to provide adequate notice can be severe. Moreover, once discharge enters, many of these deficiencies cannot be fixed.

# Trustee's Tips

Sabrina L. McKinney, Chapter 13 and Chapter 12 Trustee

Hope this finds you all safe and healthy! I cannot tell you how good it was to see some of you live and in person at the 2021 Annual Bankruptcy and Commercial Law Section's seminar at the Henderson Resort in Destin in September. The seminar was well attended considering the circumstances and provide excellent presentations by all of the judges who spoke. Thank you to Judge Creswell and Judge Sawyer for attending and presenting at this year's seminar. I was honored by the Section to be asked to present Judge Sawyer with a plaque honoring his upcoming retirement next year. Thank you, Judge Sawyer, for all your years of dedicated service to the Bench and Bar. You will be sorely missed when you retire in March 2022.

At the end of 2020, Congress enacted the Consolidated Appropriations Act of 2021, effective December 27, 2020. As part of the Act, Congress extended the CARES Act plan modification option until March 27, 2022. As we are truly beginning to see the ravages of COVID on our economy as the enhanced unemployment and other programs are running out, we have seen a marked increase in CARES Act modified plans. I wanted to remind you all what is needed and how these modified plans are handled. All CARES Act modified plans are required to be set for hearing. To avoid an objection to the modified plan by the Trustee's office, please make sure to upload through the 13documents.com portal your "COVID Docs" that need to accompany the CARES Act modified plans. We need documentation that the CARES Act modified plan filed is directly or indirectly as a result of the COVID pandemic. If there are no documents available, then an affidavit signed by the debtor must accompany the modified plan. If the debtor's payments are going to change, please also remember to file an amended Schedule I/J. Finally, you all know that the Court signed Administrative Order 2021-06 entitled "Attorney Compensation for CARES Act Modifications." This Order allows the attorney an additional fee of \$250.00 per year for up to two years for a total of \$500.00 for a CARES Act modification that extends the plan to a full 84 months. Please be aware that the Trustee's office reviews every CARES Act modified plan. If the attorney seeks to add an additional \$500.00 fee to the Chapter 13 plan, but the debtor's modification only extends the plan for one year, the Trustee will object to the modification. So please do your plan calculations correctly to avoid that simple, but time-consuming, objection. Don't forget you have access to our PlanCalc plan calculation program through the 13network online to assist you with those calculations.

I would also like to make a plea to the Bar for assistance. You all may recall the judges issued orders some time ago requiring that debtor's counsel file all amendments for a confirmation docket no later than 5:00 p.m. two business days prior to the docket. This deadline is so the Trustee will have adequate time to review the amendments prior to the docket. Some appear to be slipping on that deadline and are filing amendments on the day before and even the day of confirmation and expect the Trustee's office to review the amendments in time to recommend the case to the Judge for confirmation. Please be advised that we do not always have time to look at last minute amendments, so you should not expect us to do so. If an amendment is filed past the deadline set by the judges for amendments, it may not be reviewed by the Trustee prior to confirmation. Furthermore, there is no guarantee the judges will always continue your case to allow additional time for review. So please file all amendments in a timely fashion to insure there will be adequate time for review by the Trustee's office and to avoid the time and expense of further delaying your cases for confirmation.

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

Regards,

Sabrina L. McKinney



# HELPFUL TIPS

## FROM THE CLERK'S OFFICE

### From the Case Administrators

- ◆ Local Rule 9011-1, *Signing of Papers*, governs the signature requirements for every filing. It requires signature blocks to contain the full name of each person who signed the paper, at least one mailing address, one telephone number, and one email address. Additionally, Local Rule 5005-1, *Filing and Transmittal of Papers*, requires attorneys to file documents electronically. For a filing not made through a person's electronic-filing account and authorized by that person, a signature is required and may be represented in any manner intended to convey a signature.
- ◆ When you file a Notice of Appearance and Request for Notice, be sure you include a certificate of service showing all creditors have been served; otherwise, you will receive a submission error and have to refile.
- ◆ Please remember to file a certificate of service when filing any motion, notice, objection, and response. A notice of address change is an exception and does not require a certificate of service. If the certificate of service is filed as a separate document rather than with the pleading, you will need to include the debtor's name, case number, and signature block as required by Local Rule 9011-1. Be sure to relate the certificate to the correct docket entry.
- ◆ If you file a change of address and you receive a submission error on it, we will not change the address until the error is corrected.
- ◆ In chapter 13 cases, make sure on both the application to pay the filing fee in installments and the chapter 13 plan you correctly list any fee that was paid with the petition. This will limit overpayments made by the trustee and save you the hassle of filing a motion for refund.
- ◆ When you file an objection to claim, be sure you verify the claim number is correct in the title and body of the document and in the associated docket text.
- ◆ To prevent duplicate mistakes that require multiple submission errors please, read the docket text which specifically details what steps need to be taken to correct the error. If the docket text is not clear, please call our office. Any case administrator here can explain what needs to be done or can walk through the steps with you to ensure you understand and clear up the error correctly.
- ◆ When you file an amended chapter 13 plan, make sure the amended plan references the last correct plan or amended plan. An amended plan should not relate to a chapter 13 plan that has received a submission error.
- ◆ When you file a new petition, be sure you list the debtor's full legal name (first, middle, and last) and include any suffix. The alias should include any other names the debtor has used, including names without the suffix.

### From the Courtroom Deputies

- ◆ When preparing for trials and evidentiary hearings, please be sure to email both a descriptive list of all exhibits to be offered and all pre-marked exhibits to the judge's chambers not later than five business days prior to the hearing date. Exhibits should be submitted in pdf format and combined into a single pdf portfolio for easy review. Further information on this topic can be found on our court's website under Attorney Resources > Procedures for Attorneys > Administrative Order on Procedures for Attorneys Marking and Submitting Exhibits with Fillable Attachments.
- ◆ When correcting a submission error on a chapter 13 motion for relief from stay, please remember that Judge Creswell requires the affidavit to be filed as a separate attachment under the same docket entry with the amended motion. For example: Amended Motion for Relief from Stay (Attachments: #1: Affidavit; #2: Note; #3: Mortgage). Local Rule 5005-1(g) explains how the supporting document should be filed with the motion.

### Tips for Preventing Overpayments

In September, the court issued [Admin Order 2021-09](#) to help prevent overpayments to the court. Consider implementing these procedural suggestions in your office to comply with the admin order:

Before you file a new case, review all documents that mention the filing fee to make sure everything is correct.

The petition: check Part 2, Statement 8.

- ◆ Is the correct box checked?
- ◆ If the second box is checked, have you prepared and filed an application to pay in installments?

Application to Pay the Filing Fee in Installments (if filed):

- ◆ Make sure the correct chapter has been marked and that the total amount matches the fee for that chapter.
- ◆ Make sure any initial payments made with the filing of the petition are reflected in Part 1, Statement 2.

Chapter 13 plan (if filed): check Part 3, Filing fees.

- ◆ Is one of the boxes checked? Does it match what you put on the petition?
- ◆ If you intend the fee to be paid through the plan, did you file an application to pay in installments? Does the initial installment amount match what was paid and what was listed on the application? Does the total amount paid and the amount of the remaining balance equal the amount of the required fee? Is the fee total accurate?

If an order denying the application to pay in installments is entered, the current case's filing fee must be paid directly to the clerk's office before the deadline given in the order.

If a notice to dismiss a case for fees is filed by the clerk's office, make sure the debtor knows where to send the remainder of the fee.

- ◆ In a chapter 7 case or a chapter 13 case in which the fee is to be paid directly to the clerk, funds should be remitted directly to the Bankruptcy Court.
- ◆ If the chapter 13 plan states that the filing fee is to be paid through the plan and an Order Approving Payment of the Filing Fee in Installments has been entered, make sure the debtor sends enough funds to the chapter 13 trustee to fully pay the filing fee, including the payment of the trustee's claim pursuant to 11 U.S.C. §503, before the deadline. Check the National Data Center to verify that the trustee has enough funds on hand to pay the remaining filing fee. The clerk's office will not dismiss a case for fees if the trustee has the funds on hand.

---

#### **Debtors can get their case information quickly 24 hours a day...Free!**

- ◆ See their payments have been received by the trustee's office
- ◆ Track their cases on their computers or cell phones
- ◆ Be notified when changes occur

[National Data Center for Debtors](#)

#### **Attorneys! Get your client information via the National Data Center...Free!**

- ◆ 24/7 access to your client's case and claim data
- ◆ View electronic copies of the disbursement check voucher received from the trustee's office.

[National Data Center for Attorneys](#)

## From the IT Department

Now that ALMB has moved to NextGen CM/ECF, system standards have changed and will continue to evolve. One area that is being impacted is the standard for PDF documents uploaded to our system.

Fillable PDFs, for example forms such as the chapter 13 plan and summons, have fields that need to be “flattened” before they are loaded into ECF, otherwise changes can still be made to the documents. For this reason, instead of simply uploading a PDF file that has fillable fields, you must first print it as a PDF. To do this, go under File and select Print. Change the printer from your default to Adobe PDF. The system will prompt you to save the document. Select a location and click on Save. The PDF document will now be a “flat” file with the fillable fields locked with your typed in responses.

As ALMB moves up in versions of ECF, failing to flatten fillable PDFs will result in documents that cannot be properly displayed or noticed in ECF

## New Bankruptcy Rules and New Form Effective December 1, 2021

The Federal Rules of Bankruptcy Procedure will incorporate a few new rules effective December 1, 2021. The changes are:

1. Rule 2005, subsection (c) will be amended to delete the references to 18 U.S.C. § 3146(a) and (b) and replace them with a reference to the “relevant provisions and policies of § 3142.”
2. Rule 3007(a)(2)(A)(ii) will be amended to clarify that the special service method required by Rule 7004(h) must be used for service of objections to claims only on insured depository institutions as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813.
3. Rule 7007.1 addresses corporate ownership statements. Subsection (a) will be amended to include non-governmental corporations that seek to intervene. In addition, stylistic changes were made to subdivision (b) to reflect that some statements will be filed by nonparties seeking to intervene.
4. Rule 9036 will be amended to further expand the use of electronic noticing and service. It recognizes a court’s authority to provide notices or make service electronically through the Bankruptcy Noticing Center (BNC) to entities that currently receive a high volume of paper notices from the bankruptcy courts. The rule is also reorganized to separate methods of electronic noticing and service available to courts from those available to parties. Under the amended rule, both courts and parties may serve or provide notice to registered users of the court’s electronic-filing system by filing documents with that system. Both courts and parties also may serve and provide notice to any entity by electronic means consented to in writing by the recipient. Only the courts may serve or give notice to an entity at an electronic address registered with the BNC as part of the Electronic Bankruptcy Noticing program.

The changes to Rule 9036(b)(2)(B) also empower the Director of the Administrative Office of the U.S. Courts (AO) through the BNC to contact entities that receive a high volume of paper notices. The AO has established 100 paper notices in a month as a high volume receiver and will require the recipient to establish an address to receive electronic notices. If the entity does not established an address under 11 U.S.C § 342(e) or (f) to receive electronic notices within 45 days of the notice of designation by the AO, the AO will designate an address for that entity.

In addition to the rule changes, Form 122B will be modified to remind debtors and attorneys that the form is not required in chapter 11, subchapter V cases.

# Personnel Changes in the Clerk's Office

Ethan Calhoun is Judge Creswell's new term law clerk. He was born and raised in Phenix City, Alabama. After graduating from Central High School, Ethan attended Kansas State University where he was a member of the football team. He later transferred to play for Troy University, graduating *summa cum laude* with a B.S. in Political Science. Ethan earned his J.D. from The University of Alabama School of Law in May of 2021. While in law school, Ethan was the president of the Bench & Bar Legal Honor Society, a senator in the Student Bar Association, a member of the John A. Campbell Moot Court Board, and an editor for the Law & Psychology Review. He also participated in oral arguments as a member of the school's Duberstein Bankruptcy Moot Court Team. Welcome, Ethan!



## Clerk's Office Milestones

This year marks significant milestones for several bankruptcy court employees. On August 25, 2021, the bankruptcy court recognized these employees for their years of service:

- ◆ Bill Livingston - 30 years
- ◆ DeAnna Williams - 30 years
- ◆ Jill Weiss - 20 years
- ◆ Brian Suckman - 5 years
- ◆ Kathy Copeland - 5 years