



Court News and Views

THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

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Clerk's Corner JC Guerrero

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Welcome to another edition of our newsletter. Thank you for taking the time to read this publication. Please continue to give us feedback on how we can make it better.

Chambers: this has been a busy year with many changes for our court. The biggest change has been in our chambers. As you all know, Judge Dwight Williams retired in January and Judge Bess Creswell took the bench in April. She has hit the ground running. Please look at the article about her background and at the inputs she provided on her new court schedule and practice pointers for her court. We are glad to have her on board.

New Rules and Amendments: this year's December rule changes are not as robust as they have been the past few years, though if you have an appellate practice you will need to study those changes in depth. Please see the list on page nine. You can read the text of all the changes at uscourts.gov. Click on Rules and Policies and then on Pending Rules and Forms Amendments.

NextGen: we are officially on the schedule to upgrade our CM/ECF software to NextGen in 2020. ALNB just went live on it, and ALSB is scheduled to go live in 2019. One of the most significant changes you will see is the single sign-on feature. You will have to upgrade your PACER account to use NextGen, but that gives you the added bonus of having just a single username and password for any court on NextGen.

Training: I received a call from an attorney in our district a few months back. He had recently hired some new staff members, and they needed CM/ECF training. We are fortunate to have some great trainers in this office. Specifically, Brian Suckman (IT Director) and DeAnna Williams (CA Supervisor) team up to provide some of the best ECF training this side of the Mississippi. For this attorney's staff members, they provided both general training and office-specific training focused on issues the staff were having and on specific questions they had. It went great, and I encourage all of you to consider sending staff to our office for either new training or refresher training soon.

Webpage and Email Updates: please continue to monitor our webpage (<https://www.almb.uscourts.gov>) for regular updates on operational issues, schedule changes, etc. Also, while you are on our webpage, please sign up to receive our email updates. You can sign up by typing in your email address in the bottom righthand corner of our homepage (under the Email Updates section).

Thank you again for taking the time to read this. Until next time...

Welcome to Judge Bess M. Parrish Creswell



Judge Bess M. Parrish Creswell was appointed to the U.S. Bankruptcy Court for the Middle District of Alabama in April of 2018. Before her appointment, Judge Creswell partnered at Burr & Forman, representing debtors and creditors in debt restructuring, bankruptcy cases, financial transactions, non-bankruptcy offensive and defensive litigation, and maritime financing and foreclosures. Prior to joining Burr & Forman, Judge Creswell practiced bankruptcy, creditors' rights, and commercial litigation at Alston & Bird LLP in Atlanta, Georgia. She also served as law clerk to The Honorable Ray C. Mullins in the U.S. Bankruptcy Court for the Northern District of Georgia.

Judge Creswell earned her J.D. in 2004 from Wake Forest University School of Law, where she was business editor of the *Wake Forest Law Review* and represented Wake Forest in the Kaufman Memorial Securities Law Moot Court Competition. She earned her B.A. in accounting and trust management from Campbell University in 2001 and her M.B.A. from the Lundy-Fetterman School of Business in 2001. Judge Creswell is married to Michael Creswell. They have two children, Walker and Eden Grey.

- **When did you know you wanted to be a judge?** While I don't know exactly when I decided that I wanted to be a judge, it was early in my career. Right out of law school I served as a floating clerk for Judge Mullins and Judge Diehl in the Bankruptcy Court for the Northern District of Georgia. That was my first real glimpse of the process, and I was fascinated by it.
- **What skill do you think is important for lawyers to develop in their careers?** I think listening is one of the most important skills a lawyer can develop. In practice I would observe lawyers that would provide options available to a client based on their interpretation of the issues without really listening to what it was the client needed or wanted. This would result in both parties becoming frustrated. While my listening skills can always improve, I do try to remind myself to "listen first" each time I take the bench.
- **What is one thing that surprised you about being a judge?** I am not sure if it came as a surprise, but one thing I had not given a lot of thought to before is how many moving parts there are in the process. In addition to the attorneys and their clients, there are a lot of great people behind the scenes that make the process work. I try to keep in mind that all of these people may be impacted by administrative and policy decisions I make as a judge.
- **What do you find exciting about being a judge?** I am excited that I now get to take on the role of problem solver exclusively. In practice there were times that I had to advocate positions that I did not support wholeheartedly or days where despite all my best efforts I could not get my client (or the opposing attorney) to be reasonable. Those times made for long days. I also enjoy that I can now spend as much time as I want on diving into a legal issue without business constraints. It makes researching and seeking answers a lot less stressful.
- **What are your favorite activities when not working?** While I enjoy reading and traveling, my favorite thing to do when I am not working these days is spending time with my husband, Michael, and my two children, Walker (6) and Eden Grey (3). Some of my favorite "family activities" include dance parties in the kitchen, water balloon fights, and hide-and-seek around the house.

Welcome to the Team!



Jack Spencer was born in Kalispell, Montana, but considers Madison, Mississippi, home. He earned his JD from the University of Alabama School of Law in 2018 and his undergraduate degree from the University of Mississippi in 2015. In his spare time, Jack enjoys watching both college and professional football and basketball, running, and reading. Jack joined the court as Judge Sawyer's law clerk in August, just in time to assist with Judge Creswell's investiture.

Kimberly Waldrop was born in Dothan, but raised in Abbeville, Alabama. Before coming to the court as Judge Creswell's law clerk, Kimberly had been practicing law at Sasser, Sefton & Brown, P.C. for seven years. She earned her law degree in 2011 from Thomas Goode Jones School of Law and her undergraduate degree from Troy University in 2008. Kimberly has two boys under the age of five, so she doesn't have much spare time, but when she does catch the "rare moment of 'me' time," it is spent reading or binge-watching Netflix.



Jessica Brown was born in Montgomery but was raised in South Georgia. She completed her undergraduate and master's degrees at LaGrange College and earned her JD from Jones School of Law in 2015. Jessica was hired as law clerk for Judge Dwight H. Williams (retired) in 2015, and after a short break from the court, Judge Creswell hired Jessica as her career law clerk. In recent news, Jessica and her husband are expecting their first child, and in Jessica's words, she doesn't "have anything that tops that."

Morgan Jackson-Flowers was born in Birmingham, Alabama, and spent a few years in St. Louis, Missouri, before moving to Montgomery. She graduated *summa cum laude* from the University of Alabama in 2013 with an English Literature degree. She joined the court as a case administrator in April after managing Midtown Pizza Kitchen for two years. When not at work, she hangs out with her cats, reads, practices yoga, and watches what she describes as "too much" Netflix and Hulu.



Constance Freeman was born in Tuskegee, Alabama, but was raised in Montgomery. She loves to take on new challenges, a trait which is apparent in her work and academic history. Constance spent six years in the U.S. Army as a supply/logistics specialist. She graduated from Troy University in 2012 with a BS in Social Sciences. Constance joined the clerk's office as a case administrator in April of this year after spending seventeen years working at the Chapter 13 Trustee's office. Her hobbies are photography, writing, and simply enjoying life.

TRUSTEE'S TIPS

Sabrina L McKinney, Chapter 13 Trustee

Hope you all had a good summer and are enjoying this fall as the weather cools down.

We've had a very productive year at the Trustee's office. For the first year of my tenure as Trustee, we focused on changes that the outside user could see. For this second year, we have been focusing on internal changes at the Trustee's office in an effort to make our office more efficient and to better serve the bankruptcy community. Here are some things that you will see in the coming months.

Starting January 1, 2019, we will begin taking debtor tax returns via the www.13documents.com portal. We will begin phasing out our taxreturns@ch13mdal.org email account because the portal is encrypted and allows for a more efficient and automated way of processing the returns. As we make this transition, it is imperative that the debtor's PII be redacted from the tax returns.

Also effective January 1, 2019, you will see a change in the mortgage claim types in our system through the 13network. Instead of the current three types of mortgage claims (mortgage maintenance, full balance and arrearage type claims), you will see six (mortgage maintenance, full balance, pre-petition arrearage, post-petition arrearage, fees and costs and gap payments). These new claim types will enable us to break out the monies paid on debtor mortgage claims in our system and more uniformly report those figures in the notice of final cure and final report.

We have two items we need your assistance with when communicating with your debtors. Please refer your debtors to www.ndc.org to get their case data online. They can check payments and check claims and other plan information without the need to call your office or ours. Please encourage your debtors to sign up with www.ndc.org and to make use of this free service. Also, please remind your clients when they are making their final plan payments that the final plan payment should not be made through epay, but should be only with a cashier's check or money order. If they use the epay system for making their final plan payment, there will be a delay in closing their cases because we cannot refund any debtor overpayment for 60 days from an epay.

Finally, we have had a new trend develop in the 13 world. As you are all aware, the Trustee's office will no longer issue "direction for pay" letters to insurance companies or creditors when debtors total their cars. All insurance settlements must be disclosed to the court and approved by motion. When you are filing your motions relating to property damage insurance settlements, please remember that if the insurance money is going to be administered through the debtor's plan, you must take into account the Trustee's administrative fee in those payments. Any insurance payouts sent to the Trustee's office to pay off a creditor's claim must include the Trustee fee; otherwise, the claim will not be paid in full until the debtor pays into the plan a sufficient amount to pay the administrative expense.

Please keep an eye on the Trustee's website for upcoming announcements of new things to come, including the roll out of the "matter calendar." Hope you all have a safe and joyous holiday season. slm

Notice from the Bankruptcy Administrator

INCREASED QUARTERLY FEE CALCULATION

Amendments codified in 28 U.S.C. § 1930(a)(6)(B) to the calculation of chapter 11 quarterly fees increase the fee payable for a calendar quarter in which disbursements in a case equal or exceed \$1 million to the lesser of one percent (1%) of disbursements or \$250,000. This change in calculation applies in any chapter 11 case filed on or after October 1, 2018, and does not have retroactive application to pending cases.

Scheduling Update—Judge Creswell

- Effective November 5, 2019, all settlements should be sent to **settlements4C@almb.uscourts.gov** no later than 12:00 PM the business day before the hearing. **Please copy opposing counsel and the trustee, but do not copy Ms. McLain or Chambers.** The Court will still allow (and encourages) settlements; however, any settlement not communicated prior to the 12:00 PM deadline will need to be put on record at the hearing. If there is an agreed continuance or the non-moving party has no defense such that an order can be entered, please send those updates to the settlement email prior to the deadline (again, copying opposing counsel and the trustee). In those cases where there is no defense, the moving party shall submit an order after review by the non-moving party and trustee per the E-Order guidelines.
- Effective November 19, 2019, the telephone docket and evidentiary hearing/contested matters docket will be on separate weeks so the telephone docket can be moved into Chamber's library. The telephone docket will begin at 1:30, and the evidentiary hearing/contested matters docket will begin at 2:00 on their scheduled days.
- Effective January 1, 2019, Monday's docket will be moved to Thursday. With this, the amendment filing deadline will be moved from Wednesday at 5:00 PM to Friday at 5:00 PM. Local and national rules require that all objections to confirmation be filed one week in advance of the confirmation hearing.

Practice Pointers for Judge Creswell

- Please do not submit orders containing "findings of fact" or "conclusions of law." Stipulated facts in an agreed/consent order are acceptable.
- With adversary proceedings, please remember Rule 7012(a) and (b) requires a pleading and responsive pleading to include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge.
- When you submit a Motion for Relief from Stay, remember to submit an affidavit in support of your motion.
- On the telephone docket, please keep your phone on mute until your case is called, formally appear on the record by announcing yourself when your case is called, and avoid using a speaker phone if possible.

We have set up an email box for attorneys to submit settlements in Judge Creswell's cases. The email address is settlements4C@almb.uscourts.gov.

From the Clerk's Office



Plaintiff's Dismissal and Joint Stipulations of Dismissal in Adversary Proceedings

This is just a quick reminder that a court order is not always required to dismiss an adversary proceeding.

Under Rule 7041(a)(1)(A)(i), without action of the court, a plaintiff may voluntarily dismiss an action by notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Under Rule 7041(a)(1)(A)(ii) all parties who have appeared may join together and dismiss an action by a joint stipulation of dismissal.

Docket dismissals using the following events:

Plaintiff's dismissal: Adversary > Notices > Dismissal in an adversary proceeding

Joint stipulation of dismissal: Adversary > Notices > Stipulated Dismissal in an adversary proceeding

If there are no errors in the notice, the clerk will acknowledge the dismissal and close the adversary proceeding.

Check for errors before docketing your dismissal!

1. Does the heading show the correct case information?

2. Does the notice cite the correct rule?

Rule 7041(a)(1)(A)(i) – a notice of dismissal before the defendant serves either an answer or a motion for summary judgment; or

Rule 7041(a)(1)(A)(ii) – a stipulation of dismissal signed by all parties who have appeared

* If the defendant has not filed an answer or notice of appearance, the adversary proceeding must be dismissed with a plaintiff's dismissal.*

3. Does the case have multiple defendants? If so, are you dismissing only one party or the entire adversary proceeding? Make sure the body text of your notice states which parties are being dismissed from the proceeding.

4. Does your notice state whether you are dismissing with or without prejudice?

DEFAULT

Federal Rules of Civil Procedure 55 and Federal Rules of Bankruptcy Procedure 7055

Default is a two-step process.

1. If a party against whom judgment is sought has failed to answer the complaint or otherwise defend, the **plaintiff may request that the clerk enter default** against the defendant.

File a **Request for Entry of Default** using docket event:

Adversary > Miscellaneous > Request for Entry of Default

Since this is a request, make sure the body text of your request does not “move the court” to do anything. Just ask the clerk to enter default.

2. Once the clerk has entered default, the plaintiff may move that the court enter **a default judgment**.

File a **Motion for Default Judgment** using docket event:

Adversary > Motions > Default Judgment.

Tips from the Courtroom Deputies

Remember to email your settlements before the hearing date. Settlements in Judge Sawyer's cases go to Bill Livingston at bill_livingston@almb.uscourts.gov. Settlements in Judge Creswell's cases go to settlements4C@almb.uscourts.gov.

Remember either to call or email the CRD when you file a motion requesting an expedited hearing. The sooner the CRD knows about the motion, the sooner he or she can set it for hearing.

Training Opportunities for Your Law Firms

We recently held a very successful training session for new employees in a local law firm, and we want to offer the opportunity to each firm in our bar. If you feel your employees, old or new, would benefit from our training on CM/ECF and how to avoid errors, please let us know. Call Brian Suckman at 33-954-3848 and he'll work with you on a date.

Tips from the Case Administrators

- When you amend documents or correct a deficiency on a case, please remember to include the case number on the amended documents.
- When you file an amended Rule 9007-1 motion, do not include the negative notice language. That language goes only on the original 9007-1 motion.
- Make sure you file a certificate of service with an amended chapter 13 plan, but do so on a separate sheet of paper. Do not type it onto the amended plan.
- When converting a case from chapter 13 to chapter 7 you must file both the chapter 7 Statement of Your Current Monthly Income, Official Form 122A-1, and the Statement of Intention for Individuals Filing Under Chapter 7, Official Form 108.

Docket the Chapter 7 Statement of Your Current Monthly Income this way:

Bankruptcy > Misc./Other > Chapter 7 Statements-Monthly Income (Form 122A-1)/
Exemption Presumption of Abuse (122A-1 Supp)

Docket the Statement of Intention this way:

Bankruptcy > Misc./Other > Statement of Intent

- When possible, file the financial management course certificate at the beginning of the case.
- Make sure the name listed on the income records is listed as a name on the petition.
- Please make sure all forms you submit are the current forms.
- Debtors can review their cases and print documents at www.pacer.gov.
- Please encourage your debtors to sign up for electronic noticing (DeBN).
- In a joint case, the names of both debtors should be in the headings of all documents.
- Rule 9037 says certain personal data identifiers should not be included in court filings. Social Security numbers, financial account numbers, names of minor children, and dates of birth are to be redacted by the attorney or party filing the document. The clerk's office does not review documents for compliance with this rule.
- In conversion cases, Rule 1019(5) sets a 14-day deadline for filing a schedule of unpaid debts and the names and addresses of the creditors. If you meet the deadline, you don't have to pay a filing fee. If you file beyond the deadline, you will have to pay the filing fee for amending schedule D and/or Schedule E/F.

Docket the Schedule of Post-Petition Debts Pursuant to 1019(5) this way:

Bankruptcy > Misc./Other > Schedule of Post-Petition Debts Pursuant to 1019(5)

- ALMB Local Form 1(Declaration re: Electronic Filing) is no longer required.
- Please do not include the last four digits of the debtor's social security number in document headings.

Checklist for Filing Rule 9007-1 Motion to Modify Plan

Please check that your motion, certificate of service, and proposed amended plan contain the following components:

Motion

- ☐ Debtor's (and joint debtor's) name(s)
- ☐ Case number
- ☐ Current Local Rule 9007-1 negative notice language
- ☐ The attorney's signature and signature block as required by Local Rules 5005-1 and 9011-1

Certificate of Service

- ☐ Mentions both the amended plan and motion
- ☐ The attorney's signature and signature block as required by Local Rules 5005-1 and 9011-1

Proposed Amended Plan

- ☐ Debtor's (and joint debtor's) name(s)
- ☐ Case number
- ☐ Amended box is checked
- ☐ The attorney's signature and signature block as required by Local Rules 5005-1 and 9011-1

New Bankruptcy Rules and Amendments Going into Effect on December 1, 2018

3002.1	8007	8017
5005	8010	8018.1
7004	8011	8021
7062	8013	8022
8002	8015	9025
8006	8016	

Learning Opportunities

In the past few months, employees in the clerk's office have had several learning and professional development opportunities.



Two case administrators attended the national operations forum in Minneapolis, Minnesota. Among other things, they learned about updates to bankruptcy noticing processes, managing records, offering attorney training, and ensuring data quality.



Two other case administrators were representatives at the National Bankruptcy Conference which was held in New York City. Twenty-five different seminars were offered, with topics ranging



from effective communication, workplace conduct, and conflict management to implementing new operating systems such as CM/ECF NextGen and Microsoft Office 365.

In September, our newest case administrators traveled to Pensacola for a joint training conference with the district and bankruptcy courts for the Northern, Middle, and Southern Districts of Alabama. They attended seminars on burnout prevention and developing trust in the workplace. They also gave and received updates on the implementation of NextGen in the Alabama courts.

Awards Day

At our annual awards day, we celebrated meeting our 2018 goals and receiving no findings on our recent audit. Five team members were also awarded for their long service with the court: Janet Clark (15 years), Tony Nolen (20 years), Rhonda King (20 years), Cynthia Sanders (20 years), and Jackie McLain (30 years). For a bit of fun, we played Name That Movie, a game created and hosted by our IT Director Brian Suckman (pictured with the winning team).

