

ON THE DOCKET

Volume 2, Issue 3

Kristen E. Batty, Editor



The Inner Workings of the Court: News and Advice

By: *Susan M. Thurston, Clerk of Court*

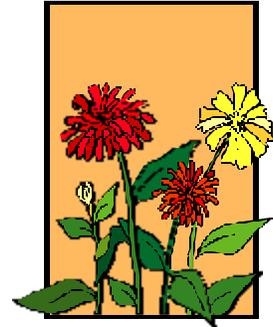
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I hope everyone had a relaxing summer and like me, happily put the kids back on the school bus! As mentioned in our last edition, this July we installed our new digital sound recording system and are thrilled with its results. You should notice a remarkable improvement in the sound quality and projection in the courtroom. Please

refer to the related article covering this topic on page 4.

Also as promised, we commenced a new electronic noticing program through the Bankruptcy Noticing Center this summer, which program allows interested parties to receive copies of court notices and orders by either e-mail or fax de-



livery, days faster than the U.S. Mail. Information about this new program is available in the clerk's office, on our website: www.rib.gov.

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Team Coach

By: *Cindy Cory, Courtroom Deputy*

As an aid to those who practice in the Bankruptcy Court, the Clerk's office has prepared a Checklist of Common Filing Mistakes. Should you file a document incorrectly, you will receive a copy

of this checklist highlighting the problem area. This form can be used as a quick reference and a training tool to assist filers in meeting the procedural requirements of the Court. Copies are also avail-

able in the public area and on our website.

Sample Checklist:

1. When filing supplemental forms and schedules to complete the petition, please ensure that the *case name and case*

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News from Chambers: (in its entirety)

By Leah G. Waterman, Judicial Assistant

Editor's Note: In Volume 2, Issue 2, this article was mistakenly not printed in its entirety. The complete article is printed below.

Judge Arthur Votolato honored by Rhode Island Legal Services, Inc.

During the week of March 20, 2000, **Rhode Island Legal Services, Inc.**, a non-profit organization which provides civil legal assistance to Rhode Island residents who are elderly or who have low incomes, sponsored a series of community events culminating with a reception and dinner on Friday the 24th at the Providence Marriott.

At the dinner **RILS** honored U.S. Bankruptcy Judge Arthur N. Votolato with *The Equal Justice Award*, for his contribution to provide equal access to jus-

tice to people of all races, ethnic groups and economic backgrounds in the State of Rhode Island.

Mayor Vincent A. Cianci, Jr., Mayor of the **City of Providence**, also presented Judge Votolato with a *Citizen Citation* recognizing Judge Votolato's unparalleled record of success as the U.S. Bankruptcy Judge for the District of Rhode Island, highlighting his many years of dedication to public service, contributions to many legal service organizations, and joining with Rhode Island Legal Services in honoring and celebrating a lifetime of exceptional achievement. Mayor Cianci then presented Judge Votolato with a *key to the City of Providence*. (Not to mention a large basket of the *Mayor's Own Marinara Sauce!*)

Rhode Island Supreme Court Chief Justice Joseph R. Weisber-

ger was also honored at the award dinner.

The main speaker at The Equal Justice Award Dinner was Judge Joe Brown, who many of you will recognize from his syndicated courtroom television show by the same name **B A Judge Joe Brown.**

Although unable to attend the Award dinner, Charles J. Fogarty, Lieutenant Governor of the **State of Rhode Island**, sent his best wishes in a letter to Judge Votolato together with a *Citation* from the State congratu-

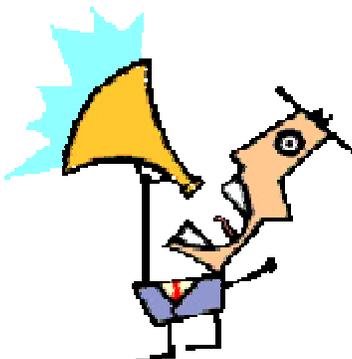
Congratulations! to Judge Votolato from the staff at the Rhode Island Bankruptcy Court.

Office Closings

The Clerk's Office will be closed on the following days:

September 4, 2000 in observance of Labor Day
and

October 9, 2000 in observance of Columbus Day



NCBC Annual Conference

By: Linda Spaight, Case Administrator and Michelle Torres, Management Analyst

San Diego, California, was the setting for the 2000 National Conference of Bankruptcy Clerks (“NCBC”) which took place from July 19 to July 22 and was attended by over three hundred people (the largest ever!) from Bankruptcy Courts nationwide, from as far away as Guam and the Northern Mariana Islands. This year’s attendees from the Rhode Island Bankruptcy Court included: **Michelle T., Susan T., Carolyn, Jennifer, Jody, Linda, Kristen, and April.**

The conference, hosted by the San Diego Bankruptcy Court, focused on Case Management / Electronic Case Filing (“CM/ECF”). Prior to the com-



mencement of the conference, the Rhode Island delegation visited the San Diego Bankruptcy Court for a special demonstration of the CM/ECF system (the successor program to our current case management system, Bancap) which we expect to implement in our court within the next 18-24 months.

During the next two days we attended a variety of workshops including interactive dem-

onstrations focusing on CM/ECF, Ergonomics, Ethics, Electronic Storage, as well as professional and personal growth workshops. NCBC members had the opportunity to meet and network with other clerks to discuss items of mutual interest and current bankruptcy issues.

We’d like to conclude by borrowing Dr. Martin E.P. Seligman’s definition of optimism as quoted by our keynote speaker, Mark Towers: “Make friends with the past, focus on the present and get excited about the future”. We think that gathering at the annual conference of the NCBC motivates all bankruptcy clerks to embrace this ideal which, in turn, is reflected in the

WOULD YOU LIKE TO BECOME A MEMBER OF THE NCBC ???

The **N**ational **C**onference of **B**ankruptcy **C**lerks is an independent organization founded in 1980 to serve the professional needs of the then newly created position of Clerk of Court for the United States Bankruptcy Courts. Its membership was later expanded to include deputy clerks with associate memberships available to judges, other federal, state and local government employees, and the private sector. The NCBC membership is open to all. Membership in the NCBC allows you to access to the NCBC web site, receive the quarterly newsletter, *Impact*, and extends an invitation to attend the *Annual Conference* where you can network with other bankruptcy professionals. NCBC strives to bring together bankruptcy courts throughout the country to discuss issues of concern and court procedures, and to share information. The *Associate Membership Fee* is \$30.00 per year. If you’re interested in receiving a membership application, please contact Kristen Batty, Administrative Specialist, US Bankruptcy

New Digital Recording System

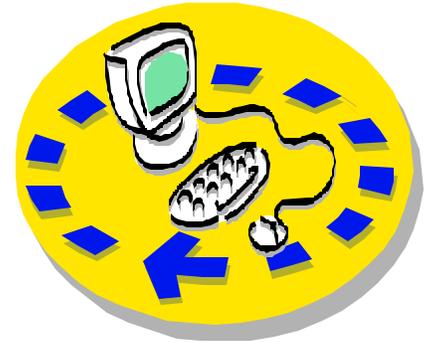
By: Martha Saucier, ECRO/ Intake Clerk and Jody Venuti, Intake Clerk

After an exciting, yet stressful, week of installation and training, on August 2, 2000 we went “live” on the court’s new **Digital Court Recording System, ACourtFlow®**, in the courtroom and conference room. This new system allows for expeditious play backs; improved sound quality; and in the future will provide the public with access to court recordings via our website (with thanks to our Systems Department for their continued program work!). These new features will enhance all aspects of our court proceedings. Playbacks are now a breeze whether pulling up a question just recorded or, if the judge needs to hear a proceeding from a previous date . With just a few clicks, the entire courtroom will hear the previously recorded proceeding. **ACourtFlow®** allows for nearly instantaneous search and retrieval of any recorded proceeding. Sound quality is improved dramatically because of the nature of digital recording as

opposed to analog. A good analogy is a CD compared to a cassette tape. **ACourtFlow-s®** ability to transfer audio files virtually anywhere should help to decrease the return time on transcript requests.

As always however, it is very important to remember to state your appearance for the record before you speak in Court. This helps to provide an accurate record of all proceedings.

In addition to the above exciting features, **ACourtFlow®** allows us to capture data and make it available to multiple users. This feature will eventually allow attorneys and others to access use our website to hear the actual court proceedings from your desktop. This feature will enable attorneys to listen to the audio of the actual hearing in order to assist them in preparing appropriate orders.



The United States Bankruptcy Court for the District of Rhode Island is the first federal court currently using this particular system (several other bankruptcy courts use a different digital system). We expect other courts will follow suit, as we have received numerous phone inquiries from other courts interested in this new technology.

We also hope to realize cost savings by replacing dozens of pages of annotations, hearing folders and hundreds of cassette tapes with digital recordings. This technology alleviates the need to store these records at the

New General Order No. 00-003

On 8/14/2000, the United States Bankruptcy Court for the District of Rhode Island issued *Bankruptcy General Order No. 00-003*, entitled “**Amendments to Mailing Matrix**”. This order requires a Motion to Amend the Matrix be filed

whenever the debtor files its initial schedules containing creditors that were *not listed on the original matrix*. A copy of this order can be obtained in the Bankruptcy Clerk’s Office or on our website: www.rib.uscourts.gov under *News and An-*

In the Beginning... A Historical Perspective of the Rhode Island Bankruptcy Court.

By: Cindy Cory, Courtroom Deputy (with historical background provided by Judge Votolato)

The year was 1968. Bankruptcy Referee George Sheehan, who had been a part-time referee for 47 years while maintaining a private law practice, had died after a long illness, and his position remained vacant for several years. Marie and Florence Sheridan, sisters, comprised the entire Clerk's Office of the Rhode Island Bankruptcy Court, and in the absence of a regular sitting Referee, they essentially operated the Court and accumulated and scheduled cases for hearing approximately once a month, when they were heard by visiting judges from Massachusetts and Maine. Eventually, U. S. District Court Judge Edward Day selected Arthur Votolato, Jr. as Referee Sheehan's successor. Judge Day told the 38 year old soon-to-be-Referee that the swearing-in ceremony would be small and private, on Thursday morning, June 25, 1968. When Mr. Votolato thanked Judge Day and commented that he would be bringing his two daughters, ages 7 and 8, to the ceremony, Judge Day replied, "Arthur, I thought we said it would be private."

Thus, the Votolato children did not miss a day of school to witness their father being installed as the new Bankruptcy Referee, and the swearing in went off as promised small and private. Nevertheless, this austere beginning was the start of a long and cordial relationship between Judge Day and Referee Votolato.

Immediately after the ceremony, Referee Votolato hurried to Court, which was held at that time in a conference room at former Referee Sheehan's law office at 49 Westminster Street (now the site of the former Hospital Trust Tower). The room was packed as the new and overwhelmed Referee heard his first cases, which seemed to him as if he was hearing the Court's entire pending caseload, which in those days was 501 cases!

Under the old bankruptcy act, the Bankruptcy Referee presided over the First Meetings of Creditors, with the case trustee present to examine the

debtor. In the early 70's, First Meetings of Creditors were completely different from those held today, and for a time, Referee Votolato actually held meetings in the evenings, thinking he was helping debtors by not requiring them to take time out of work. Night court, as it turned out, was very unpopular and quickly was discontinued, mainly upon the complaints of the debtors Votolato was trying to help. The exemption laws were not as generous back then and it was not unusual to see debtors buy back the family dog for \$50, and while a black and white television was an exempt household article, a color television was a luxury which was not exempt. Wrist watches and rings were routinely taken on the spot by the trustee as property of the estate, and it became rare to see debtors wearing any type of jewelry to these meet-



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ings. There were also rumors that, as news of the practice of Trustees spread, debtors would leave their good watches at home and bring inoperative watches to the first meetings for surrender to the Trustee. Creditors were busy in business cases, much as they are today, and the automatic stay was also a factor in most cases.

Nationwide at this time, there was criticism that there were too few trustees, and that the system essentially was a closed shop, dominated by so-called **A**bankruptcy rings.[@] In Rhode Island, Referee Votolato expanded the panel of trustees to include some new faces **B** John Boyajian, Louis Geremia, David Schechter, Joseph Little, Thomas Quinn, Sally Dowling, and others.

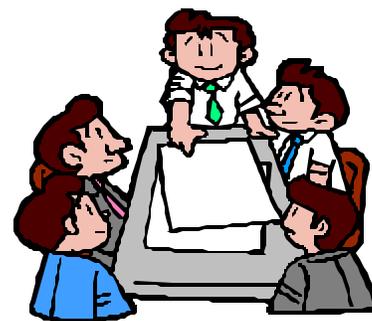
Before the Dischargeability Act of the mid-70's, consumer debtors often suffered twice at the hands of their creditors. After harrasing them into bankruptcy, small loan companies would sue debtors in State Court on pre-petition debts *after discharge*, and unless the debtor went to State Court to plead the

discharge as a defense to the action, the creditor would receive an enforceable default judgment against the debtor on the bankruptcy *discharged debt*. The Dischargeability Act put a stop to this injustice. When the amendment was being debated in Congress, part of the reason for its passage came from the allegation that debtors were often not actually served with the State Court summons, a practice known as **A**sewer service,[@] and they would end up having to pay the debt, notwithstanding the bankruptcy.

In 1973, Referee Votolato received the title of Bankruptcy Judge. The Bankruptcy Reform Act of 1978 brought such major changes to the system, that in 1982, in the *Marathon Pipeline* case, the Supreme Court ruled the entire Bankruptcy Court System unconstitutional. The Supreme Court suspended the effect of the decision to give Congress an opportunity to enact new legislation that would be constitutional. When Congress did not act, the Administrative Office of the U.S. Courts adopted the **A**Emergency Rule[@] whereby all bankruptcy cases would now fall under the jurisdiction of the U.S. District Courts, and would then be automatically referred to the Bankruptcy Courts. This is very similar

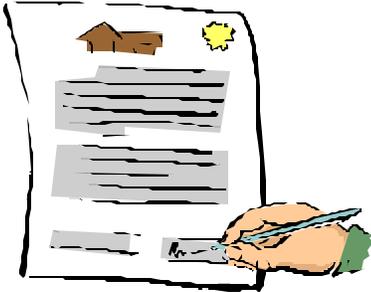
to the system in place today, and which some legal scholars argue remains unconstitutional.

The United States Trustee program began as an experiment in selected districts when the Code became effective in 1979, and the District of Rhode Island was one of the **A**pilot districts.[@] The United States Trustee function began as supervisory, and many of the administrative duties previously handled by Bankruptcy Judges were delegated to the U.S. Trustee. For example, Bankruptcy Judges no longer appoint trustees or conduct first meetings, which changes were intended to take away any potential conflicts in the administration of cases. The U.S. Trustee became responsible for appointing and overseeing the Chapter 7 and 13 panel of trustees. John Boyajian, Louis Geremia, and Thomas Quinn were re-appointed by the U.S. Trustee.



. . . the core of trustees has been fairly consistent during the last 20 years

(Team Coach continued. from page 1)



Certificate of Service to all other interested parties.

number appear on all such documents. Recently we have received several Form V documents and various schedules without any identifying case numbers or case names. Without this descriptive information, the clerk's office cannot process the document, which may result in your missing a filing deadline;

2. A related problem is the failure of filers to include the case name and case number on the *signature page* of all documents.

This identifying information ensures that if the signature page becomes separated from the rest of the document (which can happen during imaging), it can still be located and re-attached, and also prevents the page from being used for a purpose other than that for which it was intended;

3. When filing a Notice of Appearance in a case, we *strongly encourage* attorneys to include a certificate of service notifying all other interested parties of their appearance in the case. Otherwise, you will likely receive only copies of notices and orders from the court and not documents or activity filed by other parties in the case. By serving other interested parties, you alert them of your involve-

ment in the case and of your interest in receiving copies of documents such as motions, objections, responses, etc.;

4. Reaffirmation agreements must be executed and filed using Local Form U, which is available on our website and also in our Local Rules book. We continue to receive reaffirmation agreements on old forms which are not in compliance with Local Rule 4008-1. These documents are returned to the filer as defective, which delays the filing of these agreements for all interested parties and the effectiveness of the reaffirmation agreement; and finally,

5. Please remember to visit our web site at www.rib.uscourts.gov for helpful information such as

Court opinions, calendaring information, court forms and local rules, access to case informa-

A RECOMMENDED PRACTICE IS TO INCLUDE THE CASE NAME AND CASE NUMBER ON THE TOP OF EVERY PAGE OF THE DOCUMENT.



On August 18, 2000 the Clerk's Office celebrated Judge Votolato's 70th birthday.

Happy Birthday Judge!



Recent Court Decisions

By: Jonathan Calianos, Esq., Career Law Clerk to Honorable Arthur N. Votolato

Here is a short digest of some noteworthy opinions from the Court. As always, the full text of Court opinions are available on our web site www.rib.uscourts.gov and in the public area when first released.

Separate Classification of Student Loan Debt in Chapter 13 Plan Denied:

In re Bentley, 250 B.R. 475 (Bankr. D.R.I. 2000). The Debtors= Chapter 13 plan proposed three classes of creditors: (1) priority tax debt; (2) nondischargeable student loan debt; and (3) unsecured tax claims. The plan contemplated that all creditors be paid in full except the unsecured tax claims, which would receive a 5 % dividend. The Chapter 13 Trustee objected to

confirmation arguing that the Debtors= plan unfairly discriminated against unsecured creditors. The Court agreed, finding that nondischargeability of student loans is insufficient to justify a separate classification and different treatment from other unsecured creditors. Accordingly the Court denied confirmation of the Debtors= Chapter 13 plan.

Property Held as Tenants by the Entirety is not Excluded from the Estate

In a recent letter to a Chapter 7 Trustee and Debtor= counsel, the Court clarified its statements made on the record in court concerning property owned as tenants by the entirety. The Debtor contended that property owned as tenants by the entirety

never becomes property of the estate because it is excluded under state law and does not need to be claimed as exempt on Schedule C. The Chapter 7 Trustee strenuously objected, arguing that Section 541 broadly defines property of the estate and clearly reaches property owned as tenancy by the entirety. He further argued that Section 522(b)(2)(B) specifically treats entirety property as an exemption and not an exclusion. The Court agreed with the Trustee and advised counsel to properly schedule property owned as tenancy by the



Intake Input

By: Jody Venuti, Intake Clerk

Tips for Efficient and Accurate Filing:

1. When filing a petition at the front counter, REMEMBER to include the attorney bar ID number on the petition. See LBR 1005-1(c). This information helps the intake staff to quickly locate the

attorney in the court's database.

2. If a matrix is more than one page long, it is HIGHLY recommended that it be filed on diskette. This is very easy to do and instructions are available in the Clerks Office or on the website, www.rib.uscourts.gov under *News & An-*

nouncements (2/3/00).

In the near future, filing the creditor list on disk will be mandatory. So get started now!

The intake team constantly strives to serve the public in an efficient and professional man-

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uscourts.gov, or may be obtained directly from the Electronic Bankruptcy Noticing web page at www.ENBuscourts.com. We strongly encourage practitioners to participate in this exciting program as we believe it offers many benefits to you and the court.

Another new advancement in the court is the creation of a Bankruptcy Court Attorney Advisory Committee. The Committee is comprised of a cross section of twelve distinguished bankruptcy attorneys, collectively representing all types of parties in bankruptcy including debtors, creditors, and trustees across all chapters. The objective of the committee is to provide advice and assistance to the court with strategic planning, automation initiatives and legal education needs. Information about the membership of the committee and

minutes of the first meeting held on May 25, 2000 are available on our website under Access to Information. Please feel free to contact any of the member attorneys or myself, if you have suggestions or comments to assist the Committee in its work.

This summer, the Bankruptcy Court issued a republication of its local rules and official local forms, which new edition includes the April 1999 and March 2000 amendments. Forms for obtaining bound copies of the rules and official local forms from the publisher are available in the Clerk's office. In addition, loose-leaf copies of the revised rules and forms are also available in the Clerk's office at no charge.

Finally, I would like to announce that two administrative orders were recently issued affecting bankruptcy practice.

General Order Number 2000-01 was issued by the United States District Court on August 8, 2000 which specially designates each judge of the Bankruptcy Court for the District of Rhode Island to conduct jury trials in proceedings in the Bankruptcy Court where the right to a jury trial applies and where all parties have consented. A copy of this order is available in the Clerk's office as well as in the News and Announcement section of our web page. On August 14, 2000, the Bankruptcy Court issued Bankruptcy General Order 00-003 entitled Amendments to Mailing Matrix. A description of this order and



Two administrative orders issued affecting bankruptcy practice.

Reminder: Please DO NOT staple original pleadings.

OFFICE OF THE CLERK
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DISTRICT OF RHODE ISLAND

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Clerk of Court

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August 28, 2000

RE: Electronic Bankruptcy Noticing Now Available

Dear Bankruptcy Noticing Recipient:

I am pleased to announce that The United States Bankruptcy Court for the District of Rhode Island, is now offering a new way for you to receive bankruptcy notices from the court. You may now choose to receive overnight bankruptcy notices via Internet e-mail or transmitted as a fax to your office. Electronic noticing will provide notices days faster than the U.S. Mail.

Should you elect the Internet e-mail alternative, your e-mail provider must provide a return receipt to confirm that the notice was properly delivered to your e-mail account. The notice will be attached to the message as a file in Adobe's Portable Document Format (PDF). A free PDF reader plug-in is available from Adobe's web site.

Please visit the Electronic Bankruptcy Noticing web page at www.EBNuscourts.com for detailed information about this new free electronic noticing service including a list of known return receipt e-mail providers, the *Electronic Noticing Implementation Guide* and *Electronic Bankruptcy Noticing Questions and Answers*. An *Electronic Bankruptcy Noticing Agreement* must be signed and returned to the BNC to initiate this service. This form is available on the web site and should be submitted directly to the BNC.

Your participation in the free electronic bankruptcy noticing program is encouraged, since we believe it will offer many benefits to you and the court. If you choose not to participate, you will continue to receive printed bankruptcy notices in the mail, just as you do now.

For complete electronic noticing information, visit the electronic noticing web page at www.EBNuscourts.com or call the Bankruptcy Noticing Center toll-free at 1-877-837-3424 for free technical support or to obtain a copy of an *Electronic Bankruptcy Noticing Agreement*.

Sincerely,