United States Bankruptcy Court
District of Rhode Island

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ON THE DOCKET

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Bankruptcy Judge Arthur N. Votolato reappointed for 14 Year Term

On May 6, 1999, the First Circuit Court of Appeals entered an Order reappointing Bankruptcy Judge Arthur N. Votolato to another 14 year term on the bench. This year marks Judge Votolato s 31st anniversary as the sole bankruptcy judge in Rhode Island. Judge Votolato began his judicial tenure in 1968, as a referee in bankruptcy under the then Bankruptcy Act of 1898. Since 1968, he has presided over all of the bankruptcy cases filed in Rhode Island, and has also been assigned to sit, by designation, in the Districts of Texas, California, Colorado, Puerto Rico, Maine, and Massachusetts. In addition, Judge Votolato serves as the Chief Judge of the First Circuit Bankruptcy Appellate Panel, overseeing bankruptcy appeals filed in Massachusetts, Maine, New Hampshire, Puerto Rico and Rhode Island.

Judge Votolato has written many articles and has authored more than 600 opinions, with over 60 published prior to 1975. He is a member of the National Conference of Bankruptcy Judges Board of Governors, the American Bankruptcy Institute, and serves on various committees.

Judge Votolato at his 30th anniversary surprise celebration.

The Inner Workings of the Court: News and Advise

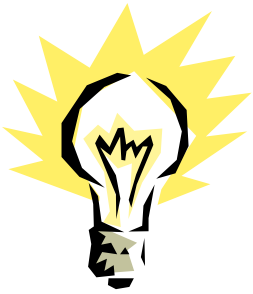
By: Susan M. Thurston, Clerk of Court

We are pleased to bring this second issue of On the Docket to the practitioners and users of the Rhode Island Bankruptcy Court. We have added several feature columns that will appear in subsequent publications including, **A View from the Bench** tips and advise from Judge Votolato on practice in his court; **Team Coach** practical advise and suggestions from the case management team on case processing procedures; **Intake Input** information and ideas for the efficient filing of papers with the court; and **Court Decisions** a synopsis of recent R.I. Bankruptcy and 1st Cir. BAP decisions.

We look forward to working with the bankruptcy bar and appreciate your suggestions for improving this publica-

Team Coach: Top Ten Helpful Hints to Practicing in R.I. Bankruptcy Court

By: Lucinda Cory, Courtroom Deputy



Send us your questions or issues for clarification!

The Deputy Clerks of the Rhode Island Bankruptcy Court would like to dedicate this, their first column, to helpful hints for the bar, paralegals, and secretaries, in an effort to make your professional lives easier and more productive. A pattern of common problems and questions arise in bankruptcy, and by addressing them, we hope to make your understanding of this court s procedures clearer.

1. **Be sure to file an original and two copies of all pleadings**. Be sure to leave the original of any pleading in a case from l998 to the present UNSTAPLED. This original pleading is the one to be imaged. All copies should be stapled. (Remember all cases from 1998 to the present are available on our website.

2. **LBR 1005-1(d) language must appear on all motions.** This language informs other of when a response is required and the consequences of failing to timely respond.

3. **Objections *need* memoranda of law**. The Judge *needs* to know the basis for any objection. A one-line objection doesn t tell the court anything.

4. **Exhibit dividers that protrude from the side of the page should not be used in pleadings**, unless on a Joint Pretrial Order, as they have to be removed for imaging.

5. A separate order filed with a **Motion for Relief from Stay**, which can be entered if no objections are received, speeds the case along by saving time of re-imaging the entire motion after it is endorsed. *Remember not to attach supporting documents to the motion for relief from stay; save exhibits for the Joint Pretrial Order!*

6. **Applications to employ special counsel/ brokers/appraisers** must have the affidavit of the person to be employed **with** a company name, a full address and telephone number.

7. **Motions requesting separate reliefs should be filed as separate documents**. As the Court frequently en-

(Continued on page 7)

A View from the Bench

By: Leah Waterman, Judicial Assistant

Periodically, Judge Votolato will use this column to discuss matters of general interest and to answer questions of practitioners and paralegals who come before the Bankruptcy Court.

What does the bench think?

Following are a few practical tips on preparing a matter for motion or trial:

$ Rhode Island Bankruptcy Rules: First and foremost, familiarize yourself with the Local Bankruptcy Rules (effective November 1, 1997, and amended April 1, 1999), which govern the practice and procedure before this Court. Proper use of these rules can be very helpful and time saving.

$ Pre-trial Documents: Be especially thorough and accurate in the preparation of the initial pleadings: i.e., the petition and schedules in a bankruptcy case; the complaint in an adversary proceeding. Think of this as a job interview where you're trying to create the best possible first impression. With accurate information up front, you establish credibility, but which can easily be lost through repeated amendments and/ or corrections.

$Noticing Requirements: Be sure that all parties who have an interest in the case receive notice of the filing of pleadings. Refer to Fed. R. Bankr. P. 2002 and R.I. LBR 2002-1 if you have any question as to who constitutes an interested party. The failure to serve an interested party will probably result in a wasted hearing, the need to come back on another day, and additional unnecessary expense.

$ Requests for Continuance: For the Court to maintain control of the calendar, matters set for

(Continued on page 7)

We Hear You!! Responding to the 1998 Customer Service Survey.

By: Ann M. McGloshen, Chief Deputy Clerk

We'd like to begin this column by saying "thank you" to everyone who took the time to return a completed survey to the Clerk's Office. This column will address the various concerns raised by respondants to the survey:

Request: It is difficult to get through to a live person with the automated voice mail system.

Bk. Response: Since the compilation of the survey results, changes have been made to the voice mail system to make it more user friendly. Over the past few months, the following improvements have been made:

- Callers are informed at the outset that they may press "0" or an extension number AT ANY TIME during the recording to reach a "live" person;
- A message in Spanish and in Portugese directs callers to specific extension numbers for assistance.
- Additionally, we are investigating the purchase of a new phone system to allow for greater roll over of lines for handling the reception calls.
- Another suggested method of reaching court staff is to e-mail them from our website at **www.rib.uscourts.gov.** Under the telephone directory section of the website, click on the person's name and the e-mail screen will appear. Type out the message and it will be sent to the designated person over the internet.

Request: Include a link to the First Circuit and BAP Opinions on the website.

BK Response: The First Circuit Court of Appeals does not presently have a web page available to the public. When it does, we will include a link to it from our site. We are in the process of trying to include BAP opinions on our website. We hope to have these available in the next few months.

Request: Can the court validate parking for the time a practitioner spends in the clerk's office transacting business, i.e., filing pleadings and other court documents.

BK Response: No. The bankruptcy court does not own any of the parking lots adjacent to The Federal Center. Moreover, Congress has not authorized the court to use appropriated funds to pay for visitor parking. Often however, there are metered spaces available on Empire Street.

Request: That the Panel Trustees be given a "Trustee Pass" with a photo identification to avoid having to go through a second screening upon arriving on the sixth floor.

BK Response: Court issued photo ID cards are provided to employees of the federal government who maintain either permanent or temporary status. The card is available only to federal employees for security purposes and to easily identify government employees. The Admin. Office of US Courts makes no provision for the issuance of such cards to non-government employees, such as trustees.

Request: Why is the public required to pass through two security checks to visit the Bankruptcy Court?

BK Response: The Federal Center is a multi-tenant federal building, occupied by executive and judicial branch employees. Entry into the building at ground level is secured by the Federal Protective Service for the protection of the executive branch agencies. Security for the Bankruptcy Court is a responsibility of the U.S. Marshall's Service, which is a higher level of security. Therefore, when you visit the Bankruptcy Court, you must also pass through the Marshall's security devises on the 6th floor, which have stricter requirements. The Bankruptcy Court has no authority to waive or limit the Marshall Service's security mandates.

We encourage you to "Let Us Know How We Are Doing" by logging onto our web-site. Click on the "Send us Feedback!" icon. If you do not have Internet access, please use the "Suggestion Box" located in the clerk's office public area for your ideas, suggestions, and comments. To better serve you in the future, please be specific in requesting information or making suggestions. Your accurate description of the type of information you're looking for allows us to respond promptly and efficiently. We are here to serve our customers and

Customer Service is a Top Priority at the Bankruptcy Court

Since the compilation of the survey results, changes have been made to the voice mail system to make it more user friendly.

Callers can press O at any time to reach a live person at the Court

Intake Input

By: Susan Flynn, Intake Clerk

Have you visited the Clerk s office lately? The counter has been extended into the public area to provide more room for handling documents, opening briefcases, etc. We are taking steps to ensure that your visit to the court is as pleasant as possible. We are always happy to hear your suggestions for improvement.

When filing documents with the court, please remember:

1. Original documents should NOT be stapled (only the copies). This is for imaging purposes.

2. A choice box for exemption type (federal or state) *must* be checked on Schedule C.

3. We DO accept VISA and Master Card from an attorney as payment for any filing that requires a fee (i.e. petition filing fee, motion fee, archive retrieval, copies, certifications, etc.)

4. Signing documents with blue ink as opposed to black makes it easier for the intake staff to determine which is the original pleading.

5. Please do not attach the Chapter 13 Plan to the Petition. It is a separate document.

6. All Petition Forms and other documents can be found on our web site at www.rib.uscourts.gov . Please take a few minutes to browse the site for available forms. If there are additional forms you would like added, please let us know.

Hear what the intake section has to say

Rave Reviews for Bankruptcy Services

Since the introduction of the Court s website, **www.rib.uscourts.gov,** we have received many positive comments:

Without a doubt, this is the best court (USDC, bankruptcy, or state court) site we ve seen. KUDOS! Ernest Edsel, Esq.

Your site is terrific! Good job! Hopefully, other courts will develop something like this one. Laura DeMario, Secured Legal.

Thank you for the kind remarks we appreciate hearing from you! We believe our website is a success thanks to our two great systems staff: **Craig Balme**, Systems Manager and lead programmer, and **Stephen Cloutier**, website designer and administrator.

Also, congratulations to Sue F. in our intake staff, for a job well done! Dear Sue F., Thank you so much for your prompt and courteous attention. It is not often when you call a place to get information, and actually get it, let alone, come away from the conversation smiling. You went above and beyond to help me out. .. Ray Conover, Loan Officer, Statewide Insurance Corp.

www.rib.uscourts.gov

June 1 will mark the one year anniversary of our website. As of May 26, 1999, we have had over 13, 475 HITS!!

Bankruptcy Staff Now Wearing Uniforms!

By: Carolyn Sweeney, Data Quality Analyst

Recently, the U.S. Bankruptcy Court for the District of Rhode Island gave it s employees the option of wearing uniforms at work. The uniforms consist of khaki pants with either a maroon or white waffle knit polo shirt, with the court seal embossed on the left hand side. Employees appreciate the option of this casual line of dress at the office. According to Susan M. Thurston, Clerk of Court, the uniforms present a professional appearance and are comfortable working attire in performing court business.

Stop by and see how we look!

Registration Required for Case Lookup on Website

Many of you may have noticed that beginning on May 17, 1999, registration was required in order to use the case lookup section of the website. Please follow the registration instructions on the home page of the website. Once registered, a password is assigned to allow for access to the docket and image information. Registration provides for greater security over access to case information and will later be used when billing is implemented.

Recent Court Decisions

By Jonathan C. Calianos, Esq.

In this edition I would like to highlight some cases of interest decided by the First Circuit and the Bankruptcy Appellate Panel for the First Circuit since the first of the year.

Patriot Portfolio, LLC v. Weinstein (*In re Weinstein*), 164 F.3d 677 (1st Cir. 1999). The Chapter 7 Debtor was seeking to avoid a judicial lien recorded against his residence. The lien was recorded before the Debtor recorded a declaration of homestead pursuant to Massachusetts law. The Court found that 11 U.S.C. § 522 preempted Massachusetts Homestead Act s exceptions for pre-existing liens and prior contracted debts. Because the Debtor possessed the interest to which the [judicial] lien fixed, before it fixed, he was entitled to avoid the lien under Section 522(f).

The BAP recently decided two appeals from this Court, affirming Judge Votolato in both instances. *In Re Howe*, 1999 WL 247304 (1st Cir. BAP March 12, 1999). The Debtor filed a Chapter 7 petition claiming the exemptions provided by state law. The Debtor attempted to exempt three choses in action under R.I. Gen. Laws §9-26-4(10). The Debtor argued that because the choses in action were unliquidated and contingent they were exempt under the policy of the law. The BAP, while acknowledging that some jurisdictions do allow such exemptions, stated that there was nothing in Rhode Island case law to support the Debtor s claim of exemption.

In re Bandilli, 231 B.R. 836 (1st Cir. BAP 1999). Three and one-half months after confirmation of the Debtor s Chapter 13 plan, the debtors sought a hardship discharge under 11 U. S.C. § 1328(b) on account of severe medical illness which allegedly resulted in reduced income and an inability to fund the plan. The BAP stated that the debtor has the burden of establishing all three elements set forth in Section 1328(b) and affirmed the bankruptcy court s findings that the debtors failed to prove that plan modification would not be practical and that their inability to complete payments was due to circumstances for which they should not justly be held accountable.

Mrs. Banilli suffered from a chronic illness which manifested itself years prior to the bankruptcy and she was undergoing a temporary relapse. However the debtors did not establish any correlation between the illness and the alleged decrease in income.

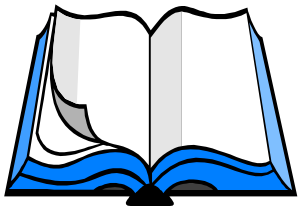
The BAP stated it was proper to consider the information provided at confirmation against the evidence being offered in support of the hardship discharge to determine if the circumstances alleged in support of the hardship discharge were known or were reasonably foreseeable at the time of confirmation.

The BAP has also decided a few other cases of interest.

In re Christo, 228 B.R. 48 (1st Cir. BAP 1999). The Debtor, who had three separate tort claims pending from three separate prepetition automobile accidents, claimed three exemptions of $15,000 each under 11 U.S.C. §522(d)(11)(D). The BAP, affirming the bankruptcy court, found that a debtor is entitled to exempt one payment on account of personal bodily injury and sustained the trustee s objection to exemptions.

Rhode Island Depositors Economic Protectionn Corp. v. Hayes (*In re Hayes*), 229 B.R. 253. The BAP reversed a bankruptcy judge s finding that the debtors discharge was not barred by 11 U.S.C. § 727(a)(2)(A). Several years before filing for bankruptcy, the Debtors transferred legal title in real estate to a trust for no

(Continued on page 6)



1999 Bankruptcy Decisions from the First Circuit Court of Appeals & Bankruptcy Appellate Panel

The BAP recently decided two appeals from this Court, affirming Judge Votolato in both instances.

(Court Decisions Continued from page 5)

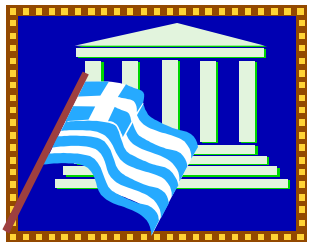
consideration, and continued to live in the property, pay the taxes, insurance, and mortgage on the property and otherwise continue to exercise control over the property. The bankruptcy court dismissed DEPCO s claim under Section 727(a)(2)(A) because DEPCO did not prove that the debtors concealed from creditors the transfer of their interest in the property in the year prior to bankruptcy.

The BAP reversed, finding that the Debtors concealed their true interest in the property in the year prior to bankruptcy by filing a false affidavit in state court regarding the property, and by failing to list their retained interest in their sworn bankruptcy schedules.

In re Independent Engineering Co., Inc., 1999 WL 247302 (1st Cir. BAP February 26, 1999). The attorney for a Chapter 11 corporate debtor filed an application to be employed with an accompanying 2016(b) statement indicating that he received a $10,000 retainer from the corporation s president. The application failed to disclose any other details regarding the terms of employment or payment of fees.

The attorney subsequently filed an amended application to be employed and attached and incorporated his fee agreement with the Debtor which provided that he would be paid a $10,000 security deposit retainer. Paragraph 6 of the fee agreement provided for billings against the retainer with the retainer to be replenished by the debtor.

The bankruptcy court approved the amended application stating that notwithstanding paragraph



6 of the attached agreement, all compensation shall be subject to approval by the court upon appropriate application. Approximately one month later the at-

AutoCOP Update

By Gail Kelleher, Bancap Database Administrator

Due to some unresolved configuration problems and the need for additional modifications, regrettably AutoCOP (Automated Case Opening Program) is not yet ready to make it s debut at the Bankruptcy Court. Originally developed in Iowa, AutoCOP was released nationally in May 1999, and is available for installation nationwide. Our systems staff continues to work on this project, and looks forward to going live in RI! in the near future.

Upcoming Office Closings

The Clerk s Office will be closed on the following dates:

May 31, 1999 in observance of Memorial Day.

July 5, 1999 in observance of Independence Day.

August 9, 1999 in observance of Victory Day.

Please use the outside deposit box for any filings when the Clerk s Office is closed.

We re CLOSED

(View from the Bench Continued from page 2)

hearing or trial cannot be continued by agreement or by stipulation B these requests must be presented in writing, for cause shown, and served upon opposing counsel. Refer to R.I. LBR 5071-1. Regardless of how pleasant and helpful they appear to be, employees of the clerk=s office, including the calendar clerk, are not authorized to grant continuances.

$ Not All Matters are Set for Hearing: The Court decides many matters on the pleadings B so put your best foot forward at the outset. By making your best argument first, you gain the initiative and your opponent then has to catch up. Don=t save the best for last.

$ Announcement of Representation: When addressing the Court, counsel or pro se litigants shall, for the record, announce their names and the name of the party they represent.

$ Reminder of the Duty to Confer: Counsel involved in an evidentiary hearing shall confer in a good faith effort to resolve the dispute. Refer to R.I. LBR 9014-1(d). Forty-eight (48) hours prior to the hearing on confirmation, debtor=s attorney (or debtor, if pro se) and any objector to the Chapter 13 plan are required to confer with the Chapter 13 Trustee, regarding the feasibil-

Tools of the Trade

(Team Coach Continued from page 2)

dorses orders, combination pleadings, if one of the reliefs requested is disallowed, may not be endorsed. In that situation, the prevailing party will be expected to file two separate orders. For example, Motion for Relief from Stay and for Adequate Protection or Motion for Relief from Stay and to Compel. These relief requests have separate deadlines, service requirements and LBR 1005(d) language requirements. The filing of separate motions avoids the confusion of double docketing and ensures that an order will address the specific relief requested.

Debtors must sign amended schedules!

8. **Motions to Amend Schedules A, B, C, I and J :** Debtor(s) signature is required on these Amended Schedules. The debtor(s) signature may be on the amended schedules or on an accompanying declaration or affidavit. The exception is Schedule C, which may be signed by the attorney for the debtor or the debtor(s). Be sure to serve the panel trustee and the US Trustee. No fee required.

Please do not file a motion to amend Schedules D,E, and F combined with an amendment to any other schedule. Amending Schedules D,E and F requires a fee and a separate order, which advises the added creditors of specific deadlines. Amendments to all other schedules and statements require no fee and may be endorsed granted.

9. **Common motions requiring a fee:** Motion to Amend Schedules D,E or F to ADD Creditors. $20.00 *No fee if you want to amend the amount of a debt to a creditor already on the schedule or move a creditor from one schedule to another.* Motions for Relief from Stay $75.00; and Motions to Reopen a Chapter 7 case $130.00.

10. **Objections to Claims and Assignments of Claims** should specify the Claimant, Claim #, Claim amount and original holder of the claim (for assignments). Service should be made on the claimant, debtor s attorney, panel trustee and US Trustee.

We hope these suggestions are helpful. Our goal is to help the bar reduce the number of defective pleading notices they receive and to ensure the effective and accurate flow of documents within the court. In future columns, we will address more complicated matters, such as service requirements, appeals and the dreaded bifurcation of cases! If there are procedural areas you would like to see clarified or addressed in this column, please let us know by telephone , e-mail or in writing. We understand bankruptcy

Motions to Amend Schedules A, B, C, I and J: Debtor(s) signature is required on these amended schedules.

Case Manager Assignments and Telephone Extensions

U.S. BANKRUPTCY COURT, DISTRICT OF RHODE ISLAND, (401) 528-4477

Cases are assigned by chapter and by the terminal digit of the case docket number, i.e. Chapter 7 BK No. 99-10022 would be assigned to Jennifer; and Chapter 13 BK No. 99-10054 is assigned to Susan R. The 1st and 2nd item refers to the backup case manager.

	Ch.7	Ch.13	AP's	Ch.11
Michelle T. (ext. 49) (1st: Linda 2nd: Jenn)	**0** **4**	**0**	0	
Debby (ext. 22) (1st: Holly 2nd: Christine)	**1**	**1**	**1**	
Jennifer (ext. 10) (1st: Dana 2nd: Michelle T.)	**2** **(07-47)**	**2**	**2**	
Holly (ext. 35) (1st: Debby 2nd: Linda)	**3**	**3**	**3**	**Even #s**
Christine (ext. 12) (1st: Amy 2nd: Susan R.) (AP cases: Linda)	**5**	**5**	**5** **4**	
Dana (ext. 25) (1st: Jenn 2nd: Flo)	**6** **(57-97)**	**6**	**6**	
Linda (ext. 21) (1st: Susan 2nd: Holly)		**7**	**7**	**Odd #s**
Flo (ext. 13) (1st: Michelle T 2nd: Amy)	**8**	**8**	**8**	
Susan R. (ext. 23) (1st: Flo 2nd: Dana)	**9**	**9** **4**	**9**	

***Effective as of 4/12/99**