

Edited by: Kristen E.
Batty

The Inner Workings of the Court: News and Advice

By: Susan M. Thurston, Clerk of Court

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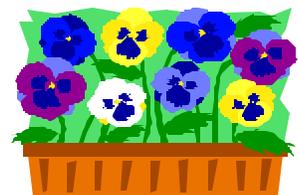
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Spring showers (awaiting May flowers) have not dampened the spirits at the U.S. Bankruptcy Court! We continue to work on a variety of projects for improving service to the Bar and other users of the bankruptcy court system. One such project is an electronic noticing program to provide service of the court's notices and orders to attorneys either by e-mail or fax. This will obviously speed up the delivery of these documents, which will afford counsel more time for preparing responses, etc. The program is currently being piloted in two bankruptcy courts and should be available in Rhode Island late this summer.

Another project currently in the

works is to bring digital sound recording to the courtroom. This will enable the court to conduct better playback during proceedings; will improve the quality of the record; will make the record more accessible to the court and ultimately, the public; and in time, should result in a speedier transcription. Related to this activity is a project to introduce wireless networking in the courtroom, which will eliminate unsightly computer wires and will allow us to eventually install computers at the counsel table, together with other types of courtroom technology to assist in conducting court proceedings in an electronic format.

Included in this Quarter's edition, [see Page 8](#), is a practical article on the cur-



rent reaffirmation process and the use of the new reaffirmation form, with some helpful hints to avoid a defective pleading notice. Also, there is an article discussing the most recent changes to the local rules and what to be aware of. If there are topics you would like to see addressed, please feel free to drop me a line, by phone, e-mail or letter, and we will see to it that your questions and concerns are



Receive notices by
e-mail or fax

News from Chambers

By: Leah G. Waterman, Judicial Assistant

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 justice* 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!*)

Office Closings and 1/2 staff

The Clerk's Office will be CLOSED:

Monday, May 29, in observance of Memorial Day.

Tuesday, July 4, in observance of Independence Day.



PLEASE USE THE OUTSIDE DEPOSIT BOX FOR ANY FILINGS.

NCBC ANNUAL CONFERENCE

This year's National Conference of Bankruptcy Clerks (NCBC) annual meeting is being held in San Diego, CA on July 18 – 21, 2000. Eight employees from this office will be attending. Among many topics to be discussed, one of the hottest will be the "electronic case filing". We'll be sure to share with you what we learn when



Notice to IRS and Points of Contact

By: Wayne Falk, IRS

The Internal Revenue Service has an electronic noticing system in place with the Rhode Island Bankruptcy Court. Via this system, the IRS office in Providence receives an electronic transmission of Notice of Bankruptcy and Meeting of Creditors, and discharge orders. Electronic notices are usually received within 48 hours of court issue, enabling the Service to establish controls before mailed notices would be received.

Electronic noticing is triggered by the match of name and address on file to the creditor matrix. To insure the match and generation of the electronic notice, please use the follow-

ing address on your matrix:

Internal Revenue Service

P. O. Box 6867

Providence, RI 02940

The Service should not be included on the creditor matrix if no tax debt is owed.

The Providence office is responsible for handling bank-



Use the above address on your matrix.

ruptcy matters regardless of the location of the IRS file, and upon receipt of notice takes all necessary actions to comply with Bankruptcy Code provisions. It should not be necessary to send notice to a location other than that above, but if done, the above address should also be included on the matrix.

Where collection actions are pending when the petition is filed, immediate contact may be initiated by telephone call to Elena Camardo at 401 525-4206 or Eugenia Gomes at 401 525-4272, at the Providence office. They are responsible for curing violation of the automatic stay or taking any

Team Coach

By: Lucinda Cory, Courtroom Deputy

Highlights of the newly adopted amendments to the local rules. If you do not have a copy of the Amendments, you may obtain them from the website or the Clerk's Office. Please read the Amendments in their totality to ensure you follow correct procedures.

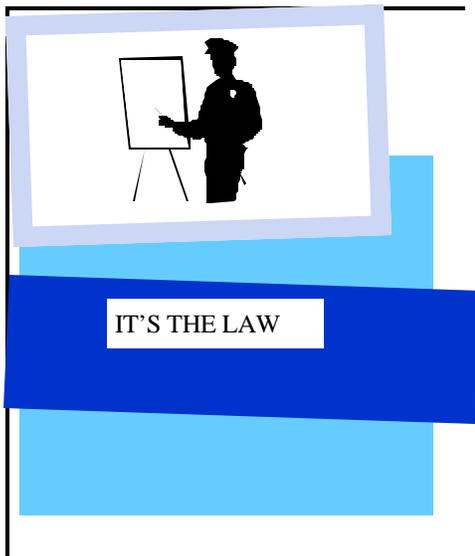
1. Rule 1005-1 Filing Papers- Requirements - Amended Rule

The amended rule requires that the **case name, number and chapter (i.e. the caption)** appear not only on the first page, but also **on the signature page**. The appearance of this

information on the signature page is critical to ensuring that papers aren't inadvertently misfiled or lost, especially after imaging. We urge all filers to make this amendment a priority. The required signature information on plead-

LOCAL RULE
AMENDMENTS

(Continued on page 4)



(Team Coach Continued from page 3)

ings should include: (1) the client's name; (2) original signature (s); (3) the law firm's name; (4) address; (5) telephone number; and (6) facsimile number.

LBR 1005-1 also requires that all pleadings be double-spaced, with the exception of quotations and footnotes. Moreover, subsection (d) requires that the applicable response language appear on all motions. This rule was discussed in depth in the Jan/Feb/Mar 2000 edition of *On the Docket @*, see Vol. 2, Iss. 1. Back copies of *On the Docket* are available on our website.

LBR 1005-1(e) requires that an intended filing related to a matter scheduled for hearing that day must be filed in open court and will not be accepted in the clerk's office. Subsection (f) requires that amended pleadings state in **bold print** what part of the pleading is being amended.

2. Rule 2083-1 Chapter 13

General - New Rule

Local Form V is required to be filed with every Chapter 13 petition or within 15 days thereafter. This form, which is to be executed between debtor's counsel and the Chapter 13 debtor(s), is intended to clarify the duties and responsibilities of the parties and should help avoid such problems as when the Chapter 13 Trustee does not timely receive the first plan payment. By having this form for reference, those involved in Chapter 13 cases will understand the system more completely.

3. Rule 3015-2 - Modification of Secured Claim - New Rule

Under this new rule, Chapter 13 debtors wishing to modify a secured claim, (often referred to as bifurcation, stripping or cram-down) must file a separate motion, which shall include: (1) the name and address of the claimant; (2) an identification of the security; and (3) a description of the modification. The motion is to be filed and served with a copy of the plan. The debtor can no longer seek to modify a secured debt simply by setting it out in the Chapter 13 Plan. As always, notice to the proper parties and inclusion of the LBR 1005-1(d) response-time language are required. This amendment ensures that creditors will receive actual notice and full disclosure when a secured debt is sought to be modified.

4. Rule 4008-1 Reaffirmations - Amended Rule

All reaffirmations must now be filed on Form B240 which has been adopted as **RI Bankr. Form U**. This form is more specific and detailed than the previous form and is intended to provide greater information to debtors and creditors about their rights and responsibilities, while giving the court sufficient information to intelligently review the documents.

5. Rule 5005-2 Corporate Disclosure Statement - New Rule

In order to ensure conflicts of interest do not exist between the court and the parties, corporate parties must now file a statement identifying all parent corporations and listing any publicly held company that owns 10% or more of the party's stock, and are required to update said statement when changes in ownership occur.

6. 5011-1 Withdrawal of Reference - Amended Rule

A withdrawal of reference is to be filed as a motion, indicating that relief is being sought from the US District Court. The motion shall contain the LBR 1005-1(d) response language; include a \$75.00 filing fee; and be filed

(Continued on page 5)

corum - Amended Rule

Subsections (e) and (f) are new. Subsection (e) addresses cellular telephones, laptop computers and beepers. Cellular telephones and noise emitting beepers are required to be turned off before entering the courtroom. Advance permission is required to use a laptop computer in the courtroom. Subsection (f) deals with appropriate dress in the courtroom.

8. Appendix IV Maximum Attorney Fee Without Written Application - Amended

Ch 7 - \$1,000

Chapter 13 - \$2,000

Document Preparer - \$100

The Chapter 13 fee was in-

creased from \$1500 to \$2000, and the document preparer fee was increased from \$75 to \$100. The amounts set forth are the maximum allowed fee without a fee application. They are not to be construed as minimum fees for specific services. Fees in excess of these amounts will be flagged and counsel will receive a notice to file a written fee application. Additionally, in appropriate cases, the Court may require applicants to file fee applications even where the amount charged is less than the amounts listed above. It is recommended that counsel and document preparers keep contemporaneous time records to support work performed in the event a fee application is ordered to be filed.

9. Local Form O - Joint Pretrial Order - Amended Form

**Local Rule Amendments
are on the Web!**
www.rib.uscourts.gov

(Team Coach Continued from page 4)

with a certificate of service and a completed US District Court cover sheet. Copies of all documents to be transmitted with the motion are to be provided by the moving party and/or respondent. Upon expiration of the objection deadline, the matter will be transmitted by the Bankruptcy

Clerk to the US District Court, and once transmitted, any additional related documents should thereafter be filed at the US District Court.

7. Rule 5072-1 Courtroom De-**Recent Court Decisions**

By: **Jonathan C. Calianos, Law Clerk**

Here is a short digest of recent opinions issued by the court. Please visit our web site at www.rib.uscourts.gov to obtain the full text of these opinions.

Auto Glass Wholesale, Inc. v. O'Brien (In re O'Brien), BK No. 98-12520, A.P. No. 98-1125 (Bankr. D.R.I. March 8, 2000). The Creditor filed a complaint to determine its debt nondischargeable under Section 523(a)(2)(A).

The Creditor also sought an award of treble damages and attorney's fees under Massachusetts General Laws, Chapter 93A and requested that such an award also

be determined nondischargeable. The Creditor alleged (and the Court found) that the Debtor forged his wife's name on a personal guaranty with the intent to induce the creditor to extend credit. The Creditor justifiably relied on the forged guarantee, believing it was genuine, and extended further credit to the Debtor. The Court awarded the Creditor double damages and at-

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From the Suggestion Box

By: Ann McGloshen, Chief Deputy Clerk

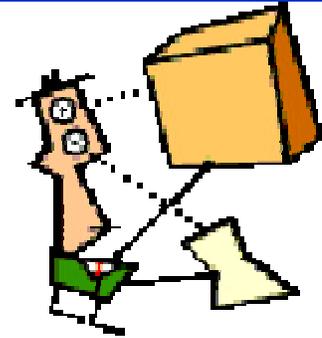
Suggestion: Anonymously, one of our customers has requested that another copy machine be placed in the public area indicating that it is free to us.

Response: We contacted the vendor, CSC, Inc., who is the provider of the paid copier in the public area and inquired, once again, about the possibility of securing a second copier. Our request was denied because the current copier is not meeting the \$300.00 monthly sales requirement. According to the company's records, sales are only averaging \$290.00 monthly.

Approximately four

years ago CSC, Inc., placed a second copier in the law library for a period of six weeks (4/23-6/07/96) in an effort to accommodate a similar request. The usage on this second copier was extremely low, which proved the need for a second copier did not exist.

.....
Suggestion: Modify the filing intake software so the counter knows exactly how many files are left in a block (I love most every change the bankruptcy court institutes but **not** the new system of filing cases.) so the bankruptcy attorneys can have all their hearings on the same day (preferably the same block). This will make the 341 meeting



less hectic because the same attorney can handle the whole half-hour block.

Response: The clerk's office strives to meet the needs of its customers to the best of its ability and makes changes that, hopefully, promote a user-friendly atmosphere. However, this particular request does not fall under the court's authority. The U.S. Trustee program is responsible for determining how trustee assignments are made and advises the court on the dates and rotations to use. A copy of this particular sug-

A Historical Perspective on Bankruptcy

By: Lucinda Cory, Courtroom Deputy

This article is the third of a series.

Imprisonment for Debt

The Magna Carta, signed by King John in 1215, decreed a man's body could not be taken for the failure to pay a debt. After that time, several laws in conflict with the Magna Carta were passed and impris-

onment became common punishment for failure to pay debts. These laws made it easy for a creditor to have a debtor imprisoned, and by 1641 it was estimated that in England and Wales about 10,000 people were imprisoned for debt.¹

Prisoners in King's Bench Prison, who were gentlemen, were often arrested on warrants issued by their unpaid tai-

lors. These prisoners then petitioned legislators in 1628 complaining that the Magna Carta



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(Imprisonment Cont. from page 6)

had been breached. The Petition of Rights of 1628 said that being imprisoned for debt after trial was different from simply being arrested and imprisoned for debt. In 1628 all debtors, regardless of the reason for insolvency or amount of debt, were punished equally. The timing of the Petition was bad. England was consumed by the Great Rebellion of Cavaliers and Roundheads. It would be seven years before Cromwell could address the issue and he was sympathetic to those on whom the laws were harsh. He told Parliament, "In every government there must be something fundamental, like a Magna Carta, that would be standing and be unalterable."²

By the 1640's, some changes were being made in the treatment of debtors. But the laws remained simplistic and the legal system had not kept up with the changing economics and complexities of society. There were no provisions for a debtor with assets tied up by inheritance laws, will, or by trustees. There were no protections for debtors who had paid as much as they could to their creditors, and no provisions for men once they were imprisoned. Debtors were still basically at the mercy of their creditors. While other European countries did not imprison men for longer than a year for

debt, England's debtors were imprisoned indefinitely, side by side with hardened criminals in horrendous conditions. It was the horror stories from these prisons and the increasing numbers of debtors dying in prison that brought matters to the attention of the authorities. As late as the 1850's, Charles Dickens, one of the outspoken critics of the system documented his personal tribulations with Marshalsea Prison in his semi-autobiographical novel, David Copperfield.

Reports on conditions in the Marshalsea Prison around 1749 show that several prisoners died daily from starvation and disease. Families of those arrested would become dependent on charity and often moved into the prisons, which became communities in themselves. Bailiffs, tradesmen and attorneys benefited from keeping the system intact. Bailiffs in particular had lucrative incomes from charging prisoners for food, cells, clothing and favors. Tradesmen added charges to the amounts of debts for the cost of having a debtor arrested. Attorneys profited from court proceedings.³ As bad as the Marshalsea Prison was, the Fleet Prison was worse. (Described by Dickens in The Pickwick Papers.) When the Fleet Prison was finally closed in 1842 by an Act (5&6 Victoria cap 22), some debtors in the process of being moved to the Marshalsea Prison, had been found

to have been imprisoned there for as long as 30 years for debt.

From 1649 to the end of the century, legislation began to relieve the harshness of the laws. By 1682 debtors were jailed separately from criminals (22,23, Charles II cap 20). By the Act of 1808 (Geo III cap 123), anyone who had been in jail for a year for a debt of less than £20 was allowed to petition for release. The law also attempted to compel creditors to accept some payment, although creditors did not have to agree to let a debtor be released. The release of a debtor from jail did not discharge the debt.⁴ It wasn't until 1869 that debtors prisons were finally abolished and the Bankruptcy Act of the same year began to address the complexities of the debtor/creditor relationship.

1. Barty-King, Hugh, The Worst Poverty. Alan Sutton Publishing, 1977, p. 38.

2. Ibid p. 42.

3. George, M. Dorothy, London Life In the 18th Century.



What Do I Need to Know About Reaffirmation Agreements?

By: Susan M. Thurston, Clerk of Court

As many of you know, the Administrative Office of the U.S. Courts recently prescribed a new multi-page reaffirmation form which replaces the previous one-page form. On March 14, 2000, this Court adopted the new form as mandatory **R.I. Bankr. Form U**. Since its adoption, several issues have arisen as to the use of the form, the amount of information that must be provided and the scope of judicial review. This article is intended to assist practitioners in handling reaffirmation matters and to provide some basic guidance on the Court's review procedures.

11 U.S.C. § 524(c) addresses the disclosures required in any reaffirmation agreement and other mandatory conditions with respect to the filing of such agreements. Local Bankruptcy Rule 4008-1 defines additional information that this Court requires to be disclosed in any reaffirmation agreement, and subdivision (b) outlines the Court's review procedures. New subdivision (d) mandates use of the new multi-page reaf-

firmation form.

Since the adoption of the new form, numerous defective pleading notices have been issued for continued use of the old form. These are issued in all instances where the new Local Form U is not being used. If the agreement is not re-filed using the appropriate form by the response deadline, the prior agreement is stricken and is deemed of no force or effect due to the noncompliance of the deficiency.

To avoid having to re-draft the information and obtain new signatures, it is strongly recommended that the parties ensure that they are using Local form U, which can be obtained on our website at www.rib.uscourts.gov.

Another topic of great interest is the amount of information required to be included on the new form. There is substantially more information required on the new form than was required previously, including detailed information about the debt, the security/collateral, and the debtor's finances. In reviewing these agreements, we are finding that many parties are failing to adequately or fully complete the

required information. It is the parties responsibility to ensure that all of the required information is fully contained in the agreement. If parts of the form are left blank or otherwise are missing, pursuant to **LBR 4008-1(d), the Agreement is deemed invalid and unenforceable**. The Court no longer monitors the agreements for completeness, but leaves it to the parties to enforce their rights according to the rules and code.

Pursuant to LBR 4008-1(b), the Court reviews all non-real estate reaffirmation agreements against schedules I and J for ability to pay. Where it appears that based on the debtor's own sworn statements that there is insufficient income to meet the proposed reaffirmed debt, an order to show cause will issue as to why the attorney affidavit should not be stricken. In order to avoid receiving such an order, it is strongly recommended that counsel review these schedules at the time the reaffirmation agreement is being negotiated to ensure that the debtor is in fact able to meet this new obligation, and to substantiate the attorney's declaration that the Agreement does not impose an undue hardship





(Recent Court Decisions Continued from page 5)

torney's fees and found the debts were nondischargeable.

In Re Petrozella, _ B.R. _, 2000 W.L. 533567, BK No. 99-16144 (Bankr. D.R.I., April 14, 2000). The Chapter 7 Debtors claimed a \$2,000 exemption in Miscellaneous furniture under R.I. Gen. Laws ' 9-26-4, which allows an exemption not exceeding \$1,000 in household furniture. The Debtors argued that because they were joint debtors they were *each* entitled to the \$1,000 statutory exemption. The Court disagreed, finding that the statute allowed one exemption in household goods and because these Debtors lived in the same household, their exemption was limited to \$1,000.

In re Roberts, BK No. 93-10308 (Bankr. D.R.I. April 14, 2000). The Chapter 13 Trustee filed a motion to dismiss the Debtors' Chapter 13 case because the plan was incapable of being completed. The Debtors responded by filing a motion for entry of discharge, arguing they had made all the payments contemplated by the plan. The Debtors alternatively sought a hardship discharge under Section 1328(b). The confirmation order, confirming the Debtors' plan provided that Unsecured creditors shall receive at least 10% of the amount of their claim fully provided and allowed by the Court. During the course of the Chapter 13, the Debtor failed to pay certain trust fund taxes to the IRS, incurring a \$53,000 post-petition tax liability. The IRS filed an amended proof of claim which the Trustee argued rendered the plan incapable of being completed. The

Court agreed, finding that by failing to pay unsecured creditors 10% of their claims as required by the Confirmation Order, the Debtors did not complete the plan. The Court denied the request for a hardship discharge.

Geremia v. Dwyer (In re Dwyer), BK No. 98-14688, A.P. No. 99-1035 (Bankr. D.R.I. May 2, 2000). The Chapter 7 Trustee filed an adversary proceeding against the Debtor's mother seeking to recover an alleged fraudulent conveyance of real estate. The Trustee and counsel for the Debtor's mother stipulated that the Debtor held only bare legal title in the subject real estate. As part of the stipulated facts, it was agreed that: (1) The Debtor was placed on the title on the advice of the Defendant's brother-in-law; (2) the Defendant purchased the house in 1978 and was solely liable on the mortgage; (3) The Debtor lived in the subject property for a few years and paid the Defendant \$200 per month rent which the Defendant claimed on her income tax returns; and (4) The Defendant paid all the bills associated with the subject real estate and paid for any necessary improvements over the years. The Court found that the Debtor's bare legal title to the property does not constitute an economic interest in property and the Debtor's equitable interest in the property was not property of the estate. Based on these findings, the Court held that when the Debtor returned the bare legal title to his mother just prior to bankruptcy, the transaction did not constitute a fraudulent conveyance. In footnote three, the Court made a



**United States Bankruptcy Court
District of Rhode Island**

**MANDATORY COMPLIANCE WITH LBR 1009-1
AMENDMENTS TO SCHEDULES A, B, I OR J**

PLEASE TAKE NOTICE: The Court is strictly construing LBR 1009-1 (Amendments) with respect to Amended Schedules A, B, I & J by requiring the **SIGNATURE OF THE DEBTOR(S)** on: (1) the amended schedule; or (2) on the affirmation related to the amended schedule; or (3) on the motion to amend if and only if it clearly and conspicuously states the nature of the amendment.

Pleadings not in compliance with this local rule will be deemed defective and unless timely corrected, the requested amendment will be denied.

Susan M. Thurston
Clerk of Court