

United States Bankruptcy Court, District of Rhode Island

ON THE DOCKET

Inner Workings: News and Advice

by Susan M. Thurston, Clerk of Court

It has been such a busy summer at the Rhode Island Bankruptcy Court! On two separate occasions – the May 8 retirement party and the July 31 courtroom dedication -- we said our goodbyes to our long time beloved Bankruptcy Judge, Arthur N. Votolato, after more than 44 years of distinguished service in Rhode Island. See *infra* at page 4 for extended coverage of these memorable events. The beautiful courtroom plaque that RI Bar Association members Bill Delaney, Andrew Richardson and Joseph DiOrio commissioned is permanently hung outside the courtroom. Throughout the summer, bankruptcy judges from Massachusetts handled the court calendars and we are extremely appreciative of their efforts during this time.

On Thursday, September 6, attorney Diane Finkle was sworn in as the new bankruptcy judge for the District of Rhode Island. Judge Finkle conducted her first

court session on Thursday, September 13, 2012. Members of the bar should expect that changes to court processes will occur in the coming months as Judge Finkle settles into her new position. Two such changes that have already taken place are the start time for the court calendar and the procedure for submitting proposed orders. As of October 1, the court calendars will commence at 9:30 am, rather than 10:00 am. Also, the submission of proposed orders must be filed as a separate event (Proposed Order under Other category) rather than as an attachment to a motion.

As part of the transition in chambers, we recently said goodbye to many of our former staff and are in the process of welcoming several new employees. Judge Votolato's long time Judicial Assistant, Leah Waterman, also retired on July 31, 2012 after 26 years with the court. In addition, both of Judge Votolato's law clerks – John O'Day and Jenna Hashway – have also moved on to new positions. Due to reduced funding in fiscal year 2013 which started October 1, we said goodbye to case manager Katharine Flaherty on September 7, 2012 and lost Anne O'Hara, Public Information Specialist, to early retirement on September 30. Anne was here for 32 years and literally served as the face of the court for the public at the front counter. She was always cheerful and extremely patient and we will miss her happy disposition and dedication immensely.

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Lima Decision

by John O'Day, Law Clerk

On July 30, 2012 Judge Votolato issued the final decision of his long career, Lima v. Conlon, et al (In re Lima). In that case, Deborah Lima was in financial difficulty over a small \$16,000 home equity mortgage with CitiFinancial on her home worth nearly \$300,000. Falling behind on this mortgage and with CitiFinancial threatening foreclosure, Lima heard of (through a friend) and contacted unemployed real estate/mortgage broker John Jeannetti, another defendant, to try to solve her problem with the mortgage. Although Jeannetti was unable to obtain conventional financing, he suggested another plan in which Lima would "sell" her home to someone who could get financing with Lima paying the cost of the mortgage obtained by the new "owner." In return, Jeannetti and the new "owner", defendant Glen Conlon, would be paid \$10,000 per year for up to four years under the parties' agreement for their services, while Lima paid all the costs of the mortgage as "rent" and also paid for any repairs to the property.

Lima accepted this arrangement and executed a deed to Conlon who

obtained a \$60,000 mortgage which was used to pay off CitiFinancial, less than \$1000 in real estate taxes, and closing costs. Conlon and Jeannetti appropriated the balance of the funds dispersed from the new mortgage, over \$35,000, to themselves. Lima believed that she could reclaim her house by paying the "rent" to Conlon and to establish better credit, allowing her then to get financing to place title back in her name. Under this arrangement in two years Lima paid over \$12,000 to Conlon, servicing the original mortgage. Unknown to Lima, Conlon with Jeannetti's help, twice proceeded to refinance the original mortgage at higher amounts and also placed a second mortgage on the property. The agreement between Lima and Conlon never contemplated a subsequent refinancing. Through all of the financial maneuvering, Conlon and Jeannetti pocketed more than \$93,000 from the equity in the property. Finally, Lima awoke to her problems and filed for bankruptcy, which was when Conlon first appeared in this court seeking relief from stay to evict his "tenant" Lima.

Lima brought suit to try to reclaim her property alleging various theories. Following a two day trial, Judge Votolato found that the arrangement between Lima and Conlon was not a true sale but an equitable mortgage as recognized under Rhode Island law. This doctrine allows a party to show that a transaction was not an absolute transfer but instead was intended only as security for a debt. The facts as found by Judge Votolato fit the equitable mortgage requirements and the Judge: (1) voided the transfer to Conlon; and (2) ordered Conlon and Jeannetti to return \$53,000 to Lima, the difference between the maximum amount they could have earned under the original agreement and what they actually took. Judge Votolato also found that Waban Mortgage Company, which had provided Conlon with a \$40,000 second mortgage, was not a bona fide purchaser for value without knowledge of Lima's interest in the property, and invalidated that mortgage as well.

The full text of the decision can be found on the Court's website.

WELCOME



Jimmy Dahu

On September 17, 2012, we welcomed two new law clerks to chambers. Jimmy Dahu now serves as the career law clerk and Jordan Baumer is serving as a term law clerk. Jimmy previously clerked for Judge Mahoney in the Southern District of Alabama bankruptcy court and has been practicing bankruptcy law for six years in Texas and Arizona. Jordan has just completed a one year clerkship with Judge Hoffman in Massachusetts.

Please welcome and introduce yourselves to Jimmy and Jordan at your next bankruptcy court session.



Jordan Baumer

Tips and Traps

by Dina Fortes, Case Manager

Here are a few reminders for common questions asked to the court:

- When filing Loss Mitigation Status Reports, always link to the original Order Granting Loss Mitigation, even if an Order to Show Cause associated with the Loss Mitigation has been issued.
- Whereas, when filing Loss Mitigation Contact Information always link to the Loss Mitigation Request.
- Every document filed with the court requires a date. Be sure to add the date on all documents prior to uploading your pdf.
- All party filers associated with a document being filed with the court must be selected as a "party filer".
- If not filed with the original petition, the Corporate Vote document must be filed by choosing the Other category in ECF and selecting the "Missing Document(s) Filed" event. Be sure to select the Corporate Vote radio button within the event.
- You can now view the confirmation hearing date on our website under the Calendar tab. This will enable you to file a Chapter 13 petition and plan simultaneously. Filing the Plan with the petition will alleviate the court of issuing an Order for Missing Documents because of the missing plan. If you are not filing the plan with the petition, or immediately after the petition, check the first meeting docket entry to ensure the confirmation hearing date in the Meeting of Creditors entry is the same date you are inserting in the plan.
- If you are having email issues or you think you may have missed a Notice of Electronic filing, you can verify by running a Summary Report from the Reports tab in ECF
- Fees for filing a Chapter 11 bankruptcy case will increase for cases filed on or after November 21, 2012. The fee increase was included in the [Temporary Bankruptcy Judgeships Extension Act of 2012 \(Pub. L. No. 112-121\)](#), which was signed into law by the President on May 25, 2012. A provision in the law increases the statutory filing fee for all new Chapter 11 cases to \$1,167. The total fee for filing a Chapter 11 case will increase to \$1,213 (statutory fee of \$1,167 under 28 U.S.C. § 1930(a)(3) plus the administrative fee of \$46 under Item 8 of the [Bankruptcy Court Miscellaneous Fee Schedule](#)).

*Related article- President signs [Temporary Bankruptcy Judgeships Extension Act](#)

Christine Lanni - Recipient of Sustained Superior Performance Award

by Gail Kelleher, Chief Deputy

For the last 18 years, the Court has held a ceremony in appreciation of the staff's dedicated service and in acknowledgment of noteworthy job performance. This year was no exception, and on September 14th, certificates were presented to staff recognizing them for superb Customer Service, Operations Team Timeliness and Accuracy and Best Suggestion, as well as automation and administrative project work conducted throughout the year.

The most prestigious award for Sustained Superior Performance is given to the employee who consistently demonstrates exceptional proficiency in fulfilling the responsibilities of his/her position. Attributes that are considered include a positive attitude, reliability, high productivity and quality of work, professional demeanor, and a strong sense of ethics. We are proud to announce the selection of Christine Lanni as this year's recipient of the Sustained Superior Performance Award.

Christine joined the Court in December 1994, and has served as a case manager for nearly 18 years. In addition to her case manager duties, Christine manages the court's records, acts as receiver for the delivery of court goods, is a back-up for end of day cash register duties, and handles attorney excusals. Perhaps the best way to describe Chris is to use the words of those that nominated her: "Christine is very conscientious about her work. She views her work environment, not only as it affects her, but as it affects Operations as a whole." "There have been many evenings during her 18 years when the lights are ready to be flicked off for the night and a voice says, 'I'll be here for a little longer'." "Christine takes great responsibility for her work; you can tell that she is proud to be a member of a federal court by the way she performs her work. She is on top of her cases and never minds pitching in when the office is short staffed. Always patient, I don't think I ever heard her say no when asked for assistance." Congratulations Christine!

Several staff were recognized for their years of service to the Court. Kristen Batty (HR Administrator), Amy Geraghty-Seale (Operations Supervisor) and April Elderkin (Financial Administrator) all received pins for twenty years of service. Additionally, Jennifer Davis (Case Manager and last year's winner of the Sustained Superior Performance Award) and Jody Venuti (Quality Assurance Specialist) each celebrated their fifteenth anniversary with the Court.

It is a pleasure to brag a little about our court staff; each and every one of them are committed in their service to the citizens of Rhode Island. Congratulations All!

A Fond Farewell

by Gail Kelleher, Deputy Clerk

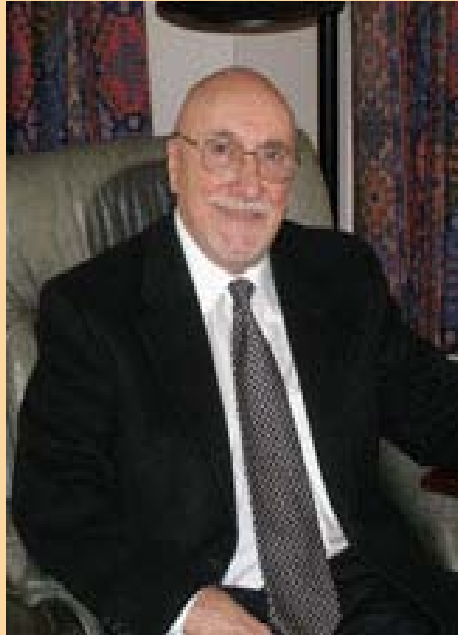
We all knew this day would come – yet, when it happened, our court family could not help but feel a bit bewildered that the judge who presided over his courtroom for forty-four years was stepping down. The announcement came in January of 2012 and the wheels of change were quickly set into motion: the selection committee; the applicants; the final nominees; and finally, the appointment of the Honorable Diane Finkle as his successor. Through it all, Judge Votolato did exactly as he's done for the last forty-four years – holding court, listening to both sides, and rendering decisions for the just resolution of financial disputes.

In March, an email was received from attorney Chris Lefevbre. He would be organizing a retirement party for the judge, and what a party it was! The celebration was held at DiParma's Italian Table on May 8th, with hundreds of well-wishers in attendance including the judge's immediate family, friends from across the country, former law clerks, innumerable members of the bankruptcy bar, and the Clerk's Office staff. Several guest speakers, including Judges Alton Wiley, Joan Feeney and Jonathan Calianos, shared personal stories (often hilarious) of their relationships and adventures with Judge Votolato over the last forty years. One of the highlights of the event was a retrospective video chronicling the judge's life, from childhood to present. This video was created by his former law clerk and now Clerk of Court, Susan Thurston. No one enjoyed this event more than Judge Votolato himself! At the end of the evening, he held court one more time and delivered a moving, heartfelt thank you to everyone who attended.

Preparing for change is a challenge in itself. After the retirement party, both Judge Votolato and the Clerk's Office

began in earnest to address procedural and logistical matters that arise when a change of leadership is forthcoming.

The Court received a phone call in May from Attorney Bill Delaney. On behalf of the RI Bar Association,



he arranged for the courtroom to be officially dedicated to Judge Votolato! This event took place on Judge Votolato's last day as a federal judge. On July 31st, federal and state judges, family members, Clerk's Office staff, and members of

the RI Bar attended the dedication ceremony. Many of the attorneys in attendance had practiced before him for decades and were delighted to be part of a truly memorable send off. The Clerk's Office presented Judge Votolato with a framed portrait, which is now mounted in the chamber's conference room next to the portraits of Judges Sheehan and Littlefield – the only other bankruptcy judges in this court's history. As a special surprise, attorneys Bill Delaney, Andrew Richardson and Joseph DiOrio commissioned an oil portrait of Judge Votolato to be hung in the courtroom later this year. Again, Judge Votolato was undoubtedly moved by the kind words and expressions of appreciation that day. With speeches read and the plaque unveiled, the members of the bar formed an impromptu receiving line for their last chance to wish Judge Votolato well.

It's been over two months since his retirement and we are all adjusting to this new life. Judge Votolato calls from time to time, but mostly he is busy with family and friends and enjoying his version of retired life. We've heard that he has been mediating matters lately – some things never change!



Improvements to the Returned Mail Process for Debtor's Counsel

by Susan M. Thurston, Clerk of Court

The centralized noticing system known as the Bankruptcy Noticing Center (BNC) has been providing nationwide noticing services to the bankruptcy courts since the mid to late 1990s. Throughout this 20-year period, the Administrative Office of the U.S. Courts, working with the bankruptcy court community and the BNC contractor, has consistently sought to introduce new improvements to the noticing program and its features and capabilities at lower cost. One such time and money-saving enhancement will be implemented this fall and will benefit attorneys representing debtors in bankruptcy.

Centralized Returned Mail

Currently, returned mail due to undeliverable addresses is handled either by the court or is returned to the debtors' attorneys if specified by the court. As a cost-savings and efficiency measure, bankruptcy courts have been strongly urged to have most returned mail sent to the debtor's attorney, which provides notice that a better address for such recipient should be provided to the court. This procedure is not changing. However, for those pieces of mail that are currently directed for return to the bankruptcy courts, a new centralized returned mail program has been developed to handle all such returned mail in one facility. According to a judiciary study, an estimated 736,000 mail pieces are returned to the bankruptcy courts each year. The new centralized service will eliminate the court staff effort required to manually process returned mail and will reduce national postage expenditures by up to \$1.25 million per year.

So what does this have to do with me serving as debtor's counsel? Under the terms of the revised contract, the contractor will have two business days to process all returned mail. The contractor's system will then auto generate a "Notice of Returned Mail" email notification to the debtor's attorney, with a copy of the notice as a PDF attachment, advising of the returned mail by the U.S. Postal Service (USPS). If no attorney email address is available or if the debtor is pro se, the notice of returned mail notification will instead be sent by regular mail to the attorney or pro se debtor, as appropriate. Thus, beginning in September, debtors' attorneys' will start to receive returned mail in

bankruptcy cases in two different ways: regular USPS mail for the majority of items where the return address is the debtor's attorney, and email for those pieces of returned mail that would have been sent back to the bankruptcy court. The returned mail notice contains a form for updating the notice recipient's address, which counsel can fill in, sign and file with the court. See Figure 1 for a format of the email notification of the returned mail notice to be sent to debtors' attorneys.

Figure 1: Example of the Returned Mail Notice Sent to Debtors

Returned Mail Notice to Debtor/Debtor's Attorney
Date:
From: United States Bankruptcy Court, district
Re: U.S. Courts, Bankruptcy Noticing Center-Returned Mail Notice
In re: Case Name, Case Number, judge's initials

TO THE DEBTOR/DEBTOR'S ATTORNEY:

The attached document was mailed to the notice recipient(s) listed below via the U.S. Postal Service, and it was returned to the Bankruptcy Noticing Center as undeliverable. Please be advised that dischargeability of a debt may be affected if a creditor fails to receive certain notices. You should determine whether the address should be updated. NOTE: THIS FORM CANNOT BE USED TO ADD A NEW CREDITOR NOT PREVIOUSLY LISTED ON YOUR SCHEDULES.

If this form is used by the court in place of filing a separate notice of change of address and/or an amended schedule: (1) determine the updated address and send the attached document to the notice recipient; (2) list the updated address below; (3) sign and date the form; and (4) file this form with the court. Please type or print legibly. Notice Recipient's Address on Envelope Returned to the Bankruptcy Noticing Center:

Bart Simpson
Company
301 Maple Avenue
Springfield, Illinois 28123-1204

THE UPDATED ADDRESS IS:

Signature of Debtor or Debtor's Attorney Date

The Bankruptcy Noticing Center does not respond to messages re-garding returned mail notification. Please contact the U.S. Bankruptcy Court where the case is pending with questions or comments.

ECF 5.0 Release Highlights

by Jody Venuti, Quality Assurance Specialist

The newest release of ECF (Version 5.0) will be installed before the end of the year. Some enhancements you can look forward to include:

The capability for an attorney or creditor filer to terminate themselves from an individual case within an ECF entry is possible in Release 5.0. *This will not be available to attorneys for the debtor or the joint debtor and the attorney will need to certify that they have no controversy before the court and that their client consents to the withdrawal.

5.0 has the ability to allow more than one social security number for a debtor, if need be (the system will allow up to 5 SSNs and all will display on the Meeting of Creditors notice and all SSNs are searchable in PACER).

During the case opening process in 5.0, ECF will check for prior filings in the district by a debtor with the same SSN/ITIN or the same Tax ID/EIN as the debtor currently filing. If the prior filing was within the last 8 years, the "Prior filing within last 8 years" field will automatically be set to "yes". The filer will be presented with a link to a case, similar to the one below.



Open New Voluntary Bankruptcy Case

It appears that this debtor filed case: [06-11114-1-JHW](#)

Prior filing within last 8 years

Fee status

Nature of debt

The query screen in 5.0 will be enhanced to include: Case Status, Filed Date and Nature of Suit to aid in particular queries.

Another new option in 5.0, is a Utilities menu item that will allow the user to return to the PACER Service Center page. This will save the PACER user time when navigating to other court sites or to the National Party Case Index.

Finally, in 5.0, the Notice of Electronic Filing will display the attorney's email and party information for each party whom he represents. Previously, the Notice of Electronic filing only displayed each attorney's email address.

Bankruptcy Training Series: The Fundamentals of a Bankruptcy Case

by Susan M. Thurston, Clerk of Court

This series is designed for counsel representing debtors in bankruptcy. Each session will focus on an essential aspect of filing and handling a bankruptcy case on behalf of a debtor. The speakers will address case intake and practical points for serving as debtor's counsel; how to complete the chapter 7 means test and new legal developments; what the case trustee looks for in examining a debtor's bankruptcy case; and lastly, the procedures for seeking loss mitigation in the bankruptcy court. You may sign up for one or all three sessions.

The series is sponsored by the Volunteer Lawyer Program, the US Armed Forces Legal Services Project and the US Bankruptcy Court.

Please [click here](#) for registration details.



Bankruptcy Filing Fee Increase

by Amy Geraghty-Seale, Operations Manager

Effective November 21, 2012:

Filing	Old Fee	New Fee
Chapter 11	\$1,046.00	\$1,213.00
Splitting a joint Chapter 11 case	\$1,046.00	\$1,167.00
Reopening a Chapter 11 case	\$1,000.00	\$1,167.00
Filing a Chapter 15		\$1,167.00
Chapter 9	\$1,046.00	\$1,213.00
Converting Chapter 7 to 11 [Debtor]	\$755.00	\$922.00
Converting Chapter 13 to 11 [Debtor]	\$765.00	\$932.00

Pending Federal Bankruptcy Rule and Form Changes

by Amy Geraghty-Seale, Operations Manager

The following new and amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms will become effective December 1, 2012. The amended rules and forms are as follows: Bankruptcy Rules 1007, 2015, 3001, 7054, and 7056. Official Forms 1, 9A–9I, 10, and 21.

Below is a brief summary of each change, but practitioners are advised to obtain a complete copy of the amendments and familiarize themselves of the changes. The rules and forms may be found on-line at www.uscourts.gov/rules/.

Federal Rules of Bankruptcy Procedure:

Bankruptcy Rule 1007 (Lists, Schedules, Statements, and Other Documents; Time Limits) Technical Amendment – This amendment conforms Rule 1007(c) to the amendment to Rule 1007(a)(2) in 2011.

Bankruptcy Rule 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status) Technical Amendment – conforms to the renumbering of section 704(a)(8) of the Bankruptcy Code in 2005.

New Bankruptcy Rule 3001(c)(3) (Proof of Claim) provides additional information on claims based on an open-end or revolving consumer credit agreement [ex. credit card debts]. Creditors would be required to file a statement that provides: 1) the name of the entity from whom the creditor purchased the account; 2) the name of the entity to whom the debt was owed at the time of the account holder's last transaction; 3) the date of the account holder's last transaction; 4) the date of the last payment on the account; and 5) the charge-off date.

Bankruptcy Rule 7054 (Judgments; Costs) Amended to increase the time for a party to respond to the prevailing party's bills of cost in an adversary proceeding from 1 day to 14 days, and extends the time for seeking court review of the costs taxed by the clerk from 5 days to 7 days.

Bankruptcy Rule 7056 (Summary Judgment) Amended to set a new default deadline 30 days before the initial date set for an evidentiary hearing.

Federal Bankruptcy Form Amendments:

Official Form 7 (Statement of Financial Affairs) - Amended to revise the definition of an "insiders" to make it consistent with the Bankruptcy Code.

Official Forms 9A-9I (Meeting of Creditors) – Amended to remind filers not to include the forms with any other court filings as they contain the debtor's social security or tax identification number.

Official Form 10 (Proof of Claims):

Section 7 - Amended to remind filers to attach those documents required by Bankruptcy Rule 3001(c) for claims based on an open-end or revolving consider credit agreement or claims secured by a security interest in the debtor's principal residence.

Section 8 – Amended to remove the statement that an authorized agent attach a power of attorney if one exists.

Official Form 21 (Debtor's Statement of Social Security Number) – Amended to warn filers not to include the form with any other court filings as it contains the debtor's social security or tax identification number.

Watch What You Click!

by Craig Balme, IT Manager

Hello loyal readers! These days we are in a veritable deluge of email spam that contains everything from prescription drug advertisements, to viruses and malware with all kinds of goodies in between. One type of email 'spam' I want to discuss today is called 'phishing': the name used for emails that try to trick you into revealing useful, personal information such as username/password combinations to financial websites.

How often have you received an email that appears completely legitimate, and is designed in such a way to be very compelling for you to follow the instructions provided? These emails are examples of 'phishing', or social-engineering through email. Consider the image below. This is a real email that came to the Court a few months ago. As you can see, the appearance and language are pretty convincing and would scare many uninformed people into following the instructions. Imagine if you were actually a CPA at a company and you received this message? How compelled would you feel to open it 'just in case'? This is called 'social engineering' and is what most phishing attacks depend on to scare the recipient into taking action.

Not only is the email format very professional and well crafted, it also gives phone numbers and other information that makes it appear much more official. Also, there are no misspelled words or poorly phrased sentences (spelling and grammar errors are usually indicative that it was not created in the USA).

The first thing to do in these cases is to hover over the links and look at your status bar to see what country they are sending your browser. As you can see it's pointing to Brazil, not the USA (1). Secondly, you can see that the link doesn't even go to a PDF -- it goes to a web page (.html) (2) which probably has an embedded exploit. Note that the 'View in your browser' link also points to Brazil so no matter what you click, it will send you to that html web page.

Always be careful when you get emails that are vague, broadly targeted or not specific to you (ie. your name is not in the email), and always check the links! I hope this information is helpful to you.



ATTORNEY VOLUNTEERS NEEDED

With today's taut economy, foreclosures and unemployment have been exceptionally high. Please consider accepting a pro bono case from RIBA's volunteer program. [Click here](#) to make a tremendous difference to struggling families in financial distress.

Termination of your CPA license.
Harold Harris to: craig_balme 03/01

You're receiving this notification as a Certified Public Accountant and a member of AICPA. Having trouble reading this email? [View it in your browser](#)

AICPA American Institute of CPAs[®]

Termination of Accountant status due to tax return fraud accusations

Valued accountant officer,

We have been informed of your alleged assistance in income tax refund fraud on behalf of one of your employees. According to AICPA Bylaw Paragraph 765 your Certified Public Accountant status can be revoked in case of the occurrence of filing of a false or fraudulent income tax return for your client or employer.

Please familiarize yourself with the notification below and provide your feedback to it within 14 days. The failure to respond within this term will result in cancellation of your Accountant license.

[Complaint.pdf](#)

The American Institute of Certified Public Accountants

HTTP://PORTALFARN.COM, BRV1/WP-INCLUDES/AICP.HTML

Email: services@aicpa.org
Tel: 855 (1) 7077
Fax: 800.367.5066

(2)

Change in Court Calendar Start Times

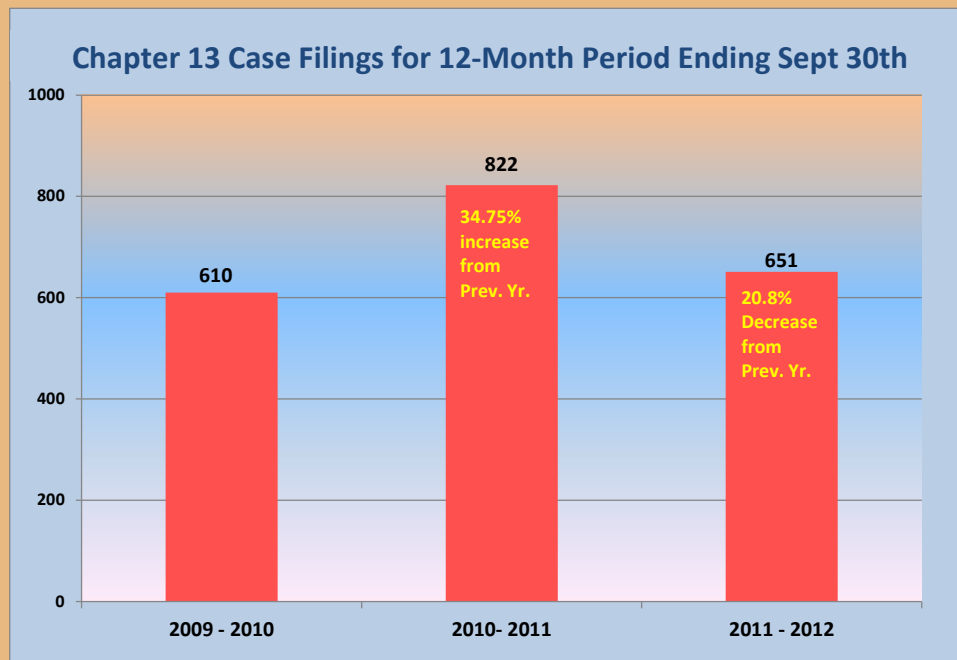
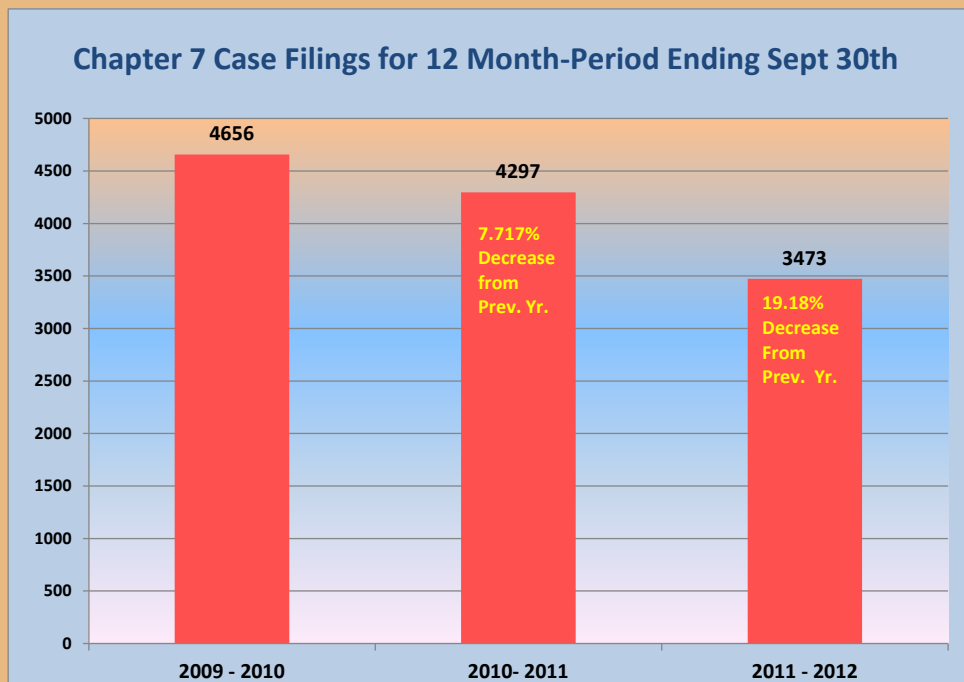
Beginning October 1, 2012:

Wednesday calendars will commence at 9:30 am - (all chapter 13 matters will be scheduled on Wednesdays).

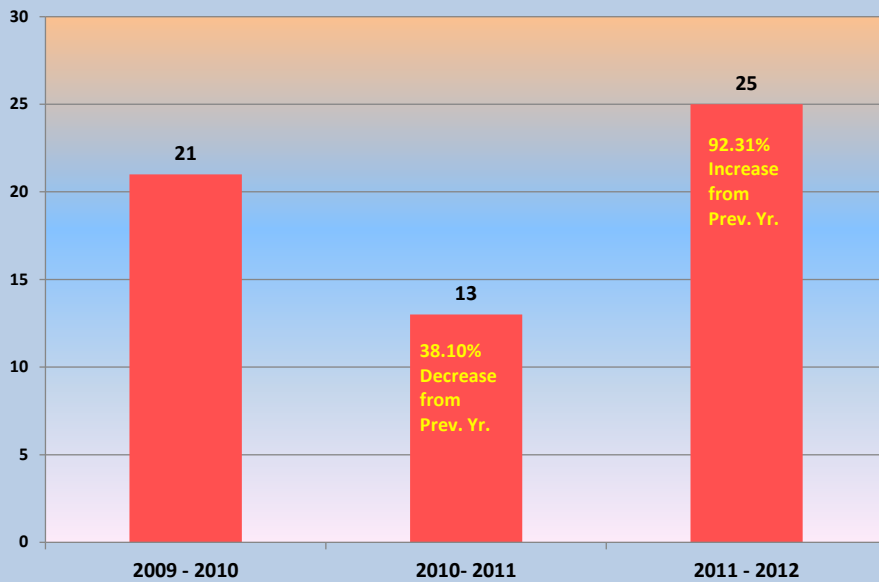
Thursday calendars will commence at 1:30 pm, unless otherwise noted.

Case Filing Statistics for Period Ending September 30, 2012

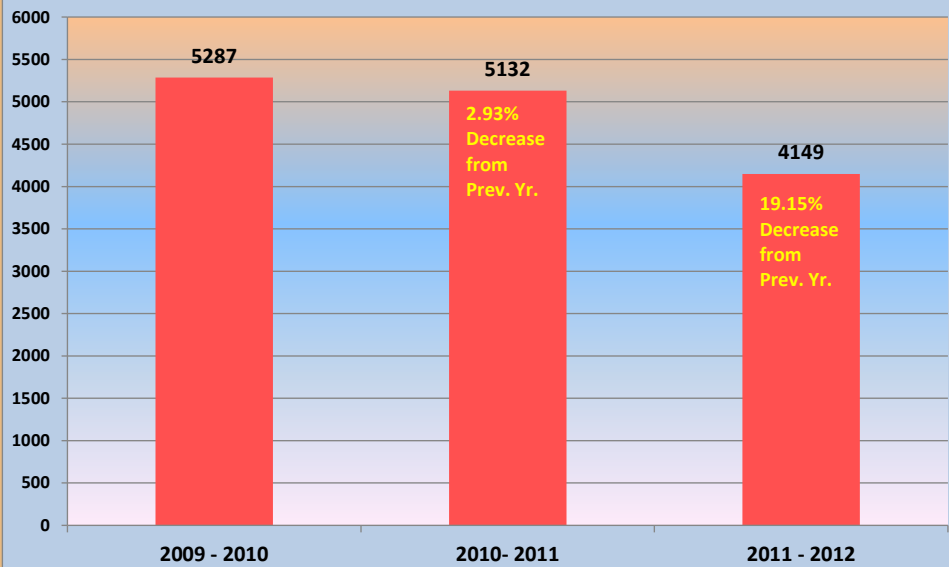
by Gail Kelleher, Chief Deputy Clerk



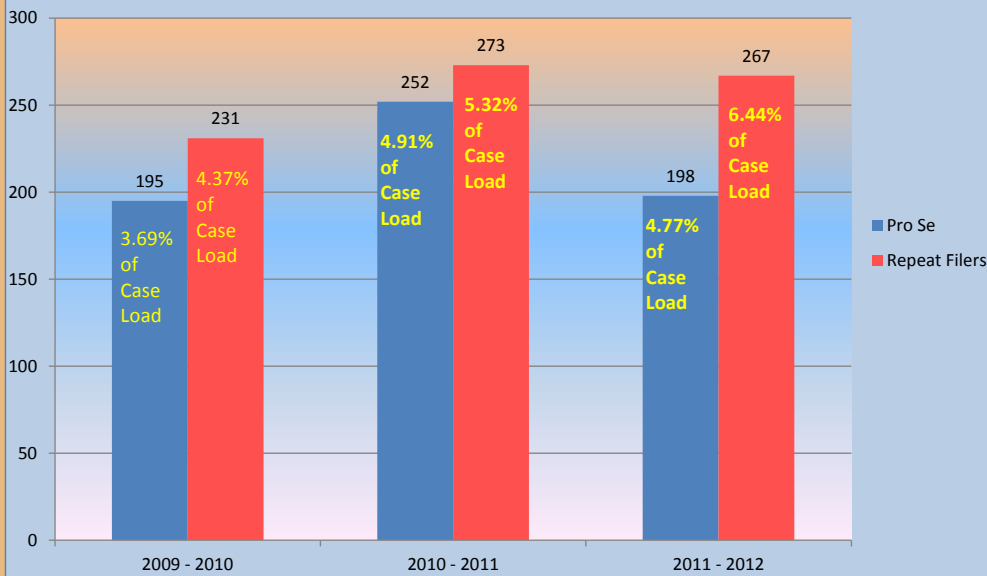
Chapter 11 Case Filings For 12-Month Period Ending Sept 30th



Comparison of Filings for 12-Month Period Ending September 30th - All Chapters



Pro Se & Repeat Filers for 12-Month Period Ending Sept 30th



United States Bankruptcy Court
District of Rhode Island
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Providence, RI 02903
Phone: (401) 626-3100
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