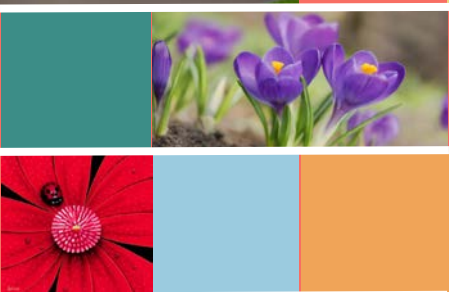


■ Volume 16 ■ Issue 1 ■ April 2015

United States Bankruptcy Court District of Rhode Island

ON THE DOCKET



Inner Workings: News and Advice

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

BY THE TIME THIS NEWSLETTER IS PUBLISHED, I can only hope that this endless winter will be ready to wrap up and the snow will actually be melting. We all deserve some kind of reward for getting through this incredible season. Despite the snow, sleet and freezing rain, the staff at the Rhode Island Bankruptcy Court has continued to administer the bankruptcy caseload even when the physical clerk's office had to shut down. I am extremely proud of the tremendous dedication that our staff has shown throughout this winter and thanks to our excellent IT department, our ability to work remotely no matter what the weather condition is, has enabled the Court to continue to perform its critical mission.

In terms of court projects that are underway, we are currently working on the migration of our ECF servers to a centralized server architecture that will improve our disaster recovery abilities and provide enhanced continuity of court operations if a power outage or other event were to occur (remember [the October 2014 squirrel that ran into the South Street substation?](#)). This centralization is also required in order for the Court to move to the Next Generation Electronic Filing system which is currently in its pilot phase but will be distributed nationally in the next year.

Another major venture we are just commencing is the migration of our legacy telephone system to the National Internet Protocol Telephony (IPT). The National IPT service leverages converged services capabilities (voice, data and video) supported



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New Data Communications Network



by the judiciary's new data communications network (DCN). Courts can count on improved service reliability and the extra benefits that come with voice, video, and data delivered over a single network. Plus, the system has room to grow as new telecommunications functions become available. We are optimistic that the new system will also be useful to facilitate continuity of operations planning since the system can be set up to forward calls and messages automatically, including to mobile devices and via email (a great feature for an unexpected snow day!).

A new free email service was launched on February 23, 2015 and is known as the "debtor electronic bankruptcy noticing program" (DeBN).

This program is available for any debtor in an open bankruptcy case (pro se or attorney represented; individual or business debtor) and will deliver court notices and orders by email rather than by U.S. mail, ensuring quicker receipt of these court documents. Details about this new program are discussed *Infra* at page 6, and a new webpage has been posted on our site with the debtor request form, electronic filing instructions, FAQs and related information.

For those who were unable to attend the December 17, 2014 joint training program covering the recent bankruptcy appellate rule changes, you can find copies of the training slides on our website under [For Attorneys>Bankruptcy Resources and Manuals>Training Materials>Appeal Training Slides](#).

And finally, please sign up for the social media communication system that best suits your needs -- eMail, Facebook and/or Twitter. While we try and limit how many emails we distribute, we tweet reminders of upcoming rule and procedure changes as well as recent circuit opinions covering bankruptcy topics. If you follow other bankruptcy feeds on Twitter, consider adding our court to your list. You can find us at <https://twitter.com/USBCDR11>.

Please feel free to email me at Susan_Thurston@rib.uscourts.gov with any concerns or suggestions for improving the Bankruptcy Court and its operations.

ELECTRONIC FILING FOR PROOF OF CLAIM: No Login or Password Needed

By Jody Venuti, Quality Assurance Specialist

REMINDER: The Court's ePOC program allows ANY creditor to electronically create and file a proof of claim, amended proofs of claim and withdrawals of claim absolutely free and without the need for a login and password. Registered ECF users are also welcome to use ePOC instead of logging

into ECF to file claims – the program will create the claim so the filer does not need to create one in advance. This is a quick, efficient program offered in many courts. Access to ePOC is located on the left-side of our "Home" page underneath the

e-Filing link. Clicking on the [File a Proof of Claim](#) link will bring you our ePOC program page containing filing links, instructions and frequently asked questions.



Recent Court Opinions

By Catherine Thomas and Jonathan Pincince, Law Clerks

Here is a short digest of some noteworthy opinions of the Court. As always, opinions are available on the Court's website at <http://www.rib.uscourts.gov/?q=judges-info/opinions>.

***In re Nadeau*, BK No. 13-13098 (Chapter 7) (Oct. 17, 2014):** After an evidentiary hearing on the United States Trustee's motion to dismiss the case for abuse pursuant to 11 U.S.C. § 707(b)(1), the Court concluded that the movant proved by a preponderance of the evidence that the debtors filed their petition in bad faith and the totality of the circumstances of the debtors' financial situation demonstrated abuse. Bad faith was found where (1) the debtors, after deciding to file a bankruptcy petition, incurred an increased financial burden by purchasing a new vehicle; and (2) the debtors had the ability to repay a meaningful portion of their unsecured debts.

***In re Dziurgot-Farnsworth*, BK No. 14-10915 (Chapter 7) (Dec. 12, 2014):** The Court denied a motion brought by one alleged creditor seeking an order that another creditor cease efforts to enforce a judgment against the debtor and seeking the turnover of certain assets to the case trustee because (1) the

property in question was not an asset of the debtor or her bankruptcy estate; (2) the movant lacked standing to seek the relief requested; and (3) the motion was procedurally improper, as such relief must be sought via an adversary proceeding.

***In re Forrestal*, BK No. 15-10057 (Chapter 13) (Feb. 10, 2015):** The Court granted the creditor's motion for in rem relief from stay under 11 U.S.C. § 362(d) (4) because it found a scheme to delay, hinder, or defraud the creditor due to multiple bankruptcy filings affecting certain real property. The Court found that between the debtor and his wife, they had prevented three scheduled foreclosure sales of their real property by filing individual or joint petitions on the eve of such sales, while knowing that they could not qualify for loss mitigation or cure the outstanding arrearage in a Chapter 13 plan.



The U.S. Bankruptcy Court Welcomes a New Intern

By Carolyn Sweeney, Case Manager



In February, the U.S. Bankruptcy Court welcomed a new intern, Virginia Kain, into the Clerk's Office. Virginia is a junior at Colgate University in New York, majoring in Political Science. During her internship with the Clerk's Office, she will be assisting in various projects while learning about the federal bankruptcy process and the

federal court system. You may have noticed Virginia observing court proceedings.

Please welcome Virginia to the Bankruptcy Court!

Welcome!

Tips and Tricks

By Dina Fortes, Case Manager

1. When amending documents, please adhere to LBR 1009-1 including clearly identifying what the added or changed information is on each document. The amended document should clearly state in bold print, “AMENDED”, and the actual amendment should be underlined and in italics or other conspicuous means to easily identify what has changed from the original document. The amended document should also contain an original signature by the amending party, or if electronically filed, the electronic signature of the amending party. (The attorney is to retain the original signatures of the Debtor). Documents that are not clearly identified will be considered defective and terminated, and no further action will be taken.

If the case is closed, amendments to bankruptcy schedules or statements may be made only after the granting of a Motion to Reopen and a Motion to Amend, and payment of the applicable fee.

2. Remember that ECF has a comprehensive search feature to assist users in querying topics such as finding correct events when filing documents. Simply click on the “Search” tab located on the blue menu bar in CM/ECF, which will launch the search menus and events box. Type in the name of the event for which you are searching and hit enter. The next screen displays all events relating to that specific topic. Select the appropriate event for the document you are filing and proceed with the additional screen prompts. There is also a shortcut bar under the menu tabs that will take you to our website, local rules, helpdesk, captivate training modules, electronic filer user manual and attorney handbook.

3. **NEW SERVICE FOR DEBTORS!** Any debtor in bankruptcy can now request to receive court notices and orders by email rather than by U.S. mail. This new free program is known as “Debtor Electronic Bankruptcy Noticing” (DeBN), and information is available on our website. Please share this information with your clients so they can receive notice of court orders more quickly!

4. Effective December 1, 2014, Fed.R.Bankr.P. 9037 was amended so that no reopening fee is required to redact a record already filed in a case, if redaction is the **ONLY** reason for the reopening. Simply file a Motion to Redact with the redacted document and pay the applicable redaction fee (currently \$25.00 per motion filed). No Motion to Reopen is required.

5. Do you find at times you don’t know how to file a certain document, OR ask, “Which event should be used?” Our website has training modules with step by step instructions on how documents should be filed within specific events. The training modules include audio instructions for better clarity and understanding. “But, I’m more of a visual learner” you say. No worries -- the modules also demonstrate how to proceed through the screens guaranteeing the documents you file are done properly.

The training modules are located on the Court’s website: www.rib.uscourts.gov . Simply select the “For Attorneys” menu > Bankruptcy Resources and Manuals > Registration and Training > Electronic Filer Training.

6. The Attorney User Manual has been updated to include the following flowcharts:

- Flowchart regarding [Confirmation of a Chapter 13 Plan](#)
- Flowchart regarding the filing of an [Amended List of Creditors](#)



Notes on *In Rem* Relief from the Automatic Stay Under Section 362(d)(4)

By Jonathan Pincince, Law Clerk



Both debtors' and creditors' counsel would do well to be aware of the possibility of *in rem* relief from the automatic stay pursuant to Bankruptcy Code section 362(d)(4). Translated from Latin, *in rem* means "against a thing." *Black's Law Dictionary* 913 (10th ed. 2014). Section 362(d)(4) does not use the term *in rem*, but relief under that section is known as *in rem* relief because it is granted "with respect to a stay of an act against real property" rather than against the debtor. *See, e.g., In re Rodriguez*, 516 B.R. 177, 179 n.2 (1st Cir. B.A.P. 2014) ("Section 362(d)(4) allows a bankruptcy court to grant *in rem* relief to a secured creditor with an interest in real property if the court finds that the bankruptcy filing was part of a scheme to delay, hinder, or defraud creditors."). More specifically, subsection (d)(4)(B) states that *in rem* relief shall be granted if "the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved . . . multiple bankruptcy filings affecting such real property." Note that the moving creditor has the burden of proof under section 362(d)(4). *See In re Taal*, 520 B.R. 370, 377-78 (Bankr. D.N.H. 2014). In its "hanging paragraph," section 362(d)(4) provides that if an order granting *in rem* relief is properly recorded, it is binding in any case affecting that same real property for a two year period. *See* 11 U.S.C. § 362(d)(4)(*); *Rodriguez*, 516 B.R. at 179 n.2 ("*In rem* relief renders the automatic stay in any future bankruptcy cases inapplicable to the lender's foreclosure of a particular *res*, regardless of who owns the property or files the case."). In a subsequent case, however, a debtor may move for relief from the *in rem* order "based upon changed circumstances or for good cause shown." *See* 11 U.S.C. § 362(d)(4)(*).

As is evident from the language of section 362(d)(4)(B), it is intended to stop a debtor's "abuse of the bankruptcy process through multiple filings with the sole purpose of frustrating the legitimate efforts of creditors to recover their collateral." *In re Henderson*, 395 B.R. 893, 901 (Bankr. D.S.C. 2008); *Rodriguez*, 516 B.R. at 179 n.2 ("*In rem* relief thus addresses circumstances when the debtor is likely to invoke the automatic stay to frustrate foreclosure efforts through repeated filings, whether by the same or different persons.") (quoting *Gonzalez-Ruiz v. Doral Fin. Corp.* (*In re Gonzalez-Ruiz*), 341 B.R. 371, 384 (1st Cir. B.A.P. 2006)).

As a practical matter, when filing a motion for relief from stay via ECF, counsel should check the box designating that *in rem* relief is being requested only if that is indeed the case. This filing requirement was created to bring to the Court's attention any such *in rem* motions. Finally, one recent case in which the Court granted *in rem* relief from stay is *In re Forrestal*, BK No. 15-10057 (Chapter 13) (Feb. 10, 2015), which decision is summarized in the Recent Court Opinions article in this issue of On the Docket and is available on the Opinions page of the Court's website.

Debtor Electronic Bankruptcy Noticing (DeBN)

By Amy Geraghty, Operations Supervisor

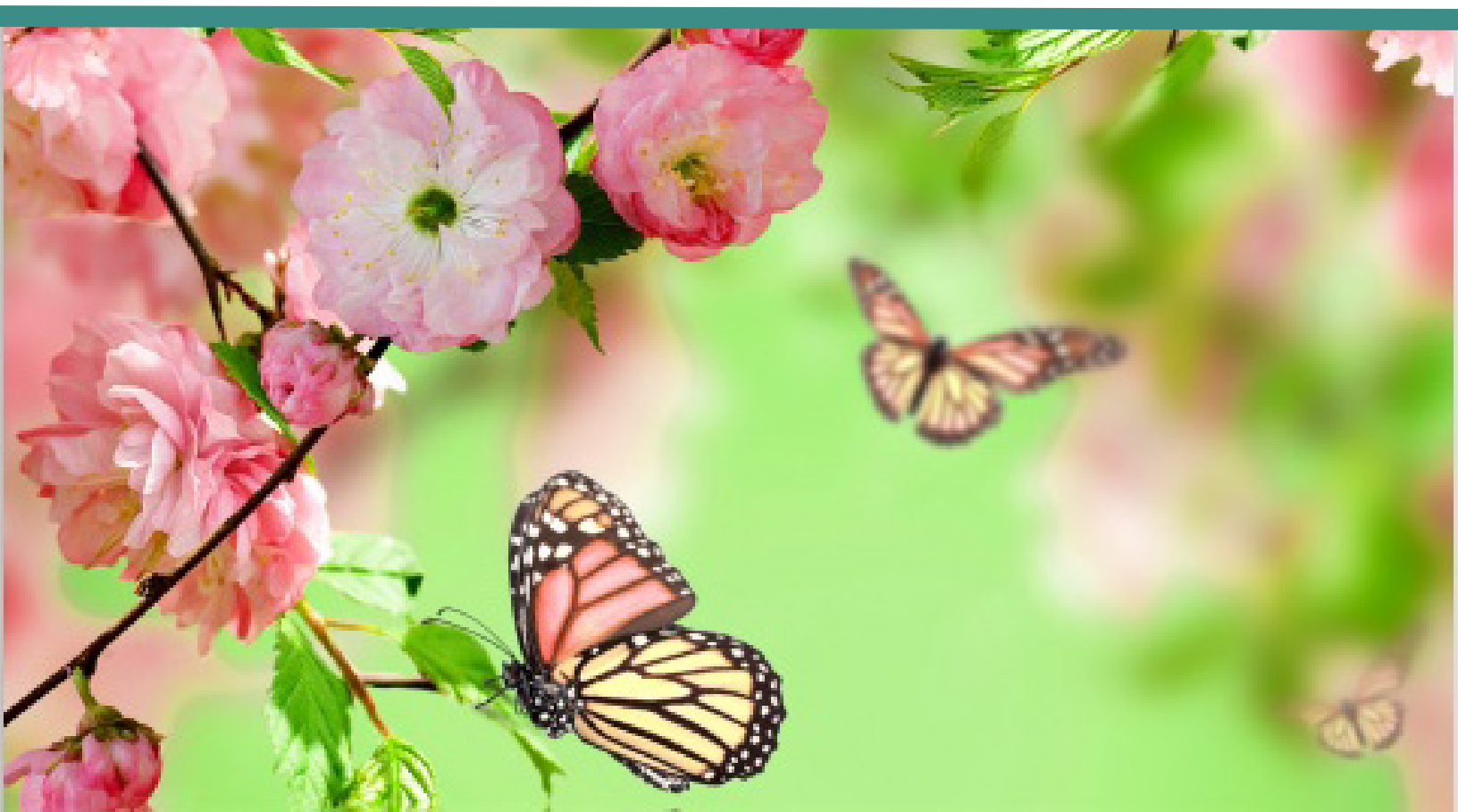
On February 23, 2015, the Bankruptcy Court for the District of Rhode Island launched a new electronic noticing program for debtors known as, “Debtor Electronic Bankruptcy Noticing” [DeBN]. DeBN is a free service which utilizes the Bankruptcy Noticing Center to send court generated orders and notices to debtors [pro se or represented] via a personal email account, instead of by first class mail. This new service affords debtors a fast and private way to receive court documents. In addition, because the debtors receive a pdf of the documents, there is no charge and no limit to the number of times emailed court notices and orders can be viewed!

Attorney can file the DeBN request form for their clients directly in the ECF system, [attorneys may indicate the debtor’s signature with “/s/”] using the “Debtor Electronic Noticing” event in the “Other” category, or a debtor can file the form themselves by mail or in person at the Clerk’s Office. If joint debtors in a case each wish to enroll in DeBN, each debtor must file a separate request form. Once a DeBN request has been filed, the debtor will receive an email notifying them of DeBN activation or the attorney may receive a deficiency notice if further information is required.

****Service requirements for other parties in a bankruptcy case on the debtor do not change with DeBN.***

To learn more about DeBN, or to download the DeBN request form, please visit the Court’s website at www.rib.uscourts.gov, and click Court Info >Noticing Information and click on [DeBN](#) on the left.

Electronic filing instructions can be found in the [Electronic Filer User Manual](#).



Selection of Bankruptcy Glossary of Terms

- **contingent claim** - A claim that may be owed by the debtor under certain circumstances, e.g., where the debtor is a cosigner on another person's loan and that person fails to pay.
- **disclosure statement** - A written document prepared by the chapter 11 debtor or other plan proponent that is designed to provide "adequate information" to creditors to enable them to evaluate the chapter 11 plan of reorganization.
- **executory contract or lease** - Generally includes contracts or leases under which both parties to the agreement have duties remaining to be performed. (If a contract or lease is executory, a debtor may assume it or reject it.)
- **exemptions, exempt property** - Certain property owned by an individual debtor that the Bankruptcy Code or applicable state law permits the debtor to keep from unsecured creditors. For example, in some states the debtor may be able to exempt all or a portion of the equity in the debtor's primary residence (homestead exemption), or some or all "tools of the trade" used by the debtor to make a living (i.e., auto tools for an auto mechanic or dental tools for a dentist). The availability and amount of property the debtor may exempt depends on the state the debtor lives in.
- **joint administration** - A court-approved mechanism under which two or more cases can be administered together. (Assuming no conflicts of interest, these separate businesses or individuals can pool their resources, hire the same professionals, etc.)
- **objection to dischargeability** - A trustee's or creditor's objection to the debtor being released from personal liability for certain dischargeable debts. Common reasons include allegations that the debt to be discharged was incurred by false pretenses or that debt arose because of the debtor's fraud while acting as a fiduciary.
- **preference or preferential debt payment** - A debt payment made to a creditor in the 90-day period before a debtor files bankruptcy (or within one year if the creditor was an insider) that gives the creditor more than the creditor would receive in the debtor's chapter 7 case.
- **presumption of abuse** - Section 707(b)(2) of the Bankruptcy Code applies a "means test" to determine whether an individual debtor's chapter 7 filing is presumed to be an abuse of the Bankruptcy Code requiring dismissal or conversion of the case (generally to chapter 13). Abuse is presumed if the debtor's aggregate current monthly income (see definition above) over 5 years, net of certain statutorily allowed expenses is more than (i) \$10,950, or (ii) 25% of the debtor's nonpriority unsecured debt, as long as that amount is at least \$6,575. The debtor may rebut a presumption of abuse only by a showing of special circumstances that justify additional expenses or adjustments of current monthly income.
- **small business case** - A special type of chapter 11 case in which there is no creditors' committee (or the creditors' committee is deemed inactive by the court) and in which the debtor is subject to more oversight by the U.S. trustee than other chapter 11 debtors. The Bankruptcy Code contains certain provisions designed to reduce the time a small business debtor is in bankruptcy.
- **substantive consolidation** - Putting the assets and liabilities of two or more related debtors into a single pool to pay creditors. (Courts are reluctant to allow substantive consolidation since the action must not only justify the benefit that one set of creditors receives, but also the harm that other creditors suffer as a result.)

Frequently Asked Questions

- **How long does it take to complete the bankruptcy process and receive a discharge of debts?**

Each case is different, but a general rule of thumb is that in a Chapter 7 case a debtor's discharge is usually entered between 90 to 120 days after the case was filed provided no objections to discharge are filed. Once the discharge is entered, the case is generally closed shortly thereafter. The entry of a discharge may take longer if a debtor's entitlement to the discharge is contested by the case trustee, creditors or other parties in interest. In a Chapter 13 case, a discharge is entered upon the successful completion of the repayment plan, usually between 36 to 60 months following bankruptcy. In Chapter 11, corporations and partnerships do not obtain a discharge but instead seek court approval of their plan of reorganization, which is known as plan confirmation. Once the confirmed plan is substantially consummated, a final decree will issue completing the bankruptcy process. This process may take several years to complete.

- **What if I am unable to attend the Creditor's Meeting on the date/time scheduled?**

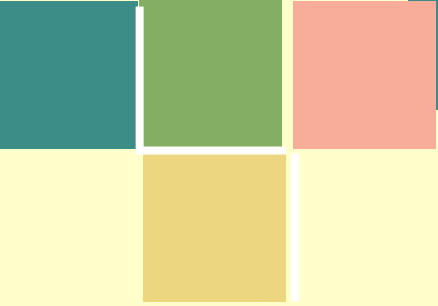
If you are unable to attend the Creditor's Meeting on the date/time it is scheduled, you must contact the case trustee assigned to your case if a Chapter 7 or 13 case, or the local office of the U.S. Trustee if a Chapter 11 case as soon as possible, and request the matter be continued to another date/time. If you are unable to travel, you can make a written request to appear telephonically at your Creditors' Meeting. The case trustee or U.S. Trustee will determine if your circumstances warrant an appearance by telephone. If you are serving in the military and will be out of state, consult the local office of the U.S. Trustee and/or the case trustee to determine how to proceed.

The Bankruptcy Clerk's office has no involvement in the scheduling of your Creditor's Meeting and therefore cannot assist you with any requested changes or telephonic requests. All questions concerning the Meeting of Creditors must be directed to the local office of the U.S. Trustee or to your case trustee.

- **Credit Counseling vs. Personal Financial Management, What Are the Differences?**

An individual debtor must complete TWO DIFFERENT CLASSES to obtain a discharge. The names for these courses are: 1) Credit Counseling; and 2) Personal Financial Management. The courses are different in two ways: (a) When the class must be taken; and (b) What type of individual debtor must take the class. If a bankruptcy case is filed jointly, each spouse must take both courses.

- ▶ **CREDIT COUNSELING**, Before Filing For Bankruptcy – The Bankruptcy Code ordinarily requires an individual debtor (not a business debtor) to complete an approved course in Credit Counseling within 180 days before filing a bankruptcy case. See [list of courses approved by the U.S. Trustee \(link is external\)](#). The course can be completed in person, over the internet, or by telephone, and the credit counseling service will provide a certificate that the course was completed.
- ▶ **PERSONAL FINANCIAL MANAGEMENT**, Very Soon After Filing for Bankruptcy - In order to obtain a discharge of debts, an individual debtor (not a business debtor) must complete an approved course in Personal Financial Management within 60 days after the 341(a) Meeting of Creditors. See [list of courses approved by the U.S. Trustee. \(link is external\)](#) The course can be completed in person, over the internet, or over the telephone, and the course provider will provide a Certificate of Completion.



INVITATION TO RHODE ISLAND BANKRUPTCY ATTORNEYS ANNUAL OPEN MEETING WITH THE BANKRUPTCY COURT

You are invited to attend a public discussion with Rhode Island Bankruptcy Judge Diane Finkle.

Once again we want to hear your comments, suggestions, and input about the Bankruptcy Court's processes and procedures! These are extremely helpful for us.

- How is the Court doing?
- What can we do to become more efficient and help service you and your clients?
- What about the current Loss Mitigation Program: is it working more efficiently and at less cost?
- Are the training programs and practice tips on the Court's Website of assistance?
- Are there questions/feedback on the new appellate processing changes?
- Is the new debtor electronic noticing program useful for you and your clients?

WHEN: Thursday, April 30, 2015 at 3:00 p.m.

LOCATION: Arthur N. Votolato Courtroom

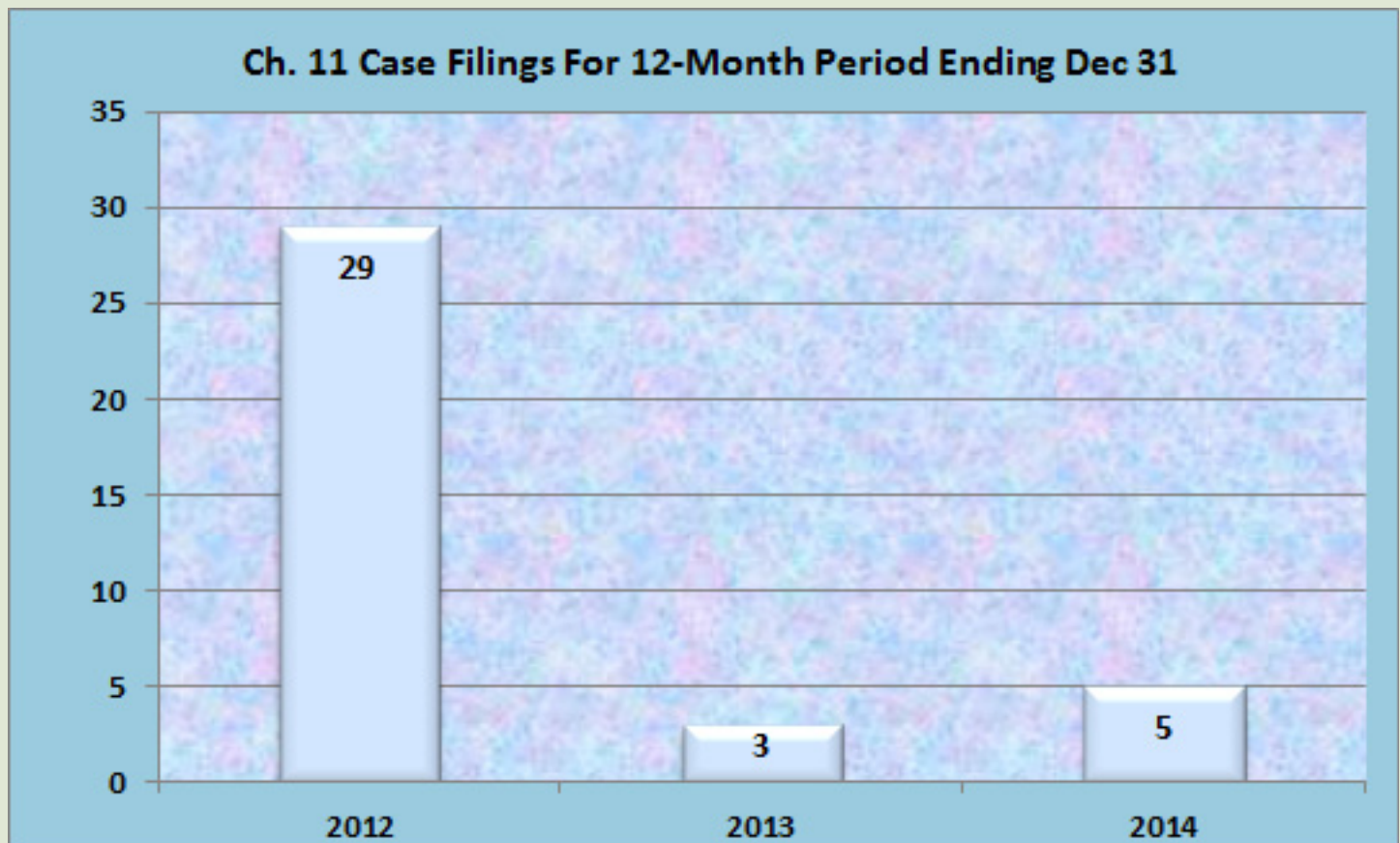
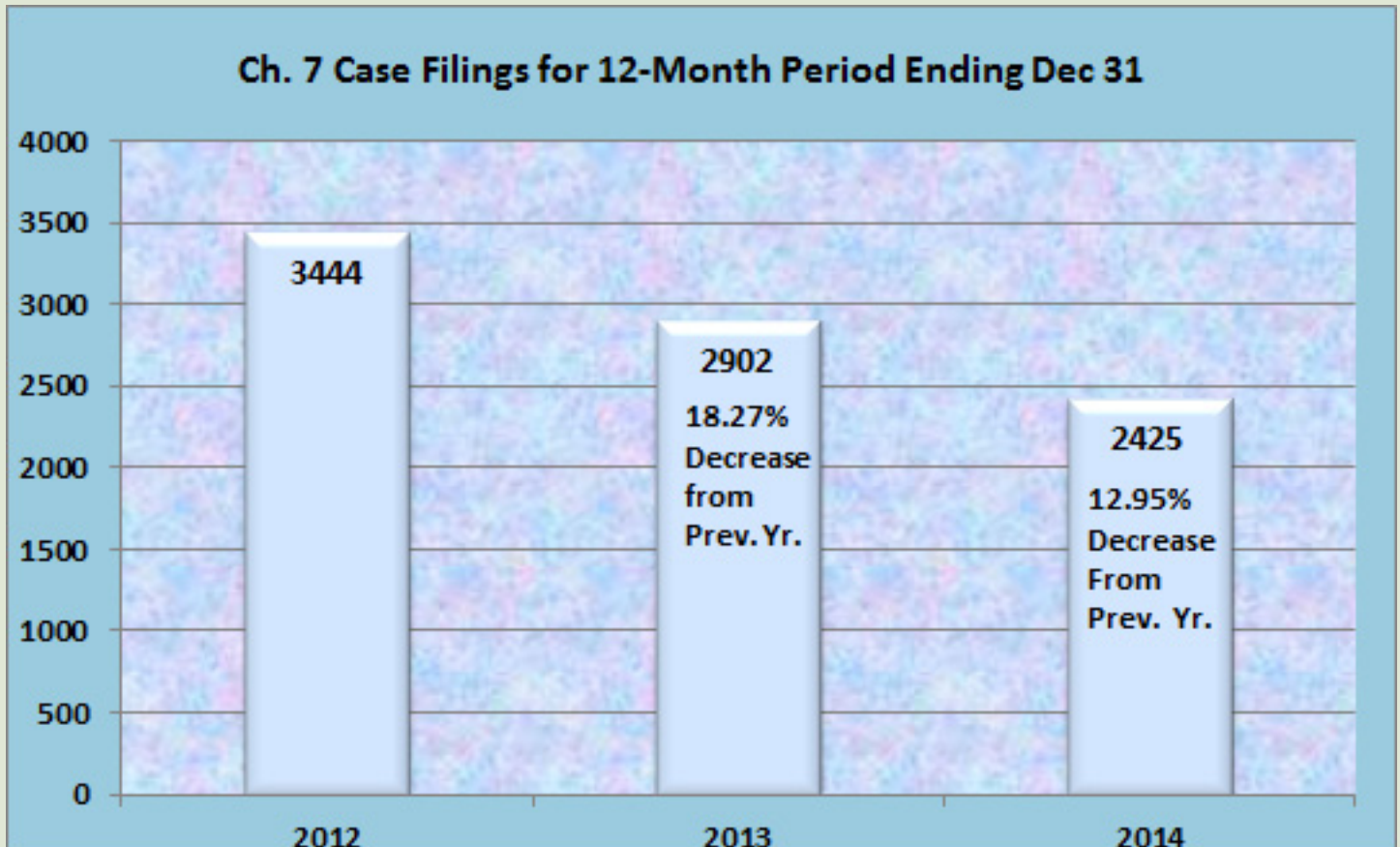
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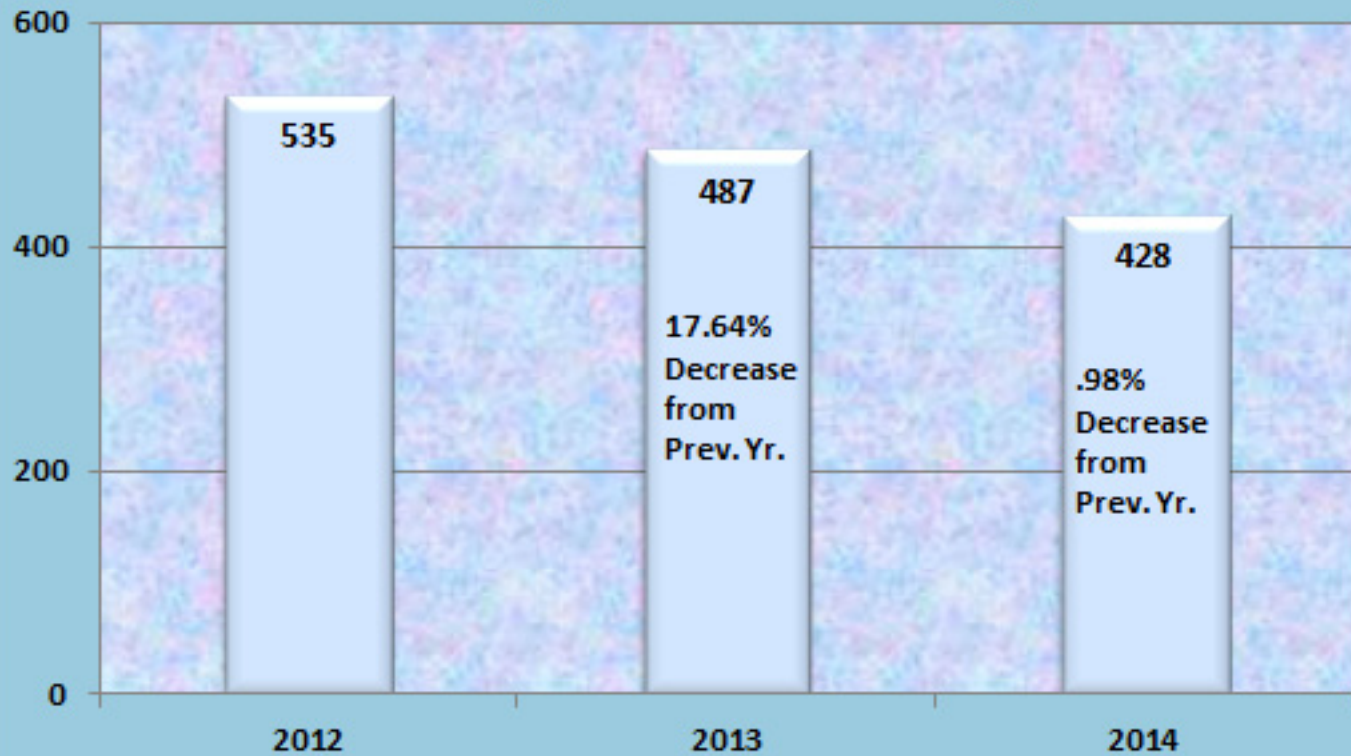
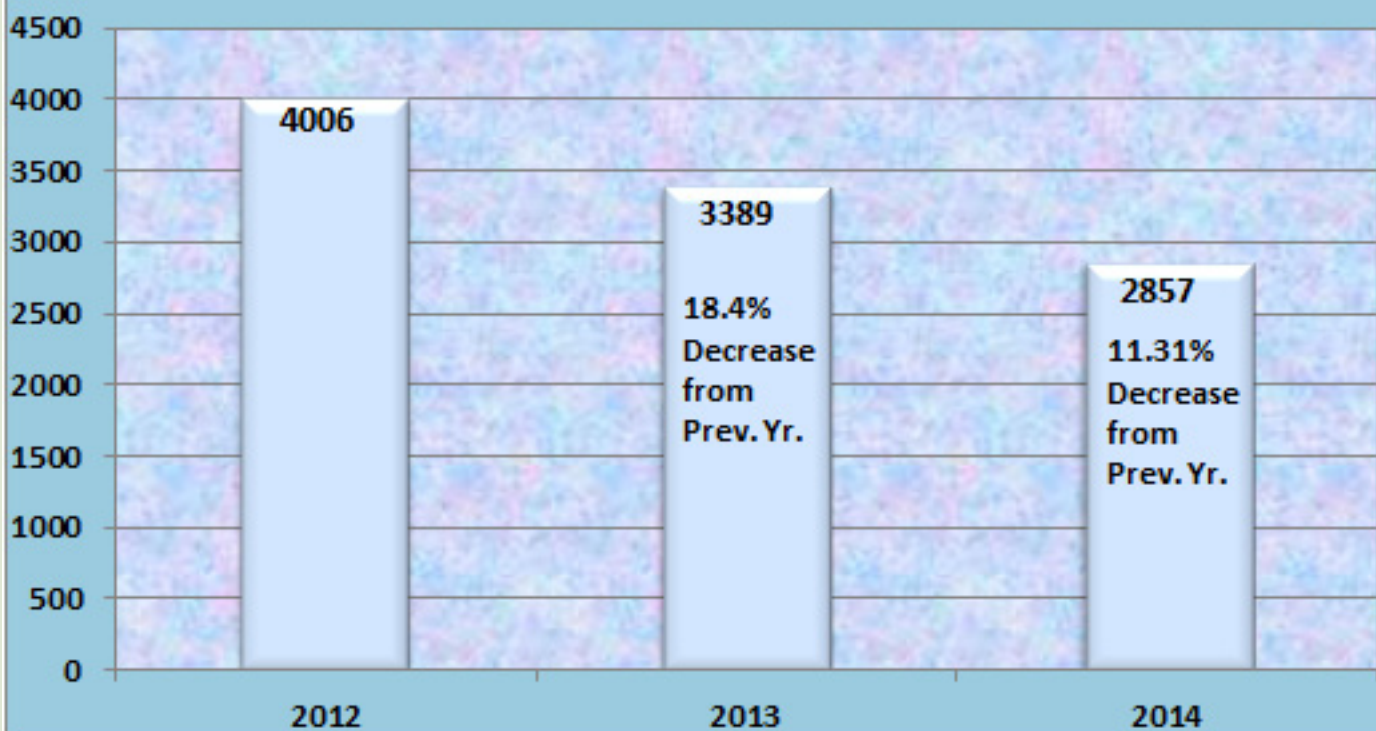
Please R.S.V.P. to Janet_Descoteaux@rib.uscourts.gov by April 27, 2015 if you plan to attend.

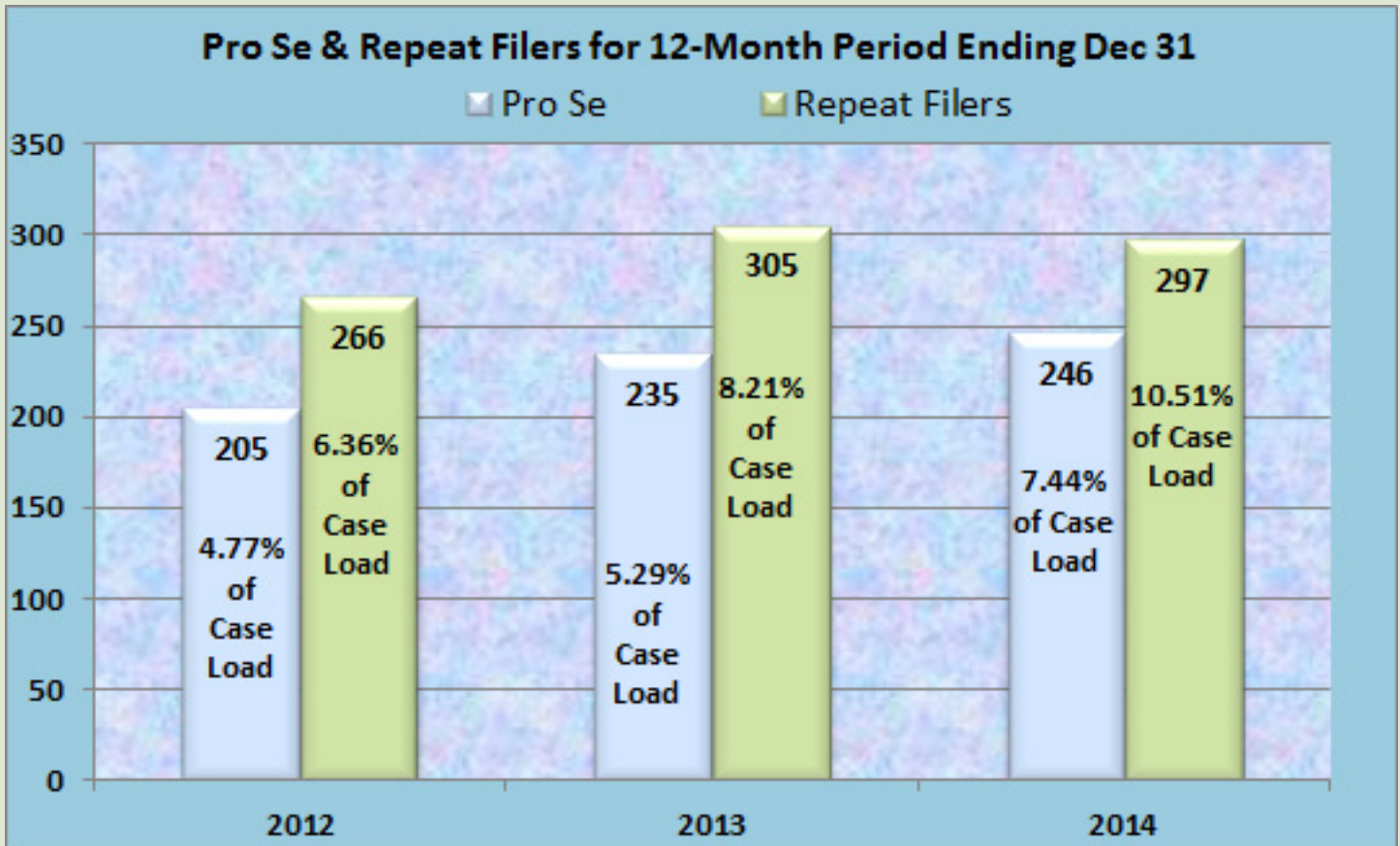


Case Filing Statistics for the Period Ending December 31, 2014

By Jody Venuti, Quality Assurance Specialist



Ch. 13 Case Filings for 12-Month Period Ending Dec 31**Comparison of Filings for 12-Month Period Ending Dec 31- All Chapters**



2015 COURT HOLIDAY CLOSING DATES

Memorial Day - Monday, May 25th
 Independence Day - Friday, July 3rd
 Labor Day - Monday, September 7th
 Columbus Day - Monday, October 12th
 Veterans Day - Wednesday, November 11th
 Thanksgiving Day - Thursday, November 26th
 Christmas Day - Friday, December 25th

CONTACT "ON THE DOCKET" PUBLICATION STAFF

If you have comments regarding this issue or suggestions for future articles, please contact "On the Docket" staff at the following email address:

Janet_Descoteaux@rib.uscourts.gov

Please do not use the above email address to file or send papers to the Court or to ask questions about court procedures or status of a particular case. Contact the Clerk's office at the following number for assistance in these matters.

Clerk's Office: (401) 626-3100

Visit the Court website at www.rib.uscourts.gov or our [Electronic Filing User Manual](#) for local filing information.

Please Note:

Clerk's office staff is not permitted to give legal advice.